AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

G.S.A.
411-587
18-Vols

4-1-83
Vol. 48 No. 64
Pages 13921-14346

federal register

Friday
April 1, 1983

Selected Subjects

Acreage Allotments
Agricultural Stabilization and Conservation Service

Coal Mining
Surface Mining Reclamation and Enforcement Office

Color Additives
Food and Drug Administration

Conflict of Interests
Farm Credit Administration

Drugs
Food and Drug Administration

Food Stamps
Food and Nutrition Service

Government Employees
Personnel Management Office

Government Property Management
General Services Administration

Household Appliances
Federal Trade Commission

Labeling
Food and Drug Administration

Loan Programs—Education
Education Department

Marketing Agreements
Agricultural Marketing Service

Mortgage Insurance
Federal Housing Commissioner—Office of Assistant Secretary for Housing

CONTINUED INSIDE



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

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

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

Selected Subjects

Navigation (Water)
Engineers Corps

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Quarantine
Animal and Plant Health Inspection Service

Reporting and Recordkeeping Requirements
Agriculture Department
Alcohol, Tobacco and Firearms Bureau
Environmental Protection Agency

Security Measures
Energy Department

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

The President
EXECUTIVE ORDERS
13921 Generalized System of Preferences, amendments (EO 12413)

Executive Agencies

Agricultural Marketing Service
RULES
13964 Lemons grown in Ariz. and Calif.
13963 Oranges and grapefruit grown in Tex.

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
13958 Acreage determination and compliance; interim

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Federal Grain Inspection Service; Food and Nutrition Service; Soil Conservation Service.
RULES
Export sales reporting requirements:
13954 Wet blue cattle hides

Alcohol, Tobacco and Firearms Bureau
RULES
13982 Firearms and ammunition, commerce; .22 caliber rimfire ammunition, elimination of all recordkeeping requirements
NOTICES
Authority delegations:
14113 Regional Regulatory Administrator et al.

Animal and Plant Health Inspection Service
RULES
Animal and poultry import restrictions:
13965 Mares from countries affected with CEM; interim
PROPOSED RULES
Plant quarantine, foreign:
13987 Citrus canker—Mexico; comment period reopened

Army Department
See also Engineers Corps.
NOTICES
Meetings:
14022 Science Board (2 documents)

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
14021 Procurement list, 1983; additions and deletions (2 documents)

Census Bureau
NOTICES
Meetings:
14018 American Economic Association Advisory Committee

Commerce Department
See also Census Bureau; International Trade Administration.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
14022 MidAmerican Commodity Exchange; live hogs
NOTICES
Meetings:
14020 President's Private Sector Survey on Cost Control

Customs Service
PROPOSED RULES
Tariff classification of merchandise:
14000 Chocolate, bulk liquid; correction

Defense Department
See Army Department; Engineers Corps; Navy Department.

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
14025 Virginia Electric & Power Co.

Education Department
RULES
Postsecondary education:
14316 Guaranteed student loan program; family contribution schedule
PROPOSED RULES
Postsecondary education:
14344 Guaranteed student loan program; family contribution schedule
NOTICES
Grant applications and proposals:
14023 Business and international education program

Employment and Training Administration
NOTICES
Adjustment assistance:
14071 Autland Manganese Corp. et al.
14069 Character Suburbanwear, Inc.
14073 Colorado & Wyoming Railway Co.
14071 Grand Ford, Inc.
14072 Puna Sugar Co., Ltd., et al.
Unemployment compensation; extended benefit periods:
14070 Maine
14070 Minnesota and Oregon
14073 Employment transfer and business competition determinations; financial assistance applications

Employment Standards Administration
NOTICES
14298 Minimum wages for Federal and Federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Calif., D.C., Fla., Idaho, Ill., Iowa, Kans., Md., Mass., Minn., Miss., Mo., Nebr., N.Y., Ohio, Oreg., Va., Wash., W. Va., and Wis.)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Southeastern Power Administration.
PROPOSED RULES
13988 Unclassified controlled nuclear information; identification and protection
NOTICES
Environmental statements; availability, etc.:
14029 Hanford Site, Richland, Washington; radioactive high-level and transuranic wastes
International atomic energy agreements; civil uses; subsequent arrangements:
14031–14033 European Atomic Energy Community (6 documents)
14033 Japan
14032 Japan and European Atomic Energy Community
14031 Japan and Sweden

Engineers Corps
RULES
Navigation regulations:
13985 Fox River, Wis.; locks and canal

Environmental Protection Agency
RULES
14146 Permit programs; de-consolidation
NOTICES
Environmental statements; availability, etc.:
14037 Agency statements; weekly receipts
Meetings:
14037 Radioactivity in drinking water workshop
14038 Science Advisory Board
Toxic and hazardous substances control:
14035 Premanufacture notices receipts
14036 Premanufacture notification requirements; test marketing exemption applications

Farm Credit Administration
PROPOSED RULES
13999 Conflict of interests; Federal Farm Credit Board waiver

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
14038 California (2 documents)
14038 Missouri

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
14027 Columbia Gas Transmission Corp.
14028 Louisiana Intrastate Gas Corp. et al.
14028 Northern Natural Gas Co.
14117 Meetings; Sunshine Act
Natural Gas Policy Act:
14027, 14029 Jurisdictional agency determinations; well category withdrawals, etc. (2 documents)

Federal Grain Inspection Service
NOTICES
Agency designation actions:
14017 Indiana and Nebraska; correction and extension of time
14015 Iowa
14016 Louisiana, North Carolina, and Ohio
14015 Michigan

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
Mortgage and loan insurance programs:
13978 Rent requirements for Section 101 and 236 programs; income-percentage formula, etc.; interim rule confirmed and correction

Federal Maritime Commission
NOTICES
14039 Agreements filed, etc.
14117 Meetings; Sunshine Act

Federal Reserve System
PROPOSED RULES
13993 Regulatory agenda
NOTICES
Applications, etc.:
14041 First Wisconsin Corp. et al.
14040 Newton Financial Corp. et al.
14041 Whitmore Co., Inc.
Bank holding companies; proposed de novo nonbank activities:
14039 Multibank Financial Corp. et al.
14117 Meetings; Sunshine Act (2 documents)

Federal Trade Commission
RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
13973 Refrigerators, refrigerator-freezers and freezers; comparability ranges
13972 Representative average unit energy costs of residential energy sources
Prohibited trade practices:
13970 Meredith Corp.
13971 Occidental Petroleum Corp. et al.
13972 U.S. Pioneer Electronics Corp.
NOTICES
14041 Premerger notification waiting periods; early terminations

Fish and Wildlife Service
NOTICES
14056 Wetlands and deepwater habitats in conterminous United States (1950's to 1970's); status and trends report; availability

Food and Drug Administration
RULES
Color additives:
13976 D&C Orange No. 17; provisional listing; expiration
13975 D&C Orange No. 17; provisional listing; postponement of closing date
13975 D&C Red No. 33; provisional listings; postponement of closing date

13978 Communicable diseases control; interstate conveyance sanitation; editorial amendments; correction
Human subjects, protection:
13978 Informed consent requirements; correction
Organization and authority delegations:
13974 Drugs and Biologics National Center officials; insulin, antibiotics, and distribution of biological products; correction
13974 Headquarters; organizations structure; correction
PROPOSED RULES
Food for human consumption:
14001 Peaches, quick frozen; identity standard, advance notice; terminated
14002 Raspberries, quick frozen; identity standard; advance notice; terminated
14002 Spinach, quick frozen; identity standard, advance notice, terminated
Human drugs:
14003 Good manufacturing practice; homeopathic drug products; exemption from active ingredient identity and strength testing
Labeling:
14000 Display panel, principal; area requirement; withdrawn
NOTICES
Biological products:
14048 Therapeutic plasma exchange derivative; licensing requirements
Color additive petitions:
14045 Cosmetic, Toiletry & Fragrance Association, Inc.
Human drugs:
14050 Over-the-counter (OTC) drug review; policy statement, clarification and inquiry
14048 Reserpine-containing drugs; precaution statement in professional labeling
Laser variance approvals, etc.:
14042 Laser Images, Inc., et al.
14042 RCA Corp.
Medical devices; premarket approval:
14044 CILCO, Inc.

Food and Nutrition Service
RULES
Food stamp program:
13955 Joint food stamp public assistance case processing; interim

General Services Administration
RULES
Property management:
13986 Code of ethics for Government service; display

Health and Human Services Department
See also Food and Drug Administration; Health Resources and Services Administration.
NOTICES
14051 Agency forms submitted to OMB for review

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
14050 June

Housing and Urban Development Department
See Federal Housing Commissioner—Office of Assistant Secretary for Housing.

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.
RULES
13986 Fish and wildlife policy; State-Federal relationship; correction
NOTICES
Meetings:
14059 Alaska Land Use Council

International Trade Administration
NOTICES
14019 Cheese, quota; foreign government subsidies list; quarterly update
Countervailing duties:
14019 Portland hydraulic cement and cement clinker from Mexico
Meetings:
14020 Numerically Controlled Machine Tool Technical Advisory Committee

Interstate Commerce Commission
NOTICES
Motor carriers:
14068 Compensated intercorporate hauling operations; intent to engage in
14059 Finance applications
14060–14066 Permanent authority applications (3 documents)
14067 Permanent authority applications; restriction removals
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
14067 Jack Link Truck Line, Inc., et al.
14068 Overland Transportation System, Inc., et al.
14069 Ryder Truck Lines, Inc., et al.

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.
NOTICES
14092 Agency forms submitted to OMB for review
Organization, functions, and authority delegations:
14092 Veterans' Employment, Office of Assistant Secretary of Labor

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
14053 Montana and North Dakota
Environmental statements; availability, etc.:
14053 Hell's Half Acre wilderness area et al., Idaho
Meetings:
14051 Anchorage District Advisory Council
Opening of public lands:
14052 Idaho; correction
Survey plat filings:
14052 Minnesota (4 documents)

Merit Systems Protection Board
RULES
13954 Freedom of Information and Privacy Acts; implementation; correction

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations:
14057 Mid-Atlantic; lease offering; correction
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
14056 Amoco Production Co.

Navy Department
NOTICES
14023 Agency forms submitted to OMB for review (2 documents)

Nuclear Regulatory Commission
RULES
Production and utilization facilities, domestic licensing:
13966 License conditions and technical specifications; applicability in an emergency
PROPOSED RULES
Production and utilization facilities; domestic licensing:
13987 Power reactor safety; licensing requirements for pending operating license applications; withdrawn
NOTICES
14117 Meetings; Sunshine Act

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
14005 Powered platforms for exterior building maintenance; advance notice; extension of time
NOTICES
Meetings:
14074 Occupational Safety and Health Federal Advisory Council; republication

Panama Canal Commission
NOTICES
14093 Agency forms submitted to OMB for review

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
14074 Blackmore & Glunt, Inc., et al.
14091 Havi Corp.; withdrawn
14087 International Reserve Equipment Corp. et al.

Personnel Management Office
RULES
Career and career-conditional employment, etc.:
13951 Canal Zone Merit System or Panama Canal Employment System; noncompetitive appointment of former employees
Pay administration:
13952 Deductions from civilian pay for increase in uniformed service retired or retainer pay; interim
PROPOSED RULES
13987 Reduction in force (RIF) procedures; correction

[*Editorial note:* The following six documents from Personnel Management Office appeared at, in order, pages 13384, 13374, 13342, 13368, 13371, and 13380 in the **Federal Register** of March 30, 1983.]

RULES
Prevailing rate systems; blue collar supervisory pay practices
PROPOSED RULES
Pay administration:
Exemption criteria; Fair Labor Standards Act
Performance management system
Reduction in force (RIF) procedures
Reduction in force (RIF) procedures and effects; publication of advance comments
NOTICES
Federal Personnel Manual issuance (FPM); management rights, consultation and scope of bargaining policy in labor-management relations

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
14055 Galesville Project, Oreg.
14054, 14055 Garrison Diversion Unit, N. Dak. (2 documents)

Securities and Exchange Commission
NOTICES
Hearings, etc.:
14093 Alabama Power Co.
14094 Kingsport Power Co. et al.
14097 Pruco Life Insurance Co. of New Jersey et al.
14098 Southwestern Investors, Inc.
14098 Sun Life Assurance Co. of Canada (U.S.) et al.
14100 West Penn Power Co.
Self-regulatory organizations; proposed rule changes:
14101 American Stock Exchange, Inc.
14104 Lincoln National Pension Insurance Co. et al.
14105 Midwest Stock Exchange, Inc.
14103 New York Stock Exchange, Inc.
14095 Pacific Stock Exchange, Inc.

Small Business Administration
NOTICES
Applications, etc.:
14106 Ferranti High Technology, Inc.
14107 Freshstart Venture Capital Corp.
14107 Grocers Capital Co., Inc. (2 documents)
14107 H.B.R. Capital Corp.
Meetings; regional advisory councils:
14108 Nebraska
14108 New Jersey

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
14017 Berrien Township Park Critical Area Treatment and Public Water-Based Recreation Development RC&D Measure, Mich.
14018 Little Wyaconda-Sugar Creek Watershed, Mo.
14018 Riley Park Water Based Recreation RC&D Measure, Ind.

Southeastern Power Administration
NOTICES
Kerr-Philpott projects:
14033 Power rates; interim approval

Surface Mining Reclamation and Enforcement Office
RULES
13984 Federal lands program; surface coal mining and reclamation operations; correction
PROPOSED RULES
Coal exploration on on-Federal and non-Indian lands; Federal program regulations; various States:
14006 Massachusetts
14005 North Carolina; hearing postponement and extension of time
Permanent program submission; various States:
14013 Tennessee

Synthetic Fuels Corporation
NOTICES
14108 Environmental monitoring plan guidelines; interim

Tennessee Valley Authority
NOTICES
14117 Meetings; Sunshine Act

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Customs Service.

Veterans Administration
NOTICES
14114 Privacy Act; systems of records

Separate Parts in This Issue

Part II
14146 Environmental Protection Agency

Part III
14298 Labor Department, Employment Standards Administration; Wage and Hour Division

Part IV
14316 Department of Education

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

4707 (Amended by EO 12413)..... 13921
4768 (Amended by EO 12413)..... 13921

Executive Orders:

11888 (Amended by EO 12413)..... 13921
12389 (Amended by EO 12413)..... 13921
12413..... 13921

5 CFR

315..... 13951
553..... 13952
1204..... 13954
1205..... 13954

Proposed Rules:

351..... 13987

7 CFR

20..... 13954
272..... 13955
273..... 13955
718..... 13958
906..... 13963
910..... 13964

Proposed Rules:

319..... 13987

9 CFR

92..... 13965

10 CFR

50..... 13966

Proposed Rules:

50..... 13987
1017..... 13988

12 CFR

Proposed Rules:

Ch. II..... 13993
601..... 13999

16 CFR

13 (3 documents)..... 13970–13972
305 (2 documents)..... 13972, 13973

19 CFR

Proposed Rules:

177..... 14000

21 CFR

5 (2 documents)..... 13974
81 (3 documents)..... 13975, 13976
82..... 13976
1003..... 13978
1240..... 13978

Proposed Rules:

101..... 14000
148 (2 documents)..... 14001, 14002
158..... 14002
201..... 14000
211..... 14003
501..... 14000
701..... 14000
801..... 14000

24 CFR

215..... 13978
236..... 13978
425..... 13978
426..... 13978

27 CFR

178..... 13982

29 CFR

Proposed Rules:

1910..... 14005

30 CFR

700..... 13984
701..... 13984
740..... 13984
741..... 13984
742..... 13984
743..... 13984
744..... 13984
745..... 13984
746..... 13984

Proposed Rules:

921..... 14006
932..... 14005
942..... 14013

33 CFR

207..... 13985

34 CFR

682..... 14316

Proposed Rules:

682..... 14344

40 CFR

122..... 14146
123..... 14146
124..... 14146
125..... 14146
144..... 14146
145..... 14146
146..... 14146
233..... 14146
260..... 14146
261..... 14146
262..... 14146
263..... 14146
264..... 14146
265..... 14146
270..... 14146
271..... 14146

41 CFR

101–20..... 13986

43 CFR

24..... 13986

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

Presidential Documents

Title 3—

The President

Executive Order 12413 of March 30, 1983

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended, Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), and Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), and as President of the United States of America, in order to modify, as provided by Sections 504 (a) and (c) of the Trade Act of 1974 (19 U.S.C. 2464 (a) and (c)), the limitations on preferential treatment for eligible articles from countries designated as beneficiary developing countries; to adjust the original designation of eligible articles after taking into account information and advice received in fulfillment of Sections 131–134 and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151–2154, 2463); to provide for the continuation, to the greatest extent possible, of preferential treatment under the Generalized System of Preferences (GSP) for articles which are currently eligible for such treatment and which are imported from countries designated as beneficiary developing countries, consistent with the changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) which have resulted from the recent enactment of Public Law 97–446; and to make technical changes in the identification of certain beneficiary developing countries, it is hereby ordered as follows:

Section 1. In order to subdivide and amend the nomenclature of existing items for purposes of the GSP, the TSUS are modified as provided in Annex I, attached hereto and made a part hereof.

Sec. 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is amended by substituting therefor the new Annex II attached hereto and made a part hereof.

Sec. 3. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in General Headnote 3(c)(iii) of the TSUS, is amended by substituting therefor the new Annex III, attached hereto and made a part hereof.

Sec. 4. General Headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is modified by substituting therefor the General Headnote 3(c)(iii) set forth in Annex IV, attached hereto and made a part hereof.

Sec. 5. In order to provide staged reductions in the rates of duty for those new TSUS items created by Annex I to this Order, Annex III to Presidential Proclamation No. 4707 of December 11, 1979, and Annex III to Presidential Proclamation No. 4768 of June 28, 1980, are amended by Annex V to this Order, attached hereto and made a part hereof.

Sec. 6. General Headnote 3(c)(i) of the TSUS listing the designated beneficiary developing countries for purposes of the GSP is modified as provided in Annex VI, attached hereto and made a party hereof.

Sec. 7. Whenever the column 1 rate of duty in the TSUS for any item specified in Annex I to this Order is reduced to the same level as, or to a lower level

than, the corresponding rate of duty inserted in the column entitled "LDDC" by Annex I of this Order, the rate of duty in the column entitled "LDDC" for such item shall be deleted from the TSUS.

Sec. 8. Annexes III and IV of Presidential Proclamation No. 4707 of December 11, 1979, and Annexes II, III and IV of Presidential Proclamation No. 4768 of June 28, 1980, are superseded to the extent inconsistent with this Order.

Sec. 9. In order to correct a typographical error in Executive Order No. 12389 of October 25, 1982, Annex II thereto is amended by deleting "effective September, 1982" from footnote 4 and inserting in lieu thereof "effective October 30, 1982." This amendment is effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after October 30, 1982.

Sec. 10. (a) The deletion, from Annex II of Executive Order No. 11888, as amended, and as further amended by Section 2 of this Order, of TSUS items 642.30, 726.60, 726.62, and 737.45, and the insertion in such Annex II of items 535.13, 642.31, 642.34, and 737.42; the deletion, from Annex III of Executive Order No. 11888, as amended, and as further amended by Section 3 of this Order, of TSUS item 737.50, and the insertion in such Annex III of items 737.43, 737.47, 737.49, and 737.51; and the deletion, from General Headnote 3(c)(iii) of the TSUS as modified by Section 4 of this Order, of "737.50 . . . . Hong Kong", and the insertion in such headnote of the following:

"737.43	Hong Kong
737.47	Hong Kong
	Taiwan
737.49	Hong Kong
	Taiwan
737.51	Hong Kong
	Taiwan",

shall be effective with respect to articles that are both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on and after January 27, 1983.

Sec. 11. Unless otherwise specified, the remaining amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on and after March 31, 1983.

Ronald Reagan

THE WHITE HOUSE,
March 30, 1983.

Billing code 3195-01-M

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of ordered modifications.
2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", "Rates of Duty LDDC", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

Section A. Effective as to articles entered, or withdrawn from warehouse for consumption, on and after March 31, 1983.

1. Item 137.95 is superseded by:

	[Vegetables,...:]			
	[Other:]			
"137.93	Pumpkins and breadfruit.....	25% ad val.	50% ad val.
137.97	Other.....	25% ad val.	50% ad val."

2. Items 152.81 and 152.82 are superseded by:

[Fruit...:]			
"152.40	Apple and quince.....	15% ad val.	35% ad val.
152.41	If product of Cuba.....	14% ad val.(s)	
152.88	Other.....	15% ad val.	35% ad val.
152.89	If product of Cuba.....	14% ad val.(s)"	

3. Items 153.03 and 153.06 are superseded by:

[All...:]			
"Currant and other berry:			
153.03	Strawberry.....	3% ad val.	35% ad val.
153.05	Mulberry and blackberry.....	3% ad val.	35% ad val.
153.07	Other.....	3% ad val.	35% ad val."

4. Item 169.46 is superseded by:

[Other...:]			
[Spirits:]			
"In containers each holding not over 1 gallon:			
169.42	Mescal.....	$2.56 per proof gallon	$6.72 per proof gallon
169.44	Other.....	$2.56 per proof gallon	$6.72 per proof gallon"

ANNEX I

-2-

5. Item 403.28 is superseded by:

	[Cyclic...:]			
	[Other:]			
	[Alcohols,...:]			
	"Naphthols:			
403.27	α-Naphthols.....	[See Annex V]	20% ad val.	7c per lb. + 73% ad val.
403.29	Other.....	[See Annex V]	20% ad val.	7c per lb. + 73% ad val."

6.(a) Item 404.44 is superseded by:

	[Cyclic...:]			
	[Other:]			
	[Carboxylic...:]			
	[Other:]			
	[Carboxylic...:]			
"404.42	p-Hydroxy-benzoic acid.....	[See Annex V]	7% ad val.	7c per lb. + 48.5% ad val.
404.43	Gentisic acid; and Hydroxy-cinnamic acid and its salts.....	[See Annex V]	7% ad val.	7c per lb. + 48.5% ad val."

(b) Conforming change: The article description for item 907.00 in the Appendix to the TSUS is modified by deleting therefrom "404.44" and inserting in lieu thereof "404.42".

7.(a) Item 405.32 and the superior heading thereto are superseded by:

	[Cyclic...:]			
	[Other:]			
	[Amides...:]			
	[Other:]			
"405.31	N-Acetylsulfanilyl chloride.....	1.7c per lb. + 18.1% ad val.		7c per lb. + 58% ad val.
	Other:			
405.33	Products provided for in the Chemical Appendix to the Tariff Schedules.....	1.7c per lb. + 18.1% ad val.		7c per lb. + 58% ad val."

(b) Conforming change: CAS number 121-60-8 is deleted from the Chemical Appendix to the Tariff Schedules.

ANNEX I

-3-

8.(a) Item 411.28 is superseded by:

	[Products...:] [Obtained,...:] [Drugs:]			
"411.26	Sulfamerazine.....	[See Annex V]	11.6% ad val.	7c per lb. + 128.5% ad val.
411.27	Sulfadiazine, sulfaguanidine, sulfapyridine, and salicyl-azosulfapyridine (Sulfasala-zine).....	[See Annex V]	11.6% ad val.	7c per lb. + 128.5% ad val."

(b) Conforming change: The article description for item 907.17 in the Appendix to the TSUS is modified by deleting therefrom "411.28" and inserting in lieu thereof "411.27".

9.(a) Item 411.84 and the superior heading thereto are superseded by:

	[Products...:] [Obtained,...:] [Drugs:] [Other:] [Anti-infective...:] [Anti-infective...:]			
"411.81	Sulfamethazine, sodium; sulfamethoxazole; sulfisoxazole; sulfacetamide, sodium; sulfanilamide; and sulfaquinoxaline.....	[See Annex V]	10.8% ad val.	7c per lb. + 96% ad val.
	Other:			
411.83	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	10.8% ad val.	7c per lb. + 96% ad val."

(b) Conforming change: CAS numbers 59-40-5, 63-74-1, 127-56-0, 127-69-5, 723-46-6, and 1981-58-4 are deleted from the Chemical Appendix to the Tariff Schedules.

ANNEX I

-4-

10. Item 411.94 and the superior heading thereto are superseded by:

	[Products...:]			
	[Obtained,...:]			
	[Drugs:]			
	[Other:]			
	[Anti-infective...:]			
	[Anti-infective...:]			
"411.91	Mandelic acid.....	[See Annex V]	8.1% ad val.	7c per lb. + 67.5% ad val.
	Other:			
411.93	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	8.1% ad val.	7c per lb. + 67.5% ad val."

11.(a) Item 412.68 and the superior heading thereto are superseded by:

	[Products...:]			
	[Obtained,...:]			
	[Drugs:]			
	[Other:]			
"412.67	Hydrochlorothiazide; tolbutamide.....	[See Annex V]	6.9% ad val.	7c per lb. + 45% ad val.
	Other:			
412.69	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	6.9% ad val.	7c per lb. + 45% ad val."

(b) Conforming change: CAS numbers 58-93-5 and 64-77-7 are deleted from the Chemical Appendix to the Tariff Schedules.

ANNEX I

-5-

12. Item 654.05 is superseded by:

	[Articles...:]			
	[Articles,...:]			
	[Of copper:]			
	"Other:			
654.04	Cooking and kitchen ware.....	[See Annex V]	4.9% ad val.	40% ad val.
654.06	Other.....	[See Annex V]	4.9% ad val.	40% ad val."

13. Item 703.15 is superseded by:

	[Headwear, ...:]			
	[Not...:]			
	"Not knit:			
703.14	Non-woven disposable apparel designed for use in hospitals, clinics, laboratories, or contaminated areas.....	[See Annex V]		45c per lb.+ 65% ad val.
703.16	Other.....	[See Annex V]		45c per lb.+ 65% ad val."

14. Item 727.12 is superseded by:

	[Furniture,...:]			
	[Of unspun...:]			
"727.13	Of buri.....	[See Annex V]	7.5% ad val.	60% ad val.
727.14	Other.....	[See Annex V]	7.5% ad val.	60% ad val."

15. Item 728.25 is superseded by:

	"Floor coverings of vinyl:			
728.22	Vinyl tile.....	[See Annex V]	5.3% ad val.	40% ad val.
728.24	Other.....	[See Annex V]	5.3% ad val.	40% ad val.
728.27	Floor coverings not specially provided for.....	[See Annex V]	5.3% ad val.	40% ad val."

16.(a) Item 730.90 is superseded by:

	[Bombs,...:]			
	"Cartridges and empty cartridge shells:			
	Containing a projectile:			
730.94	For rifles or pistols, except .22 caliber.....	[See Annex V]	5% ad val.	30% ad val.
730.95	Other.....	[See Annex V]	5% ad val.	30% ad val.
730.96	Other.....	[See Annex V]	5% ad val.	30% ad val."

(b) Conforming changes: Items 730.91, 730.92, and 730.93 are redesignated as 730.97, 730.98, and 730.99, respectively.

ANNEX I

-6-

Section B. Effective as to articles entered, or withdrawn from warehouse for consumption, on and after January 1, 1988.

1. Items 411.83 and 411.86 and the superior heading thereto are superseded by:

	[Products...:]		
	[Obtained...:]		
	[Drugs:]		
	[Other:]		
	[Anti-infective...:]		
	[Anti-infective...:]		
"411.85	Other.....	10.8% ad val.	7c per lb. + 96% ad val."

2. Items 411.93 and 411.96 and the superior heading thereto are superseded by:

	[Products...:]		
	[Obtained...:]		
	[Drugs:]		
	[Other:]		
	[Anti-infective...:]		
	[Anti-infective...:]		
"411.95	Other.....	8.1% ad val.	7c per lb. + 67.5% ad val."

3. Items 412.69 and 412.70 and the superior heading thereto are superseded by:

	[Products...:]		
	[Obtained...:]		
	[Drugs:]		
	[Other:]		
"412.71	Other.....	6.9% ad val.	7c per lb. + 45% ad val."

ANNEX II

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

100.25	124.65	140.46	152.05
100.31	124.70	140.54	152.30
105.30	124.80	140.56	152.40
105.60	125.01	140.70	152.43
105.84	125.10	140.76	152.58
106.70	125.15	141.05	152.60
106.75	125.20	141.20	152.78
107.10	125.32	141.35	153.03
107.15	125.34	141.45	153.05
107.20	125.50	141.50	153.16
107.25	125.82	141.70	153.20
107.40	125.84	141.78	153.24
107.45	126.41	141.82	153.28
107.65	127.10	141.85	153.32
107.70	130.20	141.87	154.10
107.78	130.30	141.98	154.40
110.28	130.32	144.14	154.43
110.35	130.37	145.02	154.60
110.45	130.40	145.09	155.30
111.10	130.45	145.24	155.40
111.15	130.63	145.26	155.60
111.18	131.20	145.28	155.75
111.56	131.35	145.30	156.25
111.60	131.80	145.50	156.30
112.03	132.55	145.52	156.40
112.36	135.12	145.53	156.47
112.40	135.14	145.54	157.10
112.94	135.30	145.65	161.05
113.30	135.41	145.70	161.06
113.40	135.50	146.12	161.37
113.50	135.60	146.42	161.43
113.60	135.70	146.66	161.45
114.04	135.80	146.69	161.53
114.25	135.99	146.74	161.57
114.55	136.10	146.78	161.61
117.65	136.40	146.82	161.65
117.67	136.50	146.87	161.69
119.50	136.60	146.90	161.71
119.55	136.90	147.21	161.75
120.17	136.92	147.29	161.83
121.10	136.95	147.33	161.84
121.15	136.97	147.36	161.88
121.25	137.02	147.53	161.92
121.30	137.04	147.54	161.96
121.35	137.84	147.80	162.03
121.52	137.88	147.85	162.07
121.54	137.89	148.08	162.11
121.56	138.40	148.19	162.15
121.64	138.41	148.35	165.55
121.65	140.10	148.52	166.10
123.50	140.11	148.65	166.20
124.20	140.14	148.77	166.30
124.25	140.16	148.81	166.40
124.30	140.20	149.15	167.15
124.40	140.35	149.60	167.25
124.60	140.38	152.00	167.34

ANNEX II

-2-

167.40	182.11	206.53	251.30
167.50	182.15	206.54	251.45
168.12	182.20	206.65	252.05
168.13	182.30	206.95	252.10
168.14	182.32	207.00	252.13
168.16	182.35	220.10	252.15
168.36	182.36	220.15	252.17
168.37	182.40	220.31	252.20
168.39	182.45	220.35	252.25
168.41	182.46	220.36	252.27
168.42	182.49	220.37	252.30
168.54	182.52	220.39	252.35
168.57	182.58	220.41	252.40
168.59	182.90	220.47	252.42
168.61	182.96	220.50	252.45
168.96	183.01	222.30	252.50
168.98	183.05	222.32	252.57
169.04	184.50	222.34	252.59
169.07	184.51	222.36	252.61
169.08	184.53	222.40	252.63
169.32	184.58	222.41	252.70
169.37	184.65	222.42	252.73
169.38	186.10	222.44	252.75
169.39	186.15	222.55	252.77
169.42	186.20	222.57	252.81
169.44	186.30	222.60	252.84
169.47	186.40	222.62	252.86
169.48	186.50	222.64	252.90
169.49	188.30	240.10	253.05
169.58	188.34	240.12	253.10
169.59	188.50	240.14	253.15
170.10	190.10	240.16	253.20
170.15	190.25	240.19	253.25
170.63	190.68	240.21	253.30
170.67	190.85	240.30	253.35
170.70	191.18	240.32	253.40
175.36	192.17	240.34	253.45
176.01	192.45	240.36	254.05
176.14	193.10	240.38	254.09
176.15	200.06	240.40	254.15
176.29	200.45	240.50	254.18
176.30	202.38	240.52	254.20
176.49	202.54	240.54	254.25
176.50	202.56	240.56	254.30
176.70	202.60	240.58	254.35
177.12	202.66	240.60	254.40
177.16	203.10	245.00	254.42
177.22	203.20	245.10	254.44
177.24	203.30	245.30	254.46
177.26	204.05	245.45	254.48
177.40	204.10	245.50	254.50
177.58	204.20	245.60	254.54
177.62	204.30	245.70	254.56
177.69	204.35	245.80	254.58
177.72	206.30	251.10	254.63
178.30	206.45	251.15	254.65
182.05	206.50	251.20	254.70
182.10	206.52	251.25	254.80

ANNEX II

-3-

254.85	304.44	347.28	402.16
254.90	304.48	347.30	402.20
254.95	304.58	347.35	402.24
256.05	305.20	347.72	402.28
256.10	305.22	347.75	402.32
256.13	305.28	355.04	403.27
256.15	305.40	355.20	404.42
256.20	305.50	355.42	405.02
256.25	306.11	355.55	405.31
256.30	306.42	356.40	406.72
256.35	306.53	358.06	406.81
256.40	306.60	358.14	406.86
256.42	306.61	360.04	406.96
256.44	306.70	360.35	407.00
256.48	306.71	360.36	407.09
256.52	306.72	360.44	408.00
256.54	306.80	360.77	408.08
256.56	306.81	360.79	408.12
256.58	306.82	360.82	408.16
256.65	307.02	360.84	408.21
256.67	307.04	361.21	408.22
256.70	307.06	361.23	408.23
256.75	307.08	361.26	408.24
256.80	307.16	361.43	408.28
256.84	308.06	361.53	408.29
256.90	308.10	361.85	408.31
270.45	308.16	363.02	408.32
270.50	308.18	364.09	408.36
273.30	308.20	364.14	408.38
273.50	308.30	364.18	408.41
273.55	308.35	364.21	408.44
273.65	308.45	364.25	408.48
273.70	308.47	364.35	408.54
273.75	308.51	365.05	408.61
273.85	308.55	365.14	408.64
273.90	308.80	365.15	408.68
273.95	308.90	365.25	408.76
274.00	312.10	365.29	408.81
274.05	312.30	365.72	408.84
274.10	312.40	365.76	408.88
274.15	312.50	365.91	408.92
274.20	315.30	367.28	408.96
274.23	315.55	367.31	409.02
274.27	315.75	370.17	409.06
274.29	315.80	370.19	409.10
274.33	315.85	370.22	409.14
274.35	315.90	372.60	409.18
274.60	315.95	372.65	409.22
274.65	316.50	385.95	409.26
274.70	316.70	386.13	409.28
274.75	319.07	387.25	409.30
274.80	335.50	387.32	409.34
274.85	335.70	387.33	409.38
274.90	335.85	390.16	409.42
304.10	337.20	402.00	410.36
304.14	337.72	402.04	410.40
304.22	339.10	402.08	410.44
304.40	347.20	402.12	410.48

ANNEX II

-4-

410.52	417.16	419.40	421.60
410.56	417.18	419.42	421.62
410.60	417.20	419.44	421.72
410.64	417.24	419.50	421.74
410.66	417.26	419.52	421.76
410.68	417.28	419.54	421.84
410.72	417.32	419.60	421.86
410.76	417.34	419.70	421.90
410.80	417.36	419.74	422.00
410.84	417.38	419.76	422.10
410.88	417.42	419.80	422.12
410.92	417.44	419.82	422.14
410.96	417.50	419.84	422.20
411.00	417.52	419.90	422.24
411.04	417.54	420.00	422.26
411.08	417.64	420.02	422.30
411.10	417.70	420.04	422.58
411.20	417.72	420.06	422.60
411.24	417.74	420.08	422.62
411.26	417.76	420.14	422.70
411.64	417.78	420.16	422.72
411.80	417.80	420.18	422.74
411.81	417.90	420.20	422.76
411.91	417.92	420.22	422.78
412.22	418.00	420.24	422.80
412.31	418.14	420.26	422.82
412.67	418.18	420.28	422.90
412.72	418.22	420.30	422.92
412.76	418.24	420.34	422.94
412.80	418.26	420.36	423.00
412.84	418.28	420.40	423.80
412.88	418.32	420.54	423.84
412.92	418.40	420.60	423.86
412.96	418.42	420.68	423.94
413.00	418.44	420.70	423.96
413.04	418.50	420.78	425.00
413.08	418.52	420.82	425.02
413.12	418.60	420.84	425.04
413.16	418.62	420.86	425.06
413.20	418.68	420.88	425.08
413.24	418.72	420.94	425.09
413.28	418.74	420.98	425.10
413.30	418.76	421.04	425.12
413.32	418.80	421.06	425.14
413.36	418.94	421.08	425.18
413.40	419.00	421.10	425.20
413.50	419.02	421.14	425.22
413.51	419.04	421.16	425.24
415.20	419.10	421.18	425.26
415.27	419.20	421.22	425.28
415.50	419.22	421.34	425.32
416.05	419.24	421.36	425.34
416.30	419.28	421.44	425.36
416.45	419.32	421.46	425.38
417.10	419.34	421.52	425.41
417.14	419.38	421.54	425.42

ANNEX II

-5-

425.52	427.25	428.94	437.69
425.72	427.28	428.96	437.70
425.74	427.30	429.00	437.72
425.76	427.40	429.10	437.74
425.78	427.42	429.12	437.82
425.82	427.44	429.19	437.84
425.84	427.45	429.22	437.86
425.86	427.46	429.24	438.01
425.87	427.48	429.26	438.02
425.88	427.53	429.29	439.30
425.94	427.54	429.30	439.50
426.00	427.56	429.32	440.00
426.04	427.58	429.34	445.05
426.08	427.60	429.38	445.10
426.10	427.62	429.42	445.15
426.12	427.64	429.44	445.20
426.14	427.70	429.46	445.25
426.18	427.72	429.47	445.30
426.22	427.74	429.48	445.35
426.24	427.82	429.60	445.44
426.26	427.84	429.70	445.46
426.28	427.92	429.85	445.48
426.32	427.94	429.95	445.52
426.34	427.97	432.15	445.54
426.36	427.98	432.25	445.56
426.42	428.04	435.10	445.75
426.44	428.06	436.00	446.10
426.46	428.12	437.02	446.12
426.52	428.20	437.04	446.15
426.54	428.22	437.06	446.30
426.56	428.24	437.10	450.10
426.58	428.26	437.12	450.20
426.62	428.30	437.13	452.24
426.64	428.32	437.14	452.28
426.72	428.34	437.16	452.48
426.76	428.36	437.18	452.54
426.77	428.38	437.20	452.58
426.78	428.40	437.22	452.80
426.82	428.41	437.30	455.02
426.84	428.42	437.32	455.06
426.86	428.44	437.36	455.16
426.88	428.47	437.38	455.18
426.92	428.50	437.40	455.20
426.94	428.52	437.44	455.22
426.96	428.54	437.47	455.24
426.98	428.62	437.49	455.30
427.02	428.64	437.50	455.32
427.04	428.66	437.51	455.34
427.06	428.68	437.52	455.36
427.08	428.72	437.54	455.38
427.12	428.80	437.55	455.44
427.14	428.82	437.56	455.46
427.16	428.84	437.57	460.10
427.18	428.86	437.58	460.15
427.20	428.88	437.64	460.25
427.22	428.90	437.65	460.30
427.24	428.92	437.68	460.35

460.45	473.02	490.10	514.24
460.50	473.06	490.12	514.34
460.55	473.10	490.24	514.41
460.60	473.12	490.30	514.44
460.65	473.14	490.32	514.51
460.70	473.16	490.40	514.54
460.75	473.18	490.42	514.57
460.80	473.19	490.44	514.61
460.85	473.20	490.46	514.65
460.90	473.24	490.48	514.81
461.05	473.28	490.50	515.11
461.10	473.30	490.90	515.14
461.15	473.32	490.92	515.24
461.20	473.36	490.94	515.31
461.30	473.38	493.10	515.34
461.35	473.44	493.14	515.51
461.40	473.46	493.17	515.54
461.45	473.48	493.18	515.61
465.05	473.50	493.20	515.64
465.10	473.54	493.22	516.21
465.15	473.58	493.25	516.24
465.20	473.60	493.26	516.71
465.25	473.62	493.30	516.73
465.30	473.66	493.46	516.74
465.35	473.70	493.47	516.76
465.40	473.72	493.50	516.91
465.45	473.74	493.67	516.94
465.50	473.76	493.68	517.11
465.55	473.78	494.04	517.21
465.60	473.80	494.40	517.24
465.65	473.82	494.52	517.51
465.70	473.84	494.60	517.61
465.75	473.86	495.05	517.71
465.80	473.88	495.10	517.74
465.85	473.90	495.15	517.81
465.87	474.02	495.20	517.91
465.90	474.04	511.11	518.21
465.92	474.06	511.25	518.41
465.95	474.08	511.31	518.51
466.05	474.20	511.41	519.11
466.10	474.22	511.51	519.14
466.15	474.26	511.61	519.31
466.20	474.30	511.71	519.37
466.25	474.35	512.24	519.51
466.30	474.40	512.31	519.83
470.18	474.42	512.35	519.84
470.85	474.44	512.41	519.86
472.06	474.46	512.44	519.91
472.10	474.50	513.21	519.93
472.14	474.60	513.36	519.95
472.24	474.62	513.41	519.97
472.30	475.55	513.51	520.31
472.40	475.60	513.74	520.37
472.42	485.10	513.81	520.39
472.44	485.20	513.84	520.51
472.48	485.30	513.94	520.54
472.50	490.05	514.21	520.61

ANNEX II

-7-

520.71	540.47	548.05	612.30
521.87	540.51	601.33	612.31
522.41	540.55	601.54	612.32
522.45	540.61	602.20	612.34
522.61	540.63	602.28	612.35
522.71	540.65	603.10	612.36
522.81	540.67	603.15	612.38
523.31	540.71	603.25	612.39
523.33	541.11	603.30	612.40
523.35	541.21	603.45	612.41
523.37	541.31	603.49	612.43
523.51	543.11	603.54	612.44
523.61	544.11	603.55	612.45
523.91	544.14	603.70	612.50
531.01	544.16	605.03	612.52
531.04	544.18	605.05	612.55
531.11	544.31	605.06	612.56
531.21	544.51	605.08	612.60
531.24	544.54	605.27	612.61
531.33	544.61	605.60	612.62
531.35	544.64	605.65	612.63
531.37	545.11	605.66	612.64
531.39	545.17	606.15	612.70
532.14	545.21	606.26	612.71
532.41	545.25	606.28	612.72
532.61	545.27	606.33	612.73
533.11	545.31	606.48	612.80
533.15	545.34	606.57	612.81
533.54	545.35	606.59	612.82
534.11	545.37	606.60	613.02
534.21	545.55	606.62	613.03
534.31	545.57	606.64	613.04
534.74	545.61	606.71	613.06
534.76	545.63	606.73	613.08
534.81	545.65	606.75	613.10
534.84	545.67	606.77	613.11
534.87	545.81	609.14	613.12
534.91	545.85	609.15	613.15
534.97	545.87	609.88	613.18
535.11	546.21	609.90	618.10
535.12	546.23	610.56	618.17
535.13	546.25	610.58	618.20
535.14	546.39	610.62	618.22
535.21	546.47	610.63	618.25
535.24	547.11	610.65	618.27
535.27	547.13	610.66	618.29
535.41	547.15	610.70	618.40
536.11	547.21	610.71	618.42
536.15	547.31	610.74	618.47
540.11	547.37	610.80	620.08
540.13	547.41	612.02	620.10
540.14	547.43	612.05	620.12
540.15	547.51	612.08	620.16
540.21	547.53	612.10	620.20
540.37	547.55	612.15	620.22
540.41	548.01	612.17	620.26
540.43	548.03	612.20	620.30

ANNEX II

-8-

620.40	629.10	644.06	646.76
620.42	629.20	644.08	646.77
620.46	629.25	644.09	646.78
620.50	629.26	644.11	646.82
622.15	629.50	644.12	646.85
622.17	629.60	644.15	646.86
622.20	629.65	644.17	646.87
622.25	632.02	644.18	646.88
622.35	632.04	644.20	646.89
622.40	632.12	644.22	646.90
624.02	632.18	644.24	646.92
624.04	632.34	644.26	646.95
624.10	632.42	644.28	646.97
624.12	632.60	644.30	646.98
624.14	632.62	644.32	647.01
624.16	632.66	644.36	647.03
624.18	633.00	644.38	647.05
624.20	640.05	644.40	647.10
624.22	640.10	644.42	648.51
624.24	640.20	644.46	648.53
624.30	640.25	644.48	648.55
624.32	640.30	644.52	648.57
624.34	640.35	644.56	648.61
624.40	640.40	644.60	648.63
624.42	642.06	644.64	648.67
624.50	642.08	644.68	648.69
624.52	642.09	644.72	648.71
624.54	642.15	644.76	648.73
626.15	642.18	644.80	648.75
626.17	642.20	644.84	648.80
626.18	642.25	644.88	648.85
626.20	642.27	644.92	648.89
626.22	642.31	644.95	648.91
626.24	642.34	644.98	648.93
626.30	642.45	646.02	648.95
626.31	642.47	646.04	649.01
626.35	642.50	646.06	649.03
626.40	642.52	646.17	649.05
626.42	642.54	646.20	649.07
626.45	642.56	646.22	649.11
628.05	642.58	646.27	649.14
628.10	642.60	646.28	649.17
628.15	642.62	646.30	649.19
628.20	642.64	646.34	649.21
628.25	642.66	646.36	649.23
628.30	642.68	646.40	649.24
628.35	642.70	646.41	649.25
628.40	642.72	646.42	649.26
628.45	642.74	646.45	649.27
628.50	642.76	646.47	649.29
628.55	642.78	646.51	649.31
628.59	642.80	646.53	649.32
628.70	642.82	646.57	649.33
628.74	642.85	646.65	649.35
628.90	642.87	646.72	649.41
628.95	642.93	646.74	649.43
629.05	644.02	646.75	649.44

ANNEX II

-9-

649.46	651.15	653.60	661.10
649.47	651.23	653.62	661.15
649.48	651.25	653.65	661.20
649.49	651.27	653.70	661.25
649.53	651.29	653.75	661.30
649.57	651.31	653.80	661.35
649.67	651.45	653.90	661.40
649.71	651.48	653.96	661.45
649.73	651.51	654.00	661.50
649.75	651.55	654.02	661.54
649.77	651.60	654.03	661.56
649.79	651.62	654.06	661.67
649.81	652.06	654.09	661.68
649.83	652.09	654.11	661.85
649.85	652.13	654.14	661.90
649.87	652.14	654.15	661.92
649.89	652.15	654.20	661.95
649.91	652.18	656.05	662.10
650.01	652.21	656.10	662.15
650.05	652.24	656.15	662.18
650.07	652.27	656.20	662.20
650.13	652.30	656.25	662.26
650.15	652.33	656.30	662.30
650.17	652.35	656.35	662.50
650.19	652.36	657.10	664.06
650.21	652.38	657.15	664.07
650.31	652.41	657.25	664.08
650.35	652.42	657.30	664.10
650.37	652.45	657.35	666.10
650.43	652.50	657.40	666.25
650.45	652.55	657.50	668.00
650.47	652.65	657.60	668.02
650.48	652.70	657.70	668.04
650.51	652.72	657.75	668.06
650.53	652.75	657.80	668.07
650.56	652.80	657.90	668.10
650.57	652.86	658.00	668.15
650.61	652.88	660.10	668.21
650.63	652.90	660.15	668.23
650.65	652.92	660.20	668.32
650.71	652.93	660.22	668.34
650.73	653.00	660.25	668.36
650.75	653.01	660.30	668.38
650.77	653.03	660.35	668.50
650.79	653.05	660.56	670.00
650.81	653.07	660.59	670.02
650.83	653.10	660.62	670.04
650.85	653.15	660.67	670.06
650.87	653.20	660.71	670.12
650.90	653.25	660.74	670.14
651.01	653.30	660.76	670.16
651.03	653.35	660.77	670.17
651.04	653.37	660.85	670.18
651.07	653.39	660.92	670.19
651.09	653.45	660.96	670.20
651.11	653.47	660.97	670.22
651.13	653.52	661.05	670.23

670.25	680.05	685.42	702.15
670.27	680.07	685.60	702.20
670.29	680.12	685.70	702.25
670.33	680.13	686.18	702.28
670.35	680.14	686.24	702.30
670.40	680.17	686.40	702.32
670.41	680.19	686.50	702.35
670.42	680.25	686.60	702.37
670.43	680.27	686.70	702.40
670.50	680.42	686.80	702.45
670.52	680.46	686.90	702.85
670.54	680.49	687.10	702.90
670.56	680.59	687.20	702.95
670.58	680.62	687.30	703.20
670.64	680.92	687.70	703.25
670.66	681.10	687.72	703.30
670.68	681.13	688.04	703.35
670.70	681.15	688.06	703.40
670.72	681.21	688.20	703.45
670.74	681.27	688.25	703.50
670.90	681.33	688.30	703.55
672.10	681.36	688.32	703.60
672.14	681.39	688.34	703.65
672.20	682.05	690.05	703.70
672.22	682.07	690.10	703.72
672.25	682.20	690.15	703.75
674.10	682.25	690.20	703.80
674.20	682.30	690.35	703.85
674.30	682.41	690.40	704.34
674.32	682.45	692.04	704.75
674.40	682.50	692.14	704.80
674.42	682.52	692.16	704.95
674.50	682.55	692.29	705.30
674.52	682.70	692.35	705.82
674.53	682.80	692.40	705.83
674.55	682.90	692.45	705.90
674.56	682.95	692.50	706.04
674.60	683.07	692.55	706.19
674.70	683.20	692.60	706.33
674.75	683.30	694.31	706.37
674.80	683.32	694.50	706.42
674.90	683.40	694.61	706.44
676.07	683.50	694.63	706.45
676.10	683.60	694.64	706.47
676.12	683.65	694.65	706.50
676.15	683.90	694.66	708.01
676.22	683.95	694.67	708.03
676.23	684.20	694.70	708.05
676.25	684.25	696.05	708.07
676.30	684.28	696.15	708.09
676.50	684.40	696.30	708.21
678.20	684.62	696.40	708.23
678.30	684.64	696.50	708.25
678.32	685.10	696.60	708.27
678.35	685.26	700.54	708.29
678.40	685.34	702.08	708.41
678.45	685.36	702.14	708.43

ANNEX II

-11-

708.45	710.42	721.10	725.16
708.56	710.46	722.02	725.18
708.58	710.50	722.04	725.20
708.61	710.60	722.10	725.22
708.63	710.61	722.12	725.24
708.65	710.63	722.16	725.26
708.71	710.65	722.18	725.30
708.72	710.67	722.30	725.34
708.73	710.68	722.32	725.36
708.75	710.70	722.34	725.40
708.76	710.72	722.40	725.46
708.78	710.76	722.42	725.47
708.80	710.78	722.44	725.52
708.82	710.80	722.46	726.05
708.85	710.86	722.50	726.10
708.87	710.88	722.52	726.15
708.89	710.90	722.55	726.20
708.91	711.04	722.56	726.25
708.93	711.08	722.60	726.40
709.01	711.25	722.64	726.45
709.03	711.30	722.70	726.50
709.05	711.31	722.72	726.52
709.06	711.32	722.75	726.55
709.07	711.40	722.78	726.63
709.09	711.42	722.80	726.70
709.10	711.45	722.82	726.75
709.11	711.47	722.83	726.90
709.13	711.49	722.85	727.02
709.17	711.55	722.86	727.04
709.19	711.60	722.88	727.11
709.21	711.67	722.90	727.13
709.23	711.75	722.92	727.14
709.25	711.77	722.94	727.15
709.27	711.78	722.96	727.25
709.45	711.86	723.05	727.27
709.50	711.88	723.10	727.40
709.54	711.90	723.15	727.45
709.55	711.98	723.20	727.47
709.56	712.05	723.25	727.50
709.57	712.10	723.30	727.52
709.61	712.12	723.32	727.86
709.63	712.15	723.35	728.05
709.66	712.20	724.10	728.10
710.04	712.25	724.12	728.15
710.06	712.27	724.20	728.20
710.08	712.47	724.25	728.24
710.12	712.49	724.35	728.27
710.14	713.05	724.40	730.05
710.16	713.07	724.45	730.23
710.20	713.09	725.01	730.25
710.21	713.11	725.03	730.27
710.26	713.17	725.04	730.29
710.27	713.19	725.05	730.31
710.30	715.20	725.07	730.37
710.34	715.55	725.08	730.39
710.36	720.80	725.12	730.41
710.40	720.92	725.14	730.43

ANNEX II

-12-

730.45	734.91	748.12	760.40
730.51	734.93	748.15	760.42
730.53	734.95	748.20	760.45
730.55	735.01	748.21	760.50
730.57	735.02	748.25	760.52
730.59	735.04	748.32	760.54
730.63	735.06	748.34	760.56
730.65	735.10	748.36	760.58
730.67	735.11	748.50	766.20
730.71	735.15	748.55	770.05
730.73	735.17	750.05	770.07
730.74	735.18	750.10	770.10
730.75	737.09	750.15	770.30
730.77	737.26	750.20	770.40
730.80	737.35	750.32	770.45
730.81	737.42	750.47	770.70
730.85	737.55	750.55	770.80
730.86	737.65	750.60	771.05
730.88	737.70	750.65	771.20
730.95	740.05	750.70	771.25
730.96	740.38	750.75	771.30
730.97	740.50	750.80	771.31
730.98	740.55	751.10	771.35
730.99	740.60	751.11	771.40
731.05	740.70	751.15	771.41
731.06	740.80	751.20	771.50
731.10	741.06	751.25	771.55
731.20	741.10	755.05	772.03
731.24	741.15	755.10	772.06
731.26	741.20	755.20	772.09
731.30	741.30	755.30	772.15
731.42	741.35	755.40	772.20
731.44	741.40	755.45	772.25
731.50	741.50	755.50	772.40
731.70	745.04	756.02	772.42
732.35	745.08	756.04	772.45
732.38	745.10	756.06	772.54
732.43	745.20	756.10	772.65
732.50	745.25	756.15	772.70
732.52	745.28	756.21	772.80
732.60	745.30	756.23	772.85
732.62	745.34	756.25	772.95
734.05	745.45	756.30	772.97
734.30	745.50	756.35	773.05
734.32	745.52	756.40	773.10
734.40	745.54	756.50	773.15
734.42	745.56	756.55	773.20
734.45	745.58	756.60	773.25
734.54	745.60	760.10	773.30
734.60	745.62	760.12	773.35
734.71	745.65	760.15	774.20
734.72	745.66	760.20	774.25
734.75	745.67	760.30	774.35
734.77	745.68	760.32	774.40
734.80	745.70	760.34	774.50
734.85	748.05	760.36	774.55
734.88	748.10	760.38	790.00

790.07
790.10
790.15
790.23
790.25
790.30
790.37
790.40
790.45
790.47
790.50
790.55
790.59
790.60
790.61
790.62
790.63
791.05
791.10
791.15
791.17
791.19
791.20
791.27
791.30
791.35
791.45
791.48
791.50
791.54
791.57
791.60
791.65
791.70
791.80
791.90
792.22
792.30
792.32
792.40
792.70
799.00

ANNEX III

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT WHEN IMPORTED FROM BENEFICIARY DEVELOPING COUNTRIES OTHER THAN THOSE SPECIFIED IN GENERAL HEADNOTE 3(c)(iii) OF THE TSUS

107.48	220.20	618.02	684.70	737.15
107.80	220.25	618.06	685.24	737.21
112.21	220.48	618.15	685.29	737.23
113.01	222.10	622.22	685.40	737.28
114.06	222.50	642.14	685.90	737.30
121.55	245.20	642.16	686.30	737.40
121.61	256.60	642.17	687.42	737.43
121.62	256.87	646.32	688.10	737.47
135.51	304.12	648.97	688.12	737.49
135.90	305.30	649.37	688.15	737.51
135.95	315.25	650.89	688.43	737.60
136.00	319.01	651.21	692.32	737.80
136.20	319.03	651.33	696.10	737.95
136.22	319.05	651.37	696.35	740.11
136.30	337.40	651.46	700.90	740.12
136.61	355.81	651.49	702.47	740.13
136.80	356.25	651.53	703.14	740.14
137.10	365.84	652.03	706.39	740.15
137.40	366.84	652.60	706.61	740.30
137.50	389.61	652.84	708.47	740.34
137.63	406.20	653.48	709.15	740.75
137.71	407.16	653.85	709.40	741.25
137.75	408.72	653.93	711.38	750.22
137.79	416.10	653.94	713.15	750.25
137.93	417.22	653.99	722.14	750.35
138.05	418.78	654.04	725.32	750.40
138.35	423.88	654.07	725.50	750.45
140.21	425.70	654.12	726.65	750.50
141.77	428.58	654.13	727.06	751.05
146.22	437.60	657.24	727.23	755.25
146.44	445.42	660.42	727.29	756.45
146.76	452.44	660.48	727.35	771.43
148.03	472.12	660.80	727.55	771.45
148.12	473.52	661.06	728.22	772.35
148.17	473.56	661.09	730.94	772.51
148.25	493.82	661.65	734.10	772.60
148.30	522.21	662.35	734.15	774.45
148.72	523.94	672.16	734.20	790.03
149.50	532.22	674.35	734.25	790.39
152.54	532.31	676.20	734.34	790.70
152.72	534.94	676.52	734.51	791.28
154.53	535.31	678.50	734.56	792.10
155.20	544.41	682.35	734.70	792.50
155.35	545.53	682.60	734.86	792.60
167.05	602.10	683.05	734.87	792.75
192.21	603.40	683.15	734.90	
192.85	603.50	683.70	735.07	
200.91	605.48	683.80	735.09	
202.62	606.36	684.10	735.12	
204.40	606.37	684.15	735.20	
206.47	606.44	684.48	737.07	
206.60	612.03	684.53		
206.98	612.06	684.55		

ANNEX IV

"(iii) The following designated eligible articles provided for in TSUS item numbers preceded by the designation "A*", if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not entitled to the duty-free treatment provided for in subdivision (c)(ii) of this headnote:

107.48	Brazil	155.20	Brazil, Dominican Republic, Thailand
107.80	Argentina		
112.21	Peru		
113.01	Thailand	155.35	Barbados
114.06	Republic of Korea	167.05	Mexico
121.55	India	192.21	Colombia
121.61	Argentina	192.85	Mexico
121.62	India	200.91	Honduras
135.51	Mexico	202.62	Mexico
135.90	Mexico	204.40	Taiwan
135.95	Mexico	206.47	Taiwan
136.00	Dominican Republic	206.60	Mexico
136.20	Mexico	206.98	Taiwan
136.22	Mexico	220.20	Portugal
136.30	Mexico	220.25	Portugal
136.61	Mexico	220.48	Portugal
136.80	Mexico	222.10	Hong Kong
137.10	Mexico	222.50	Taiwan
137.40	Mexico	245.20	Brazil
137.50	Mexico	256.60	Republic of Korea
137.63	Mexico	256.87	Mexico
137.71	Mexico	304.12	Egypt
137.75	Costa Rica	305.30	Bangladesh
137.79	Mexico	315.25	Mexico
137.93	Dominican Republic	319.01	India
138.05	Mexico	319.03	India
138.35	Costa Rica	319.05	India
140.21	Mexico	337.40	Hong Kong, Republic of Korea
141.77	Mexico		
146.22	Turkey	355.81	Taiwan
146.44	Philippines	356.25	Israel
146.76	Mexico	365.84	Philippines
148.03	Mexico	366.84	Philippines
148.12	Mexico	389.61	Hong Kong, Taiwan
148.17	Mexico		
148.25	Mexico	406.20	Israel
148.30	Mexico	407.16	Venezuela
148.72	Chile	408.72	Republic of Korea
149.50	Mexico	416.10	Turkey
152.54	Brazil	417.22	Mexico
152.72	Honduras	418.78	Mexico
154.53	Taiwan	423.88	Mexico

ANNEX IV

-2-

425.70	Mexico	653.99	Taiwan
428.58	Brazil	654.04	Republic of Korea
437.60	Argentina		Taiwan
445.42	Taiwan	654.07	Taiwan
452.44	Brazil	654.12	Taiwan
472.12	India	654.13	Hong Kong
473.52	Mexico	657.24	Taiwan
473.56	Mexico	660.42	Brazil
493.82	Mexico	660.48	Brazil
522.21	Mexico		Mexico
523.94	Mexico	660.80	Taiwan
532.22	Republic of Korea	661.06	Hong Kong
532.31	Mexico		Taiwan
534.94	Taiwan	661.09	Singapore
535.31	Mexico	661.65	Israel
544.41	Mexico	662.35	Mexico
545.53	Mexico	672.16	Taiwan
602.10	Honduras	674.35	Taiwan
603.40	Chile	676.20	Taiwan
603.50	Chile	676.52	Hong Kong
605.48	Chile		Mexico
606.36	Brazil		Singapore
606.37	Brazil		Taiwan
606.44	Brazil	678.50	Republic of Korea
612.03	Chile		Taiwan
612.06	Chile	682.35	Mexico
618.02	Ghana	682.60	Hong Kong
618.06	Ghana		Mexico
618.15	Yugoslavia		Taiwan
622.22	Bolivia	683.05	Taiwan
642.14	Republic of Korea	683.15	Mexico
642.16	Republic of Korea	683.70	Hong Kong
642.17	Republic of Korea		Taiwan
646.32	Republic of Korea	683.80	Hong Kong
648.97	Taiwan	684.10	Taiwan
649.37	Taiwan	684.15	Singapore
650.89	Hong Kong	684.48	Hong Kong
	Taiwan	684.53	Taiwan
651.21	Taiwan	684.55	Mexico
651.33	Hong Kong	684.70	Republic of Korea
651.37	Taiwan		Taiwan
651.46	Republic of Korea	685.24	Hong Kong
651.49	Taiwan		Republic of Korea
651.53	Taiwan		Singapore
652.03	Republic of Korea		Taiwan
652.60	Taiwan	685.29	Taiwan
652.84	Mexico	685.40	Republic of Korea
653.48	Taiwan		Taiwan
653.85	Taiwan	685.90	Mexico
653.93	Taiwan		Taiwan
653.94	Republic of Korea	686.30	Taiwan

ANNEX IV

-3-

687.42	Taiwan	737.21	Hong Kong
688.10	Taiwan	737.23	Taiwan
688.12	Mexico	737.28	Republic of Korea
688.15	Mexico	737.30	Republic of Korea
688.43	Taiwan	737.40	Republic of Korea
692.32	Brazil Mexico	737.43	Hong Kong
696.10	Taiwan	737.47	Hong Kong Taiwan
696.35	Taiwan	737.49	Hong Kong Taiwan
700.90	Mexico		
702.47	Mexico	737.51	Hong Kong Taiwan
703.14	Mexico		
706.39	Hong Kong Republic of Korea Taiwan	737.60	Hong Kong
		737.80	Hong Kong
		737.95	Hong Kong Taiwan
706.61	Hong Kong Taiwan		
708.47	Hong Kong	740.11	Hong Kong Israel Peru
709.15	Israel		
709.40	Hong Kong	740.12	Hong Kong
711.38	Mexico	740.13	Hong Kong
713.15	Mexico	740.14	Hong Kong
722.14	Macao	740.15	Hong Kong
725.32	Taiwan	740.30	Hong Kong
725.50	Taiwan	740.34	Hong Kong
726.65	Mexico	740.75	Republic of Korea
727.06	Mexico	741.25	Hong Kong
727.23	Taiwan	750.22	Taiwan
727.29	Yugoslavia	750.25	Hong Kong
727.35	Taiwan	750.35	Taiwan
727.55	Taiwan	750.40	Hong Kong
728.22	Taiwan	750.45	Republic of Korea
730.94	Republic of Korea	750.50	Republic of Korea
734.10	Taiwan	751.05	Taiwan
734.15	Taiwan	755.25	Hong Kong
734.20	Hong Kong Taiwan	756.45	Hong Kong
		771.43	Taiwan
734.25	Hong Kong	771.45	Taiwan
734.34	Hong Kong	772.35	Taiwan
734.51	Taiwan	772.51	Republic of Korea
734.56	Haiti	772.60	Republic of Korea
734.70	Republic of Korea	774.45	Hong Kong
734.86	Taiwan	790.03	Taiwan
734.87	Taiwan	790.39	Taiwan
734.90	Taiwan	790.70	Republic of Korea
735.07	Republic of Korea	791.28	India
735.09	Taiwan	792.10	Mexico
735.12	Taiwan	792.50	Philippines
735.20	Taiwan	792.60	Hong Kong
737.07	Hong Kong	792.75	Hong Kong"
737.15	Hong Kong		

ANNEX V

A. Annex III to Presidential Proclamation 4707 of December 11, 1979 is amended--

a) by deleting from Section A of the Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

654.05	730.90	730.92
703.15	730.91	730.93

b) by inserting in Section A of that Annex the following TSUS item numbers in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1—							
		1980	1981	1982	1983	1984	1985	1986	1987
654.04 2/	2/	2/	2/	2/	6.2% 2/	5.9%	5.6%	5.2%	4.9%
654.05 2/	7.5% ad val.	7.2%	6.9%	6.5%	6.2% 2/	2/	2/	2/	2/
654.06 2/	2/	2/	2/	2/	6.2% 2/	5.9%	5.6%	5.2%	4.9%
703.14 5/	5/	5/	5/	5/	17c/lb. + 14% 5/	15c/lb. + 12.5%	13c/lb. + 11%	12c/lb. + 9.5%	10c/lb. + 8%
703.15 3/	25c per lb. + 20% ad val.	23c/lb. + 18.5%	21c/lb. + 17%	19c/lb. + 15.5%	17c/lb. + 14% 5/	5/	5/	5/	5/
703.16 3/	5/	5/	5/	5/	17c/lb. + 14% 5/	15c/lb. + 12.5%	13c/lb. + 11%	12c/lb. + 9.5%	10c/lb. + 8%
730.90 2/	12.5% ad val.	11.6%	10.6%	9.7%	8.8% 2/	2/	2/	2/	2/
730.91 3/	6% ad val.	5.8%	5.6%	5.3%	5.1% 2/	2/	2/	2/	2/
730.92 4/	8% ad val.	7.4%	6.8%	6.2%	5.6% 4/	4/	4/	4/	4/
730.93 5/	9% ad val.	8.3%	7.7%	7%	6.3% 5/	5/	5/	5/	5/
730.94 2/	2/	2/	2/	2/	8.8% 2/	7.8%	6.9%	5.9%	5%
730.95 2/	2/	2/	2/	2/	8.8% 2/	7.8%	6.9%	5.9%	5%
730.96 2/	2/	2/	2/	2/	8.8% 2/	7.8%	6.9%	5.9%	5%
730.97 3/	3/	3/	3/	3/	5.1% 3/	4.9%	4.7%	4.4%	4.2%
730.98 4/	4/	4/	4/	4/	5.6% 4/	5%	4.4%	3.8%	3.2%
730.99 5/	5/	5/	5/	5/	6.3% 5/	5.6%	5%	4.3%	3.6%

Footnote 3 for items 654.04, 654.05, and 654.06:

3/ Item 654.05 is discontinued effective March 31, 1983, and is superseded by items 654.04 and 654.06.

Footnote 5 for items 703.14, 703.15, and 703.16:

5/ Item 703.15 is discontinued effective March 31, 1983, and is superseded by items 703.14 and 703.16.

Footnote 2 for items 730.90, 730.94, 730.95, and 730.96:

2/ Item 730.90 is discontinued effective March 31, 1983, and is superseded by items 730.94, 730.95, and 730.96.

Footnote 3 for items 730.91 and 730.97:

3/ Item 730.91 is redesignated as item 730.97 effective March 31, 1983.

Footnote 4 for items 730.92 and 730.98:

4/ Item 730.92 is redesignated as item 730.98 effective March 31, 1983.

Footnote 5 for items 730.93 and 730.99:

5/ Item 730.93 is redesignated as item 730.99 effective March 31, 1983.

c) by deleting Section B of that Annex and by inserting the following therein:

Section B. Staged rate modifications effective as to articles entered, or withdrawn from warehouse for consumption, on and after April 1, 1982, in accordance with the determination of the U.S. Trade Representative published in the Federal Register on March 24, 1982.

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective as to articles entered on and after April 1—							
		1982	1983	1984	1985	1986	1987	1988	1989
Schedule 7, Part 4									
727.10 2/	16% ad val.	2/	2/	2/	2/	2/	2/	2/	2/
727.11 2/	2/	14.9% 2/	13.9%	12.8%	11.8%	10.7%	9.6%	8.6%	7.5%
727.12 2/	2/	14.9% 2/	2/	2/	2/	2/	2/	2/	2/
727.13 2/	2/	2/	13.9% 2/	12.8%	11.8%	10.7%	9.6%	8.6%	7.5%
727.14 2/	2/	2/	13.9% 2/	12.8%	11.8%	10.7%	9.6%	8.6%	7.5%

1/ The symbol "%" indicates percent ad valorem.
2/ Item 727.10 was discontinued effective March 30, 1980 and was superseded by items 727.11 and 727.12. Item 727.12 is discontinued March 31, 1983 and is superseded by items 727.13 and 727.14.

ANNEX V

-2-

B. Annex III to Presidential Proclamation 4768 of June 18, 1980 is amended--

a) by deleting from Section A of that Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

403.28	411.28	411.94
404.44	411.84	412.68

b) by inserting in Section A of that Annex the following TSUS item numbers in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles exported to the United States on and after July 1, 1980, and entered on and after--							
		July 1, 1980	January 1, 1981	January 1, 1982	January 1, 1983	January 1, 1984	January 1, 1985	January 1, 1986	January 1, 1987
403.27[2]	1/	1/	1/	1/	0.2c/lb. + 22.7% 1/	22.4%	21.6%	20.8%	20%
403.28[2]	1.7c per lb. + 22.7% ad val	1.3c/lb. + 22.7%	0.9c/lb. + 22.7%	0.6c/lb. + 22.7%	0.2c/lb. + 22.7% 1/	1/	1/	1/	1/
403.29[2]	1/	1/	1/	1/	0.2c/lb. + 22.7% 1/	22.4%	21.6%	20.8%	20%
404.42[3]	1/	1/	1/	1/	10.4% 1/	9.6%	8.7%	7.9%	7%
404.43[3]	1/	1/	1/	1/	10.4% 1/	9.6%	8.7%	7.9%	7%
404.44[3]	1.4c per lb. + 12.1% ad val	0.7c/lb. + 12.1%	12.1%	11.3%	10.4% 1/	1/	1/	1/	1/
411.26[2]	1/	1/	1/	1/	20.3% 1/	18.1%	16%	13.8%	11.6%
411.27[2]	1/	1/	1/	1/	20.3% 1/	18.1%	16%	13.8%	11.6%
411.28[2]	1.4c per lb. + 28.5% ad val	26.8%	24.7%	22.5%	20.3% 1/	1/	1/	1/	1/
411.81[4]	4/	4/	4/	4/	18.9% 4/	16.9%	14.9%	12.8%	10.8%
411.83[4]	4/	4/	4/	4/	18.9% 4/	16.9%	14.9%	12.8%	10.8%
411.84[4]	1.7c per lb. + 26.6% ad val	25%	23%	20.9%	18.9% 4/	4/	4/	4/	4/
411.91[5]	5/	5/	5/	5/	13.8% 5/	12.3%	10.9%	9.5%	8.1%
411.93[5]	5/	5/	5/	5/	13.8% 5/	12.3%	10.9%	9.5%	8.1%
411.94[5]	1.7c per lb. + 18.7% ad val	18%	16.6%	15.2%	13.8% 5/	5/	5/	5/	5/
412.67[6]	6/	6/	6/	6/	10.3% 6/	9.5%	8.6%	7.8%	6.9%
412.68[6]	1.7c per lb. + 13.6% ad val	12.9%	12%	11.2%	10.3% 6/	6/	6/	6/	6/
412.69[6]	6/	6/	6/	6/	10.3% 6/	9.5%	8.6%	7.8%	6.9%

Footnote 2 for items 403.27, 403.28, and 403.29:

2/ Item 403.28 is discontinued effective March 31, 1983, and is superseded by items 403.27 and 403.29.

Footnote 3 for items 404.42, 404.43, and 404.44:

3/ Item 404.44 is discontinued effective March 31, 1983, and is superseded by items 404.42 and 404.43.

Footnote 3 for items 411.26, 411.27, and 411.28:

3/ Item 411.28 is discontinued effective March 31, 1983, and is superseded by items 411.26 and 411.27.

Footnote 4 for items 411.81, 411.83, and 411.84:

4/ Item 411.84 is discontinued effective March 31, 1983, and is superseded by items 411.81 and 411.83.

Footnote 5 for items 411.91, 411.93, and 411.94:

5/ Item 411.94 is discontinued effective March 31, 1983, and is superseded by items 411.91 and 411.93.

Footnote 4 for items 412.67, 412.68, and 412.69:

6/ Item 412.68 is discontinued effective March 31, 1983, and is superseded by items 412.67 and 412.69.

c) by deleting from Section B of that Annex TSUS item number 728.25, with its corresponding rates of duty and by inserting the following TSUS item numbers in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after--							
		July 1, 1980	January 1, 1981	January 1, 1982	January 1, 1983	January 1, 1984	January 1, 1985	January 1, 1986	January 1, 1987
728.22	1/	1/	1/	1/	6.9% 1/	6.5%	6.1%	5.7%	5.3%
728.24	1/	1/	1/	1/	6.9% 1/	6.5%	6.1%	5.7%	5.3%
728.25	8.5% ad val.	8.1%	7.7%	7.3%	6.9% 1/	1/	1/	1/	1/
728.27	1/	1/	1/	1/	6.9% 1/	6.5%	6.1%	5.7%	5.3%

Footnote 1 for items 728.22, 728.24, 728.25, and 728.27:
1/ Item 728.25 is discontinued effective March 31, 1983 and is superseded by items 728.22, 728.24, and 728.27.

ANNEX VI

General headnote 3(c)(i) of the TSUS is modified--

(a) by deleting from the list of designated independent countries "Saint Christopher-Nevis", and by substituting "Suriname" for "Surinam" and "Yemen (Sanaa)" for "Yemen (Sana)" in such list, and

(b) by adding, in alphabetical order, "Saint Christopher-Nevis" to the list of designated non-independent countries and territories.

[FR Doc. 83-8732
Filed 3-31-83; 12:17 pm]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations establish an authority under which United States citizens having at least 1 year of service under the Panama Canal Employment System (PCES) may be given noncompetitive career-conditional or career appointments in the competitive civil service. This authority implements provisions of the Panama Canal Act of 1979 calling for appropriate interchange of personnel between the PCES and the competitive service.

EFFECTIVE DATE: May 2, 1983.

FOR FURTHER INFORMATION CONTACT: William Bohling, Noncompetitive Staffing Branch, Staffing Group, (202) 632–6000.

SUPPLEMENTARY INFORMATION: Sections 3651 and 3652 of title 22, United States Code, provide for replacement of the Canal Zone Merit System by the Panama Canal Employment System (PCES), and further provide for appropriate interchange of United States citizen personnel between the PCES and the competitive service. The PCES became effective on March 31, 1982. Its regulations include provisions for noncompetitive appointment of employees from the competitive service. Proposed regulations permitting noncompetitive appointment of PCES employees into the competitive civil service were published in the Federal Register on September 24, 1982 (47 FR 42110–42111).

Three comments were received in response to the proposed regulations. One corrected two statements in the Supplementary Information. Basic pay in the PCES is based only partially on local rates, and labor relations are covered by 35 CFR 253.311, which states that labor management and employee relations will be governed by 5 U.S.C. Chapter 71. As this corrected information does not change the determination that the PCES is a merit system, closely parallel to the competitive civil service system, no change in the regulations is warranted. The second comment suggested that the prohibition against using the proposed regulation to effect temporary or term appointments be deleted, as PCES employees are, in fact, eligible for noncompetitive temporary and term appointments under §§ 316.302(c)(3) and 316.40 (b)(2). This suggestion was not adopted as proposed because it is important to distinguish between appointments under this regulation, which confer competitive status, and temporary and term appointments, which do not confer status. However, we have rewritten § 315.601(a) of the regulations to reduce the possibility of misunderstanding. The third comment opposed issuance of any regulations implementing interchange with PCES while court or administrative challenges to PCES' legality are pending. This suggestion was not adopted because resolution of any legal challenges to the Panama Canal Treaty and implementing legislation in 22 U.S.C. 3651 and 3652 is likely to be a lengthy process. In the meantime, this legislation remains in effect, and the regulations are needed to control the personnel movement which is already authorized. Any subsequent legal changes can be reflected in amendments to these regulations.

With the exception of the editorial change noted above, the final regulations are the same as the proposed regulations. These regulations extend to PCES employees the noncompetitive appointment benefits previously afforded to employees of the Canal Zone Merit System, and carry out the intent of the Panama Canal Treaty and its implementing legislation to maintain as much as possible the level of benefits available to U.S. employees in Panama before adoption of the Treaty.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 315

Government employees.

Office of Personnel Management.
Donald J. Devine,
Director.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Accordingly, the U.S. Office of Personnel Management is revising 5 CFR 315.601 to read as follows:

§ 315.601 Appointment of former employees of the Canal Zone Merit System or Panama Canal Employment System.

(a) *Agency authority.* This section may be used by an agency to appoint noncompetitively, for other than temporary or term employment, a United States citizen separated from a career or career-conditional appointment under the Canal Zone Merit System, which was in effect before March 31, 1982, or under the Panama Canal Employment System, which became effective on March 31, 1982. (Appointments of such persons for temporary or term employment are to be made under applicable provisions of Part 316 of this chapter.)

(b) *Service requirement.* An agency may appoint such a former employee under this section only when, immediately prior to separation from a qualifying appointment, the employee served continuously for at least one year under a nontemporary appointment in the Canal Zone Merit System, the Panama Canal Employment System, or a combination of the two systems.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more career-conditional or career

appointments in the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) of this section provided no more than 3 years have elapsed since:

(i) separation from a qualifying Canal Zone Merit System or Panama Canal Employment System appointment; or

(ii) separation from service in Panama in a position excluded from the Canal Zone Merit System or Panama Canal Employment System, when such service immediately followed service under a qualifying appointment in one of those systems.

(d) *Tenure on appointment.* On appointment under paragraph (a) of this section: (1) A former career employee of the Canal Zone Merit System or Panama Canal Employment System becomes a career employee.

(2) A former Canal Zone Merit System and/or Panama Canal Employment System employee whose service from the date of career-conditional appointment in the Canal Zone Merit System or Panama Canal Employment System through the date of noncompetitive appointment under this section, inclusive, does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(3) All other former Canal Zone Merit System and Panama Canal Employment System employees become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year probationary period under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) On satisfactory completion of probation in accordance with § 315.80 (a)(3) if he or she had not completed a 1-year probationary period under the Canal Zone Merit System or Panama Canal Employment System.

(22 U.S.C. 3651 and 3652)

[FR Doc. 83-8567 Filed 3-31-83; 8:45 am]
BILLING CODE 6325-01-M

---

5 CFR Part 553

Deductions From Civilian Pay for Increases in Uniformed Service Retired or Retainer Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: Section 301(d) of Pub. L. 97–253, the Omnibus Budget Reconciliation Act of 1982, requires each Federal agency to deduct from the civilian pay of a member or former member of a uniformed service an amount equal to each increase in the individual's uniformed service retired or retainer pay received in fiscal years 1983, 1984, and 1985. Under an amendment to this provision made by section 3(h) of Pub. L. 97–346, this deduction is to be made "in accordance with regulations issued by the Office of Personnel Management." The Office of Personnel Management is issuing interim regulations to implement this provision effective April 1, 1983, the date of the next scheduled increase in uniformed service retired or retainer pay. These regulations are necessary to permit timely implementation of this provision.

DATES: Interim rules effective April 1, 1983. Comments must be received on or before May 31, 1983. These rules will expire on September 30, 1985.

ADDRESS: Written comments may be sent to Jerome D. Julius, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, Washington, D.C. 20044, or delivered to Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The requirement that each Federal agency deduct from the civilian pay of a member or former member of a uniformed service an amount equal to each increase in uniformed service retired or retainer pay received in fiscal years 1983, 1984, and 1985 is similar to the requirement in 5 U.S.C. 8344(a) that each Federal agency deduct from the pay of a reemployed annuitant an amount equal to the annuity "allocable to the period of actual employment." The method used to compute the deduction required by 5 U.S.C. 8344(a) was established by the Comptroller General of the United States in 28 Comp. Gen. 693 (1949). Section 553.105 of the interim regulations employs a method that achieves the same result.

To simplify the computation of the deduction required by section 301(d) of Pub. L. 97–253, as amended, the interim regulations provide for the computation of an hourly deduction from the affected individual's civilian pay. This method avoids the necessity of recomputing the deduction when the civilian pay of an affected individual changes. In addition, this method can be applied without regard to whether the individual occupies a full-time, part-time, or intermittent position. Once the hourly deduction has been determined, the interim regulations provide that the hourly deduction shall be multiplied by the number of hours the individual was in a pay status (including periods of paid leave), for each pay period after March 31, 1983 (including the pay period in which April 1, 1983, falls), up to the maximums specified in § 553.105 (a)(2) and (b)(2).

The legislative history of the amendments made by section 3(h) of Pub. L. 97–346 makes it clear that: (1) The application of this provision will not require a decrease in the total amount received by an employee from military retired pay plus salary, and (2) an employee's rate of pay *before* the offset will be the rate of pay for such purposes as computing premium pay, annuities, and other pay-connected benefits. These amendments are reflected in §§ 553.104(b) and 553.107 of the interim regulations. It should be noted that an individual who is not receiving any uniformed service retired or retainer pay because of the reduction in retired or retainer pay provisions of 5 U.S.C. 5532 (b) and (c) will not be subject to a deduction from his or her civilian pay because the net increase in his or her retired or retainer pay will be zero.

Section 301(d)(1) provides that amounts deducted from the civilian pay of a member or former member of a uniformed service shall be deposited into the Treasury of the United States. A special miscellaneous receipts account will be established by the Department of the Treasury for this purpose, and Federal agencies should follow standard procedures for covering these deposits into the Treasury. Finally, the authority for the deduction required by section 301(d) of Pub. L. 97–253, as amended, will expire on September 30, 1985.

Under 5 U.S.C. 553, the Director finds that good cause exists for waiving the general notice of proposed rulemaking and for making this rule effective in less than 30 days. These actions are necessary to permit timely implementation of section 301(d) of Pub. L. 97–253, as amended, and thereby to effectuate the intended savings to the Federal Government.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 553

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Donald J. Devine,

Director.

For the reasons set forth above, Title 5 of the Code of Federal Regulations is amended by adding a new Part 553 to read as follows:

PART 553—DEDUCTIONS FROM CIVILIAN PAY FOR INCREASES IN UNIFORMED SERVICE RETIRED OR RETAINER PAY

Sec.

553.101 Applicability.
553.102 Coverage.
553.103 Definitions.
553.104 Computation of increases in uniformed service retired or retainer pay.
553.105 Computation of deduction.
553.106 Effective date of deduction.
553.107 Entitlements and computations based on rate of basic pay.

Authority: Sec. 301(d), Pub. L. 97–253, as amended by sec. 3(h), Pub. L. 97–346.

§ 553.101 Applicability.

This part contains regulations of the Office of Personnel Management to implement section 301(d) of Pub. L. 97–253, as amended by section 3(h) of Pub. L. 97–346, which authorizes the Office to prescribe regulations concerning deductions from the civilian pay of a member or former member of a uniformed service equal to the amount of each increase in the individual's uniformed service retired or retainer pay received in fiscal years 1983, 1984, and 1985. This part should be read together with these sections of law.

§ 553.102 Coverage.

(a) Except as otherwise provided in this section, the deduction applies to any member or former member of a uniformed service who is employed in a position, as defined in section 5531(2) of title 5, United States Code, and receives an increase in uniformed service retired or retainer pay in fiscal year 1983, 1984, or 1985.

(b) The deduction does not apply to a member or former member of a uniformed service whose retired or retainer pay is computed, in whole or in part, based on disability—

(1) Resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(2) Caused by an instrumentality of war and incurred in line of duty during a period of war, as defined in sections 101 and 301 of title 38, United States Code.

(c) The deduction does not apply to any individual whose compensation may not, under section 1 of article III of the Constitution of the United States, be diminished during the individual's continuance in office.

(d) With respect to any increase in uniformed service retired or retainer pay that becomes effective in fiscal year 1983, 1984, or 1985, the deduction does not apply to a member or former member of a uniformed service who was not employed in a position during the fiscal year in which the increase became effective.

§ 553.103 Definitions.

In this part:

"Agency" means an entity in the legislative, executive, or judicial branch of the Federal Government, including a Government corporation, as defined in section 103 of title 5, United States Code, and a nonappropriated fund instrumentality under the jurisdiction of the armed forces, that employs an individual to whom the deduction applies.

"Deduction" means the deduction from civilian pay required by section 301(d) of Pub. L. 97–253, as amended by section 3(h) of Pub. L. 97–346.

"Position" has the meaning given that term in section 5531(2) of title 5, United States Code.

"Rate of basic pay" means the rate of pay fixed by law or administrative action for an individual or position in any branch of the Federal Government, including a Government corporation, as defined in section 103 of title 5, United States Code, and a nonapportioned fund instrumentality under the jurisdiction of the armed forces, before any deductions and exclusive of additional pay of any kind.

§ 553.104 Computation of increases in uniformed service retired or retainer pay.

(a) The Secretary of Commerce, the Secretary of Defense, the Secretary of Health and Human Services, or the Secretary of Transportation, as appropriate, shall—

(1) Compute the amount of each increase in uniformed service retired or retainer pay pursuant to section 1401a(b) of title 10, United States Code, received by each individual to whom the deduction applies in fiscal years 1983, 1984, and 1985; and

(2) Furnish each agency with the amount of each increase received by each individual to whom the deduction applies in fiscal years 1983, 1984, and 1985.

(b) The amount of each increase in uniformed service retired or retainer pay received by each individual to whom the deduction applies in fiscal years 1983, 1984, and 1985 shall be determined on the basis of the additional amount the individual receives after the application of section 301 (a), (b), and (c) of Pub. L. 97–253 and section 5532 (b) and (c) of title 5, United States Code.

§ 553.105 Computation of deduction.

(a) Except as provided in paragraph (b) of this section, each agency shall compute the deduction as follows for each individual to whom the deduction applies:

(1)(i) For pay periods beginning in fiscal year 1983, divide the amount of any increase in uniformed service retired or retainer pay (expresed as an annual rate) received in fiscal year 1983 by 2,080 and round to the nearest cent (counting one-half cent and over as a whole cent) to determine the hourly deduction from the individual's civilian pay.

(ii) For pay periods beginning in fiscal years 1984 and 1985, divide the total amount of any increase or increases in uniformed service retired or retainer pay (expressed as an annual rate) received in any of fiscal years 1983, 1984, and 1985 in which the individual was employed in a position by 2,087 and round to the nearest cent (counting one-half cent and over as a whole cent) to determine the hourly deduction from the individual's civilian pay.

(2) For each pay period after March 31, 1983 (including the pay period in which April 1, 1983, falls), multiply the hourly deduction from the individual's civilian pay by the number of hours the individual was in a pay status during that pay period, up to a maximum of 40 hours per week or, for an individual under an alternative work schedule established under Part 620 of this chapter with a variable weekly tour of duty, 80 hours per pay period.

(b) For an individual with an uncommon tour of duty to whom the deduction applies, each agency shall compute the deduction as follows:

(1) Divide the total amount of any increase or increases in uniformed service retired or retainer pay (expressed as an annual rate) received in any of fiscal years 1983, 1984, and 1985 in which the individual was employed in a position by the actual number of hours in the individual's tour

of duty during the applicable fiscal year and round to the nearest cent (counting one-half cent and over as a whole cent) to determine the hourly deduction from the individual's civilian pay.

(2) For each pay period after March 31, 1983 (including the pay period in which April 1, 1983, falls), multiply the hourly deduction from the individual's civilian pay by the number of hours the individual was in a pay status during that pay period, up to the actual number of hours in the individual's tour of duty per pay period.

§ 553.106 Effective date of deduction.

Each deduction and each increase in the amount of a deduction shall become effective on the first day of the calendar month in which an increase in uniformed service retired or retainer pay becomes effective in fiscal year 1983, 1984, or 1985.

§ 553.107 Entitlements and computations based on rate of basic pay.

All entitlements and computations based on the rate of basic pay for an individual or position under any law, regulation, or Executive order shall be based on the rate of basic pay before the deduction.

[FR Doc. 83-8486 Filed 3-31-83; 8:45 am]
BILLING CODE 6325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1204 and 1205

Privacy Act of 1974; Freedom of Information Act; Correction

ACTION: Correction of final rules.

SUMMARY: This document sets forth two technical corrections of final rules on the Freedom of Information Act and Privacy Act which were published in the **Federal Register** on February 11, 1983 (48 FR 6311). Section 1204.11(c) of the Freedom of Information Act rules is corrected to refer, in conjunction with applicable procedures for waiver of fees, to § 1204.13(b). Section 1205.16 of the Privacy Act rules is corrected to make it clear that its paragraph (c), which concerns fees for amended records, continues to be retained as part of the Board's rules.

FOR FURTHER INFORMATION CONTACT: Kathy Semone, (202) 653-7200.

PART 1204—FREEDOM OF INFORMATION ACT

§ 1204.11 [Corrected]

1. Paragraph (c) of § 1204.11 is corrected to read as follows:

* * * * *

(c) *Payment.* Records usually will not be released until fees have been received, unless the fees are waived according to § 1204.13(b) of this part.

PART 1205—PRIVACY ACT

2. Paragraph (b) of § 1205.16 is corrected to read as follows:

§ 1205.16 Fees.

* * * * *

(b) *Duplication.* (1) Photocopies of records duplicated by the Board shall be subject to a charge of 10 cents per page.

(2) Fees for Board duplication of audio, video and automated tapes shall be charged at the actual cost to the Board.

* * * * *

Dated: March 24, 1983.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 83-8503 Filed 3-31-83; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Sales Reporting of Wet Blue Cattle Hides

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Export Sales Reporting Regulations (7 CFR Part 20) to add "wet blue" cattle hides to the list of the types of cattle hides and skins to be reported. The addition of wet blues expands the reporting coverage to include all currently significant raw materials used in the manufacture of finished leather. This rule also revises the description of the types of cattle hides and skins to be reported and changes the reporting unit of certain items from number of pieces to hide equivalent number.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas B. McDonald, Jr., Acting Director, Export Sales Reporting Division, FAS, Room 4919, South Agricultural Building, Washington, D.C. 20250, telephone (202) 447-5851.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures required by Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "non-major." It has been determined that these program provisions will not 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 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.

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act, a copy of this rule has been submitted to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

On February 8, 1983, the Foreign Agricultural Service published in the **Federal Register** (48 FR 5748) a proposal to amend the Export Sales Reporting Regulations (7 CFR Part 20) to provide for reporting of export sales involving wet blue cattle hides and skins. Section 7(g) of the Export Administration Act of 1979 (Pub. L. 96-72) requires the Secretary of Agriculture to collect data regarding export sales of hides and skins, and this requirement was implemented through the Export Sales Reporting Program. However, wet blues were not included in the original list of commodities to be reported because of their relative insignificance at that time. The recent increase in exports of wet blues and trade interest in reflecting export sales of all significant raw materials prompted this change.

During the comment period provided by the proposal, 8 comments were received. All commentors supported the addition of wet blues to the list of cattle hides and skins to be reported so that complete coverage of all significant raw materials used in the manufacturing of leather could be obtained under the present reporting requirements.

Other pertinent comments concerned specific suggestions for clarifying the descriptions of wet blues to be reported and questioned the necessity for reporting minor items of raw hides and wet blues. The need for reporting category "cattle hides and skins—cattle, calf and kip, excluding wet blues, in cuts not otherwise specified" was questioned by one commentor. Additionally, the

elimination of reporting of "cattle, calf and kip, wet blues—splits, excluding grain portion" was suggested because of their limited volume. Based on our evaluation, it is felt that both of these minor categories are necessary to provide complete coverage, as well as to completely define the items to be reported in the other categories.

It was apparent from the comments received regarding the proposed definition—"cattle, calf and kip, wet blues—grain portion only, full thickness or split (hide equivalent)"—that redefinition was necessary to eliminate confusion. Therefore, this category was redefined to provide for separate definition of the two components—unsplit and grain splits. This redefinition also clarifies that sided product must be converted to the hide equivalent reporting unit.

This rule also changes the reporting unit for "cattle hides and skins—cattle calf and kip, excluding wet blues, cut into croupons, crops, dossets, sides, butts and butt bends" from number of pieces to hide equivalent number, thus eliminating reporting of some actual product counts previously reported.

The final rule provides for the weekly reporting of wet blue cattle hides and skins by adding them to the list of commodities subject to reporting contained in Appendix I of the Export Sales Reporting Regulations.

All individuals or firms engaged in the export sale of wet blue cattle hides and skins are solely responsible for reporting any and all information required by the Export Sales Reporting Regulations. Any individual or firm with reporting responsibility should contact the Export Sales Reporting Division at 202–447–9209 to obtain complete program information, a supply of reporting forms and a reporting "firm number."

The Export Sales Reporting program is approved under OMB No. 0551–0007, effective through April 30, 1983 and is now in the renewal process.

The reporting or recordkeeping provisions that are included in this rule have been approved by the Office of Management and Budget (OMB).

It has been determined that there is good cause for making this rule effective as of April 1, 1983, which is less than 30 days from the date of publication. This is because: (1) There has been an increase of approximately 60 percent in the value of wet blues exported in 1982 as compared with 1981. By collecting and publishing data which more accurately reflects the impact of foreign demand on the hide and skin industry as soon as possible, the Department will be fulfilling the purpose of the Export Sales Reporting Program. (2) It would not impose any real hardship since most firms which would be affected by the new reporting requirement are fully familiar with the reporting process, and all firms involved will be directly contacted and advised as to the new reporting requirements; and (3) Although the firms would have to report sales for the period beginning April 1, 1983, it would not impose any undue burden on the reporting firms since the reports would not have to be received by the Department until April 11, 1983.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting requirements.

PART 20—[AMENDED]

Accordingly, Part 20 of Subtitle A of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 20 reads as follows:

Authority: Sec. 812, Pub. L. 91–524, as added by Pub. L. 93–86, Sec. 1(27)(B), 87 Stat. 238 (7 U.S.C. 612c–3); Sec. 7(g), Pub. L. 96–72, 93 Stat. 519 (50 U.S.C. App. 2406(g)).

Appendix I—[Amended]

2. Appendix I is amended by revising all items relating to "cattle hides and skins" to read as follows:

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
* *	*	*	*
Cattle hides and skins—Whole cattle hides, excluding wet blues	Pieces	Jan. 1	Dec. 31.
Cattle hides and skins—Whole calf skins, excluding wet blues	Pieces	Jan. 1	Dec. 31.
Cattle hides and skins—Whole kip skins, excluding wet blues	Pieces	Jan. 1	Dec. 31.
Cattle hides and skins—Cattle, calf and kip, excluding wet blues, cut into croupons, crops, dossets, sides, butts or butt bends (hide equivalent)	Number	Jan. 1	Dec. 31.
Cattle hides and skins—Cattle, calf and kip, excluding wet blues, in cuts not otherwise specified	Pounds	Jan. 1	Dec. 31.
Cattle, calf and kip, wet blues—unsplit (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, wet blues—grain splits (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, wet blues—splits, excluding grain splits	Pounds	Jan. 1	Dec. 31.
* *	*	*	*

Issued at Washington, D.C., this March 30, 1983.

Richard A. Smith,

Administrator, Foreign Agricultural Service.

[FR Doc. 83-8696 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-10-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 244]

Food Stamp Program: Joint Food Stamp/Public Assistance Case Processing

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule allows each State agency to choose to permit Public Assistance (PA) and General Assistance (GA) households to have their food stamp applications included in their PA or GA applications, and to permit food stamp applicants to be certified eligible based on information in their PA and GA casefile, to the extent reasonably verified information is available in the file. This change is required by Section 173 of the 1982 Food Stamp Amendments. This rule also revises the regulations to eliminate indefinite certification periods. This rule is intended to provide more flexibility to the State agencies in administering the Food Stamp Program and to reduce abuse and error by allowing more effective Program administration.

DATE: This action is effective on publication. Comments must be received on or before June 30, 1983, to be assured of consideration.

ADDRESS: Comments should be submitted to Judith M. Seymour, Acting Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Judith M. Seymour at the above

address, or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and Secretary's memorandum No. 1512-1. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor.

Justification for Publishing as an Interim Rule, Effective on Publication

This rule is being published as an interim rule, effective upon publication. This schedule of the effective date is required by the mandate of Section 193 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, enacted on September 8, 1982). Section 193 states that the 1982 Amendments shall be effective upon enactment. The date of enactment is September 8, 1982 and as of that date the provisions superseded relevant provisions then in effect. Consequently, it is imperative that the Department issue rules implementing the law and that State agencies follow the new procedures as soon as possible. The rules regarding the elimination of the "indefinite" certification period for households receiving public assistance clarify current regulations. This clarification is necessary since some states have been interpreting current regulations as allowing for "indefinite" certification periods for PA households. Other states have interpreted FNS rules as requiring that PA households be assigned definite food stamp certification periods which could not be extended even if the PA eligibility were to be extended. Thus the Department believes it is in the public interest that this docket contains the agency's interpretation of the uniform nationwide standard while the agency examines public comment on this issue. For this reason, Robert D. Leard, Administrator of the Food and Nutrition Service, pursuant to 5 U.S.C. 553, has determined that prior public comment on this rule is impracticable and contrary to the public interest and that good cause exists for making this rule effective less than 30 days after publication. Public comment is solicited on this rule for 90 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in a subsequent publication.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). Robert E. Leard, Administrator of the Food and Nutrition Service has certified that this proposal does not have a significant economic impact on a substantial number of small entities. This rule implements a provision from the Omnibus Budget Reconciliation Act of 1982 which affects the food stamp certification system. The provision makes two of the four current joint application processing requirements optional for State agencies. In addition, this rule revises food stamp regulations to eliminate indefinite certification periods. These provisions do not represent major changes in certification of operational policy and should reduce program costs, abuse and error by tightening certification standards, and as well as give State agencies flexibility in program administration.

Paperwork Reduction Act

The Department does not think that this regulation has an impact on the paperwork burden of State agencies. If any commenters believe otherwise, the Department is interested in hearing from them.

Background

Joint Food Stamp/Public Assistance Case Processing

The Food Stamp Act of 1977 eliminated categorical food stamp eligibility of Public Assistance (PA) and some General Assistance (GA) households. However, Congress was concerned that the elimination of the categorical eligibility of PA and some GA households could lead to the creation of participation barriers that would discourage the participation of otherwise eligible PA and GA households. Consequently, Congress, in the Food Stamp Act of 1977, included several provisions which were aimed at minimizing barriers to participation for PA and GA households. The intent of the provisions was to spare households which are applying for benefits in both programs from having to go through the same application process in both programs. These provisions were (1) that a single interview be conducted to determine eligibility for food stamps and AFDC; (2) that households in which all members are recipients of Supplemental Security Income (SSI) be permitted to apply for participation in the Food Stamp Program by completing a simple application at the Social Security office; (3) that households in which all members are included in a PA or GA grant have their application for participation in the Food Stamp Program included in the PA or GA application form; and (4) that new applicants, as well as households which have recently lost or been denied eligibility for PA or GA be certified for food stamps based on information in the PA or GA case file, if reasonably verified information is available in these files. Current application processing rules in § 273.2(j) reflect these statutory provisions from the 1977 Act.

Since that time, State and local officials have expressed concern that the specificity of these requirements is administratively burdensome (Senate Report No. 97-504, 97th Congress, July 26, 1982, p. 58). As a result, in the 1982 Amendments, Congress included a provision (Section 173 of Pub. L. 97-253), to make optional, at the discretion of the State agency, the two requirements that the food stamp application must be contained in the PA or GA application for PA and GA households, and that food stamp applicants must be certified for participation based on reasonably verified information in PA or GA casefiles. The other two joint processing requirements, the single PA/food stamp interview and the application/certification of pure SSI households at Social Security offices, have not been modified. The result of this change in the Act is that the administrative burden placed on State agencies is lessened while the advantages for applicants inherent in joint processing still are maintained. This interim rule makes changes in § 273.2(j)(1) (i) and (iv) to reflect this statutory change.

Indefinite Certification Periods

In 1979, when the Department developed the rules described above for the joint processing of applicants for the food stamp and PA/GA programs, the Department also addressed the issue of jointly processing recertifications for the similar programs. While not required by the Act, the Department believed this was a logical extension of Congressional intent. However, in determining how to achieve the objective of having households jointly recertified for food stamps and PA, a fundamental difference between the two programs had to be reconciled.

In the Food Stamp Program, households are certified for definite periods of time not to exceed twelve

months. Once set, a certification period cannot be lengthened without a recertification. The month before a household's certification period is to expire, the State agency must tell the household and arrange for the household to come in and reapply. Thus, in order to continue to receive benefits after the end dates of food stamp certification periods, housholds must reapply and be found eligible. Failure by a household to take this positive action results in the household's being terminated from the Program.

In the AFDC program, a household's eligibility is also periodically redetermined. AFDC households do not lose their benefits if the State agency does not complete the redetermination during the prescribed period.

Information the Department had at the time the current regulations were developed indicated that State AFDC agencies often did not complete all redeterminations within the prescribed time periods. Therefore, to achieve the desired objective, the current regulations require that jointly processed cases be assigned "indefinite" food stamp certification periods, i.e., certification periods without definite ending dates. Food stamp certification periods could thereby be lengthened if the PA redetermination were pushed back. However, in accordance with Section 3 of the Act, the requirement that certification periods be no longer than twelve months was retained. Thus, a food stamp certification period set to expire six months after certification because that was the redetermination schedule for PA, was allowed to "slip" with PA, but for no longer than twelve months. At that time the household had to be called in for a food stamp recertification.

One other provision, one involving the Notice of Expiration, was also included in the rules. While a Notice of Expiration is required to be used in the PA program, the Department understood at the time that the procedures surrounding its use were less stringent than those governing use of the food stamp Notice. Most important among these differences, the food stamp Notice was required to be sent to households between the 15th and 30th of the month preceding the last month of a household's certification period; there was no such requirement in PA. This caused a problem in that sometimes a State agency would not know it needed to "slip" the redetermination date for PA until after the date the food stamp Notice was to be sent. If the certification periods for the two programs were scheduled to coincide exactly, but the AFDC process is delayed, the recertification process for the two programs would not coincide because of different notification timeframes. The Department attempted to solve this problem by requiring that food stamp certification periods be set indefinitely to expire one month after the PA redetermination period (with the twelve month limit). Thus, a decision would always have been made on the scheduling of the PA redetermination before the time for sending the food stamp Notice came up. If the PA redetermination was held on schedule, the Department expected State agencies to shorten the food stamp certification period, do both the PA redetermination and food stamp recertification together, and begin the process once more. Unfortunately, this procedure appears to have been misunderstood and to have created more problems than it was intended to solve.

While most of the problems caused by current rules have been administrative in nature, one that was recently discovered is more serious. What was recently found was that some State agencies were incorrectly applying the policy and allowing food stamp certification periods to slip beyond the twelve month limit. In these cases households were being issued benefits for a period of time when they were technically not certified. The issuances involved are overissuances.

In order to solve this particular problem and hopefully to make the policy on certification periods for PA/FS households clearer, the Department is revising these rules.

Essentially, the change deletes special procedures for assigning certification periods to PA/FS households. The new rules will no longer allow "indefinite" certification periods, will not allow food stamp certification periods to slip, and will not drop the requirement that food stamp certification periods be one month longer than PA redetermination periods. The rules, instead, require State agencies to assign certification periods to PA/FS households so that, to the greatest extent practicable, the food stamp recertification and PA redetermination occur at the same time. However, food stamp certification periods will have to have definite ending dates that trigger the use of the food stamp Notice of Expiration.

The Department remains committed to the objective of jointly processing recertifications, believing that it is in the best interest of the participants in these programs and the State agencies involved to achieve this. It is clear that State agencies need flexibility to design procedures that achieve this objective within the framework of their administration of the two programs. However, it is also clear that while joint processing of recertifications is desirable it should not be achieved by sacrificing the integrity of the Food Stamp Program. The changes in §§ 273.10(f)(2) and 273.10(g)(1)(i) underscore the Department's continued interest in joint processing as well as the Department's interest in maintaining Program integrity.

Implementation

The provisions regarding joint FS/PA case processing do not require State agencies to change their current procedures. Therefore, the decision on when to implement the changes would be a State agency decision. The change regarding certification periods must be implemented at time of application or at recertification no later than July 1, 1983.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs-Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 and are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, paragraph (g)(60) is revised to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(60) Amendment 244. State agencies shall implement the provisions regarding joint food stamp/public assistance case processing at State agency discretion. The provisions regarding certification periods must be implemented at time of application or at recertification no later than July 1, 1983.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.2, paragraph (j)(1)(i) is revised, paragraph (j)(1)(ii) is removed, paragraphs (iii) through (v) are redesignated (ii) through (iv) and the last

sentence in newly designated paragraph (j)(1)(iv) is revised.

The revisions read as follows:

§ 273.2 Application processing.

* * * * *

(j) *PA and GA household.* * * *

(1) *PA households.* (i) State agencies, at their discretion, may permit households applying for PA and food stamps at the same time to complete a joint application for both programs, or separate applications for both programs or an application for PA with an addendum to collect information relevant only to food stamps. If the State agency elects to use a joint PA/food stamp application, the application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of either program for false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(v) of this section. The joint PA/food stamp application may be used for all food stamp applicants provided the application form is approved for all households by FNS.

* * * * *

(iv) * * * Households who file joint applications for food stamps and PA and whose PA applications are subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

* * * * *

2. In § 273.10:

(a) Paragraph (f)(2) is revised.

(b) Paragraph (f)(3) is amended by removing the first word "Other" in the first sentence and capitalizing the following word "household".

(c) paragraph (g)(1)(i)(B) is removed and paragraphs (g)(1)(i)(C) and (g)(1)(i)(D) are redesignated (g)(1)(i)(B) and (g)(1)(i)(C) respectively.

The revision reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(f) *Certification periods.* * * *

(2) Households in which all members are contained in a single PA grant, or in a single GA grant where GA and food stamp applications are processed jointly in accordance with 273.2(j), should have their food stamp recertifications, to the extent possible, at the same time they are redetermined for PA/GA. State agencies shall assign these households certification periods in accordance with this section. If such households do have their food stamp recertifications scheduled for the same time as their PA/GA redetermination, and the PA/GA redeterminations are not completed timely, the State agency shall ensure that the food stamp recertifications are timely completed. In no event shall food stamp benefits be continued beyond the end of a certification period.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps.)

Dated: March 24, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-8294 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Part 718

[Amdt. 7]

Determination of Acreage and Compliance; Farm Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the regulations set forth at 7 CFR Part 718 which govern the determinations of acreage and compliance under the production adjustment and marketing quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS). These changes in the regulations are necessary (1) to implement provisions of the Agricultural Act of 1949, as amended by the agriculture and Food Act of 1981, (2) to delete certain program requirements which are not applicable to the 1982 crops and subsequent crops, and (3) to improve the administration of the programs.

DATES: This interim rule shall be effective upon April 1, 1983. Comments must be received by May 31, 1983 in order to be assured of consideration.

ADDRESS: Interested persons may send comments to the Director, Cotton, Grain, and Rice Price Support Division, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: H. Paul Newhouse, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3471. A final Regulatory Impact Analysis has been prepared and is available from H. Paul Newhouse.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Secretary's Memorandum 1512–1 and Executive Order 12291, and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this interim rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; and Grain Reserve Program, 10.067, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Department of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Section 374 of the agricultural Act of 1938, as amended (7 U.S.C. 1374) authorizes the Secretary of Agriculture to ascertain, by measurement or otherwise, the acreage of any agricultural commodity or land use on farms for which the ascertainment of such acreage or land use is necessary to determine compliance under any program administered by the Secretary. Accordingly, regulations have been issued by the Secretary at 7 CFR Part 718 setting forth provisions relating to determinations of acreage and compliance with respect to various commodity programs.

The following are changes in these regulations which are required to be made as the result of statutory amendments, as well as certain other administrative changes.

Section 718.2(b) of the current regulations does not contain definitions for aerial compliance, conservation use or set-aside acreage maintenance check, early measurement, farm inspection, ground compliance, ground measurement, or premeasurement. this interim rule defines these terms since they relate to the determinations of acreage and compliance for the 1982 and subsequent crops.

Section 718.2(b)(4) of the current regulations refers to the Director, Production Adjustment Division. This interim rule refers to the Director, Cotton, Grain, and Rice Price Support Division, to reflect a reorganization within the Department.

Section 718.2(b)(11) of the current regulations defines as "program crops" field corn, grain sorghum, wheat, rice, upland cotton, and, if designated, oats and barley. This interim rule defines as "program crops" field corn, grain sorghum, wheat, oats, rice, upland cotton, and, if designated, barley, to reflect statutory changes made by the Agriculture and Food Act of 1981.

Section 718.2(b)(12) of the current regulations defines "quality control check." This interim rule substitutes for this term the term "random inspection," which is more descriptive of the definition.

Section 718.2(b)(14) of the current regulations refers to "reporting date" as a date that is established by the State committee for each applicable program crop. For the 1982 crop year, this interim rule does not change this requirement. For the 1983 and subsequent crop years, this interim rule refers to "reporting date" as a date that is established by the Deputy Administrator for each applicable program crop.

Section 718.2(b)(15) of the current regulations defines "required check." This interim rule substitutes for this term the term "required inspection," which is more descriptive of the definition.

Section 718.2(b)(17) of the current regulations defines "skip-row planting." This interim rule expands the phrase to "skip-row or strip-crop planting" to advoid confusion since both skip-row or strip-crop areas are exceptions to the minimum size and width requirements for conservation use or set-aside acreage.

Section 718.2(b)(19) of the current regulations defines "tolerance" as it applies to program crops and marketing quota crops. This interim rule defines "tolerance" as it applies to program crops, marketing quota crops, peanuts, and conservation use or set-aside acreage. The Agriculture and Food Act of 1981 provides that peanuts are no longer marketing quota crops and further sets forth certain requirements for conservation use acreage in connection with program crops.

Section 718.2(b)(20) of the current regulations defines "turn area" as that area perpendicular to the crop rows which is used for operating equipment necessary to the production of a row crop (also called "turnrow," "headland," or "endrow"). This interim rule defines "turn area" as the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called "turnrow," "headland," or "endrow"), since the turn area is not always strictly perpendicular to the crop rows.

Section 718.2(b)(21) of the current regulations defines "variance" as administrative variance as it applies to marketing quota crops and tolerance as it applies to both program crops and marketing quota crops. This interim rule defines "variance" as administrative variance as it applies to marketing quota crops and tolerance as it applies to program crops, marketing quota crops, peanuts, and conservation use or set-aside acreage. The Agriculture and Food Act of 1981 provides that peanuts are no longer marketing quota crops and further sets forth certain requirements for conservation use acreage in connection with program crops.

Section 718.4(b)(1)(iv) of the current regulations states that the State committee shall establish final reporting dates for crops. For the 1982 crop year, this interim rule does not change this regulation. For the 1983 crop year, and subsequent crop years, this interim rule states that the State committee shall establish disposition dates for crops that are no later than the applicable final reporting dates as established by the Deputy Administrator.

Section 718.5 of the current regulations refers to "producer services." This interim rule substitutes for the term "producer services" the term "measurement services," which is more descriptive of the services which are performed.

Section 718.5(a)(1) of the current regulations refers to requests for services made after the date established by the State committee for accepting such requests. For the 1982 crop year, this interim rule does not change this regulation. For the 1983 and subsequent crop years, this interim rule refers to requests for services made after the established final reporting date for the applicable crop.

Section 718.6(a) of the current regulations states that a report of acreage, land use, production, and other program requirements shall be furnished to the county committee by the farm operator not later than the date established in accordance with paragraph (b) of § 718.4. For the 1982 crop year, this interim rule does not change this requirement. For the 1983 and subsequent crop years, this interim rule states that a report of acreage, land use, production, and other program requirements shall be furnished to the county committee not later than the applicable final reporting date established by the Deputy Administrator.

Section 718.6(b) of the current regulations refers to "quality control." This interim rule refers to "farm inspections" in order to reflect the change in definition in § 718.2(b)(12).

Section 718.6(c) of the current regulations refers to the applicability of variance rules to program crops and marketing quota crops. This interim rule refers to the applicability of variance rules to program crops, marketing quota crops, peanuts, and conservation use or set-aside acreage. The Agriculture and Food Act of 1981 provides that peanuts are no longer marketing quota crops and further sets forth certain requirements for conservation use acreage in connection with program crops.

Section 718.6(c)(2) of the current regulations establishes tolerances for (i) program crops, (ii) ELS cotton and peanuts, and (iii) tobacco other than flue-cured or burley. This interim rule deletes these tolerances and establishes tolerances for (i) program crops, ELS cotton, and peanuts, (ii) conservation use or set-aside acreage, and (iii) tobacco other than flue-cured or burley, to reflect statutory changes made by the Agriculture and Food Act of 1981.

Section 718.6(h) of the current regulations is amended to add references to "conservation use acreage" to the specified requirements since an acreage reduction program, rather than a set-aside program, is in effect for the 1982 crop year for wheat, feed grains, upland cotton, and rice. Also included in this amendment are reporting requirements, minimum size and width requirements, and exceptions to the minimum size and width requirements, for conservation use or set-aside acreage for the 1982 crop year and the 1983 and subsequent crop years.

Section 718.6(h)(3) is added to the current regulations to provide a minimum size requirement for conservation use or set-aside acreage of 1.0 acre for the 1982 crop year and 5.0 acres for the 1983 and subsequent crop years. The provisions of the Agriculture and Food Act of 1981 authorize the Secretary to determine a percentage of

the total program crop acreage which is to be designated as conservation use acreage under acreage reduction and land diversion programs or as set-aside acreage. In accordance with this authority, the Secretary designated a relatively small percentage of the total program crop acreages for conservation use acreage as a requirement for program participation for the 1982 crop year. This designation necessitates a decrease in the minimum size requirement for conservation use acreage for the 1982 crop year. For 1983, the Secretary has implemented cash land diversion programs required for program participation for all program crops, except for upland cotton for which the cash land diversion is voluntary. Consequently, the Secretary has provided for the designation of larger percentages of the total program crop acreages for conservation use acreage as a requirement for participation for the 1983 crop year programs. For the 1983 and subsequent crop years, the minimum size requirement for conservation use acreage is increased because of the larger percentages of the total program crop acreages devoted to conservation use and since such increases in minimum size requirements will result in more productive acreages being devoted to conservation use.

Sections 718.6 (h)(4), (h)(5), and (h)(6) are added to the current regulations to provide for a greater number of exceptions to the minimum size and width requirements for conservation use or set-aside acreage.

Section 718.11 of the current regulations establishes procedures for adjusting acreages for peanuts and for tobacco other than flue-cured or burley. This interim rule deletes those procedures for peanuts since there is no longer an acreage allotment program for peanuts as the result of statutory changes made by the Agriculture and Food Act of 1981. A reference is also made to conservation use or seat-aside acreage to clarify that there is no adjustment procedure for conservation use or set-aside acreage when the acreage determined from a farm inspection is less than the program requirement.

Lastly, § 718.6 (a)(2) and (f)(2) of the current regulations have been revised to correct typographical errors.

Since producers are currently engaged in farming operations and are affected by the changes provided by this interim rule, it has been determined that this regulation shall become effective upon date of filing with the Director, Office of the Federal Register. However, comments are solicited for 60 days after publication of this document and a final rule will be published in the **Federal Register** as soon as possible discussing any comments received as well as setting forth any applicable amendments to the regulations.

List of Subjects in 7 CFR Part 718

Acreage allotments, Marketing quotas.

Interim Rule

PART 718—[AMENDED]

Accordingly, the regulations at 7 CFR Part 718 are amended as follows:

1. Section 718.1 is revised to read as follows:

§ 718.1 Applicability.

The provisions of this part apply to compliance determinations for the 1982 and subsequent crop years as authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, with respect to the programs administered by the Agricultural Stabilization and Conservation Service (ASCS) through State and county committees.

2. Section 718.2 is amended by: Redesignating paragraphs (b)(2) as (b)(3), (b)(3) and (b)(4) as (b)(5) and (b)(6), (b)(5) and (b)(6) as (b)(9) and (b)(10), (b)(7) through (b)(10) as (b)(13) through (b)(16), and (b)(11) through (b)(21) as (b)(18) through (b)(28); adding new paragraphs (b)(2), (b)(4), (b)(7), (b)(8), (b)(11), (b)(12), and (b)(17); and revising the new paragraph (b)(6), (b)(18), (b)(19), (b)(21), (b)(22), (b)(24), (b)(26), (b)(27), and (b)(28) to read as follows:

§ 718.2 Definitions.

* * * * *

(b) * * *

(2) *Aerial compliance.* A technique for determining acreage and updating aerial photography using 35mm slides and approved equipment.

* * * * *

(4) *Conservation use or set-aside acreage maintenance check.* An inspection made in addition to the regular random inspections to determine whether producers are continuing to maintain designated program acreages in accordance with program regulations.

* * * * *

(6) *Director.* The Director, or Acting Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, Department of Agriculture.

(7) *Early measurement.* Determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop or land use.

(8) *Farm inspection.* An inspection by an authorized Agricultural Stabilization and Conservation Service representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

* * * * *

(11) *Ground compliance.* A method for determining acreage and updating aerial photography using field visits.

(12) *Ground measurement.* The distance between 2 points on the ground, obtained by actual use of a chain tape and expressed in chains and links.

* * * * *

(17) *Premeasurement.* Determining an acreage before planting, designating, or adjusting by planimetering a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision, then staking and referencing the area on the ground and guaranteeing the acreage when subsequent planting, designating, or adjusting is done within the staked area.

(18) *Program crops.* field corn, grain sorghum, wheat, oats, and, if designated, barley, which are planted for other than cover or green manure or volunteer acreage of these crops which is harvested for grain. Also included as program crops are rice and upland cotton.

(19) *Random inspection.* An inspection by an authorized representative of the Agricultural Stabilization and Conservation Service of a farm selected as a part of an impartial sample to determine the producer's adherence to program requirements or to verify the farm operator's report.

* * * * *

(21) *Reporting date.* For the 1982 crop year, the date established by the State Committee, in accordance with the appropriate program regulation set forth in this chapter, by which a farm operator must report applicable program crop acreage. For the 1983 and subsequent crop years, the date established by the Deputy Administrator by which a farm operator must report applicable program crop acreage.

(22) *Required inspection.* An inspection by an authorized representative of the Agricultural Stabilization and Conservation Service to a farm specifically selected by application of prescribed rules to determine the producer's adherence to

program requirements or to verify the farm operator's report.

* * * * *

(24) *Skip-row or strip-crop planting.* A cultural practice in which strips of rows of the crop are alternated with strips of idle land or another crop.

* * * * *

(26) *Tolerance.* For program crops, marketing quota crops, and peanuts, a prescribed amount within which the reported acreage can differ from the determined acreage and still be considered as correctly reported. Also, for conservation use or set-aside acreage, the prescribed amount within which the determined acreage can be less than the program requirement and still be considered as having met the program requirement.

(27) *Turn area.* The area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

(28) *Variance.* Administrative variance as it applies to marketing quota crops and tolerance as it applies to program crops, marketing quota crops, peanuts, and conservation use or set-aside acreage.

3. Section 718.4 is amended by revising paragraph (b)(1)(iv) to read as follows:

§ 718.4 Committee responsibilities.

* * * * *

(b) * * *

(1) * * *

(iv) In accordance with instructions issued by the Deputy Administrator:

(A) For the 1982 crop year, establish and publicize final reporting dates and normal planting periods for crops.

(B) For the 1983 and subsequent crop years, establish disposition dates from crops that are no later than the applicable final reporting dates which are established by the Deputy Administrator, establish normal planting periods for crops, and publicize all such applicable dates and periods.

* * * * *

4. Section 718.5 is amended by revising: The preamble to paragraph (a); paragraph (a)(1); paragraph (b); and paragraph (c) to read as follows:

§ 718.5 Measurement services.

(a) *General.* The county committee shall provide measurement services if the producer requests such service and pays the cost, except that requests for service shall not be accepted for determining total acreage of a crop or land use.

(1) When the request is made after:

(i) For the 1982 crop year, the date established by the State committee for accepting such requests except as provided in paragraph (a)(3) of § 718.6.

(ii) For the 1983 and subsequent crop years, the established final reporting date for the applicable crop except as provided in paragraph (a)(3) of § 718.6.

* * * * *

(b) *Types of measurement service.* Services include, but are not limited to, measuring land and crop areas (including premeasurement) and conservation use or set-aside acreage, measuring quantities of farm-stored commodities, and appraising the yields of crops.

(c) *Guaranteeing service.* When a producer requests, pays for, and receives written notice that measurement services have been furnished, compliance with program requirements relating to the measured acreage shall be guaranteed for the current year even though an error in the measurement services is discovered in the measurement, placement of field or subdivision lines, planimetry, or computation thereof if the producer has taken action based on the service and the entire crop or land use acreage required for the farm was measured. If the producer has not taken action based on the measurement services, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

* * * * *

5. Section 718.6 is amended by: Redesignating paragraphs (a)(1) and (a)(2) as (a)(3) and (a)(4), and (h)(1) as (h)(3); removing paragraph (h)(2); adding new paragraphs (a)(1), (a)(2), (h)(1), (h)(2), (h)(4), (h)(5), and (h)(6); and revising the preamble to paragraph (a), new paragraphs (a)(3) and (a)(4), paragraph (b), the preamble to paragraph (c), paragraph (c)(2), paragraph (f)(2), the preamble to paragraph (h), and new paragraph (h)(3) to read as follows:

§ 718.6 Determining farm operator adherence to program requirements

(a) *Farm operator report.* A report of acreage, land use, production, and other program requirements shall be furnished to the county committee by the farm operator not later than:

(1) For the 1982 crop year, the date established in accordance with paragraph (b) of § 718.4.

(2) For the 1983 and subsequent crop years, the applicable final reporting date established by the Deputy Administrator which is publicized by, and available at, the applicable State and County ASCS Office. The report shall be used for determining program eligibility and benefits, except as otherwise provided for under this part. The report shall be on forms prescribed and in accordance with instructions issued by the Deputy Administrator.

(3) Accepting a late-filed report. A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to:

(i) The existence of the crop,

(ii) The use made of the crop,

(iii) The lack of crop, or

(iv) A disaster condition affecting the crop.

The farm operator shall pay the cost of a farm visit by an authorized Agricultural Stabilization and Conservation Service employee unless the county committee determines that the producer's failure to file the farm operator's report was caused by a condition beyond the producer's control.

(4) Revised report. The farm operator may revise a report of acreage to alter the acreage reported. Revised reports shall be filed in accordance with instructions issued by the Deputy Administrator and shall be accepted:

(i) At any time for all crops and land use if evidence exists for inspection and determination of:

(A) The existence of the crop,

(B) The use made of the crop,

(C) The lack of crop, or

(D) A disaster condition affecting the crop; and

(ii) Until the time that production evidence is furnished to the county office for upland cotton and rice yield purposes, to reflect the fact that the harvested acreage is less than the planted acreage.

(b) *Farm inspections.* A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of the Agricultural Stabilization and Conservation Service to ascertain the acreage or production or to determine adherence to any requirement specified as a prerequisite for obtaining program benefits.

(c) *Variance rules applicability.* There are no variances when the total acreage of a program crop, marketing quota crop, peanuts, or conservation use or set-aside acreage requirement is determined using measurement service prior to planting or where a farm operator reports a marketing quota crop acreage in excess of the effective farm allotment. For farms using measurement service with respect to an acreage which is less than the total acreage of a program crop,

marketing quota crop, peanuts, or conservation use or set-aside acreage requirement, the variances shall apply only to the acreages for which measurement service was not furnished. Variances apply to the total acreage of a program crop, marketing quota crop, peanuts, or conservation use or set-aside acreage requirement for which measurement services are furnished after planting but before the operator reports the acreage which meets the specifications as provided in paragraphs (c)(1) and (c)(2) of this section. Variances apply to the adjusted acreage for farms using measurement service after planting but before the operator reports the acreage and which have a determined acreage greater than the marketing quota crop allotment, permitted program crop acreage, or an acreage less than the conservation use or set-aside acreage by more than the applicable variance rule prescribed in paragraphs (c) (1) or (2) of this section.

* * * * *

(2) Tolerance. The irrigated and nonirrigated acreage of a crop reported on the same farm shall be considered separately in applying the tolerance when separate yields have been established. Tolerance is applicable to individual crop acreages or program requirements, and shall be considered to have been met if the determined acreage for:

(i) A program crop, ELS cotton, and peanuts does not differ from the reported acreage by more than the larger of:

(A) 1.0 acre or 5 percent of the reported acreage for the 1982 crop year, and

(B) 1.0 acre or 5 percent of the reported acreage, not to exceed 50 acres, for the 1983 and subsequent crop years;

(ii) Conservation use or set-aside acreage is not less than the requirement by more than the larger of:

(A) 1.0 acre or 10 percent of the required acreage for the 1982 crop year, and

(B) 1.0 acre or 5 percent of the required acreage, not to exceed 50 acres, for the 1983 and subsequent crop years;

(iii) Tobacco other than flue-cured or burley does not exceed the allotment by more than the larger of 0.1 acre or 5 percent of the effective allotment, except that if the administrative variance is exceeded, such acreage of tobacco must be adjusted to the farm acreage allotment in order to avoid marketing quota penalties.

* * * * *

(f) * * *

(2) Other crops and land used. The acreage of each field or subdivision computed for land uses or crops, except tobacco, shall be recorded in acres and tenths of an acre, dropping all hundredths of an acre.

* * * * *

(h) *Conservation use or set-aside acreage.* Producers on farms participating in the acreage reduction program shall designate eligible conservation use or set-aside acreage for such farms, whichever is applicable, that meets the minimum size and width requirements of this paragraph.

(1) For the 1982 crop year, the conservation use or set-aside acreage shall be designated no later than:

(i) The established final date for reporting fall-seeded crops when:

(A) The conservation use or set-aside acreage is devoted to wheat, barley, or oats on or before January 29, 1982, or

(B) The producer on the farm has not filed an intention to participate in a program for a spring or summer-seeded crop.

(ii) The established final date for reporting the latest spring-seeded crop when the producer on the farm has filed an intention to participate in a program for a spring or summer-seeded crop, unless the conservation use or set-aside acreage is devoted to wheat, barley, or oats on or before January 19, 1982.

(2) For the 1983 and subsequent crop years, the conservation use or set-aside acreage shall be designated no later than:

(i) The established final date for reporting small grains when:

(A) The conservation use or set-aside acreage is devoted to a small grain, or

(B) The producer on the farm has not filed an intention to participate in a program for a spring or summer-seeded crop.

(ii) The established final date for reporting the latest spring-seeded crop when the producer on the farm has filed an intention to participate in a program for a spring or summer-seeded crop unless the conservation use or set-aside acreage is devoted to a small grain.

(3) Minimum size and width requirements for conservation use or set-aside acreage for the 1982 and subsequent crop years. The area offered for designation must meet the following minimum requirements:

(i) Minimum size of:

(A) 1.0 acre for the 1982 crop year, and

(B) 5.0 acres for the 1983 and subsequent crop years.

(ii) Minimum average width of 1.0 chain (66 feet) wide.

(4) Exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1982 and subsequent crop years. Areas that do not meet the minimum size and width requirements may be accepted when the area offered is:

(i) An entire field. The following areas meet the definition of a field as provided for in § 718.2(b)(9):

(A) An established stripcropping strip.

(B) The skips in an acceptable skip row pattern if at least the larger of 4 rows of normal width or 160 inches from planted row to planted row of conservation use or set-aside acreage alternate with strips of a crop.

(C) Land between terraces (terrace to terrace), or between a terrace and other field boundaries.

(ii) Land which is used to promote highway safety or will improve highway scenery.

(iii) A small or irregular area of cropland along a stream or drainage ditch, if the area is devoted to a vegetative cover such as a filter strip which is used to reduce the siltation of a stream or ditch.

(iv) Land between rows of trees or vines in orchards or vineyards.

(5) Exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1982 crop year only. An area that does not meet the minimum size and width requirements may be accepted when the area offered is designated by the producer on ASCS records across the entire width or length of a field (designations across more than one dimension of a field must meet minimum size and width requirements in paragraph (h)(3) of this section) and represents:

(i) The total conservation use or set-aside acreage requirement, or

(ii) The balance of the conservation use or set-aside acreage requirement after other designations have been made that meet the minimum size and width requirements in paragraph (h)(3) of this section or are otherwise excepted in paragraph (h)(4) of this section.

(6) Additional exceptions to the minimum size and width requirements for conservation use or set-aside acreage for the 1983 and subsequent crop years. Areas that do not meet the minimum size and width requirements may be accepted when the area offered is land which is:

(i) Used for water storage.

(ii) Planted with trees or shrubs for any purpose other than orchards, vineyards, or nursery stock.

(iii) Used as a sod waterway.

(iv) Used for a wildlife food plot or habitat.

(v) The only area designated, excluding those areas excepted in paragraphs (h)(4) or (h)(6)(i), (ii), (iii),

and (iv) of this section, that does not meet the minimum requirements in paragraph (h)(3) of this section.

6. Section 718.11 is amended by: revising paragraph (a); deleting paragraph (b); redesignating paragraph (c) as paragraph (b); and adding a new paragraph (c) to read as follows:

§ 718.11 Adjustment of acreages.

(a) *General.* The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) who elects to adjust an acreage of the crop in order to become eligible for program benefits must:

(1) Notify the county committee of such election within 15 days of notification of measured acreage by the county committee as provided in § 718.9, and

(2) Pay the cost of a farm visit to determine the adjusted acreage by no later than the date such farm visit is made.

The adjusted acreage shall be used for program purposes except that if the requirements of this section are not met, the acreage initially determined shall be considered as the appropriate crop acreage for the farm.

(b) *Tobacco other than flue-cured or burley.* The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of the Agricultural Stabilization and Conservation Service and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

(c) *Conservation use or set-aside acreage.* No acreage adjustments shall be allowed for conservation use or set-aside acreage when the acreage determined from a farm inspection is less than the program requirement.

(Secs. 314, 373, 374, 375, 52 Stat. 48, as amended, 65, as amended, 66, as amended; 7 U.S.C. 1314, 1373, 1374, 1375, sec. 403, 61 Stat. 932, as amended; 7 U.S.C. 1153.)

Signed at Washington, D.C., on the 23 day of March 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-8114 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 906

Oranges and Grapefruit Grown in Texas; Special Purpose Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permits handling of smaller size grapefruit for conversion into fresh juice under certain conditions including the requirements that such grapefruit pack 64 count in ⅘ bushel carton and grade at least U.S. No. 1. Such action is designed to develop a fresh juice outlet for smaller size grapefruit.

EFFECTIVE DATES: April 1, 1983, through July 31, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been certified a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the Texas grapefruit crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Texas Valley Citrus Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This final rule extends provisions currently in effect under an interim rule published March 3, 1983, in the **Federal Register** (48 FR 8985), which amended administrative rules for Texas grapefruit (Subpart-Rules and Regulations), effective for the period February 28, 1983, through March 31, 1983. The amendment of the administrative rules authorized the use of smaller sized grapefruit for fresh juice (juice prepared without pasteurization or preservative treatment). Under this marketing order, fresh grapefruit shipments are subject to minimum grade and size requirements, and grapefruit used for fresh juice (fruit for conversion into juice without pasteurization or preservative treatment) are considered fresh shipments and therefore subject to the marketing order requirements. This final rule permits the continued use of smaller sized grapefruit for fresh juice with appropriate safeguard. The objective of this action is to encourage the continued use of Texas grapefruit for fresh (not pasteurized) juice. The Texas citrus industry is experiencing difficulty in marketing its grapefruit crop this season, particularly in the processing sector. Therefore, they are attempting to develop a new outlet for their grapefruit. Extension of these provisions through July 31, 1983, was unanimously recommended by the committee on March 8, 1983, at a public meeting.

It is found that it is impracticable and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the time intervening between the date when information upon which this final rule is based became available and the time when this final rule must become effective in order to effectuate the declared policy of the Act is insufficient. Also, no comments were received during the comment filing period provided in the interim rule. It is necessary to effectuate the declared purposes of the Act to make this final rule effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 906

Marketing Agreement and Orders, Oranges, Grapefruit, Texas.

PART 906—[AMENDED]

Therefore, Subpart—Rules and Regulations (§§ 906.120-906.151) are amended as follows (this interim rule expires July 31, 1983, and will not be published in the annual Code of Federal Regulations):

1. Section 906.120(b) is amended effective for the period April 1, 1983, through July 31, 1983, by revising the last sentence to read as follows:

§ 906.120 Fruit exempt from regulations.

* * * * *

(b) * * * Fruit for conversion into juice without pasteurization or preservative treatment, as herein described, shall be deemed fresh fruit

and subject to all regulations under this part unless handled in accordance with § 906.124.

* * * * *

2. A new § 906.124 is added to read as follows:

§ 906.124 Grapefruit for fresh juice.

During the period April 1, 1983, through July 31, 1983, any handler may, without regard to § 906.40 and the regulations issued thereunder, handle grapefruit for conversion into juice without pasteurization or preservative treatment, under the following conditions:

(a) Grade, size, container, and inspection requirements:

(1) Such grapefruit shall grade at least U.S. No. 1.

(2) Such grapefruit shall be packed 64 count in 7/10 bushel cartons: *Provided,* That the diameter range shall be from 3 inches to 3⅝ inches.

(3) Such grapefruit shall meet pack requirements as specified in (a)(1)(ii) of § 906.340 (47 FR 56311): *Provided,* That such cartons shall be prominently marked with the words "For Juice Only" on both end panels of the carton in letters not less than ¾ inch high.

(4) Such grapefruit shall be shipped only if an appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment.

(5) Such grapefruit shall be shipped by the handler directly to an approved juicer as provided in paragraph (b) of this section, and such grapefruit shall not be offered for resale or otherwise diverted into normal channels of trade for fresh fruit, and shall be used only for conversion into juice.

(6) *Terms:* The term U.S. No. 1 shall mean the same as in the U.S. Standards for Grades of Grapefruit, Texas and States other than Florida, California, and Arizona, (7 CFR 51.620–51.653); and the term 7/10 bushel carton shall mean a closed fully telescopic fiberboard carton with inside dimensions of 16½ × 10¾ × 9½ inches, described in Freight Container Tariff 2G as container No. 6506.

(b) Reporting and recordkeeping requirements are as follows:

(1) *Approved Juicer.* Any person who desires to acquire 64 count grapefruit as an approved juicer shall, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information: name and address of applicant; location of store or stores where conversion is to take place, approximate quantity of 64 count grapefruit to be used each month; a statement that the grapefruit will be used only for conversion into fresh juice at the store, and will not be resold or disposed of in fresh fruit channels; and agree to submit such reports as are required by the committee. Such application shall be investigated by the committee staff. After such investigation, the staff shall report its findings to the committee or to its delegated subcommittees. Based upon the staff report and other information, the committee, or its delegate, shall approve or disapprove the application and notify the applicant accordingly. If the applicant is approved, the applicant's name shall be placed on the list of approved juicers.

(2) *Certification by approved juicer.* Upon request of the committee, each approved juicer shall submit to the committee on or before the 10th day of each month a report of the 64 count grapefruit used during the preceding calendar month. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown therein.

(3) *Disqualification.* The committee or delegated subcommittee, may suspend or revoke permission to handle grapefruit as an approved juicer whenever a juicer uses grapefruit inconsistent with these provisions.

(4) *Diversion report.* (i) Each handler who ships 64 count grapefruit to approved juicers for conversion shall report to the committee on a diversion report the following: name and address of the juicer's place of business where the 64 count grapefruit was shipped; the net weight or container count of such grapefruit; truck license number or rail car initial and number; inspection certificate number; and such other information as the committee may require.

(ii) Each such handler shall prepare four copies of the diversion report and sign them. The original copy shall be submitted to the committee within seven days of shipment. One copy shall be retained by the handler. One copy shall be given to the party transporting the fruit who shall deliver it to the approved juicer. The approved juicer shall record on that copy of the diversion report the actual net weight or container count of 64 count grapefruit received and forward such copy to the committee office. One copy shall be submitted to the approved juicer along with the invoice.

(5) Handlers and approved juicers shall maintain records substantiating reports of the disposition of 64 count grapefruit filed with the committee and make such records available to authorized representatives of the committee at their business offices at any reasonable time during business hours. Records include copies of all applicable purchase orders, sales contracts, or disposition documents together with any other information which the committee may deem necessary to determine the disposition of 64 count grapefruit.

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

Dated: March 29, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-8565 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 910

[Lemon Reg. 405]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period of April 3–9, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: April 3, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information

submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on March 29, 1983, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is better than that of the previous week.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.705 is added as follows:

§ 910.705 Lemon regulation 405.

The quantity of lemons grown in California and Arizona which may be handled during the period April 3, 1983, through April 9, 1983, is established at 250,000 cartons.

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

Dated: March 31, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-8730 Filed 3-31-83; 12:36 pm]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-040]

Importation of Horses; Mares From Countries Affected With CEM

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; comments requested.

SUMMARY: This document amends the regulations to allow mares over 731 days of age from countries affected with contagious equine metritis (CEM) to be moved from the port of importation to the University of California Veterinary College, Davis, California, when surgery required to be performed in the country of origin in order to qualify the mares for importation into the United States is found to be incomplete. This action is needed to provide a place for treating such mares nearer to west coast ports than Ithaca, New York, which up to this time was the only place where such mares could be taken for treatment. The effect of this action is to provide importers with a choice of facilities where they can obtain required treatment for certain mares over 731 days of age which would otherwise be refused entry into the United States.

DATES: The foregoing amendment shall become effective April 1, 1983. Comments must be received on or before May 31, 1983.

ADDRESS: Written comments concerning this interim rule should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 723, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION:

Background

On Friday, October 16, 1981, a document was published in the **Federal Register** (46 FR 50930–50937) which amended the regulations in 9 CFR Part 92, to provide for the importation of certain mares from countries affected with contagious equine metritis (CEM) based on specific surgery, treatment, and cultures conducted under the direct supervision of the salaried veterinary officer of the country of origin who signed the health certificate.

One of the provisions, found at 9 CFR 92.2(i)(2)(v)(C), requires the surgical removal of the clitoral sinuses of such mares in the country of origin. This surgical procedure is new, difficult to perform, and difficult to evaluate. Some of the mares presented for importation under this provision have been found to have one or more complete or partial clitoral sinuses, even though they had been surgically treated and were accompanied by the required certificate.

Because of the severe hardship which would otherwise be imposed on the owners, the Deputy Administrator has, in some instances, exercised his discretion and allowed corrective surgery to be performed in this country, and has not required the horses to be removed from the United States. The Department believes that this policy can be continued without a significant risk of the introduction of CEM into the United States, but only if it is done under highly controlled circumstances. Accordingly, the Department amended the regulations on April 26, 1982, (47 FR 17795–17797) to allow corrective surgery to be performed on such mares in the United States. That amendment did not eliminate the general requirement that the surgery be performed in the country of origin, but only provided for those exceptional circumstances when a certificate was issued even though the surgery was not complete. The Department made arrangements at that time with the School of Veterinary Medicine, Cornell University, Ithaca, New York, for the corrective surgery to be performed at that institution.

Since these regulations were amended to allow such horses to be treated after arrival in the United States, it has become obvious that it is costly and impractical for importers bringing horses into west coast ports of entry to ship those animals to Ithaca, New York, for treatment. The Department has therefore made arrangements with the College of Veterinary Medicine, University of California, Davis, California, for corrective surgery to be performed at that institution. This will allow importers to choose between the facilities in Ithaca, New York, and those in Davis, California.

Executive Order 12291

This interim rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this action will not have an annual effect on the economy of $100

million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment or investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dr. S. T. Wilson, Jr., Director, National Program Planning Staffs, VS, APHIS, USDA, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action. This amendment relieves restrictions presently imposed on mares over 731 days of age being imported into the United States, and should be made effective immediately in order to permit affected persons to move these mares into the United States without unnecessary restrictions.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency interim action is impracticable, unnecessary and contrary to the public interest, and good cause is found for making this emergency interim action effective less than 30 days after publication of this document in the **Federal Register.**

Comments have been solicited for 60 days after publication of this document, and this emergency interim action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Certification Under the Regulatory Flexibility Act

Mr. James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it is anticipated that it will affect only a portion of the approximately 20 mares out of 6,000 horses imported into the United States each year which come from countries where CEM is known to exist and which arrive in the United States without the required surgical treatment.

Alternatives Considered

The alternatives considered in making this decision were: (1) To allow the required surgical treatment of such horses to be performed at the College of Veterinary Medicine, University of California, Davis, California; and (2) Not to allow the required surgical treatment to be performed at that facility.

Alternative 2 was rejected as this would leave importers with no option but to use the Cornell University facilities in Ithaca, New York. Alternative 1 was adopted because this would provide importers with a choice of facilities, and would eliminate costly transportation of animals across the country for treatment.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation, Contagious equine metritis (CEM).

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations is amended in the following respects:

1. In § 92.2(i)(2)(v), the first sentence of paragraph (H) is amended to read:

§ 92.2 General prohibitions; exceptions.

* * * * *

(1) * * *

(2) * * *

(v) * * *

* * * * *

(H) Any mare subject to the provisions of § 92.2(i)(2)(v) which is found upon examination during preentry quarantine to have had an incomplete clitoral sinusectomy, but which is otherwise eligible for entry, may, at the option and expense of the importer, be moved to the School of Veterinary Medicine, Cornell University, Ithaca, New York, or to the College of Veterinary Medicine, University of California, Davis, California, where the surgery required to qualify such mare for importation may be performed by a licensed veterinarian mutually acceptable to the importer, the University, and the Department. * * *

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 11, 76 Stat. 129, 130, 132; sec. 1, 84 Stat. 202, (21 U.S.C. 111, 134a, 134c, and 134f); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 30th day of March 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 83-8575 Filed 3-30-83; 11:58 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Applicability of License; Conditions and Technical Specifications in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when this action is immediately needed to protect the public health and safety. The rule is being issued because NRC regulations currently do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which a license condition or a technical specification could prevent necessary protective action by the licensee. The rule allows this action to be taken in emergency circumstances.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-492-7389).

SUPPLEMENTARY INFORMATION: The rule clarifies the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary action by a licensee to protect the public health and safety. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety

equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions—normal, transient and accident conditions—analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing—e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforeseen in the licensing process before TMI–2; thus, the technical specifications prohibited this action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of equipment needed for proper protective action.

Technical specifications or license conditions can be amended by NRC, and the rule is not intended to apply in circumstances where time allows this process to be followed. The rule would apply only to those emergency situations where action by the licensee is required immediately to protect the public health and safety—action which may be contrary to a technical specification or a license condition.

It is the intent of the rule to allow deviations from license requirements only in the special circumstances described. It is not intended that licensees be allowed to deviate from procedures and other license requirements where these are applicable.

For these reasons, the Commission believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

The rule also requires a licensee, under § 50.72, to notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any action that departs from a license condition or a technical specification. When time permits, the notification is made before the protective action is taken; otherwise, it is made as soon as possible thereafter. The impact of this reporting requirement on licensees is expected to be negligible.

The rule follows the recommendation in NUREG–0616, "Report of Special Review Group, Office of Inspection and Enforcement on Lesson Learned from Three Mile Island"[1] the NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

(a) The rule does not require that departure from a license condition or technical specification have the concurrence of the most senior licensee and NRC personnel available at the time before the departure.

While the Commission certainly does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the rule specifies that such action shall be approved by a licensed senior operator as a minimum and does not go into further detail as to which additional persons should be involved if time permits or which persons should be involved under other circumstances. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures.

(b) The rule does not require the concurrence of NRC personnel. Receiving the "concurrence" or "approval" of NRC personnel would amount to a license amendment using procedures contrary to those existing for amendments. The rule specifically applies to emergency situations where immediate action is needed and time is not available for a license amendment. Requiring the concurrence of NRC personnel available at the time tends to shift the burden of safety from the licensee to NRC—contrary to the rule's intent. It could also shift the burden to NRC personnel on site who may be unqualified to concur in a proposed licensee action.

[1] NUREG–0616 is available for inspection and copying for a fee at NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 492–9530 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager 058, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

The rule was published as a proposed rule in the **Federal Register** on August 18, 1982 (47 FR 35996). A sixty-day comment period expired on October 18, 1982.

A total of thirty-seven responses were received, representing thirty-nine organizations or persons. Respondees included: licensees of power reactors (24), individuals (5), research reactor licensees (2), nuclear steam system suppliers (2), professional organizations (2); and one response each from: a law firm, a State, a labor union, and an architectural-engineering firm. Copies of comments received by the Commission in response to the notice of proposed rulemaking may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. (file PR–50, 47 FR 35996).

The vast majority of the commenters (thirty-seven) were in favor of the rule. Many expressed enthusiastic support. Only two commenters believed that the rule should not be adopted. Eight commenters believed the rule should be issued as proposed. However, as a result of comments received by others, some changes have been made, as discussed below.

One commenter pointed out the similarity between the proposed rule and the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. The rule is identical in each and states:

> In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from those rules necessary to avoid immediate danger. (Rule 2(b)).

The commenter added that a Commanding Officer (of a naval ship) is permitted to deviate from written rules to the extent necessary to save his ship, and that there is ample precedent for the proposed NRC rule.

It is also very similar to a rule of the Federal Aviation Administration (FAA) governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from any rule * * * to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule * * * shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed NRC rule. Further, it is clear that Congress

believes that licensees have authority to take whatever action is necessary to respond t emergencies involving an imminent threat to public health and safety. H.R. Rep. No. 97–884, 97th Cong., 2d Sess. 38 (1982). The rule codifies and clarifies this authority.

In addition to seeking the usual public comment as to any aspects of the proposed rule, the **Federal Register** Notice of the proposed rule stated:

> The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

Thirty-four comments were received in response to this request, and most were strongly opposed to the Commission providing additional deviation guidance or enforcement standards.

As for deviation guidance, one comment, which was opposed to such, was typical: "[w]e do not believe that it is feasible to provide detailed guidance as to when deviations are permissible. The whole purpose of the proposed amendments is to provide flexibility in situations that cannot be anticipated. Any effort to provide more detailed standards is likely to defeat that purpose by unintentionally excluding a situation in which a deviation is necessary or appropriate."

The Commission agrees with this comment, and feels that any attempt to define in more detail the precise circumstances under which a deviation is permissible is bound to exclude a circumstance where deviation might be entirely appropriate. Whereas the conditions under which a deviation is allowed are not described at length, nevertheless, the deviation criteria are quite specific: the licensee must be faced with an emergency situation in which compliance with the license is posing a barrier to effective protective action and rapid protective action is needed.

Based on the foregoing and public comments received, no changes have been made to the rule with respect to the conditions under which the rule may be invoked.

In response to the Commission's request for comments on the need for enforcement standards, most commenters stated that the matter of enforcement should be based on the specific circumstances surrounding the event, and that enforcement standards would be difficult to frame for the unusual circumstances under which the rule might be used. One commenter pointed out that enforcement standards would tend to limit actions that could or could not be taken, and thereby serve to provide deviation guidance which most felt was inappropriate (discussed above).

The Commission has concluded that enforcement standards, as such, are not needed. The Commission agrees that providing such standards would tend to define the circumstances under which the rule could be used (deviation guidance). As discussed above, this has been judged to be undesirable.

The rule does, however, contain implicit enforcement guidance. The NRC would review a licensee's use of the rule to determine answers to the following types of questions.

a. Did the licensee have to act immediately to avert possible adverse consequences to the public health and safety?

b. Was adequate or equivalent protective action that is consistent with the license immediately apparent?

c. Was the action reasonable? Based on information available at the time did it serve to protect the public health and safety? Did the licensee deviate from its license only to the extent necessary to meet the emergency?

d. Was there time for an amendment of the license to be approved by NRC?

Answers to these questions should be adequate to determine if the rule had been violated. Specific enforcement action would have to depend on the specific circumstances.

Ten persons made comments to the effect that overly critical reviews or overzealous enforcement action following the use of the rule would cause licensees to hesitate to use the rule. The Commission agrees with these comments. The Commission recognizes that a licensee will need to exercise judgment in applying the rule, and in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, enforcement action for a violation of the rule will not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The **Federal Register** Notice for the proposed rule contained additional comments of Commissioner Gilinsky, in which he stated:

> I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

Nineteen comments were received in response to this request and most all agreed that such a decision should be made, as a minimum, by a licensed senior operator. Those opposed expressed the opinion that such concurrence should not be mandatory or that higher concurrences should be obtained if possible.

A minor clarifying change to the rule has been made in response to these comments and another which stated that the rule was confusing because the first paragraph of the proposed rule discussed *licensees* and the second discussed *operators*. The second paragraph now reads: "Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator." This change makes it clear that if a licensee takes emergency action allowed by paragraph (x), such action must be approved by, at least, a licensed senior operator acting for the licensee. Under the provision, any licensed senior operator (licensed for the unit involved) would be sufficient. However, as one commenter pointed out, more senior licensee personnel would probably be available. If so, the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command). If, however, an emergency requiring prompt action should occur on a back shift, no licensee representative higher in the chain of command is likely to be available. To require other approvals could serve to defeat the purpose of the rule.

One commenter stated that the rule should provide for deviations from the NRC regulations as well as license conditions and technical specifications. This was intended, and the language of numerous comments indicated that this was understood. Each license issued is subject to all applicable rules, regulations and orders of the Commission. This is stated in the license itself and also in 10 CFR 50.54(h) as a condition of the license. Therefore, the rule does apply to NRC rules, regulations and orders as well.

Three comments were received regarding the applicability of the rule in situations where damage to the facility or injury to personnel might be involved. For the reasons discussed above, the rule does not contain explicit deviation guidance or examples. Nevertheless, the threat of injury to personnel would be an appropriate example. As for invoking the rule to prevent damage to the facility

or machinery, it would depend on the specific circumstances of the emergency. The rule does not apply to machinery or the facility, *per se*, but would apply if such damage is tied to a possible adverse effect on public health and safety.

One commenter suggested that the Commission emphasize the permissive nature of the rule by explaining that its use is totally discretionary, that licensees need not invoke it even in an emergency, and that failure to invoke the rule would not constitute a violation of NRC requirements for which an enforcement action may be brought. This comment was not accepted. Whereas the language of the rule is permissive in nature, licensees are responsible for operating their facilities in such a manner as to protect the public health and safety. If, in an emergency, protective action is needed (and no action consistent with the license that can provide adequate or equivalent protection is immediately apparent) the licensee would be obliged to take the protective action that deviates from the license. Viewed in this sense, use of the rule is not optional.

One commenter suggested that the provisions of the rule be placed in the facility operating license indicating that Technical Specifications are not intended to prevent a licensee from undertaking, during the course of emergency conditions, any action necessary to protect public health and safety. No changes to the rule have been made in response to this comment. First, as stated above, the rule applies not only to technical specifications, but any NRC requirement, e.g., regulations, rules, license conditions, or technical specifications. Second, it is not necessary to place the statement into the operating license itself, since it is being published as a rule in § 50.54, "Conditions of licenses." By so doing, the rule applies to all operating licenses.

A commenter suggested that a policy statement to the same safe effect would be better than a rule. This was not accepted, since the Commission believes that it would be inappropriate to issue a policy statement in conflict with a rule.

Only two commenters were not in favor of the rule. One comment stated that the rule would be abused. The Commission disagrees with this comment, noting that several safeguards have been built into the rule to prevent this. First, licensees must notify the NRC by telephone when the rule is used. Second, the NRC may require written statements from a licensee concerning its actions after use of the rule. One commenter agreed that these provisions provided adequate safeguards against abuse.

Two commenters suggested that written notice to the Commission of use of the rule should be mandatory. It is highly likely that a written report would be required since most violations of the license or technical specifications do require a written report. To the extent that the Commission's information needs related to the event are not met, the Commission would require additional information, as provided for in the rule. A mandatory written report is therefore not deemed essential.

One commenter stated that the reporting requirement "When time permits, the notification (of the use of the rule) shall be made before the protective action is taken * * *" was inconsistent with the use of the term "immediately needed" language of the rule, and implied that a prior report should not be required at all. In response, the Commission notes that all power reactors have dedicated telephones connected directly to the NRC Operations Center at all times, and, under most circumstances under which the rule might need to be used, the licensee would be in contact with the NRC Operations Center anyway. Therefore, most emergency situations would allow time to make a prior notification to the NRC, considering the ease and speed that it could be done. Second, while the term "immediately" as used in the rule is not defined, it could involve a period of hours as the emergency develops, and certainly a period of time that is too short to permit NRC approval of a change to the license before the action must be taken (as stated earlier). Therefore, there is not necessarily an inconsistency between the prior report and the timing of the need for action. If, however, there is no time for a prior report, it is not required.

One commenter stated that the rule constituted an admission that NRC rules and licenses are not adequate; another stated that the rule shows that NRC rules have become unwieldy. The Commission does not agree with these comments, and believes the issuance of the rule will result in increased protection to the public health and safety. Any attempt to define NRC requirements to cover all conceivable circumstances, as discussed earlier, is bound to fail, and would result in unwieldly regulations.

One comment noted an apparent inconsistency between the rule (which admits that unanticipated circumstances can occur during the course of emergencies that may call for responses different from any considered during the course of licensing) and the admissibility of intervenor contentions that are denied litigation at a hearing on the basis that such senarios are incredible or so unlikely as to be barred from litigation.

The Commission, in issuing this rule, takes no position whatever as to the merit of any contention involving emergency circumstances that could be postulated at a nuclear facility. Rather, the rule assumes that special circumstances have occurred which makes use of the rule necessary to protect the public health and safety.

A commenter suggested that use of the rule be tied to the "general emergency" emergency classification, i.e., that the rule should apply only when a general emergency has been declared by the licensee. This comment was not accepted. Emergencies can develop rapidly. Use of the rule should not be encumbered by administrative prerequisites.

A commenter proposed that a large fee—up to one million dollars—be charged for use of the rule. The thrust of the comment was to ensure that violation of NRC requirements be carefully considered. Another suggested holding hearings after the emergency to determine justifications for use of the rule and to see if other actions could have been taken. As stated earlier, the Commission believes that the rule contains adequate safeguards. Therefore these comments were not adopted.

Finally, a commenter suggested that an evaluation be made of each instance in which a deviation was made to prevent possible future need for similar deviations. The Commission will review each use of the rule both to confirm that the intent of the rule was satisfied and also to analyze the circumstances leading to the emergency to see what permanent corrective action may be appropriate.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as considered by the Commission. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Single copies of the analysis may be obtained from Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Telephone (301) 492–7389.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. New paragraphs (x) and (y) are added to § 50.54 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(x) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(y) Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator prior to taking the action.

3. A new paragraph (c) is added to § 50.72 to read as follows:

§ 50.72 Notification of significant events.

* * * * *

(c) Each licensee licensed under § 50.21 or § 50.22 shall notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification, as permitted by § 50.54(x) of this part. When time permits, the notification must be made before the protective action is taken; otherwise, the notification must be made as soon as possible thereafter. The Commission may require written statements from a licensee concerning its actions taken under the provisions of § 50.54(x) of this part.

Dated at Bethesda, Maryland this 10 day of March, 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83-8406 Filed 3-31-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3107]

Meredith Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Des Moines, Iowa franchisor and operator of the Better Homes and Gardens Real Estate Service (Service), among other things, to cease making false or misleading representations regarding the Service, its members, or services offered. The order prohibits the dissemination of advertisements and promotional materials which represent that all Service members offer consumers "settling-in" services; participate in a home-building program; and offer "exclusive" home-protection insurance, unless the advertisement clearly discloses that not all members offer these services. The corporation is also barred from making unsubstantiated representations concerning the Service's selectivity in choosing members; training of sales associates of Service members; market size, rank and leadership in terms of sales volume of Service members; or any statement which compares Service members to other real estate franchisors as to calibre of members or membership standards. Further, the order requires the corporation to send all members of the Better Homes and Gardens Real Estate Service a letter recalling certain advertising and promotional materials, and an acknowledgment form.

DATE: Complaint and order issued March 15, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PA, Andrew B. Sacks, Washington, D.C. 20580. (202) 724-1490.

SUPPLEMENTARY INFORMATION: On Monday, Dec. 27, 1982, there was published in the **Federal Register**, 47 FR 57499, a proposed consent agreement with analysis In the Matter of Meredith Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or services; 13.10–5 Knowingly by advertising agent; § 13.15 Business status, advantages or connections; 13.15–210 Operations as special or other advertising; 13.15–225 Personnel or staff; 13.15–250 Qualifications and abilities; 13.15–255 Reputation, success or standing; 13.15–265 Service; 13.15–270 Size and extent; 13.15–280 Unique or special status or advantages; § 13.25 Competitors and their products; 13.25–5 Competitors; 13.25–25 Competitors' services; § 13.135 Nature of product or service; § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.205 Scientific or other relevant facts; § 13.225 Services; § 13.280 Unique nature of advantages. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–53 Recall of merchandise, advertising material, etc. Subpart—Disseminating Advertisements, etc.: § 13.1043 Disseminating advertisements, etc. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1510 Operations as special or other advertising; § 13.1520 Personnel or staff; § 13.1535 Qualifications. § 13.1540 Reputation, success or standing; § 13.1555 Size, extent or equipment; § 13.1560 Stock, product or service; § 13.1570 Unique status or advantages.—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use or standing; § 13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Real estate services.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Michael A. Baggage,

Acting Secretary.

[FR Doc. 83-9481 Filed 3-31-83; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket C-2492]

Occidental Petroleum Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on March 18, 1974 (39 FR 13628). The modification deletes the order's "fencing-in" provision, including the requirement that prohibited Occidental from preparing statistical data comparing its purchases from a company to its sales to that company, and vacates the order in its entirety 10 years after its March 1974 issue date.

DATES: Consent Order issued March 18, 1974. Modifying Order issued March 9, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig S. Merber, Washington, D.C. 20580. (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Occidental Petroleum Corporation, a corporation and Hooker Chemical Corporation, a corporation and as a subsidiary of Occidental Petroleum Corporation. Codification appearing at 39 FR 13628 remains unchanged.

List of Subjects in 16 CFR Part 13

Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The order Reopening and Vacating In Part and Modifying In Part Order Issued March 18, 1974 is as follows:

In the Matter of Occidental Petroleum Corporation, a corporation; Hooker Chemical Corporation, a corporation, and as a subsidiary of Occidental Petroleum Corporation ; Docket No. C–2492: Reopening and vacating in part and modifying in part order issued March 18, 1974.

On November 8, 1982, respondent Occidental Petroleum Corporation ("Occidental") filed a "Request To Reopen and Vacate or Modify Consent Order" ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Commission's Rules of Practice. The Petition asks the Commission to reopen the consent order, issued on March 18, 1974 ("the Order"), and either: vacate the Order in its entirety; modify to limit the duration to a ten-year period; or modify "to bring it in line with current case law and enforcement attitudes."

Section 5(b) of the Federal Trade Commission Act provides that the Commission shall reopen an order at the request of a respondent upon a "satisfactory showing that changed conditions of law or fact require" modification. In addition, Section 5(b) provides that the Commission has discretion to modify orders whenever, in its opinion, the public interest requires.

After reviewing respondent's Petition, the Commission has concluded that respondent has not made a satisfactory showing that changed conditions of law or fact have occurred that require the modification or vacation of the Order. However, the Commission has determined that the public interest warrants modifying the pending Order in two respects.

First, a number of the Order's provisions are aimed at "fencing-in" respondent's future conduct. *See FTC* v. *National Lead Co.*, 352 U.S. 419 (1957). Although some of these provisions may have been justified at the time the Order was initially approved, their continued existence unnecessarily inhibits respondent from engaging in conduct which, in and of itself, is innocuous and may, in certain circumstances, may be procompetitive. In addition, there no longer appears to be any need for continuing the "fencing-in" provisions of the Order. No adverse comments were received indicating any special need to retain them and the Commission has no reason to believe that the Order has or is being violated in any respect.

These same arguments support vacating the remaining provisions of the Order at the end of a ten year period. In certain cases, perpetual conduct orders are appropriate in order to insure that violations of Commission orders are subject to civil penalties rather than forcing the Commission to initiate proceedings *ab initio*. However, we have no evidence in this record that would support retaining the provisions of this Order in perpetuity.

Accordingly, *it ordered* that Paragraphs I(f), (g), (h) and II of this Order be vacated at this time and the remaining provisions be vacated ten years from date of their initial entry, *i.e.*, March 18, 1974.

By the Commission. Commissioner Bailey voted in the affirmative as to

elimination of the fencing-in provisions and in the negative as to sunsetting the Order. Commissioner Pertschuk voted in the negative.

Issued: March 9, 1983.

Attachment: Dissenting Statement by Commissioner Pertschuk.

Michael A. Baggage,

Acting Secretary.

Dissenting Statement of Commissioner Pertschuk Concerning Order Modification in Occidental Petroleum Corporation

[DOCKET NO. C-2492]

March 9, 1983.

I agree that the broad "fencing-in" provisions in the order are no longer necessary and should be narrowed to prohibit only anticompetitive reciprocal dealing. The Commission goes further, however, by terminating the order completely after ten years.

Our general policy in the past has been to issue perpetual conduct orders as to conduct which actually violates Section 5 unless there are persuasive reasons to create an exception. Here, however, the Commission appears to reverse that presumption by requiring "evidence in this record" supporting a perpetual order. It is not clear that the Commission is making a change in policy for future cases, but, in any event, I dissent from the result in this case.

[FR Doc. 83-8485 Filed 3-31-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2755]

U.S. Pioneer Electronics Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on Oct. 24, 1975 (40 FR 57197), by modifying Paragraph I(11), so as to allow the company to impose non-discriminatory standards on the kind of retailers its distributors and dealers can serve.

DATES: Consent Order issued Oct. 24, 1975. Modifying Order issued March 8, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CD, Barbara Clark, Washington, D.C. 20580. (202) 523-1483.

SUPPLEMENTARY INFORMATION: In the Matter of U.S. Pioneer Electronics Corp., a corporation. Codification appearing at 40 FR 57197 remains unchanged.

List of Subjects in 16 CFR Part 13

Audio components.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Order Modifying Decision and Order is as follows:

In the Matter of: U.S. Pioneer Electronics Corp., a corporation; Order Modifying Decision and Order; Docket No. C-2755.

The Commission on November 5, 1982 having reopened the order and issued an order against respondent to show cause why the consent order to cease and desist entered on October 24, 1975 should not be modified as set forth therein; and respondent thereafter having answered that it has no objection to modification of the consent order as set forth in the order to show cause;

Accordingly, *it is ordered* that Paragraph I(11) of the order in this matter is modified to read:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and non-discriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.

By direction of the Commission.

Issued: March 8, 1983.

Michael A. Baggage,

Acting Secretary.

[FR Doc. 83-8484 Filed 3-31-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published in the **Federal Register** on January 25, 1983 by DOE.

EFFECTIVE DATE: The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891 or Lucerne D. Winfrey, 202-376-2805, attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in Section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE.

Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981 in the **Federal Register** (46 FR 2974).

On January 25, 1983, DOE published (48 FR 3409) the most recent figures for representative average unit energy costs. Consequently, Table 1 must again be updated in order to reflect these latest cost figures. Accordingly, Table 1 is revised as follows:

TABLE 1. REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1983)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu's [1]
Electricity	7.63¢/kWh [2 3]	$0.0763/kWh	$22.66
Natural gas	62.7¢/therm [4] or 6.37/MCF [5 6]	$0.00000627/Btu	6.27
No. 2 heating oil	$1.22/gallon [7]	0.00000880/Btu	8.80
Propane	78.7¢/gallon [8]	0.00000865/Btu	8.65

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,413 Btu's.
[4] 1 therm = 100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

The dates when use of these figures becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1983 Submissions of Data Under Section 305.8 of the Commission's Rule: The new cost figures must be used in all 1983 submissions.

For Labeling and Advertising of Products Under the Commission's Rule: Only those products for which new ranges have been published based on 1983 submissions using these 1983 DOE cost figures should be labeled with estimated annual cost figures calculated using these 1983 DOE representative average unit costs for energy. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register.** Advertising for these products must also be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register.**

Advertising of Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, central air conditioners, and home heating equipment, not including furnaces), must use the 1983 representative average unit costs for energy in all representations effective June 30, 1983.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Carol M. Thomas,

Secretary.

[FR Doc. 83–8483 Filed 3–31–83; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Ranges of Comparability for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for refrigerators, refrigerator-freezers and freezers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges, which show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule, are published in the **Federal Register** by the Commission no more often than annually, and are called "ranges of comparability." The figures to be used on the ranges are provided by the Commission after an analysis of data submitted by appliance manufacturers, who derive the energy costs or efficiencies of their appliances by following test procedures prescribed by the Department of Energy ("DOE"). One element used in calculating the ranges is the representative average unit cost of the energy used by the appliances, which is calculated annually by DOE. Because this average cost usually changes annually, and because appliance models are constantly being added, changed, or dropped by manufacturers, the ranges of comparability are likely to change from year to year. This has been the case with the ranges for refrigerators, refrigerator-freezers and freezers, and this notice publishes the new range figures, which, under §§ 305.10 and 305.11 of the rule, must be used in the labeling and advertising of refrigerators, refrigerator-freezers and freezers beginning June 30, 1983.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–376–2891, or Lucerne D. Winfrey, 202–376–2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, DOE is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be

[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained information on the estimated annual cost or energy efficiency rating for the seven categories of appliances derived from tests performed pursuant to the DOE test procedures. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From that information, the Commission compiled and published[3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report annually by specified dates for each product type.[4] The data submitted by manufacturers is based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy appear to be increasing steadily, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually), if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for refrigerators, refrigerator-freezers and freezers, which were calculated using the 1982 representative average energy costs published by the Commission on July 14, 1982,[5] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission publishes the following ranges of comparability for use in the labeling and advertising of refrigerators, refrigerator-freezers and freezers beginning June 30, 1983.

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3629 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerator-freezers and freezers are due by August 1.

[5] 47 FR 30465.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and Recordkeeping requirements.

PART 305—[AMENDED]

Appendices A–1, A–2 and B to Part 305 [Revised]

Appendices A–1, A–2 and B to Part 305 are revised to read as set forth below:

APPENDIX A–1.—REFRIGERATORS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$18	$34
2.5 to 4.4	22	42
4.5 to 6.4	30	42
6.5 to 8.4	30	31
8.5 to 10.4	30	49
10.5 to 12.4	25	54
12.5 to 14.4	34	56
14.5 to 16.4	(1)	(1)
16.5 and over	72	72

[1] No data submitted.

APPENDIX A–2.—REFRIGERATOR—FREEZERS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$32	$52
10.5 to 12.4	42	81
12.5 to 14.4	42	121
14.5 to 16.4	45	125
16.5 to 18.4	61	120
18.5 to 20.4	75	124
20.5 to 22.4	80	121
22.5 to 24.4	85	129
24.5 to 26.4	107	148
26.5 to 28.4	127	128
28.5 and over	(1)	(1)

[1] No data submitted.

APPENDIX B.—FREEZERS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$18	$46
5.5 to 7.4	23	41
7.5 to 9.4	34	50
9.5 to 11.4	34	56
11.5 to 13.4	35	68
13.5 to 15.4	48	98
15.5 to 17.4	52	103
17.5 to 19.4	57	103
19.5 to 21.4	59	114
21.5 to 23.4	67	148
23.5 to 25.4	72	79
25.5 to 27.4	71	88
27.5 to 29.4	87	87
29.5 and over	114	182

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1976), 42 U.S.C. 8294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Carol M. Thomas,

Secretary.

[FR Doc. 83–8482 Filed 3–31–83; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Officials in the National Center for Drugs and Biologics; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the regulations for delegations of authority relating to insulin, antibiotics, and distribution of biological products. This document corrects the title of a Division in FDA's Office of Biologics.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In FR Doc. 83–4911 appearing at page 8442 in the issue for Tuesday, March 1, 1983, the following correction is made: On page 8443 in the first column under § 5.69 *Notification of release for distribution of biological products,* "Division of Control Activities" is corrected to read "Division of Product Quality Control".

Dated: March 29, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–8902 Filed 3–31–83; 8:54 am]

BILLING CODE 4160–01–M

21 CFR Part 5

Delegations of Authority and Organization; Revised Organization

Correction

In FR Doc. 83–6732 beginning on page 11424 in the issue of Friday, March 18, 1983, make the following correction to § 5.100 on page 11425: In the third column, the fifth line which presently reads "Division of Drug Compliance,"

should read "Division of Drug Quality Compliance".

BILLING CODE 1505-01

---

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17 for use as a color additive in externally applied drugs and cosmetics. The new closing date will be May 31, 1983. This brief postponement will provide time for the uninterrupted use of this color additive in externally applied drugs and cosmetics while FDA considers the scientific and legal aspects of the recent skin penetration studies submitted by the Cosmetic Toiletry and Fragrance Association, Inc. (CTFA). Additionally, during this brief postponement, after completing its review of these studies, the agency will prepare the appropriate **Federal Register** document(s).

DATES: Effective March 31, 1983, the new closing date for D&C Orange No. 17 will be May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of March 31, 1983, for the provisional listing of D&C Orange No. 17 for cosmetic and general drug uses by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). The agency extended the closing date until March 31, 1983, to provide time for the completion of chronic toxicity studies and to allow time for the agency to review and evaluate these studies. Elsewhere in this issue of the **Federal Register**, FDA is terminating the provisional listing and hence approval of the color additive D&C Orange No. 17 for coloring ingested drugs and cosmetics. Also published elsewhere in this issue of the **Federal Register**, the agency is publishing a final rule denying those portions of the color additive petition requesting the use of D&C Orange No. 17 in drugs and cosmetics intended for ingestion and in cosmetics for use in the area of the eye.

As noted in the **Federal Register** of August 6, 1973 (38 FR 21199), D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now CTFA) for use in coloring drugs and cosmetics. As discussed in the other two documents published elsewhere in this issue of the **Federal Register**, the agency has concluded that D&C Orange No. 17 is an animal carcinogen when adminstered in the diet, based on the increased incidence of hepatocellular neoplasms in two mammalian species. Therefore, FDA is denying that portion of the petition for this color additive that relates to ingested uses. However, under 21 U.S.C. 376(b)(5)(B)(ii), the agency must determine whether the ingestion studies that show D&C Orange No. 17 to be a carcinogen are appropriate for the evaluation of the safety of the external uses of this color additive. To assist the agency in making this determination, the petitioner has recently submitted skin penetration studies on D&C Orange No. 17.

The agency believes that the continued use of the color additive in externally applied products for the short time needed to evaluate the skin penetration and other data that CTFA has submitted will not pose a hazard to the public health. The regulation set forth below will postpone the March 31, 1983, closing date for the provisional listing of this color additive until May 31, 1983. This postponement will provide sufficient time for the agency to consider the CTFA submission and prepare the appropriate **Federal Register** document(s).

Because of the short time until the March 31, 1983, closing date, FDA concludes that notice and public procedures on this regulation are impracticable. This regulation will permit the uninterrupted use of this color additive until May 31, 1983. To prevent any interruption in the provisional listing of D&C Orange No. 17 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective March 31, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c), and (d))) and under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Orange No. 17" in paragraph (b) to read "May 31, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Orange No. 17" in paragraph (d) to read "May 31, 1983."

Effective date. This final rule is effective March 31, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: March 16, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8421 Filed 3-29-83; 11:12 am]

BILLING CODE 4160-01-M

---

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 for use as a color additive in drugs and cosmetics. The new closing date will be May 31, 1983. This brief postponement will provide time for the agency to complete its review and consider the scientific and legal aspects of the results of the toxicological studies submitted by several petitioners. Additionally, during this brief postponement, the agency will prepare the appropriate **Federal Register** document(s) upon completion of its review.

DATES: Effective March 31, 1983, the new closing date for D&C Red No. 33 will be May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of March 31, 1983, for the provisional listing of D&C Red No. 33 by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). The agency extended the closing date for D&C Red No. 33 to provide time for the completion of toxicity studies, submission of the data to FDA, review and evaluation of the data concerning the drug and cosmetic uses of D&C Red No. 33 by FDA, and publication of a regulation in the **Federal Register** regarding the agency's final decision on the petition for the permanent listing of this color additive. The regulation set forth below will postpone the March 31, 1983, closing date for the provisional listing of the color additive until May 31, 1983.

As noted in the **Federal Register** of November 20, 1968 (33 FR 17205) and of August 6, 1973 (38 FR 21200), D&C Red No. 33 is the subject of a petition (CAP 8C0086) submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc.), the Pharmaceutical Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc.) and of a petition (CAP 7C0059) submitted by the Procter & Gamble Co. The petitions requested that D&C Red No. 33 be permanently listed for use in ingested drugs, all types of cosmetics subject to ingestion, including lipsticks, externally applied drugs and cosmetics, and for use in the area of the eye.

The review and evaluation of the data relevant to the use of D&C Red No. 33 have required more time than anticipated. FDA concludes that the brief postponement will provide time for the agency to complete its review and prepare the appropriate **Federal Register** document(s). Therefore, FDA concludes that the brief extension of the closing date to May 31, 1983, is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the short time until the March 31, 1983 closing date, FDA concludes that notice and public procedures on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of this color additive until May 31, 1983. To prevent any interruption in the provisional listing of D&C Red No. 33, and in accordance with 5 U.S.C. 553(d) (1) and (3), this postponement is issued as a final regulation, effective on March 31, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))], and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81–GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for the "D&C Red No. 33" in paragraph (b) to read "May 31, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for the "D&C Red No. 33" in paragraphs (d) and (e) to read "May 31, 1983."

Effective date. This final rule shall be effective March 31, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated March 21, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3299 Filed 3-28-83; 12:00 pm]

BILLING CODE 4160-01-M

---

21 CFR Parts 81 and 82

[Docket No. 76C-0366]

Expiration of Provisional Listing of D&C Orange No. 17 for Use in Ingested Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Expiration of provisional list; final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetics has expired. FDA is not extending the provisional listing of this color additive because the agency has concluded, on the basis of animal experiments that were performed as a condition of the provisional listing of this color additive, that the color additive is carcinogenic when administered in the diet. D&C Orange No. 17 may not be added to ingested drugs and cosmetics after March 31, 1983. Published elsewhere in this issue is a notice denying those portions of the D&C Orange No. 17 color additive petition that relate to its use in drugs and cosmetics intended for ingestion and withdrawing that portion of the petition relating to its use in cosmetics for use in the area of the eye. In addition, published elsewhere in this issue is a regulation extending the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics until May 31, 1983.

EFFECTIVE DATE: March 31, 1983.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: The Color Additive Amendments of 1960 (the amendments) require premarket clearance of any color additive that is represented for use in or on food, drugs, cosmetics, some medical devices, or the human body. Under the amendments, a color additive may be approved only if data established that it is safe under its intended conditions of use. Recognizing that many color additives were already in use at the time it enacted the amendments, Congress provided for the "provisional listing" of these color additives while they were being tested for safety under section 203(b) of the transitional provisions of the amendments (Title II, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376 note)).

The color additive D&C Orange No. 17, principally 1-(2,4-dinitrophenylazo)-2-naphthol, has been in use for many years. Because D&C Orange No. 17 was in use at the time the amendments were enacted, it was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759). This color additive is currently provisionally listed under § 81.1(b) (21 CFR 81.1(b)) for use in drugs and cosmetics, with a closing date of March 31, 1983. Specifications for the certification of D&C Orange No. 17 are listed under § 82.1267 (21 CFR 82.1267).

FDA established the current closing date for this color additive in the **Federal Register** of March 27, 1981 (46 FR 18954). The agency conditioned the provisional listing of D&C Orange No. 17 upon submission of final reports of chronic toxicity studies by March 31, 1982 (see 21 CFR 81.27(d)).

D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA)), 1110 Vermont Ave. NW., Washington, DC 20005. This petition was filed for the use of D&C Orange No. 17 for coloring drugs and cosmetics, as noted in the **Federal Register** of August 6, 1973 (38 FR 21199).

Section 81.27(d) specifies the conditions under which D&C Orange No. 17 is provisionally listed. The petitioner, CTFA, has met those conditions, including the submission of final reports of chronic toxicity tests on rats and mice by March 31, 1982. FDA has reviewed these final reports of the chronic feeding studies in which D&C Orange No. 17 was administered in the diet to Charles River Albino CD rats and Charles River CD–1 mice. The agency has also reviewed all other available toxicological information on D&C Orange No. 17.

On the basis of the results of the chronic toxicity testing and of mutagenicity testing of this color additive, FDA has concluded that D&C Orange No. 17 is an animal carcinogen when administered in the diet. The long-term feeding studies and mutagenicity studies and their results are described in detail in the notice, published elsewhere in this issue of the **Federal Register**, that denies those portions of the color additive petition for D&C Orange No. 17 that relate to the ingested uses of this color additive and withdraws that portion of the petition that relates to the color additive's use in cosmetics for use in the area of the eye. That discussion is incorporated herein by reference.

Section 203(a) of the transitional provisions of the amendments provides for the provisional listing of a color additive pending completion of scientific investigations. However, section 203(a)(2) states: "The Secretary may terminate postponement of the closing date at any time if he finds * * * that by reason of a change in circumstances the basis for such postponement no longer exists * * *." Section 203(d)(1)(E) provides "for the termination. of a provisional listing (or deemed provisional listing) of a color additive or particular use thereof forthwith whenever in [the Secretary's] judgment such action is necessary to protect the public health." Because of the agency's finding that D&C Orange No. 17 is carcinogenic when ingested by laboratory animals, FDA concludes that continued use of this color in ingested drug and cosmetic products poses a potential hazard to the public health. Therefore, the agency has decided not to extend the provisional listing of this color additive for ingested uses. As a result, the provisional listing of D&C Orange No. 17 for use in ingested drugs and cosmetics terminated upon its expiration on March 31, 1983.

Accordingly, on the basis of the evidence before it, FDA concludes that: (1) The provisional listing of D&C Orange No. 17 for use in ingested drugs and cosmetics has terminated; (2) all certificates heretofore issued for batches of D&C Orange No. 17, its lakes, and all mixtures containing this color additive for ingested use are cancelled as of March 31, 1983; and (3) after that date, the addition of D&C Orange No. 17 to ingested drugs or ingested cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. FDA also concludes that the health concern regarding the use of this color additive is limited to chronic ingested use, and that D&C Orange No. 17 does not represent an acute imminent hazard. Therefore, the protection of the public health does not require the recall from the market or destruction of any drug or cosmetic product to which the color additive has already been added. The prohibition on use of D&C Orange No. 17 applies only to the ingested use of the straight color additive, its lakes, and mixtures of the color additive and its lakes.

The agency is now considering recent CTFA submissions in support of listing the external uses of this color additive. The agency believes that the continued use of the color additive in externally applied products for the short time needed to evaluate the data will not pose a hazard to the public health. Published elsewhere in this issue of the **Federal Register** is an order extending the closing date for the provisional listing of D&C Orange No. 17 for externally applied drugs and cosmetics to May 31, 1983. In the near future, FDA will publish in the **Federal Register** its final decision on the color additive petition for the use of D&C Orange No. 17 for externally applied drugs and cosmetics.

The final toxicity study reports, the agency's toxicology evaluations of these studies, and other information relied upon by the agency in reaching its decision are on file at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. They may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that may be ingested and that contain D&C Orange No. 17 may either discontinue use of the color additive or substitute a different color additive in accordance with the provisions of 21 CFR 314.8 (d)(3) and (e) or 514.8 (d)(3) and (e), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate. The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing D&C Orange No. 17 should promptly amend the IND or INAD to indicate that the color additive has been deleted or a different color additive has been substituted.

FDA is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Orange No. 17 may continue to be used with the uncolored product or products containing alternative color additives during the time necessary to obtain supplies of revised labeling or until March 31, 1984, whichever occurs first.

FDA is also making corrections in its regulations to conform them to the actions announced in this document.

The agency believes that Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) do not apply to actions of this type. Nevertheless, the agency has assessed the economic impacts that would result from this final rule terminating the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetics. A copy of the agency's

economic assessment is on file with the Dockets Management Branch (address above).

The agency has considered the environmental effects of this action, and because the action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not necessary. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 81

Color additives; Color additives provisional list; Cosmetics; Drugs.

21 CFR Part 82

Color additives; Color additives lakes; Color additives provisional list; Cosmetics; Drugs.

Therefore, under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 81 and 82 are amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS AND COSMETICS

1. Part 81 is amended:

a. In § 81.1 by revising the entry for "D&C Orange No. 17" in paragraph (b), to read as follows:

§ 81.1 Provisional lists of color additives.

* * * * *

(b) * * *

	Closing date	Restrictions
D&C Orange No. 17 (sec. 82.1267 of this chapter)	May 31, 1983	External use only.

* * * * * * *

* * * * *

b. In § 81.10 by adding new paragraph (s), to read as follows:

§ 81.10 Termination of provisional listings of color additives.

* * * * *

(s) *D&C Orange No. 17.* Having concluded that, when ingested, D&C Orange No. 17 causes cancer in rats and mice, the agency has terminated the provisional listing of D&C Orange No. 17 for use in ingested drugs and ingested cosmetics, effective March 31, 1983.

c. In § 81.25 by removing the entries for "D&C Orange No. 17" in paragraphs (a)(1) and (c)(1) and by revising paragraph (b)(1)(ii), to read as follows:

§ 81.25 Temporary tolerances.

* * * * *

(b) * * *

(1) * * *

(ii) D&C Red No. 8 and D&C Red No. 9 individually may be used in a dentifrice at not more than 0.002 percent of the pure dye by weight of the dentifrice or, in a mouthwash, at not more than 0.005 percent of the pure dye by weight of the mouthwash.

* * * * *

d. In § 81.30 by adding new paragraph (t), to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(t)(1) Certificates issued for D&C Orange No. 17, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in ingested drugs and ingested cosmetics after March 31, 1983, and use of this color additive in the manufacture of ingested drugs or ingested cosmetics after this date will result in adulteration.

(2) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market drugs and cosmetics to which the color additive was added on or before March 31, 1983.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

2. Part 82 is amended in § 82.1267 by adding a new paragraph at the end of the section, to read as follows:

§ 82.1267 D&C Orange No. 17.

* * * * *

D&C Orange No. 17 is restricted to use in externally applied drugs and cosmetics.

Notice and public procedure are not necessary prerequisites to promulgating these regulations because section 203(a)(2), (d)(1)(E), and (d)(2) of Pub. L. 86–618 so provides.

Effective date. These regulations shall be effective March 31, 1983.

(Sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: March 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8420 Filed 3-29-83; 11:14 am]

BILLING CODE 4160-01-M

---

21 CFR Part 1003

[Docket No. 78-0400]

Protection of Human Subjects; Informed Consent; Correction

Correction

In FR Doc. 83-7217 beginning on page 11430 in the issue of Friday, March 18, 1983, make the following correction on that page: In the **"SUMMARY"** to the document, the fourth line, the words "subject; informal" should read "subjects; informed".

BILLING CODE 1505-01

---

21 CFR Part 1240

Control of Communicable Diseases; Interstate Conveyance Sanitation; Editorial Amendments

Correction

In FR Doc. 83-7245 beginning on page 11431 in the issue of Friday, March 18, 1983, make the following correction on that page: In the third column, under the amendment to § 1240.83, in the paragraph designated "a", the fifth line, the word "threat" should have read "thereat".

BILLING CODE 1505-01

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236, 425, and 426

[Docket No. R-82-1006]

Rent Requirements for Section 101 (Rent Supplement) and Section 236 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Confirmation of interim rule with corrections.

SUMMARY: The Department of Housing and Urban Development (HUD)

published an interim rule on August 24, 1982 (47 FR 36814) to implement recent statutory changes affecting tenants' rent requirements under the Section 101 (Rent Supplement) and Section 236 Programs. The interim rule changes the income-percentage formula for determining the rent payable by tenants covered by these programs and the amounts of rent supplement and rental assistance payments.

This document incorporates corrections previously published on October 22, 1982 (47 FR 47006) and November 23, 1982 (47 FR 52697), as well as a few additional corrections, and inserts the correct effective date in the body of the rule. The corrected text is reprinted in full below. Date of compliance, May 1, 1983.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: James T. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, (202) 426–8730; or Steven E. Silvert, Director, Office of State Agency and Bond Financed Programs, (202) 426–0283; Department of Housing and Urban Development, Washington, D.C. 20410. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Corrections previously published consisted of inadvertently omitted words and asterisks in §§ 215.45(c)(1), 236.55 and 236.735(a). Additional clarifying changes being made in this document are described below.

Several technical changes are made in the language about the 10 percent per year limit on rent increases. Paragraphs are being renumbered in § 236.55 to move that provision from the paragraph dealing with existing tenants to a separate paragraph. This move is intended to make it clear that the portion of the 10 percent cap dealing with changes in "any other provision of Federal law becoming effective after October 1, 1981, redefining which governmental benefits are required to or may be considered as income," applies to new as well as existing tenants. In § 236.735(d), the reference to a cap on rents as determined under paragraph (b) is being removed to make it clear that the 10 percent cap is applicable to new tenants only with respect to changes in other provisions of Federal law, as described above. The "or" between the first and second elements of the cap, as stated in §§ 236.735(d), 236.55(b)(3) and 215.45(e), is changed to "and" to track the statute and to make it clear that the 10 percent cap applies to the cumulative effect of both elements. In addition, the words "not caused by redefinitions referred to in this paragraph," which had been inadvertently omitted from § 215.45(e), but included in the two other similar provisions, have been added.

In §§ 215.45(e), 215.45(f) and 236.55(b)(3), the word "income" is being changed to "adjusted monthly income" to refer to the specific, defined term that is used in rent calculations. In what is now § 236.55(b)(3)(ii), the words "in monthly income or" are being removed since no rent calculation applicable to this section is based on monthly income, as distinguished from adjusted monthly income. In § 236.735(d), the words "monthly income or adjusted monthly income" are added to the language that states which increases in income are not covered by the 10 percent cap, to make that section consistent with the corresponding section on decreases and to reflect the original intent of the interim rule.

In the provisions concerning the point at which a tenant can afford to pay the unassisted rental, and assistance can be discontinued (§§ 215.75, 215.80, 236.755 and 236.760), we are changing the "30 percent of adjusted income" language to the "amount the tenant is required to pay for rent in accordance with [the applicable section]." Under this interim rule, the amount an existing tenant is required to pay for rent may be a percentage of adjusted monthly income lower than 30 percent, as a result of the phase-in or the 10 percent cap. The amount a new or existing Section 236 RAP tenant is required to pay for rent under this rule may be based not on a percentage of adjusted monthly income at all, but on 10 percent of monthly income. Therefore, this change will enable all tenants to continue to receive assistance until the percentage applicable from the appropriate rent determination section of the rule is reached, rather than until 30 percent is reached.

A technical change is being made to the time for implementing the new rents. Sections 215.45(d), 236.55(b)(2), and 236.735(c) said the new rental rates would apply "at the earlier of the first lease expiration or annual recertification." This language is being changed to "at the first recertification." Recertifications may occur at the expiration of a lease, annually, or more frequently than annually if income changes during the year. This technical change will permit the new rental rate to be applied at any of these occasions for a recertification.

In §§ 236.55(a)(2), 236.55(b)(4) and 236.80, the words "fair market rental" are being changed to "HUD-approved market rental" to avoid confusion of this market rent with the Fair Market Rents used in the Section 8 Housing Assistance Payments Program.

List of Subjects

24 CFR Part 215

Grant programs, Housing and community development, Rent subsidies.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 425

Low and moderate income housing, Mortgage insurance, Rental housing.

24 CFR Part 426

Rent subsidies, Reporting and recordkeeping requirements.

The interim rules published on August 24, 1982 (47 FR 36816) and corrected on October 22, 1982 (47 FR 47006) and November 23, 1982 (47 FR 52697) are hereby adopted as final with additional corrections as discussed in the preamble. The entire text of the amendments being adopted as final and corrected as set forth below:

PARTS 215—RENT SUPPLEMENT PAYMENTS

1. Section 215.25 is revised to read as follows:

§ 215.25 Determination of eligibility.

(a) The housing owner will review for eligibility each individual or family who applies for rent supplement assistanee using a form prescribed by the Commissioner. For each individual or family meeting the requirements of § 215.20 of this part, the Commissioner shall provide monthly rent supplement payments to the housing owner on behalf of each qualified tenant in an amount determined as set forth in this Part. No rent supplement shall be offered where the amount of assistance at admission would be less than 10 percent of the approved rent. The rent supplement payment shall not, regardless of the tenant's income, exceed 70 percent of the approved rent for the unit.

(b) The Commissioner may approve a qualified tenant as a lessee under an option to purchase a dwelling at a stipulated price, if it is determined that the tenant will be able to finance such purchase on the basis of the probability of future increases in the tenant's income.

2. Section 215.45 is amended by revising paragraphs (a), (c), (d), (e) and (f) to read as follows:

§ 215.45 Maximum payments under contract for each tenant.

(a) The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be that amount by which the approved rent for the unit (plus, where applicable, the utility allowance established by the Commissioner for reasonable utility charges paid by the tenant) exceeds the amount determined to be payable by the tenant pursuant to paragraph (c) or (d) of this section.

* * * * *

(c) In the case of any qualified tenant on whose behalf rent supplement payments with respect to the unit commenced on or after May 1, 1983, the monthly rental charge (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges), rounded to the nearest dollar, shall be the greater of:

(1) 30% of one-twelfth of the tenant's adjusted income; or

(2) 30% of the approved monthly rental charge for the unit (or, where utility charges are paid by the tenant, 30% of the sum of the approved monthly rental charge for the unit plus the utility allowance established for such charges).

(d) In the case of any qualified tenant on whose behalf rent supplement payments with respect to the unit commenced prior to May 1, 1983, the monthly rental charge (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges) shall be calculated in accordance with paragraph (c) of this section at the first recertification occurring on or after May 1, 1983, except that the percentage of income utilized in paragraph (c)(1) shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(e) Notwithstanding paragraphs (c) and (d) of this section, the monthly rental charge payable by a qualified tenant (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges) shall not be increased by more than 10 percent during any 12-month period as a result of applying such paragraph (d) of this section, and as a result of applying any other provision of Federal law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, such monthly rental charge (or, where applicable, the sum of such charge plus utility allowance) may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in adjusted monthly income not caused by redefinitions referred to in this paragraph or to increases in the approved rental charge for the unit.

(f) In no event shall the monthly rental charge (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges) payable by a qualified tenant on whose behalf rent supplement payments with respect to the unit commenced before May 1, 1983, be decreased below the amount payable by such tenant as of April 30, 1983, unless such decrease results from a decrease in the tenant's adjusted monthly income.

3. In § 215.70, paragraph (b)(1) is revised to read as follows:

§ 215.70 Form of lease.

* * * * *

(b) * * *

(1) A provision obligating the tenant to report immediately to the housing owner any increase in income to a point where rent supplement payments should be terminated.

* * * * *

4. Section 215.75 is revised to read as follows:

§ 215.75 Housing owner's obligation under contract to report tenant income increase.

The rent supplement contract shall contain a provision obligating the housing owner to notify the Commissioner upon receiving a report from a tenant of an increase in the tenant's income resulting in the tenant's ability to pay the full monthly rental or an increased monthly payment for the housing unit with the amount the tenant is required to pay for rent, in accordance with § 214.45. The contract shall also obligate the housing owner, upon failing to notify the Commissioner when a report of such increase in income is received from a tenant, to reimburse the Commissioner for any rent supplement payments made during the period after receipt of such report when the tenant is receiving the increased income.

5. Section 215.80 is revised to read as follows:

§ 215.80 Change in tenant income status.

Appropriate adjustments will be made in rent supplement payments to reflect changes in income or other circumstances which are reported by a tenant and verified, or are shown by the annual tenant income recertification. Rent supplement payments will be discontinued when it is determined by the Commissioner that the amount the tenant is required to pay for rent in accordance with § 215.45 is sufficient to pay the approved rent for the unit occupied by the tenant. Where a tenant is no longer entitled to rent supplement payments, he/she may continue to occupy the unit. The rent charged for the unit shall not exceed the approved market rental as determined by the Commissioner.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

6. Section 236.55 is revised to read as follows:

§ 236.55 Rental charges.

(a) *Approved rental charges.* The mortgagor shall, with the approval of the Secretary, establish and maintain for each dwelling unit the following:

(1) A basic monthly rental charge for each dwelling unit determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of one percent per annum, and

(i) With the payment of the cost of utility services used by the dwelling units, when such charges are paid by the project owner, or

(ii) Without the payment of the cost of utility services used by the dwelling units, when the units have separate meters and some or all such charges are paid directly by the tenants.

(2) A HUD-approved market monthly rental charge for each dwelling unit determined on the basis of operating the project with payments of principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage, and

(i) With the payment of the cost of utility services used by the dwelling units, when the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(i) of this section; or

(ii) Without the payment of the cost of some or all utility services used by the dwelling units, when the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(ii) of this section.

(b) *Monthly Rental Charge.* Monthly rental charges shall be calculated as follows:

(1) *Rent for families commencing occupancy on or after May 1, 1983.* The tenant's monthly rental payment shall

be the greater of the basic rental charge, or

(i) 30 percent of the tenant's adjusted monthly income with respect to a unit for which the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(i) of this section, or

(ii) An amount equal to 30 percent of the tenant's adjusted monthly income less the utility allowance established by the Secretary, based on data originating from the appropriate utility, for the utility charges to be paid by such tenant, but in no case less than 25 percent of the tenant's adjusted monthly income, with respect to any units for which the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(ii) of this section.

(2) *Rent for families commencing occupancy before May 1, 1983.* At the first recertification occurring on or after May 1, 1983, the tenant's portion of the rent shall be calculated in accordance with paragraph (b)(1) of this section, except that instead of 30 percent, the percentage applied to adjusted monthly income shall be as follows:

Effective Date of Recertification and	Percentage
May 1, 1983–September 30, 1983	27
October 1, 1983–September 30, 1984	28
October 1, 1984–September 30, 1985	29
October 1, 1985 and after	30

(3) *Limitations on rent increases and decreases.* The rent the family is charged is subject to the following conditions:

(i) The rental charge shall not be increased by more than 10 percent during any 12-month period as a result of applying paragraph (b)(2) of this section, and as a result of applying any other provision of Federal law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, the rental charge may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed solely to increases in adjusted monthly income not caused by redefinitions referred to in this paragraph or to increases in the basic rental charge.

(ii) The amount of the rental payment shall not be decreased below the amount payable by the family as of April 30, 1983, unless the decrease in the rental payment is caused by a decrease in adjusted monthly income.

(4) *Limitation on tenant's monthly rental payment.* In no event shall the monthly rental exceed the HUD-approved market rental.

* * * * *

7. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

The mortgagor shall agree to pay monthly to the Commissioner the total of all rental charges collected in excess of the sum of the approved basic rental charges (as adjusted, if applicable, for tenant-paid utilities) in accordance with instructions prescribed by the Secretary.

8. Sections 236.80 and 236.81 are revised as follows:

§ 236.80 Required recertification of income.

The mortgagor shall obtain from each tenant or cooperative member who is not paying the HUD-approved market rental, an annual recertification of family income. The recertification shall be made on Form HUD–50059, Certification and Recertification of Tenant Eligibility.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0204)

§ 236.81 Optional recertification of income.

Upon request of a tenant or cooperative member, the mortgagor shall accept recertification of family income whenever there is a change in tenant's or cooperative member's family income as reported in the most recent recertification. The recertification shall be made on Form HUD–50059, Certification and Recertification of Tenant Eligibility.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0204)

9. Section 236.710 is revised to read as follows:

§ 236.710 Qualified tenant.

The benefits of the rental assistance payments are available only to an individual or a family renting a dwelling unit in a project which is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall meet the requirements prescribed by § 236.2(a) of Subpart A. In order to receive rental assistance under this Subpart, it must have been determined that the income of an individual or family is too low to permit the individual or family to pay the approved basic monthly rental (plus, where applicable, the utility allowance established for utility charges paid by the tenant) with 30% of such individual's or family's Adjusted Monthly Income, as defined in Subpart A.

10. Section 236.715 is revised to read as follows:

§ 236.715 Determination of eligibility.

The housing owner, when determining the eligibility of a tenant or prospective tenant for rental assistance payments, will use the form prescribed by the Secretary. If the applicant meets the requirements of § 236.710 and if rental assistance payments on behalf of the applicant would not cause the percentage of eligible units to be exceeded, the Secretary shall provide monthly rental assistance payments to the housing owner on behalf of the qualified tenant in an amount determined as set forth in this subpart.

11. Section 236.735 is revised to read as follows:

§ 236.735 Rental assistance payments and rental charges.

(a) The rental assistance contract shall provide that the payment on behalf of an eligible tenant shall not exceed (1) That amount by which the basic rental charge approved by the Secretary for the unit exceeds the tenant's monthly rental payment as calculated in accordance with paragraph (b) or (c) of this section, when the basic rental charge is determined pursuant to § 236.55(a)(1)(i); or (2) That amount by which the basic rental charge plus the utility allowance established for utility charges paid by the tenant exceeds the sum of the monthly rental payment calculated in accordance with paragraph (b) or (c) of this section plus such utility allowance, when the basic rental charge is determined pursuant to § 236.55(a)(1)(ii).

(b) Notwithstanding § 236.55(b), the monthly rental charge which shall be paid by a qualified tenant on whose behalf rental assistance payments are being made to the owner (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges), in the case of any qualified tenant on whose behalf rental assistance payments commence on or after May 1, 1983, shall be the highest of the following amounts, rounded to the nearest dollar.

(1) 30 percent of Adjusted Monthly Income as defined in Subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in Subpart A;

(3) If the family receives welfare-assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by

applying a percentage, the amount calculated under this paragraph (b)(3) shall be the amount resulting from one application of the percentage.

(c) In the case of any qualified tenant on whose behalf rental assistance payments commenced prior to May 1, 1983, such tenant's monthly rental charge (or, where utility charges are paid by the tenant, sum of the monthy rental charge plus the utility allowance established for such charges) shall be calculated in accordance with paragraph (b) of this section at the first recertification occurring on or after May 1, 1983, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective Date of Recertification and	Percentage
May 1, 1983–September 30, 1983	27
October 1, 1983–September 30, 1984	28
October 1, 1984–September 30, 1985	29
October 1, 1985 and after	30

(d) Notwithstanding paragraphs (b) and (c) of this section, the monthly rental charge payable by a qualified tenant (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges) shall not be increased by more than 10 percent during any 12-month period as a result of applying paragraph (c) of this section and as a result of applying any other provision of Federal law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, such monthly rental charge (or, where applicable, the sum of such charge plus utility allowance) may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed soley to increases in monthly income or adjusted monthly income not caused by redefinitions referred to in this paragraph.

(e) In no event shall the monthly rental payment (or, where utility charges are paid by the tenant, the sum of the monthly rental charge plus the utility allowance established for such charges) payable by a qualified tenant on whose behalf rental assistance payments commenced prior to May 1, 1983 be decreased below such amount payable by such tenant as of April 30, 1983, unless such decrease results from a decrease in monthly income or Adjusted Monthly Income.

(f) Where the monthly amount determined pursuant to paragraph (b) or (c) of this section is less than the utility allowance established for utility charges paid by a qualified tenant, the owner shall pay over to the tenant the portion of the rental assistance payment paid on such tenant's behalf which represents the amount by which the utility allowance exceeds the amount determined pursuant to paragraph (b) or (c).

12. Section 236.755 is revised to read as follows:

§ 236.755 Housing owner's obligation under contract to report tenant income increase.

The rental assistance contract shall contain a provision obligating the housing owner to notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in the tenant's ability to pay the approved basic monthly rental (plus, where applicable, the utility allowance established for utility charges paid by the tenant) with the amount the tenant is required to pay for rent in accordance with § 236.735. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increases in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period following receipt of such report when the tenant is receiving the increased income.

13. Section 236.760 is revised to read as follows:

§ 236.760 Change in tenant income status.

Appropriate adjustments will be made in rental assistance payments to reflect changes in income or other circumstances which are reported by a tenant and verified or are shown by the annual tenant income recertification, as required by § 236.80. Rental assistance payments will be discontinued when it is determined by the Secretary that the amount the tenant is required to pay for rent, in accordance with § 236.735, is sufficient to pay the approved basic monthly rental (plus, where applicable, the established utility allowance) for the unit occupied by the tenant. Where a tenant is no longer entitled to rental assistance payments, he/she may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in Subpart A.

Subpart E—Tax and Utility Subsidy Payments [Removed]

14. Subpart E, *Tax and Utility Subsidy Payments*, is removed.

PART 425—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS [REMOVED]

15. Part 425 is removed.

PART 426—RENTAL ASSISTANCE PAYMENTS [REMOVED]

16. Part 420 is removed.

Authority: Section 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s; Section 236, National Housing Act, 12 U.S.C. 1715Z–1; Section 322, Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 28, 1983.

W. Calvert Brand,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 83-8475 Filed 3-31-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-127]

Elimination of all Recordkeeping Requirements for .22 Caliber Rimfire Ammunition

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This rule implements the amendment of the Gun Control Act of 1968 by Pub. L. 97–377, 96 Stat. 1830 (effective December 21, 1982). Public Law 97–377 eliminated the requirement that Federal firearms licensees maintain records for .22 caliber rimfire ammunition.

EFFECTIVE DATE: These amendments were effective as of December 21, 1982.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, ATF&E Specialist, Research and Regulations Branch, Regulations and Procedures Division (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

Public Law 91–128, 83 Stat. 261 (effective November 26, 1969) amended the Internal Revenue Code of 1954 by adding section 4182(c) to provide that notwithstanding the provisions of sections 922(b)(5) and 923(g) of Title 18, United States Code, no person holding a

Federal firearms license shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts of the aforesaid types of ammunition. The amendment did not affect the recordkeeping requirements for pistol and revolver ammunition or ammunition interchangeable between rifles and handguns (e.g., .22 caliber rimfire).

Public Law 97-377 amended sections 922(b)(5) and 923(g) of Title 18, United States Code by providing that no person holding a Federal firearms license need maintain any records of .22 caliber rimfire ammunition. This includes the receipt as well as the sale or disposition of that ammunition, and applies to licensed importers, manufacturers, and collectors, as well as to licensed dealers.

Consequently, 27 CFR 178.122, 178.123, and 178.125 are revised to reflect the provisions of 18 U.S.C. 922(b)(5) and 923(g), as amended.

Administrative Procedure Act

Because the changes made by Pub. L. 97-377 became effective on December 21, 1982, and firearms licensees need immediate advice on recordkeeping requirements for ammunition, it is hereby found to be impractical to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a notice of proposed rulemaking under 5 U.S.C. 553. These regulations will not have a significant economic impact or compliance burden on a substantial number of small entities.

Drafting Information

The principal author of this Treasury decision is James P. Ficaretta of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, under the authority contained in 18 U.S.C. 926 (82 Stat. 1214), the Director proposes to amend 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Subpart H—Records

Paragraph 1. Section 178.122 is amended to remove the recordkeeping requirements for .22 caliber rimfire ammunition in paragraphs (a) and (b). As revised 178.122 (a) and (b) read as follows:

§ 178.122 Records maintained by importers.

(a) Each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacture, and the serial number of each firearm imported or otherwise acquired, and the date such importation or other acquisition was made. Each licensed importer shall, within 15 days of the date of release from Customs custody or other acquisition, record the type, caliber, size or gauge, manufacturer, and country of manufacture of the ammunition (except .22 caliber rimfire) imported or otherwise acquired, and the date such importation or other acquisition was made.

(b) A record of firearms and a separate record of ammunition (except .22 caliber rimfire) disposed of by a licensed importer to another licensee shall be maintained by the licensed importer on the licensed premises and shall show the quantity, type, manufacturer, country of manufacture, caliber, size or gauge, serial number (in the case of firearms only), of the firearms or ammunition so transferred, the name, address, and license number of the licensee to whom the firearms or ammunition were transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the following format:

Quantity	Type	Manufacturer	Country of manufacture	Caliber size or gauge	Model	Serial No.	Name address and license No. of licensee to whom transferred	Date of the transaction

* * * * * * *

Par. 2. Section 178.123 is amended to remove the recordkeeping requirements for .22 caliber rimfire ammunition in paragraphs (a) and (b). As revised, § 178.123 (a) and (b) read as follows:

§ 178.123 Records maintained by manufacturers.

(a) Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. Each licensed manufacturer shall record the type, caliber, size or gauge of the ammunition (except .22 caliber rimfire) manufactured or otherwise acquired. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

(b) A record of firearms and a separate record of ammunition (except .22 caliber rimfire) disposed of by a licensed manufacturer to another licensee shall be maintained by the licensed manufacturer on the licensed premises and shall show the quantity, type, caliber, size or gauge, serial number (in the case of firearms only), of the firearms or ammunition so

transferred, the name, address, and license number of the licensee to whom the firearms or ammunition were transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the format prescribed by § 178.122, except that the name of the manufacturer need not be recorded if the firearm or ammunition is of the manufacturer's own manufacture.

* * * * *

Par. 3. Section 178.125 is amended to remove the recordkeeping requirements for .22 caliber rimfire ammunition in paragraphs (a), (b), and (c). As revised, § 178.125 (a), (b), and (c) read as follows:

§ 178.125 Record of receipt and disposition.

(a) *Ammunition received by licensed dealers.* Each licensed dealer shall maintain records of all ammunition (except .22 caliber rimfire) received for the purpose of sale or distribution. Such record may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such record shall (1) show the name of the manufacturer and the transferor, and the type, caliber or guage, and quantity of the ammunition acquired in the transaction, and the date of such acquisition, and (2) be retained on the licensed premises of the dealer for a period of not less than two years following the date of the acquisition.

(b) *Ammunition received by licensed collectors.* Each licensed collector shall maintain records of all ammunition (except .22 caliber rimfire) acquired as curios or relics for the collection. Such records may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records shall show the information required by paragraph (a) of this section and be retained in the same manner.

(c) *Ammunition disposition.*—

(1) *Sales to nonlicensees.* The sale or other disposition of ammunition, or of an ammunition curio or relic, shall be recorded in a bound record at the time a transaction is made, except that no record need be maintained for the sale of shotgun ammunition, .22 caliber rimfire ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts of these types of ammunition. Sales or other dispositions of ammunition which are interchangeable between rifles and pistols or revolvers (for example, .45 Pistol and Revolver), except .22 caliber rimfire, must be recorded. The bound record shall be maintained in chronological order by date of sale or disposition of the ammunition, and shall be retained on the licensed premises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the ammunition.

The bound record entry shall show:

(i) The date of the transaction;

(ii) The name of the manufacturer;

(iii) The caliber or guage (or the type of ammunition component);

(iv) The quantity of ammunition (or component);

(v) The name, address, and date of birth of the nonlicensee; and

(vi) The method used to establish the identity of the ammunition purchaser.

The format required for the bound record is as follows:

DISPOSITION RECORD OF INTERCHANGEABLE AMMUNITION AND HANDGUN AMMUNITION

Date	Manufacturer	Caliber, gauge, or type of component	No. of boxes	Purchaser		Enter a (√) in the "known" column if purchaser is personally known to you. Otherwise, establish the purchaser's identification		
				Name and address	Date of birth	Known	Driver's license	Other type (specify)

However, when a commercial record is made at the time a transaction is made, a licensee may delay making an entry into the bound record if the provisions of paragraph (d) of this section are complied with.

* * * * *

Signed: February 25, 1983.

W. T. Drake,

Acting Director.

Approved: March 17, 1983.

J. M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 83-8561 Filed 3-31-83; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 740, 741, 742, 743, 744, 745 and 746

Federal Lands Program; Correction

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

ACTION: Final Rule; Correction.

SUMMARY: On February 16, 1983, (48 FR 6912) the Office of Surface Mining Reclamation and Enforcement (OSM) published final rules amending the existing regulations on the Federal lands program which set forth the requirements for surface coal mining and reclamation operations on Federal lands, involving 30 CFR Parts 700, 701, 740, 741, 742, 743, 744, 745, and 746. Several errors were made in the publication which are corrected in this notice.

EFFECTIVE DATE: March 18, 1983.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Federal Lands Specialist, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, D.C. 20240, Telephone (202) 343-5866.

SUPPLEMENTARY INFORMATION: In the February 16, 1983, **Federal Register** (48 FR 6912), the Office of Surface Mining published final rules for 30 CFR Parts 700, 701, 740, 741, 742, 743, 744, 745, and 746, concerning the Federal Lands Program. Since that publication, OSM has identified two inadvertent omissions and several typographical errors in the preamble and in the regulatory language. This notice corrects the final rules by providing the omitted language and corrections. The corrections to the final rules are as follows:

1. On page 6913, the last line of the second paragraph in column two is corrected to read "revised 30 CFR 740.11(a)."

2. On page 6917, the second line of the last paragraph in column two is corrected to read "determinations of valid existing rights."

3. On page 6920, the last line of the second full paragraph in column one is corrected to read "approval (revised § 740.4(e)(4))."

4. On page 6920, the citations in the last two paragraphs of column one to "§ 740.4(e)" are corrected to read "§ 740.4(d)" and the citations to

"§ 740.4(f)" are corrected to read "§ 740.4(e)."

5. The omitted text should have appeared on page 6922. On page 6922, line 13 of the first paragraph under the heading "Section 740.13 Permits" is corrected to read as follows:

"operations on Federal lands should consult first the applicable regulatory program and then the additional requirements of the revised § 740.13.

Previous § 741.1, "Scope," 741.2, "Objectives," and 741.4, Responsibilities," have been removed, as proposed.

Section 740.13(a) General Requirements

Previous § 741.11, "General obligations," corresponds to revised § 740.13(a), "General requirements."

Previous § 741.11(a), which required that permit applications be submitted within two months of the effective date of the applicable regulatory program, has been deleted, as proposed. Because revised § 740.11(a) makes the requirements of the regulatory program applicable to Federal lands, and because each regulatory program will implement the requirement of section 502(d) of the Act that permanent program permit applications be filed within two months of the program approval, this provision is unnecessary.

Previous § 741.11(b), which required that surface coal mining and reclamation operations on intermingled Federal and non-Federal lands be conducted in a manner which did not preclude operator compliance with the performance standards of 30 CFR Chapter VII, Subchapter K, has been deleted, as proposed.

One commenter stated that OSM should not delete previous § 741.11(b) because "there may be instances which require implementation of additional requirements on Federal lands not part of the State."

6. On page 6926, line 30 of column one is corrected to read "provision has not been adopted. Previous."

7. On page 6929 the heading in column one, "Section 740.15 Inspection, Enforcement, and Penalties," is corrected to read "Section 740.17 Inspection, Enforcement, and Civil Penalties."

8. On page 6936, line 15 of column three is corrected to read "(1) Coal exploration operations on Federal."

9. On page 6936, line 23 of column three is corrected to read "surface is owned by the United States."

10. On page 6936, "section 740.11 Applicability," is corrected by adding paragraph (f) as follows:

"(f) Where coal exploration or surface coal mining and reclamation operations within a State are on Federal lands and where no State or Federal program has been approved for the State, this Subchapter shall apply in that State upon the effective date of these regulations."

11. On page 6938, lines two and three, the paragraph entitled "Release of Bonds" in the third column is corrected to read "lease bond may be released upon satisfactory compliance with all."

Dated: March 24, 1983.

William P. Pendey,

Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 83-8495 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Navigation of Locks and Canals; Fox River, Wisconsin

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations which govern the use, administration and navigation of the locks and canals of the Fox River, Wisconsin. These amendments will allow the Detroit District Engineer to establish the days and hours of lock operation, which are now prescribed in the regulations.

EFFECTIVE DATE: May 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Davies, Office of the Chief of Engineers, DAEN-CWO-M, Washington, D.C. 20314 (202-272-0245) or Mr. Mark Grazioli, U.S. Army Engineer District, Detroit, ATTN: NCECO, 477 Michigan Avenue, Detroit, Michigan 48321, (313-226-6803).

SUPPLEMENTARY INFORMATION: Regulations have been promulgated by the Department of the Army in 33 CFR 207.460 which govern the use, administration and navigation of the locks and canals on the Fox River, Wisconsin. Section 207.460(a)(6)(iv) of the regulations establishes a schedule of lockage times for vessels. That schedule is being delete to allow the district engineer latitude in setting the days and hours of operation. The district engineer will notify project users of lock operating schedules through public notices which will be issued at least 10 days in advance of initiation of a specific schedule. This change will permit the district engineer to better serve the public by allowing greater flexibility in matching lock operating schedules to user demand. Accordingly, 33 CFR 207.460 (a)(1) and (a)(6)(iv), are amended as set forth below.

The Department of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

The Department of the Army has determined that this proposed rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

The Department of the Army has determined that a notice of proposed rulemaking and related public procedures are unnecessary in this instance because the rule only affects the procedure for notifying the public of lock operating schedules and not necessarily the schedules themselves.

List of Subjects in 33 CFR Part 207

Transportation, Rivers, Navigation.

William R. Gianelli,

Assistant Secretary of the Army (Civil Works).

PART 207—[AMENDED]

33 CFR 207.460 is amended by revising paragraphs (a)(1) and (a)(6)(iv) to read as follows:

§ 207.460 Fox River WI.

(a) *Use, Administration and Navigation of the Locks and Canals.* (1) *Navigation.* The Fox River and Wolf River navigation seasons will commence and close as determined by the district engineer, Corps of Engineers, in charge of the locality, depending on conditions and need for lock service. Days and hours of lock operation will also be determined by the district engineer. Public notices will be issued announcing or revising the opening and closing dates and operating schedules at least 10 days in advance of such dates.

* * * * *

(6) *Provisions for lockage service*

* * *

(iv) Lockage may be provided during certain hours other than announced at the intermediate locks provided prior requests are made to the Corps of Engineers, Fox River Project Office. Requests may be made either in writing, by telephone or in person to U.S. Army Corps of Engineers, Fox River Project Office, 1008 Augustine Street, Kaukauna,

Wisconsin 54130, telephone: 414–766–3531.

(33 U.S.C. 1)

[FR Doc. 83-8427 Filed 3-31-83; 8:45 am]

BILLING CODE 3710-92-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

41 CFR Part 101-20

[FPMR Amdt. D-80]

Management of Buildings and Grounds; Display of the Code of Ethics for Government Service

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: Public Law 96–303 provides for the display of the Code of Ethics for Government Service. This regulation clarifies GSA procedures concerning display of copies of the Code.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Saul Katz, Special Counsel for Ethics, Office of the Administrator (566–1212) or Mr. James A. Marsden, Director, Operations Division, Office of Buildings Management (566–1563).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this proposal will not be considered a major rule under EO 12291 of February 17, 1981, because it is not likely to: Have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal Buildings and Facilities, Government Property Management, Security Measures.

PART 101-20—[AMENDED]

Accordingly, 41 CFR Part 101–20 is amended as follows:

Subpart 101-20.4—Display of the Code of Ethics For Government Service

1. Section 101–20.402 is revised to read as follows:

§ 101-20.402 Applicability in Government-owned and leased buildings.

Each agency, as defined in § 101–20.400 of this Part, shall display copies of the Code conspicuously in each Government-owned or wholly leased building under its custody and/or control in which at least 20 civilian employees are regularly employed. These copies shall be displayed in the lobbies of the buildings. Additional copies shall be displayed in other appropriate locations such as auditoriums, cafeterias, bulletin boards, and other high traffic areas. For applicability to other leased buildings see § 101–20.403 of this Part.

2. Section 101–20.403 is revised to read as follows:

§ 101-20.403 Applicability to agencies.

Each agency, as defined in § 101–20.400 of this Part, which has at least 20 civilian employees regularly employed in a building owned, leased, or otherwise provided to the Federal Government for the purpose of performing official business of the Government shall display copies of the Code conspicuously within its spaces on the premises. Copies shall be displayed in reception areas, locker rooms, other high traffic areas, and on bulletin boards.

3. Section 101–20.404 is revised to read as follows:

§ 101-20.404 Display of the Code.

Agencies of the Federal Government shall not pay any costs for the printing, framing, or other preparation of the Code. The Administrator of General Services is charged with providing for the publication and distribution of the Code (see § 101–20.401 of this Part). Agencies may properly pay incidental expenses, such as the cost of hardware, other materials, and labor incurred to display the Code. Display shall be consistent with the decor and architecture of the building space. Installation shall cause no permanent damage to stonework or other surfaces which are difficult to maintain or repair.

(Sec. 205(c), 63 stat. 390; 40 U.S.C. 486(c))

Dated: March 12, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-8487 Filed 3-31-83; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 24

Department of the Interior Fish and Wildlife Policy; State-Federal Relationships

Correction

In FR Doc. 83–6868 beginning on page 11642 in the issue of Friday, March 18, 1983, the following correction should be made in the first column of that page: In the third line from the bottom, the words "are not outdated" should read "are now outdated".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force

Correction

In FR Doc. 83-8139 beginning on page 13368 in the issue of Wednesday, March 30, 1983, make the following corrections:

1. In the first column of page 13368, under "comment date", "April 29, 1983" should have read "May 31, 1983".

2. Below the "comment date" paragraph, insert the following information:

ADDRESS: Send or deliver written comments to Richard B. Post, Associate Director, Staffing Group, Office of Personnel Management, Room 6F08, 1900 E Street, N.W., Washington, D.C. 20415.

BILLING CODE: 1505-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 83-319]

Citrus Canker—Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This document reopens the comment period for the proposal to amend the "Citrus Canker—Mexico" interim regulations (1) to allow any importer to import restricted articles for movement to and use in certain northern parts of Louisiana and Texas in accordance with certain conditions, and (2) to allow restricted articles to be culled and repacked under certain conditions in restricted areas in Texas.

DATES: Comments on the proposed regulation must be received on or before April 11, 1983.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 726, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, APHIS, USDA, Room 637 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8248.

Stephen Poe, Plant Pathologist, Emergency Programs, Plant Protection and Quarantine, APHIS, USDA, Room 609 Federal Building, Hyattsville, MD 20782; 301-436-6365.

SUPPLEMENTARY INFORMATION: A document was published in the **Federal Register** on March 10, 1983, (48 FR 10286-10289) which proposed to amend the "Citrus Canker-Mexico" interim rule regulations (1) to allow ny importer to import restricted articles for movement to and use in certain northern parts of Louisiana and Texas in accordance with certain conditions, and (2) to allow restricted articles to be culled and repacked under certain conditions in restricted areas in Texas.

The comment period for the proposal expired on March 30, 1983. The Department was recently petitioned by fruit and vegetable associations to extend the comment period to April 29, 1983. It was asserted that additional time is needed to compile information and prepare comments.

It appears that if the proposal to amend the regulations should be adopted, the amendments should be made effective as soon as possible in order to relieve unnecessary restrictions. However, the Department is interested in receiving meaningful comments. Under these circumstances, it has been determined that the comment period should be reopened through April 11, 1983. Accordingly, any additional written comments must be received on or before April 11, 1983.

Done at Washington, D.C., this 31st day of March, 1983.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 83-8720 Filed 3-31-83; 11:42 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensing Requirements For Pending Operating License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a proposed rule published in the **Federal Register** on May 13, 1981 (46 FR 26491). That rule would have codified Three Mile Island (TMI) related provisions in NUREG-0737 for applicants for nuclear power plant operation licenses. Experience gained in the application of NUREG-0737 provisions since the publication of the proposed rule has shown that the proposed requirements are not necessary.

FOR FURTHER INFORMATION CONTACT: Thomas A. Ippolito, Chief, Operating Reactors Assessment Branch, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301-492-7415.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1981, a notice of proposed rulemaking was published in the **Federal Register** (46 FR 26491) indicating that the Commission was considering codification of some or all of the NUREG-0737 provisions for operating license (OL) applicants. The comment period for the proposed rule was to expire on August 12, 1981. It was extended to November 30, 1981 (46 FR 54378).

Comments Received

Comments were received from 49 parties: 37 from applicants, licensees, or owners groups; 6 from NSSS vendors or architect-engineers; and 6 from other

members of the public (AIF, UCS, NRDC, and others).

Five respondents favored rulemaking. One utility commented that the rule would reduce litigation; two respondents stated that the rule would enhance public safety; and two utilities did not specify their reason for favoring the rule.

Thirty-nine respondents opposed the rule. More than thirty of these opposed it because they felt it would reduce the flexibility a utility needs to meet the provisions of NUREG–0737 in a manner consistent with the specific characteristics of the utility's facility and organization. Other reasons given for opposing the rule were that it is too detailed; it duplicates other parts of NRC regulations; it might negate previous staff approvals of TMI items; it may actually delay hearings because of its complexity; and its scope is too broad for a single rulemaking. Two commenters (North Carolina Public Interest Research Group and Union of Concerned Scientists/Natural Resources Defense Council) stated that one reason for opposing the rule is that it would limit public discussion in future hearings.

The remaining five respondents took no position regarding the rule.

Commission Evaluation

As previously mentioned, most of the respondents opposed the rule because it would limit the flexibility a utility needs to meet the provisions of NUREG–0737 in a manner consistent with the specific characteristics of a utility's facility and organization. The Commission cited this as one of its reasons for not requiring a similar rule for operating reactors (August 1981), and it now believes that this issue—lack of flexibility—could also present a problem in the case of OL applications.

The issuance of this rule as an effective regulation would also limit the flexibility of the Commission and the staff. Early in the formulation of NUREG–0737 it was recognized that a number of the items contained in that document would evolve with time. Present examples include schedule changes on Items II.D.1, Safety and Relief Valve Testing, and II.F.2, Instrumentation to Detect Inadequate Core Cooling. Other items may be changed in the future, such as II.K.3.5, Automatic Trip of Reactor Coolant Pumps. If a final rule for NUREG–0737 items is issued, the process that the Commission must go through to change requirements would be significantly more complex and time consuming.

A presumed potential benefit from a final rule is that it could serve to specifically define and bound the TMI-related issues that could be considered during the hearing process. The Commission has examined records of OL hearings where NUREG–0737 issues were litigated. First, there were very few such hearings, and second, the Commission does not believe that the absence of a NUREG–0737 OL rule will cause unnecessary delays in those hearings where the issues are raised.

The Commission has had no difficulty in implementing the provisions of NUREG–0737 for OL applicants. Plants which have been licensed to operate since the issuance of NUREG–0737 have been assigned license conditions for those NUREG–0737 requirements that have been approved for future implementation. Plants which were licensed to operate prior to the issuance of NUREG–0737, have implemented the large majority of NUREG–0737 requirements.

On balance, the Commission does not believe a final rule for codifying the TMI-related provisions in NUREG–0737 for OL applicants should be issued.

Dated in Bethesda, Maryland, this 28th day of March 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-8434 Filed 3-31-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 1017

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE), in response to requirements set forth in Section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168), is proposing regulations to prohibit the unauthorized dissemination of certain unclassified but sensitive information ("Unclassified Controlled Nuclear Information"), with respect to atomic energy defense programs, by U.S. Government employees, contractors, subcontractors, access permittees, and other persons. The DOE is issuing proposed regulations to describe those types of Unclassified Controlled Nuclear Information (UCNI) to be protected, establish minimum protection standards, set forth the conditions under which access to UCNI would be granted, and establish procedures for the imposition of penalties for violation of these regulations.

DATE: Comments in connection with the proposed rule must be received on or before May 2, 1983.

ADDRESSES: Written comments should be sent to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Room 4A–038, Washington, D.C. 20585, Attention: Ms. Trisha Dedik Chico. Six copies should be submitted. Copies of comments received may be examined at the DOE Reading Room, Room 1E–190, James Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Ms. Trisha Dedik Chico, Office of Policy, Planning and Coordination, DP–3, Office of the Assistant Secretary for Defense Programs, Room 4B–014, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–1870;

Ms. Amy Shimamura, Office of the Assistant General Counsel for International Development & Defense Programs, GC–32, Room 6B–256, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Rulemaking Requirement
A. Section 501 of the DOE Organization Act
B. National Environmental Policy Act
C. Executive Order No. 12291
D. Regulatory Flexibility Act
III. Freedom of Information Act Considerations

I. Background

Much of the information concerning atomic energy defense programs which involves the production, testing, utilization, assembly, or transportation of atomic weapons or atomic weapon components; the production, utilization, or transportation of nuclear material, and the safeguarding thereof is classified. However, there exist certain types of sensitive information which have been reviewed for classification and which cannot be classified under applicable law or Executive order. Such information, for example, concerns the safeguarding of small quantities of nuclear materials and facilities, sensitive unclassified or declassified information on the production and use of special nuclear materials, and certain declassified aspects of the design or use of nuclear weapons and parts for those weapons. This information could be useful to terrorists, extortionists, hostile

foreign powers, and others for the purpose of either (1) fabricating or threatening to fabricate or use an improvised nuclear explosive or (2) perpetrating other malevolent threats or acts seriously militating against the public health and safety or the common defense and security of the United States.

In recent years there has been an increasing concern over the possibility of terrorist threats, other malevolent acts, and nuclear proliferation. This concern is based, in part, on the increased incidence of acts of terrorist-inspired violence worldwide, the increased sophistication of these acts, and the increasing availability of the high technology resources necessary to commit these acts. In response, the DOE has been directed by section 210 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1982, Pub. L. 97-90, to protect certain types of information from unauthorized dissemination in the interest of protecting both the public health and safety and the common defense and security of the nation.

Section 210 amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) by adding Section 148, *Prohibition Against the Dissemination of Certain Unclassified Information*, which directs the Secretary to prescribe regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information, with respect to atomic energy defense programs, pertaining to:

1. The design of production facilities or utilization facilities;

2. Security measures (including security plans, procedures, and equipment) for the physical protection of (a) production or utilization facilities, (b) nuclear material contained in such facilities, or (c) nuclear material in transit; or

3. The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act.

if the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on public health and safety or the common defense by increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

UCNI includes information which (1) is not otherwise classified, (2) falls within the categories enumerated above, and (3) deals with characteristics or systems for the operation and protection of atomic energy defense programs activities, which the Secretary determines shall not be disseminated without DOE authorization because such dissemination could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (a) illegal production of nuclear weapons or (b) theft, diversion, or sabotage of nuclear materials, equipment, or facilities. This includes information which may be contained in documents, reports, correspondnece, oral presentations, telephonic communications, radio transmissions, data processing system products, and information in other forms.

The provisions of this legislation also include unclassified information, falling within the categories defined herein, which was classified at one time as Restricted Data under the provisions of the Atomic Energy Act and which has been subsequently declassified, but which requires protection because of the potential significant contribution this information could make toward: (1) An unauthorized fabrication, acquisition, or detonation of a nuclear explosive device; (2) an increase in the likelihood of nuclear proliferation; (3) an unauthorized dispersal of nuclear materials or sabotage of nuclear materials, equipment, or facilities; or (4) providing military advantage to a foreign government which could use the information in a manner inimical to the United States.

Accordingly, the DOE proposes to add 10 CFR Part 1017 and to invite public comment on the proposed rule.

II. Rulemaking Requirements

A. Section 501 of the DOE Organization Act

Under Section 501(c) of the Department of Energy Organization Act, (42 U.S.C. 7191(c)), the DOE is not bound by the requirements of subsections (b), (c), and (d) of that Act with respect to the promulgation of regulations if the Secretary of Energy determines that no substantial issue of fact or law exists and that the regulations in question are unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or small businesses. Where it is determined that no substantial issue or impact exists, regulations may be promulgated in accordance with section 553 of Title 5 of the United States Code.

The DOE does not believe that these regulations raise substantial issues of law or fact or will have a substantial impact on the Nation's economy or large numbers of individuals or small businesses; accordingly, they are being promulgated in accordance with 5 U.S.C. 553.

B. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires Federal agencies to prepare detailed statements on prospects for major Federal actions significantly affecting the quality of the human environment. The DOE has determined that the proposed rule does not significantly affect the quality of the human environment; therefore, the preparation of an Environmental Impact Statement is not required.

C. Executive Order No. 12291

It has been determined that this amendment is not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981), because it is not 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 cause 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.

D. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the DOE finds that Section 603 and 604 of the Act do not apply to this amendment because its promulgation will not have a significant economic impact on a substantial number of small entities, since the proposed rule merely clarifies types of information to be protected under section 148 of the Atomic Energy Act as amended, describes the level of protection to be afforded, provides procedures for access to this information, and prescribes penalties for violation of this section.

III. Freedom of Information Act Considerations

Section 148, in the introductory paragraph, provides that the DOE's exercise of the new authority contained in the section be made "subject to subsection (b)(3) of section 552 of title 5

of the United States Code" (FOIA); thus, UCNI is not subject to disclosure under FOIA. The DOE has determined that section 148 falls within the compass of exemption 3 of the Freedom of Information Act, 5 U.S.C. 552(b)(3), and that it meets all the requirements for a statutory exemption under that section.

The DOE has determined that appeals of denials of requests for information covered by section 148 will be decided by the Assistant Secretary for Defense Programs as is the case for appeals involving the denial of classified information. Title 10 of the Code of Federal Regulations, Part 1004 has been revised to comport with this determination.

List of Subjects in 10 CFR Part 1017

Administration practice and procedure, Freedom of Information, Government contracts, Security measures.

(Sec. 210, Pub. L. No. 97-90, 95 Stat. 1169 (42 U.S.C. 2168) as amended by Sec. 17, Pub. L. No. 97-415, January 4, 1983)

For the reasons set out in the preamble, Part 1017 of Chapter X of Title 10 of the Code of Federal Regulations is proposed to be added as set forth below.

Issued in Washington, D.C., March 28, 1983.

Donald Paul Hodel,

Secretary of Energy.

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

Sec.

1017.1 Purpose and scope.
1017.2 Definitions.
1017.3 Types of information.
1017.4 Physical protection requirements.
1017.5 Control of joint Unclassified Controlled Nuclear Information outside DOE.
1017.6 Violations.

Authority: Sec. 210, Pub. L. No. 97-90, 95 Stat. 1169 (42 USC § 2168) as amended by Sec. 17, Pub. L. No. 97-415, January 4, 1983.

§1017.1 Purpose and scope.

(a) This part contains the regulations of the Department of Energy (DOE) implementing section 148 of the Atomic Energy Act of 1954, as amended, (42 USC 2011 *et seq.*) which prohibits the unauthorized dissemination of "Unclassified Controlled Nuclear Information" related to the atomic energy defense programs. The regulations of this part provide for review of information prior to designation as UCNI, identify examples of such information, establish minimum protection standards, set forth the conditions under which access to UCNI is to be granted, and provide penalties for violation. Nothing in these regulations precludes the Secretary or his delegate from designating information not specifically described in these regulations as UCNI.

(b) Pursuant to section 148 (a)(2), the Secretary hereby determines that the unauthorized dissemination of the types of information described in § 1017.3 of these regulations could reasonable be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities; and that the requirements set forth in this rule are the "minimum restrictions" necessary to protect the health and safety of the public and the common defense and security. Moreover:

(1) The facilities, materials, and activities covered by this part are limited to those involved in support of the atomic energy defense programs of the nation.

(2) Information that is classified as Restricted Data or National Security Information or that is protected from unauthorized disclosure pursuant to section 147 of the Atomic Energy Act is specifically excluded from the coverage of these regulations.

(3) These regulations do not arbitrarily preclude the release of scientific and technical information but rather require an extension of the programmatic review process in determining the appropriate level of dissemination.

(4) The conditions for access are limited to: (i) A "need-to-know" as determined by the organization responsible for the information, (ii) U.S. citizenship except as otherwise noted in § 1017.4(b) of this part, and (iii) those engaged in occupations specified in § 1017.4(b). A security clearance, or specific level thereof, is not a criterion for access to UCNI.

§1017.2 Definitions.

As used in this part:

(a) *"Access permittee"* means any person or corporation who has been authorized access by the Secretary or his delegate to UCNI applicable to civilian uses of atomic energy in accordance with the terms and conditions prescribed in the permit.

(b) *"Act or Atomic Energy Act"* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2001 *et seq.*).

(c) *"Atomic Energy Defense Programs"* means activities, equipment, and facilities utilized in or engaged in support of (1) the production, testing, utilization, assembly, or transportation of atomic weapons or atomic weapon components; (2) the production, utilization, or transportation of nuclear material; and (3) the safeguarding thereof.

(d) *"Authorized Individual"* means a U.S. citizen (except as otherwise noted in § 1017.4(b)) who has a need-to-know in the performance of official duties, and who is:

(1) A Federal employee, consultant, or DOE advisory committee member; or

(2) A contractor, subcontractor, or prospective contractor, or an employee thereof, of the Federal Government; or

(3) A Member of Congress or a duly authorized staff member of a congressional committee or of an individual Member of Congress; or

(4) The Governor of a state or his or her designated representatives and local government officials; or

(5) A Member of a State or local law enforcement authority or emergency response personnel; or

(6) DOE Access Permit Holders if the information falls within the purview of Access Permit categories.

(e) *"Authorized Reviewing Official"* is a Secretarial level officer of DOE who has been delegated the authority by the Secretary to determine what information under his/her cognizance falls within section 148 and to deny the release of such information. This authority may be further delegated.

(f) *"Component"* means any operational, experimental, or research-related part, subsection, design, or material used in the manufacture or utilization of a defense-related nuclear reactor or its primary system, nuclear weapon, nuclear explosive device, or weapon test assembly.

(g) *"Information"* means any information or material, regardless of its physical form or characteristics, that is owned or developed by or for, or is under the control of the United States Government.

(h) *"In Transit"* means the physical movement of any nuclear weapon, weapon component, or any quantity of nuclear material from one facility to another, including intra-facility movement. Material is considered "in transit" until it has been relinquished to the custody of the authorized recipient.

(i) *"Need-To-Know"* means a determination by an authorized individual that another person's access to UCNI is required in the performance of official duties.

(j) *"Nuclear Material"* means material that may include special nuclear

material, byproduct materials, or source materials as defined by the Atomic Energy Act, or any other material that the Secretary determines to be nuclear material.

(k) *"Physical Security"* means the combination of operational and security equipment, trained personnel, and procedures used to provide protection for facilities and materials against theft, sabotage, diversion, or other acts of malevolency.

(l) *"Safeguards"* means an integrated system of physical protection, personnel reliability, accountability and material control measures designed to deter, prevent, detect, and respond to unauthorized access, diversion, or possession of a nuclear weapon, a component thereof, or nuclear materials. It is the development and application of techniques and procedures dealing with the establishment and continued maintenance of a system of activities including physical protection, quantitative knowledge of the location and use of nuclear weapons, components thereof, or nuclear materials, and administrative controls and surveillance to assure that procedures and techniques of the system are effectively implemented including timely indication of possible diversion or credible assurance and verification that no diversion has occurred.

(m) *"Unauthorized Dissemination"* means the intentional or negligent dissemination, in any manner, of UCNI to any person other than an "authorized individual" as defined herein.

(n) *"Unclassified Controlled Nuclear Information"* means unclassified information protected against unauthorized dissemination pursuant to section 148 of the Atomic Energy Act, (and is so designated) with respect to atomic energy defense programs, and which pertains to:

(1) Design of production facilities or utilization facilities;

(2) Security measures relating to the protection of production or utilization facilities, nuclear materials contained in these facilities, nuclear materials in transit; or

(3) Design, production, or utilization of atomic weapons or components thereof if such information was declassified or removed from the Restricted Data category

if the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on public health and safety or the common defense by increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

§ 1017.3 Types of information.

(a) *General.* The DOE is required to prohibit the unauthorized dissemination of unclassified information with respect to atomic energy defense programs which could be of significant assistance to an individual or group of individuals intent upon committing acts of theft, diversion, or sabotage against such activities and could have a significant adverse impact upon the public health and safety or the common defense and security of the United States. The information encompassed herein includes documents, reports, correspondence, oral presentations, telephonic communications, radio transmissions, data processing system products, and information in other forms which is not otherwise classified and which deals with characteristics or systems used by the Government for the operation and protection of the atomic energy defense programs. Unauthorized dissemination of such information could significantly assist a potential malefactor in:

(1) Selecting a defense-related target (e.g., unclassified information on priority or strategic importance of DOE facilities or activities; locations, forms, and quantities of nuclear materials, etc.);

(2) Planning an unlawful act (e.g., unclassified information on unique characteristics of operational and security hardware; building plans showing unique construction or design features including security features; specific operational and security procedures, etc.);

(3) Committing an unlawful act (e.g., unclassified information regarding on or off-site response capability; armament of security forces; aspects of security force training contingency plans and response procedures, etc.);

(4) Measuring the success of such an act (e.g., unclassified information on the consequence of decommissioning or sabotage of vital equipment or facilities including operational and security equipment and/or facilities, etc.).

(b) The provisions of this section also include information falling within the categories defined herein which was classified at one time as Restricted Data under the provisions of the Atomic Energy Act and which was subsequently declassified, but which requires protection because of the potentially significant contribution this information could make toward: (1) An unauthorized fabrication, acquisition, or detonation of a nuclear explosive device; (2) an increase in the likelihood of nuclear proliferation; or (3) an unauthorized dispersal of nuclear materials or sabotage of nuclear materials, equipment, or facilities; or (4) providing military advantage to a foreign government which could use the information in a manner inimical to the United States. (c) Examples of the categories and types of information subject to protection under the provisions of section 148 include but are not limited to:

(1) *Sensitive Unclassified Safeguards Information.* This category includes unclassified information describing DOE fixed-site or transportation security plans and procedures, security inspector and guard orders, patrol schedules, response plans and capabilities, duress codes, conceptual designs, unusual occurrence/incident reports, and any other information concerning the capabilities of a particular activity or protection system and information concerning the safeguarding thereof, the unauthorized dissemination of which, by an adversary, could reasonably be expected to significantly increase the likelihood of success of an act of theft, diversion, sabotage, or assembly of atomic weapons and weapon components, or the production and utilization of nuclear materials.

(2) *Sensitive Unclassified Production, Utilization, and Design Information.* This category includes both defense-related facility and reactor design for nuclear materials production and other unclassified operational information concerning the production, processing, and utilization of nuclear materials. Specific information of this type includes defense-related reactor designs for material production and aspects of reactor plant designs for naval propulsion purposes which may be unclassified but which should be controlled because unauthorized dissemination of the information could reasonably be expected to: (i) Significantly increase the likelihood of an illegal production of nuclear materials or the theft, diversion, or sabotage of such materials; (ii) provide important insights into nuclear material production and processing; (iii) provide militarily valuable insight into facilities, systems, or equipment design or the capability and functions of naval nuclear propulsion plants in such a way as to be inimical to the common defense and security of the U.S. Also, included here, is unclassified information concerning the processing and separation of nuclear materials and unique characteristics of facility design. Limiting dissemination of some of the information of this type is important in

the furtherance of U.S. nuclear nonproliferation objectives.

(3) *Sensitive Unclassified Nuclear Weapon Design, Manufacture, and Utilization Information.* This category includes certain unclassified information concerning nuclear weapon design, manufacture, and utilization of nuclear weapons and parts for those weapons which requires protection because of the increased incidence of terrorist-inspired violence worldwide, the increased sophistication of such acts of violence, and the increasing availability of the technology needed to commit acts such as theft or sabotage of a nuclear weapon or the fabrication or threat to fabricate or detonate a nuclear explosive device. Specific information of this type is information that was at one time classified as Restricted Data under the provisions of the Atomic Energy Act but which was subsequently declasssified at a time when such acts of violence were a relatively infrequent occurrence and when nuclear proliferation was not a serious threat.

§ 1017.4 Physical Protection Requirements.

(a) *General.* UCNI requires protection from unauthorized dissemination. At a minimum, UCNI will be protected and controlled in a manner similar to that customarily accorded proprietary business information in the organizational element concerned. Each person who receives, acquires, or produces UCNI is required to take reasonable and prudent steps to ensure that it is protected from unauthorized disclosure. All Government contractors are required to establish and maintain a system for the protection of UCNI that is consistent with standards established herein.

(b) *Access to UCNI.* Except as the Secretary of Energy or his designee may otherwise authorize, no person may have access to UCNI unless the person has an established "need-to-know" for the information in the performance of official duties and is a U.S. citizen who meets one of the criteria listed below. Access by non-U.S. citizens is permitted, provided that is in conjunction with established agreements for cooperation, provisions of treaties and mutual defense acts, or DOE contracts.

(1) A Federal employee, consultant, or DOE advisory committee member; or

(2) A contractor, subcontractor, or prospective contractor, or an employee thereof, of the Federal Government; or

(3) A Member of Congress or a duly authorized staff member of a Congressional committee or of an individual Member of Congress; or

(4) The Governor of a state or his or her designated representatives and local government officials; or

(5) A Member of a State or local law enforcement authority or emergency response personnel; or

(6) DOE Access Permit Holders, if the information falls within the purview of Access Permit categories.

(c) *Preparation and marking of documents.* (1) Each document or other material that has been reviewed by an authorized reviewing official and found to contain UCNI as defined in § 1017.2(n) shall be marked in a conspicuous manner to indicate the presence of UCNI as follows:

UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION NOT FOR PUBLIC DISSEMINATION. UNAUTHORIZED DISSEMINATION SUBJECT TO BOTH CIVIL AND CRIMINAL SANCTIONS.

(2) All subsequent pages containing UCNI must be stamped at the bottom with the words "Unclassified Controlled Nuclear Information". However, portion marking is not required.

(3) Documents containing UCNI which were produced prior to the effective date of this regulation will not be reviewed or marked unless they are requested for release to an individual who is not authorized to receive UCNI.

(d) *Protection while in use or storage.* While in use, UCNI shall be under the control of an authorized individual as that term is defined in § 1017.2(d). As a minimum, UCNI will be stored in locked desks, locked file cabinets, offices, or facilities where access is controlled.

(e) *External transmission of documents and material.* (1) Documents or other matter containing UCNI, when transmitted outside an authorized place of use or storage, shall be packaged to preclude disclosure of the presence of UCNI. Packages shall be marked with both address and return address to ensure proper transmittal.

(2) Information shall be enclosed in a cover sheet wherever practicable. The cover sheet shall warn the recipient that the document contains UCNI by means of the following:

NOTICE

This document contains Unclassified Controlled Nuclear Information subject to the provisions of Section 148 of the Atomic Energy Act of 1954, as amended. Unauthorized disclosure is subject to both criminal and civil penalties.

(3) UCNI may be transported by authorized messenger or courier; by U.S. first class mail, U.S. registered mail, certified mail, or U.S. express mail; by any means approved for the transport of classified information; or by any individual authorized access pursuant to § 1017.4(b).

(4) UCNI may be discussed or transmitted over unprotected telephone or telecommunication circuits consistent with operational requirements.

(5) UCNI may be processed or produced on any ADP system which is certified for classified informaiton or which complies with the guidelines of OMB circular A–71 for the protection of unclassified sensitive information.

(f) *Reproduction and destruction of UCNI.* (1) UCNI information may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided the reproduced information is properly marked.

(2) Documents or other matters containing UCNI are to be disposed of by any method which assures complete destruction or otherwise precludes retrieval.

(g) *Retirement of UCNI.* (1) Information which may be subject to the provisions of section 148 of the Atomic Energy Act will, upon retirement to the archives, be marked as follows:

NOT FOR PUBLIC DISSEMINATION

This document contains information that may be subject to the provisions of Section 148 of the Atomic Energy Act of 1954, as amended (42 USC 2168). Review prior to release is required.

(2) A formal review of information to be retired will be done upon request only.

(h) *Removal from the UCNI category and decontrol.* (1) Documents originally containing UCNI shall be removed from the UCNI category by an authorized reviewing official whenever the information no longer meets the criteria contained in § 1017.2(n). UCNI markings will be deleted at the time the documents or matter no longer contain information falling within the scope of UCNI.

(2) Information which relates primarily to the military utilization, transportation, storage, or deployment of atomic weapons will be removed from the UCNI category only after consultation with the Department of Defense. The DOE will make the final determination that the information no longer meets the UCNI definition.

§ 1017.5 Control of Joint Unclassfied Controlled Nuclear Information Outside DOE.

(a) Unclassified Controlled Nuclear Information which pertains jointly to the functions of one or more Government organizations shall be released only after review by both organizations and

approval of the Secretary of DOE or his delegate. As a part of the review process, the appropriate organizations will consider the consequences of the unauthorized release of the information and whether such release could reasonably be expected to have a significant adverse effect on the public health and safety or the common defense and security by significantly increasing the likelihood of (1) illegal production of a nuclear weapon, or (2) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Joint consultation will be required for denials of all UCNI jointly held or for which there is joint programmatic responsibility. DOE will make the final determination for all such denials.

(c) No Government organization, including Government contractors and subcontractors, shall release UCNI currently within its possession without consultation with the originating organization and then only upon the approval of the Secretary or his delegate.

§ 1017.6 Violations.

(a) *General.* Any person who violates any regulation or order of the Secretary issued under section 148 of the Act with the respect to the unauthorized dissemination of UCNI shall be subject to a civil penalty. The penalty, to be imposed by the Secretary, shall not exceed $100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under section 148 (b)(1) of the Act. In addition, any person who willfully violates, attempts to violate, or conspires to violate the provisions of section 148 may be subject to a criminal penalty pursuant to section 223 of the Act.

(b) *Written Notification.* Whenever the Secretary has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of section 148(b)(1), the Secretary or his delegate shall notifiy such person in writing (1) setting forth the the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation or order involved in the violation, and (3) advising of each penalty which the Secretary proposes to impose and its amount. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Secretary, if any, the penalty may be collected by civil action. Such written notice shall be sent by registered or certified mail by the Secretary to the last known address of such person.

(c) The person so notified shall be granted an opportunity to show in writing, within 10 working days, why such penalty should not be imposed.

(d) *Civil Action.* On the request of the Secretary, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to section 148(b)(1). The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

[FR Doc. 83-8470 Filed 3-31-83; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual Agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures, the Board anticipates having under consideration regulatory matters as indicated below during the period from April 1, 1983 through October 1, 1983. The Board's next Semiannual Agenda will be published in October 1983.

DATE: Comments may be received any time during the next six months.

ADDRESS: Comments should be addressed to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board's Semiannual Agenda is divided into three sections: Section A reports on regulatory matters that have been proposed and that are under Board consideration; Section B reports on major regulatory reviews in progress under the Board's Regulatory Improvement Project and other regulatory matters the Board may consider for public comment during the next six months; and Section C reports those regulatory matters from the Board's last Semiannual Agenda (October 1, 1982 through April 1, 1983) on which final action has been taken.

A double asterisk (**) in Sections A and B indicates those matters listed on the Board's previous Semiannual Agenda; a dagger (†) indicates a proposal that is likely to have a significant economic impact on a substantial number of small entities (see Entries A.7 C.2 and C.8).

A. Regulatory Matters that have been Proposed and will Involve Further Board Consideration

1. Regulation: D—Reserve Requirements of Depository Institutions (12 CFR Part 204)

Action Taken: Under the Board's current Regulation D, a banker's acceptance ("BA") that does not meet the criteria of section 13 of the Federal Reserve Act ("ineligible BA") is regarded as a reservable deposit only if it is created, discounted, and sold by the same depository institution. In order to avoid reserve requirements, some banks have recently entered into arrangements with brokers and other third parties that provided for the issuance of an ineligible BA by the bank and the subsequent discount and/or resale by a third party. To prevent the use of this device as a means of avoiding reserve requirements, the Board proposes to amend Regulation D such that the creation of an ineligible BA results in a reservable liability regardless of whether the depository institution that creates the BA subsequently discounts and/or sells it (48 FR 5750, February 8, 1983). The Board believes that its proposed action would not add any reserve requirement burden to small depository institutions that have zero reserve requirements as a result of section 411 of the Garn-St Germain Depository Institutions Act of 1982. In addition, small entities typically do not issue ineligible BAs. No new recordkeeping or reporting requirements will be imposed as a result of this action.

The Board will review the public comments and is expected to take further action during the next six months.

Authority: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a).

Docket Number: R-0451.

Staff Contact: Gilbert T. Schwartz, Associate General Counsel, Legal Division, (202-452-3625).

****2. Regulation: D—Reserve Requirements of Depository Institutions and Regulation Q—Interest on Deposits (12 CFR Parts 204 and 217)**

Action Taken: In August 1982, the Board requested public comment on a proposal to amend Regulations D and Q to reduce the minimum maturity of all time deposit to seven days (47 FR 38138, August 30, 1982). At present, time deposits are defined as deposits or accounts with a minimum maturity or required notice period of 14 days. Small

banks would likely benefit from this proposal because it will provide an additional tool for them to use in competing with larger institutions for short-term, large-denomination deposits.

The Board will review the public comments and is expected to take further action during the next six months.

Authority: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a).

Docket Number: R–0417.

Staff Contact: Gilbert T. Schwartz, Associate General Counsel, (202–452–3625); and Paul S. Pilecki, Senior Attorney, (202–452–3281), Legal Division.

****3. Regulation: D—Reserve Requirements of Depository Institutions and Regulation Q—Interest on Deposits (12 CFR Parts 204 and 217)**

Action Taken: In August 1982, the Board requested public comment on a proposal to amend Regulations D and Q to increase the maximum size limitation on business savings accounts at member banks to $250,000 (47 FR 38137, August 30, 1982). Currently, member banks are not permitted to accept savings deposits in excess of $150,000 per depositor from organizations operated for profit. The Board also invited comment on the possibility of eliminating this limitation completely. Small banks would benefit from either a liberalization or elimination of this limit because the change would allow these institutions to compete more effectively with thrift institutions, which currently are subject to no such limitation. Further, small businesses should be aided by the opportunity to place larger cash balances in interest-bearing accounts.

The Board will review the public comments and is expected to take further action during the next six months.

Authority: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a).

Docket Number: R–0420.

Staff Contacts: Gilbert T. Schwartz, Associate General Counsel, (202–452–3625); and Paul S. Pilecki, Senior Attorney, (202–452–3281), Legal Division.

4. Regulation: E—Electronics Fund Transfers (12 CFR Part 205)

Action Taken: In February 1983, the Board published for comment proposed technical amendments to Regulation E to correct provisions that refer to Regulation Z (Truth in Lending) (48 FR 4667, February 2, 1983). These provisions describe the relationship between the rules governing electronic fund transfers and Regulation Z. The changes are necessary to reflect sections in Regulation Z that were redesignated when the Board revised Regulation Z under the Truth in Lending Simplification and Reform Act of 1980. Because the proposal is solely technical in nature, the changes will not have any impact on any firms offering access devices.

The Board will review the comments and is expected to take final action within the next six months.

Authority: The Electronic Fund Transfer Act, 15 U.S.C. 1693b.

Docket Number: R–0449.

Staff Contact: John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

****5. Regulation: G—Securities Credit by Persons Other Than Banks, Brokers, or Dealers (12 CFR Part 207); Regulation T—Credit by Brokers and Dealers (12 CFR Part 220); and Regulation U—Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221)**

Action Taken: In February 1982, the Board issued for public comment a regulatory framework that could be used to establish margin requirements on futures contracts based on stock indexes (47 FR 8788, March 2, 1982). This action was taken in connection with the Board's review of an application by the Kansas City Board of Trade (KCBOT) to trade in stock market index futures contracts.

The Board noted actions taken by the KCBOT to increase its own initial margin requirements on these futures contracts and to narrow the definition of hedging for margin purposes. In view of this, the Board decided not to take immediate action of its own.

However, the Board indicated that formal margin requirements on stock index futures contracts may be appropriate later. The Board plans to monitor the development and operation of this market closely.

The Board therefore asked for comment both on specific issues related to establishment of margin requirements on stock index futures contract and related instruments and on a proposed framework for such regulation. It is not expected that the proposals would have a significant impact on a substantial number of small firms.

The Board will review the comments on the proposals and may take further action during the next six months.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78c, g and w.

Docket Number: R–0385.

Staff Contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781).

6. Regulation: G—Securities Credit by Persons Other than Banks, Brokers or Dealers (12 CFR Part 207); and Regulation U—Securities Credit by Banks (12 CFR Part 221)

Action Taken: In February 1983, the Board proposed for comment a complete revision of Regulations U and G, governing securities credit extended by banks or by lenders other than banks and broker-dealers (48 FR 8466, March 1, 1983).

The proposed revision of Regulations U and G, two of the Board's four regulations concerning margin requirements, is part of the Board's Regulatory Improvement Project in which the Board is reviewing and revising all its regulations to update them, simplify their language, eliminate obsolete or unneeded language or provisions and lighten the burden of compliance.

Proposed revisions to Regulation U encompass amendments adopted in January 1982, and in addition, would:

—Permit banks to lend on margin stock to Employee Stock Ownership Plans (ESOPs) on a "good faith" basis;

—Eliminate a restriction on unsecured loans to lenders other than banks and broker-dealers, including collateral lenders, since Regulation G directly applies to their lenders; and

—Delete requirements for reports presently required of OTC market-makers, third market-makers and block positioners.

Proposed revisions to Regulation G also incorporate amendments made to the regulation in January 1982. In addition, the proposals would:

—Raise the registration threshold for G-lenders from $100,000 to $200,000 and eliminate the registration requirements for those who arrange but do not extend credit secured by margin securities;

—Allow G-lenders to extend unsecured credit to a broker or dealer; and

—Permit companies and their affiliates to finance employee purchases of company stock without a specific scheduled paydown of the loan or a three-year lockup of the stock, as is presently required.

The Board is also seeking specific public comment on whether Regulations U and G should be combined to form a new comprehensive regulation with various subchapters or whether the two regulations should be maintained separately in their simplified forms.

The changes proposed are not expected to have an adverse impact on a substantial number of small businesses. The Board will review the comments on the proposed revisions

and is expected to take further action during the next six months.

Authority: Securities Exchange Act of 1934, as amended 15 U.S.C. 78c, g, h, and w.

Docket Numbers: R–0457 (Regulation G); R–0458 (Regulation U).

Staff Contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781), Board of Governors of the Federal Reserve System, Washington, D.C.; or Mindy R. Silverman, Assistant Counsel, (212–791–5032), Federal Reserve Bank of New York.

† ** 7. Regulation: J—Collection of Checks and Other Items and Wire Transfer of Funds (12 CFR Part 210)

Action Taken: In April 1982, the Board requested public comment on a proposal that would allow Federal Reserve Banks to charge depository institutions for cash letters that are made available to them on a weekday that is a banking day for the Reserve Bank but not for the paying bank (47 FR 15349, April 9, 1982). The purpose of the amendment is to eliminate the float generated when depository institutions regularly close on weekdays, and to promote equity with other depository institutions that remain open on such days. The proposal will not impose any additional reporting, recordkeeping, or other compliance requirements on any institution, or duplicate, overlap, or conflict with any other federal rule. Board staff does expect, however, that affected institutions (approximately 450 of them with deposits of less than $20 million) could experience some reduction of earnings.

The Board will review the public comments and is expected to take further action within the next six months.

Authority: Sections 13, 16 and 11(i) of the Federal Reserve Act, 12 U.S.C. 342, 248(o), 360, and 248(i).

Docket Number: R–0392.

Staff Contact: Joseph R. Alexander, Attorney, Legal Division, (202–452–2489).

**** 8. Regulation: J—Collection of Checks and Other Items and Wire Transfer of Funds (12 CFR Part 210)**

Action Taken: In May 1981, the Board issued for public comment proposals to amend Subpart A of Regulation J by (1) redefining the terms "sender" and "bank" to include a depository institution as defined in 12 U.S.C. 461(b), namely, banks and thrift institutions; (2) imposing on a paying bank that returns an item an indemnity for loss or expense resulting from return of the item beyond the deadlines provided in the regulation; (3) incorporating provisions for collecting coupons and other securities similar to provisions regarding the payment and return of cash items; and (4) imposing a warranty and related indemnity regarding wire advice of nonpayment on a paying bank which returns a cash item (46 FR 24576, May 1, 1981). After considering the comments received, the Board adopted the first proposal in substantially the form proposed (46 FR 42059, August 19, 1981). Final action on the other three items has been deferred pending further study. In its consideration of these proposals, the Board has concluded that none of the proposals is expected to have a significant economic impact on a substantial number of small entities.

Authority: Sections 13, 16 and 11(i) of the Federal Reserve Act, 12 U.S.C. 342, 248(o), 360, and 248(i).

Docket Number: R–0357.

Staff Contact: Joseph R. Alexander, Attorney, Legal Division, (202–452–2489).

9. Regulation: K—International Banking Operations (12 CFR Part 211)

Action Taken: In January 1983, the Board published for comment proposed regulations implementing the Bank Export Services Act which permits bank holding companies, Edge Act and Agreement corporations, and bankers' banks to invest in export trading companies (48 FR 3375, January 25, 1983). The draft proposal requires that investors provide 60 day's prior written notice to the Board of the investor's intent to invest in export trading companies. It also requires that the investor detail the activities in which the export trading company will engage, and implements and interprets certain investment and lending limitations contained in the statute.

It is expected that small business entities would benefit from the simplicity and brevity of the proposed regulations, as well as from a liberal definition of an export trading company.

The Board will review the public comments and is expected to take further action in the next six months.

Authority: Bank Holding Company Act, 12 U.S.C. 1843(c)(14).

Docket Number: R–0445.

Staff Contacts: James S. Keller, Manager, International Banking Applications, Division of Banking Supervision and Regulation, (202–452–2523); and Nancy P. Jacklin, Assistant General Counsel, Legal Division, (202–452–3428).

****10. Regulaton: L—Management Official Interlocks (12 CFR Part 212)**

Action Taken: In September 1982, the Board adopted an amendment to Regulation L, which implements the prohibitions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) (47 FR 47371, October 26, 1982). The amendment conformed the regulations's provisions to recent statutory amendments to the Interlocks Act.

At the same time, the Board issued for public comment proposed amendments to Regulation L that would update, clarify, and make technical changes in light of the Board's experience with the regulation and the recent amendments to the Interlocks Act. On December 22, 1982, the Board adopted one of the proposed amendments regarding grandfathered interlocks (48 FR 5534 February 7, 1983). It is anticipated that the Board will review the public comments and take further action on the remaining proposals within the next six months.

The final amendment, as well as the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Since the amendments would ease the application of the regulation on depository institutions, their effect is expected to be beneficial rather than adverse and small institutions would share the benefits with large organizations.

Authority: Depository Institutions Management Interlocks Act, 12 U.S.C. 3207.

Docket Number: R–0431.

Staff Contacts: Melanie L. Fein, Attorney, (202–452–3594); and Bronwen Chaiffetz, Senior Counsel, (202–452–3564), Legal Division.

****11. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)**

Action Taken: In March 1982, the Board proposed for public comment a complete revision of Regulation T (47 FR 13376, March 30, 1982). The proposal is part of the Board's Regulatory Improvement Project in which the Board is reviewing and revising all of its regulations to simplify their language and ease the burden of compliance. In its last semiannual agenda the Board indicated that it would consider issuing for public comment an amendment to Regulation T to facilitate the covered writing of options by institutions and other entities which are prevented by law from using margin accounts, such a proposed amendment has been included as part of the Board's complete revision of Regulation T (proposed section 220.7, Cash Account).

The **Federal Register** documents published in June and July of 1981 (46 FR 32592 and 46 FR 37516) by the Board

contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation T. Comments received on the proposals appear to agree with the Board's analysis. The two new items in this proposal concerning options clearing firms and option writing in the cash account should not have any substantial impact on small businesses.

The Board will review the comments on the proposals and is expected to take further action during the next six months.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78 g and w.

Docket Number: R–0389.

Staff Contacts: Laura Homer, Securities Credit Officer, and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781); Robert Rewald, Division of Research and Statistics, (202–452–3637), Board of Governors of the Federal Reserve System, Washington, D.C.; or Mindy R. Silverman, Assistant Counsel, (212–791–5032), Federal Reserve Bank of New York.

12. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Action Taken: In February 1983, the Board requested public comment on a proposal that would add discount securities brokerage and security credit lending to the list of nonbanking activities in Regulation Y that are generally permissible for bank holding companies (48 FR 7746, February 24, 1983). This action was recommended by several persons who commented on the application by BankAmerica Corporation to acquire the Charles Schwab Corporation, which was subsequently approved by the Board in January 1983. Adoption of this proposal would not have a significant economic impact on any bank holding company and would expand the list of activities, which upon application, could be conducted by bank holding companies and bank service corporations.

The Board will review the comments and is expected to take further action within the next six months.

Authority: Bank Holding Company Act, 12 U.S.C. 1844(b).

Docket Number: R–0455.

Staff Contacts: Richard Whiting, Senior Attorney, (202–452–3779); and Richard Ashton, Assistant General Counsel, (202–452–3750), Legal Division.

13. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action Taken: In February 1983, the Board published for comment proposed amendments to Regulation Z to implement amendments made to the Regulation in the Garn-St Germain Depository Institutions Act (48 FR 4669, February 2, 1983). The proposal would amend 12 CFR Part 226 to delete from coverage "arrangers of credit" and to exempt certain student loans. For purposes of the administrative enforcement, the proposal would also amend two footnotes relating to disclosure errors resulting from the use of faulty calculation tools.

The proposals would not have a significant impact on small institutions. Since the proposed amendments ease the application of the regulation on all institutions and offer some protection to those institutions, their effect is expected to be beneficial rather than adverse, and small institutions would share the benefits with larger organizations.

The Board will review the comments and is expected to take final action within the next six months.

Authority: The Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

Docket Number: R–0450.

Staff Contact: Claudia J. Yarus, Staff Attorney, Division of Consumer and Community Affairs, (202–452–3667).

B. Regulatory Matters the Board May Consider During the Next Six Months

****1. Regulatory Improvement Project**

Anticipated Action: The Board's Regulatory Improvement Project involves, among other things, a substantive, zero-based review of all Federal Reserve regulations that affect the public to determine (1) the fundamental objectives of the regulation and the extent to which it is meeting current policy goals, (2) nonregulatory alternatives that would accomplish the objectives, (3) costs and benefits of the regulation, (4) unnecessary burdens imposed by the regulation, and (5) the clarity of the regulation.

During the next six months, the staff should complete its review of Regulation Y (Bank Holding Companies and Change in Bank Bank Control), and public comment on proposed changes is expected to be sought during this period. These proposals are being designed to reduce regulatory burdens, and none is expected to have a significant adverse economic impact on any bank holding company. In addition, the Project will be continuing to develop simplified revisions of the "margin credit" regulations: Regulation G (Securities Credit by Persons Other Than Banks, Brokers, or Dealers), Regulation T (Credit by Brokers and Dealers), Regulation U (Credit by Banks for the Purposes of Purchasing or Carrying Margin Stocks), and Regulation X (Rules Governing Borrowers Who Obtain Securities Credit). As a first step, substantive amendments of these regulations were made in January 1982 to afford immediate regulatory relief. As the next stage in the process, a simplified version of Regulation T was proposed for public comment in March 1982 (see Entry A.11) and simplified revisions of Regulations G and U were proposed in February 1983 (see Entry A.6). The Project will also participate in other regulatory actions listed in this agenda to ensure that the objectives of the Project are met.

Authority: Financial Regulation Simplification Act of 1980, 12 U.S.C. 3501.

Staff Contact: Barbara R. Lowrey, Associate Secretary, Office of the Secretary, (202–452–3742).

****2. Regulation K—International Banking Operations (12 CFR Part 211)**

Anticipated Action: The Board will consider publishing for comment a revised proposal that would permit Edge Corporations to provide a broader range of banking services than is now permissible to a limited class of customers. While Edge Corporations are in most instances owned by major banks, the proposal would also afford scope for smaller banks to compete more effectively in development and supply of services to support U.S. trade. Pursuant to the International Banking Act, a similar proposal was published for comment in February 1979 to improve the competitive position of Edge Corporations (44 FR 10509, February 21, 1979). If the Board determines to reconsider the proposal, it will be taken up in connection with the revision of regulation K in early 1984.

Action on this matter would represent a relaxation of regulatory burden on Edge Corporations and would permit a shift to a more cost-effective method of supervision of Edge Corporations.

Authority: International Banking Act of 1978, 12 U.S.C. 3101; Federal Reserve Act, 12 U.S.C. 601 and 605.

Staff Contacts: Nancy P. Jacklin, Assistant General Counsel, (202–452–3582); and Kathleen O'Day, Senior Attorney, (202–452–3786), Legal Division.

3. Regulation O—Loans to Executive Officers, Directors and Principal Shareholders of Member Banks (12 CFR Part 215)

Anticipated Action: The Garn-St Germain Depository Institutions Act, Pub. L. 97–320, (Garn Bill) amended sections 22(g) and 22(h) of the Federal Reserve Act to eliminate the specific dollar limitations applicable to loans by member banks to their insiders. The Garn Bill granted the Board the authority to establish limits on certain loans by state member banks to their

executive officers and to establish the amount above which loans by state member banks to their insiders must be approved in advance by the bank's board of directors.

In October 1982, the Board reaffirmed, on a temporary basis, the previous limits applicable to such loans (47 FR 49347, November 1, 1982). The Board will consider publishing for comment during the next six months an amendment to Regulation O that changes the limits. The maximum loan that could be made to an executive officer would be based on a fixed percentage of the capital of the member bank subject to a maximum dollar amount. Similarly, the maximum loan that could be made to an insider without the prior approval of the state member bank's board of directors would also be based on a fixed percentage of the bank's capital subject to a maximum dollar amount.

This action is not likely to have any significant economic impact on a substantial number of small entities.

Authority: 12 U.S.C. 375a, 375b.

Staff Contact: Jennifer Johnson, Senior Counsel, Legal Division, (202–452–3584).

**4. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Anticipated Action: The Board will consider issuing for public comment a proposal to amend Regulation Y with respect to the kinds of insurance activities that are generally permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act. This action would be taken to conform the regulation to Title VI of the Garn-St Germain Depository Institutions Act, which was adopted in October, 1982. That statute essentially prohibits bank holding companies from engaging in any insurance agency or underwriting activities, unless the activities fall within one of the specific exceptions in the new law as determined by the Board.

Adoption of the proposal would impose no additional burden on any bank holding company.

Authority: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

Staff Contact: Richard Whiting, Senior Attorney, Legal Division, (202–452–3779).

5. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Anticipated Action: The Board will consider issuing for public comment a proposal to amend Regulation Y by adding authority for member banks to invest individually or jointly in bank service corporations under the recent amendment to the Bank Service Corporation Act made by section 709 of the Garn-St Germain Depository Institutions Act of 1982.

Under the new law, banks may invest without any prior regulatory approval in corporations offering "back office" clerical service to other depository institutions. In addition, if they obtain the prior approval of the Board, member banks may invest in corporations that offer to any person services that the bank may offer under state or federal law or services that have been found by regulation to be permissible under section 4(c)(8) of the Bank Holding Company Act.

Adoption of regulations to implement the change would enable all banks, large and small, to engage in certain activities that previously were not available to them. It is not expected that adoption of this proposal would have a significant economic impact on a substantial number of small banks.

Authority: Bank Service Corporation Act, 12 U.S.C. 1861.

Staff Contact: Richard Whiting, Senior Attorney, Legal Division, (202–452–3779).

**6. Regulation: AA—Unfair or Deceptive Acts and Practices (12 CFR Part 227)

Anticipated Action: The Board is required by the Federal Trade Commission Act to adopt a rule applicable to banks that is substantially similar to a trade regulation rule adopted by the FTC prohibiting certain acts or practices of other creditors as unfair or deceptive, unless the Board finds that such acts or practices of banks are not unfair or deceptive or that implementation of a similar rule with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

In response to a proposed FTC rule (governing the preservation of consumers' claims and defenses), in 1976 the Board published a comparable proposal for comment (41 FR 7110). The proposal would require the insertion in certain credit contracts of a notice preserving a consumer's claim and defenses against a seller of goods or services so that they can be raised against any holder of the contract. The FTC published a revised version of its creditor rule for comment in November 1979. When a final FTC rule is adopted, the Board will consider appropriate regulatory action.

Authority: Section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 41 *et. seq.*

Docket Number: R–0006.

Staff Contact: Lucy H. Griffin, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

C. Regulatory Matters From the October 1, 1982, Through April 1, 1983, Semiannual Agenda on Which Final Action has Been Taken

1. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)

Action Taken: In October 1982 following review of public comments, the Board adopted two interpretations concerning how the specific rules of Regulation B should apply to various credit scoring practices (47 FR 46074, October 15, 1982). The first deals with consideration of income and the second with the selection and disclosure of reasons for adverse action. The interpretations primarily affect larger creditors that use credit scoring systems. (Very few small businesses use credit scoring systems.) The economic impact of either interpretation is unlikely to be significant.

Authority: Section 703(a) of the Equal Credit Opportunity Act, 15 U.S.C. 1691b(a).

Docket Number: R–0203.

Staff Contact: Lucy H. Griffin, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

†2. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)

Action Taken: In October 1982, the Board withdrew proposed amendments to Regulation B (47 FR 46108, October 15, 1982). The proposals would have affected creditors that extend credit to small businesses by applying recordkeeping and adverse action notification requirements to business loans of under $100,000. Inquires as to marital status of applicants would have been prohibited in all business credit applications. The Board withdrew the proposals after determining, based on a review of the comments, that the amendments would not substantially further the purposes of the act.

The proposed amendments, if adopted, would have imposed on commercial lending institutions additional notice and recordkeeping requirements for business loans of less than $100,000. These requirements would have adversely affected the large number of small lenders that make business loans of such limited size.

Authority: Equal Credit Opportunity Act, 15 U.S.C. 1691b.

Docket Number: R–0185.

Staff Contact: Claudia J. Yarus, Staff Attorney, Division of Consumer and Community Affairs, (202–452–3667).

3. Regulation: C—Home Mortgage Disclosure (12 CFR Part 203)

Action Taken: In October 1982, following review of public comments,

the Board approved the applications of Connecticut, Massachusetts, New Jersey, and New York for continued exemption from the Home Mortgage Disclosure Act (HMDA) and Regulation C (47 FR 49954, November 4, 1982). The Board also formally terminated California's prior exemption.

State exemptions from federal law that are granted by the Board result in fewer burdens on depository institutions subject to HMDA and located in those states (without significant loss of consumer protection) because duplicative requirements are eliminated.

Authority: Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et. seq.*

Docket Numbers: R-0406 and R-0434.

Staff Contact: John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, (202-452-2412).

4. Regulation: D—Reserve Requirements of Depository Institutions (12 CFR Part 204)

Action Taken: In August 1980, the Board stated that it was disposed toward returning to contemporaneous reserve accounting if investigation indicated that such a system was practical. In November 1981, the Board solicited additional public comments on a proposal to adopt contemporaneous reserve accounting (46 FR 58184, November 30, 1981). The proposal would change the reserve maintenance schedule of depository institutions to coincide with reserve computation periods as a means of improving the System's ability to meet its monetary policy objectives. Such a proposal would affect the reserve management practices of all depository institutions with $15 million or more in total deposits.

Following review of public comments, the Board in September 1982 adopted the proposal (47 FR 44705, October 12, 1982). The amendment is not expected to have an adverse economic impact on small depository institutions.

Authority: 12 U.S.C. 461 *et. seq.*

Docket Number: R-0371.

Staff Contacts: David Lindsey, Assistant Director, Division of Research and Statistics, (202-452-2601); and Gilbert T. Schwartz, Associate General Counsel, Legal Division, (202-452-3625).

5. Regulation: E—Electronic Fund Transfers (12 CFR Part 205)

Action Taken: In October 1982 following review of public comments, the Board adopted four amendments to regulation E that provide (1) an exemption for small institutions for all preauthorized transfers to or from a depositor's account; (2) an exemption from the provision that requires a periodic statement for each account when there is an intrainstitutional transfer between accounts of the same consumer; (3) modifications to the requirements for documentation and error resolution procedures for transfers initiated outside of the United States; and (4) an exemption from the provision that requires a terminal receipt to disclose the type of account involved in an automated teller machine transaction, even if only a single account can be accessed (47 FR 44708, October 12, 1982).

The action taken will relieve creditor burdens in complying with the regulation; particularly for small institutions, while not significantly reducing consumer protection.

Authority: Electronic Fund Transfer Act, 15 U.S.C. 1693b.

Docket Number: R-0388.

Staff Contacts: John C. Wood, Senior Attorney; and Jesse Filkins, Senior Attorney, Division of Consumer and Community Affairs, (202-452-2412).

6. Regulation T—Credit by Brokers and Dealers (12 CFR Part 220)

Action Taken: In September 1982, the Board issued for public comment a proposed amendment to regulation T that would permit private mortgage pass-through securities meeting specified criteria to be used as collateral for margin credit at securities brokers and dealers (47 FR 43070, September 30, 1982).

Following review of the public comments, the Board adopted the amendment (47 FR 55912, December 14, 1982), to be effective on January 17, 1983. Private mortgage pass-through securities may now be given "good faith" margin treatment if they meet the following three criteria: (1) An original issue of $25,000,000 (rather than an outstanding principal amount at the time credit is extended) that may be sold in separate series, (2) current filings with the Securities and Exchange Commission, and (3) the passing through of mortgage interest and principal payments by the servicing agent according to the terms of the offering.

It is not expected that this rule will have a significant economic impact on a substantial number of small entities.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

Docket Number: R-0423.

Staff Contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation (202-452-2781); or David Seiders, Senior Economist, Division of Research and Statistics (202-452-2894).

7. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action Taken: In February 1983, following review of public comments, the Board made final preemption determinations concerning certain provisions of Arizona, Florida and Missouri law. A request for a determination regarding South Carolina law was subsequently withdrawn because the state law provisions in question had been revised (48 FR 4454, February 1, 1983).

Determinations that state laws are inconsistent and thus preempted by federal laws result in fewer burdens on creditors in those states (without significant loss of consumer protection) because in each case duplicative requirements are eliminated.

Authority: The Truth in Lending Act, 15 U.S.C. 1601 *et. seq.*

Docket Number: R-0395.

Staff Contacts: Rugenia Silver, Staff Attorney (202-452-2412); and Gerald Hurst, Staff Attorney (202-452-3867), Division of Consumer and Community Affairs.

†8. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action Taken: In July 1982, the Board proposed for public comment two alternative methods for the treatment of seller's points and reduced rate financing under revised Regulation Z (47 FR 32433, July 27, 1982). One alternative would remove the current exclusion for seller's points from the finance charge disclosed under Truth in Lending. The other alternative would require that a disclosure be given to advise the consumer that the seller has paid money to obtain the financing and that, if the cost is passed on in the form of a higher sales price or other charge, the annual percentage rate and the other disclosures understate the cost of credit.

In September 1982, the Board withdrew its proposal, thus leaving in place Regulation Z's exclusion of seller's points from the finance charge (47 FR 44741, October 12, 1982). The Board took this action primarily as a result of comments received on the proposal, particularly the uncertainty concerning the extent to which seller's points are passed on to consumers and the consumer benefit of the proposals. The Board was also concerned about the cost and disruption that could result from adoption of the proposals.

Authority: Truth in Lending Act, 15 U.S.C. 1601 *et. seq.*

Docket Number: R-0413.

Staff Contacts: Clarence B. Cain, Staff Attorney; and Gerald P. Hurst, Staff

Attorney, Division of Consumer and Community Affairs (202–452–2412).

Board of Governors of the Federal Reserve System, March 24, 1983.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 83–7947 Filed 3–31–83; 8:45 am]

BILLING CODE 6210–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 601

EMPLOYEE RESPONSIBILITIES AND CONDUCT

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is publishing a proposed rule which determines that certain financial interests of members of the Federal Farm Credit Board are too remote or too inconsequential to affect the integrity of the exercise of certain statutory duties and responsibilities by Federal Board members and that such interests are therefore exempt from the requirements of Title 18, United States Code, 208(a).

DATE: Written comments must be received on or before May 31, 1983.

ADDRESSES: Comments or suggestions should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578. Copies of all correspondence received will be available for inspection by interested persons in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578 (202–755–2181).

SUPPLEMENTARY INFORMATION:

Background

The thirteen members of the Federal Farm Credit Board ("Federal Board") are considered special Government employees for purposes of certain provisions in Title 18, United States Code, governing the conduct of Federal employees. Generally, a Federal employee, including a special Government employee, is prohibited from engaging in activities or participating in decisionmaking processes in which the employee has a conflict of interest. Title 18, United States Code, 208, specifically prohibits a special Government employee from participating personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee or partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

The statute provides two exceptions from this general prohibition. An employee can make a full disclosure of the financial interest and receive a determination that the interest is not so substantial as to be deemed likely to affect the integrity and services which the Government may expect from the employee. Secondly, the statute authorizes the promulgation of a regulation which declares that certain financial interests are too remote or too inconsequential to affect the integrity of the employee's service, and therefore do not involve prohibited conflicts of interest.

Explanation

The proposed regulation describes the procedure by which twelve Federal Board members are nominated by Farm Credit System ("System") institutions and appointed by the President, and by which one is designated by the Secretary of Agriculture, and explains that by reason of this procedure, Federal Board members usually have a financial interest in the nature of stock ownership, loans, or otherwise, in one or more System institutions. The proposed regulation explains that the Federal Board's statutory responsibilities are the establishment of general policy for the guidance of the Farm Credit Administation, approval of necessary rules and regulations for the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 U.S.C. *et seq.*) ("1971 Act"), and the supervision and direction of the performance of the powers and duties of the Farm Credit Administration and the Governor which relate to matters of a broad and general supervisory, advisory, or policy nature. The Federal Board is specifically prohibited from operating in an administrative capacity. The proposed regulation states that Federal Board members, in the performance of their functions, are required to act on matters which may have an indirect and remote effect on their financial interests in System institutions but that such actions will not be deemed to involve prohibited conflicts of interest when they involve no preference or advantage for that Federal Board member over other persons similarly situated. The proposed regulation specifically provides that the exemption does not apply to a Board member's participation in the consideration of any action which is directed at or specifically applicable to any System institution (or institution which supervises such institution) in which the Federal Board member or a member's spouse, minor child, partner, or organization in which the member is serving as an officer, director, trustee, partner or employee holds a financial interest, or in which a financial interest is held by any person or organization with whom the Federal Board member is negotiating or has an arrangement concerning prospective employment.

List of Subjects in 12 CFR Part 601

Agriculture, Banks, Banking, Conflict of interest, Ethics in government.

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

For the reasons set out in the preamble, part 601 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as shown.

1. By adding § 601.190 *Federal Farm Credit Board-Waiver* to the table of sections for Part 601.

2. By adding a new § 601.190 to read as follows:

§ 601.190 Federal Farm Credit Board-Waiver.

Pursuant to Title V of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2221 *et seq.* ("1971 Act"), twelve members of the Federal Farm Credit Board ("Federal Board") are appointed by the President taking into consideration nominations made by the Farm Credit System ("System") institutions and the thirteenth member is designated by the Secretary of Agriculture. The individuals nominated by System institutions and/or appointed by the President or the member designated by the Secretary of Agriculture usually have a financial interest in the nature of stock ownership, loans, or otherwise in one or more System institutions. The Federal Board's responsibilities include such matters as establishing the general policy for the guidance of the Farm Credit Administration, approving necessary rules and regulations for the implementation of the 1971 Act and supervising and directing the

performance of the powers and duties of the Farm Credit Administration and the Governor which relate to matters of a broad and general supervisory, advisory, or policy nature. The Federal Board is specifically prohibited under the 1971 Act from operating in an administrative capacity. In the performance of the Federal Board's statutory functions, Federal Board members are required to act on matters which may have an indirect and remote effect on their financial interests in System institutions. For purposes of Federal Board consideration of matters of a general or policy nature which may have some affect on the interest of a Federal Board member over other persons similarly situated, pursuant to 18 U.S.C. 208(b)(2), such interests are deemed too remote or inconsequential to affect the integrity of a Federal Board member's service. Therefore, action by a Federal Board member on such matters will not be deemed to violate 18 U.S.C. 208(a). This waiver shall not extend to a Federal Board member's participation in the consideration of any action by the Farm Credit Administration which is directed at or specifically applicable to any System institution (or institution which supervises such institution) in which a financial interest is held by (a) a Federal Board member, (b) the member's spouse, minor children, partner, or organization in which the Federal Board member is serving as an officer, director, trustee, partner or employee, or (c) any person or organization with whom the Federal Board member is negotiating or has an arrangement concerning prospective employment.

(Sec. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 83-8534 Filed 3-31-83; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Tariff Classification of Bulk Liquid Chocolate; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Correction.

SUMMARY: This document corrects an error in a document relating to a proposed change of position and solicitation of comments with respect to the tariff classification of bulk liquid chocolate. The document was published in the **Federal Register** on Tuesday, March 22, 1983 (47 FR 11956).

FOR FURTHER INFORMATION CONTACT: Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service (202-566-8237)

The following correction is made to the document:

On page 11957, left hand column, second paragraph, next to last line, the word "sold" is corrected to read "solid".

Dated: March 28, 1983.

Bernard James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 83-8562 Filed 3-31-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 201, 501, 701, and 801

[Docket No. 75N-0204]

Area of Principal Display Panel; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposed rule that would have revised existing regulations to redefine the area of the principal display panel to ensure that the quantity of contents declaration would be in a type size more uniform for all packages of substantially the same size. This action is being taken because FDA concluded that the potential costs of the proposal could have outweighed its potential benefits.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 19, 1976 (41 FR 7514), FDA published a proposal to redefine the area of the principal display panel for human and animal foods, cosmetics, and over-the-counter (OTC) drugs and devices to ensure that the declarations of quantity of contents on packages of substantially the same size would be in a more uniform type size. Under existing FDA regulations, this area depends on whether the shape of the package containing the consumer commodity is rectangular, cylindrical or nearly cylindrical, or otherwise shaped. For rectangular packages, the area of the principal display panel is the product of the height times the width of the surface bearing the principal display panel. For cylindrical or nearly cylindrical packages, this area is 40 percent of the product of the height of the container times the circumference. For otherwise shaped packages, this area is 40 percent of the total surface of the container. Because of the voluntary effort of labelers, these definitions have, in the majority of cases, resulted in quantity of contents declarations of uniform type size for packages of substantially the same size. However, in a few situations the definitions have permitted packages of substantially the same size to bear declarations of differing type size. For example, when the principal display panel of a rectangular package is placed on one of the smaller package surfaces, type size is based on the area of that smaller surface. As a result, two rectangular packages of identical size and shape can have different type size requirements depending on the location of the principal display panel.

To alleviate these problems, FDA proposed to revise the labeling requirement so that, for rectangular packages, the area of the principal display panel would have been the product of the height times the width of the largest package surface. For cylindrical or nearly cylindrical packages, the area of the principal display panel would have been the larger of (1) 40 percent of the product of the height of the container times the circumference or (2) the area of the lid. For otherwise shaped packages, the area of the principal display panel would have been the larger of (1) 40 percent the total surface area or (2) the area of the lid. Although the principal display panel would generally appear on the larger package surface, the area of the principal display panel and the type size for the declaration of the quantity of contents would have been determined without regard to whether the principal display panel was actually present on the larger surface. Sixteen comments were received in response to the proposed rule: 12 from manufacturers, 2 from trade associations, 1 from a retailer, and 1 from a Federal government agency. Almost all of the comments either disapproved of the proposal or suggested revisions.

Several comments contended that the proposed definitions for the area of the principal display panel could not be practicably substituted for existing definitions for this area. Some comments pointed out that for the "quarter flat" salmon can, the proposal would require a ⅛-inch type size for the quantity of

contents statement and a ⅛-inch separation from other printed matter; consequently, 25 percent of the total label height would be devoted to the net contents. These comments believed such a requirement would be structurally unfeasible and destroy the balance and appearance of the labels involved. These comments also stressed that salmon can lids are seldom, if ever, labeled. Other comments held that principal display panels could not be properly designed if the largest panel on a package governs the type size of a smaller panel that is intended to be used as the "shelf face" panel. A few comments stated that principal display panels for OTC drugs should place primary emphasis on identity, strength, and precautionary information and objected to the fact that some types of packages would be forced to bear principal display panels where the quantity of contents declaration would be larger than this more important information. Other comments pointed out that existing FDA and Federal Trade Commission (FTC) definitions for the area of the principal display panel are consistent with each other and maintained that this consistency should not be eliminated. Further, some comments averred that the proposed definitions would impose severe economic impact on the affected industry. It was pointed out that even the simplest label change could involve significant art work expense and that any expense would be magnified many times by the multitude of different types of labels used by many firms. Also, some comments maintained that many firms keep large label inventories that would probably not be expended before the effective date of the proposed revisions; consequently, additional economic burden would be imposed from destruction of such inventories.

FDA is persuaded by the comments that, in a number of cases, the proposed definitions for the area of the principal display panel could not be practicably substituted for existing definitions for this area. FDA also agrees that FDA and FTC regulations are reasonably consistent with each other and that, wherever practicable, this consistency should be continued. Further, the agency is persuaded that there could be significant economic impact in some situations if the proposed rule were implemented. Finally, in view of the lack of consumer interest in the proposed rule and the lack of evidence of consumer confusion over type size uniformity in declarations of quantity of contents that are in accordance with existing regulations, FDA finds no significant consumer benefit that would be gained from implementation of the proposed rule. Therefore, FDA is withdrawing the proposed revisions of 21 CFR 1.7 (subsequently recodified as 21 CFR 101.1 and 501.1), 21 CFR 201.60 (subsequently recodified as 21 CFR 201.60 and 801.60), and 21 CFR 701.10 published in the **Federal Register** of February 19, 1976 (41 FR 7514), and is terminating the rulemaking proceedings initiated by that proposal.

The agency is not addressing the individual comments on the proposed rule because of its decision to terminate the proceedings in this matter. However, FDA believes it should clarify a number of issues raised by the comments concerning the existing definitions. Many of the comments appeared confused over type size requirements for alternate principal display panels. Current regulations specify that where packages bear alternate principal display panels, information required to be placed on it shall be duplicated on each principal display panel. The agency's policy has consistently been that, on any given package, the required type size for the quantity of contents declaration shall be the same size on all principal display panels and that this type size is determined by the largest principal display panel. However, a smaller panel that is not a principal display panel is not required to bear a quantity of contents declaration, or if it does, the type size of such declaration is not specified by the regulations.

Some comments requested clarification concerning appropriate portions of bottles or jars that should be excluded from determinations of the area of principal display panel. One of these comments pointed out that although FDA, in the past, has excluded the rounded heel at the bottoms of jars in determining the area of the principal display panel, this exclusion was not written into the proposed regulations.

Current FDA regulations state that tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars should be excluded from determinations of the area of the principal display panel. Further, the agency advises that the rounded heel at the bottoms of jars also should be excluded from the determinations. However, FDA advises that whenever the shoulders or necks of cans or bottles bear a label panel, these surfaces obviously are capable of being labeled. Consequently, they are not entitled to exclusion from total surface area calculations and the "total surface area" therefore includes this area for purposes of determining the area of the principal display panel.

List of Subjects

21 CFR Part 101

Food labeling; Misbranding; Nutrition labeling; Warning statements.

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers.

21 CFR Part 701

Cosmetic ingredient labeling, Cosmetic labeling, Designation of Ingredients, Misbranding.

21 CFR Part 801

Labeling, Medical devices, Over-the-counter devices, Prescription devices, Requirements for specific devices.

Therefore, under the Fair Packaging and Labeling Act (secs. 4, 6, 80 Stat. 1297, 1299 (15 U.S.C. 1453, 1455)) and the Federal Food, Drug, and Comestic Act (sec. 701(e), 70 Stat. 919 (21 U.S.C 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) the agency withdraws the proposal published in the **Federal Register** of February 19, 1976 (41 FR 7514) and terminates the rulemaking proceeding initiated by that proposal.

Dated: March 23, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR. Doc. 83-8296 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 148

[Docket No. 82N-0261]

Quick Frozen Peaches; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for quick frozen peaches based on the Recommended International Standard for Quick Frozen Peaches (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for this food.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200

C St. SW., Washington, D.C. 202–245–1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1882 (47 FR 38909), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

One comment was received in response to the advance notice of proposed rulemaking.

The Whey Products Institute, 130 N. Franklin St., Chicago, IL 60606, advanced no position on whether a U.S. standard for quick frozen peaches is necessary, but, instead noted that adopting the listing of specific optional sweeteners specified in the Codex standard, which excludes lactose, would be inconsistent with most U.S. canned fruit identity standards that permit the use of any safe and suitable nutritive carbohydrate sweetener.

FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for quick frozen peaches under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for quick frozen peaches based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for quick frozen peaches upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8299 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 148

[Docket No. 82N-0262]

Quick Frozen Raspberries; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for quick frozen raspberries based on the Recommended International Standard for Quick Frozen Raspberries (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for this food.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1982 (47 FR 38912), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

One comment was received in response to the advance notice of proposed rulemaking.

The Whey Products Institute, 130 N. Franklin St., Chicago, IL 60606, advanced no position on whether a U.S. standard for quick frozen raspberries is necessary, but, instead noted that adopting the listing of specific optional sweeteners specified in the Codex standard, which excludes lactose, would be inconsistent with most U.S. canned fruit identity standards that permit the use of any safe and suitable nutritive carbohydrate sweetener.

FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for quick frozen raspberries under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for quick frozen raspberries based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for quick frozen raspberries upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8297 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 158

[Docket No. 82N-0260]

Quick Frozen Spinach; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for quick frozen spinach based on the Recommended International Standard for Quick Frozen Spinach (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U. S. standard for this food.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1982 (47 FR 38915), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organizaation/World Health Organization Codex Alimentarius Commission.

No comments were received in response to the advance notice of proposed rulemaking.

FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for quick frozen spinach under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 341].

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for quick frozen spinach based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for quick frozen spinach upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8295 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 211

[Docket No. 79P-0265]

Current Good Manufacturing Practice in Manufacture Processing, Packing, or Holding; Proposed Exemption From Active Ingredient Identity and Strength Testing for Homeopathic Drug Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to exempt homeopathic drug products from the requirement for laboratory testing for identity and strength of each active ingredient in finished drug products before they are released for distribution. This action is primarily based upon information, submitted in a citizen petition, that compliance with this requirement is impractical and unnecessary for homeopathic drug products, which differ substantially from other classes of pharmaceutical drug products.

DATE: Comments by May 31, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clifford G. Broker (HFN-323), 301-443-5307, or Robert J. Meyer (HFN-7), 301-443-5220, National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 1978 (43 FR 45014), FDA published final CGMP regulations for human and veterinary drug products. Most of the requirements under these final regulations became effective on March 28, 1979.

On July 12, 1979, the American Association of Homeopathic Pharmacists, 6231 Leesburg Pike, Falls Church, VA 22044, submitted to FDA a citizen petition under 21 CFR 10.30 to amend the CGMP regulations by exempting homeopathic drug products from compliance with certain requirements of § 211.165(a) (21 CFR 211.165(a)). That section requires laboratory testing of finished drug products to determine their conformance with established specifications, including identity and strength of each active ingredient, before they are released for distribution. A copy of the petition is on file under Docket No. 79P-0265/CP in the Dockets Management Branch (address above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

The petitioner requested that homeopathic drug products be exempted from the requirement of § 211.165(a) for active ingredient identity and strength testing. The request was based upon (1) the impracticality of requiring active ingredient testing for finished homeopathic drug products commonly used in homeopathic medical practice in which the active ingredients have been highly diluted, (2) the deviation from some testing requirements that the regulation permits for other drug products, i.e., short-lived radiopharmaceuticals for which tests for sterility and pyrogens may be completed after batches are released for distribution, and (3) the singularly adverse economic impact that the testing requirement would have on a unique segment of the pharmaceutical industry.

The petitioner has stated that it is impractical to test homeopathic drug products for the identity and strength of their active ingredients because the amounts of these active ingredients are too minute to be detected by ordinary methods and instruments. The petitioner explained that the strength of articles recognized in the Homeopathic Pharmacopoeia of the United States is based upon a decimal system of attenuation (dilution) and notation whereby the strength of the original drug substance is progressively divided by a factor of 10. Thus, the first decimal (1X) contains $\frac{1}{10}$ of the original drug substance in a suitable diluent, the second decimal (2X) contains $\frac{1}{100}$ of the original drug substance, the third decimal (3X) contains $\frac{1}{1000}$ of the original drug substance, and so on. The petitioner stated that most homeopathic drug products are compounded at attenuations of 3X or greater, with most over-the-counter products having attenuations between 3X and 12X. Considering that original drug substances contain only minute quantities of active ingredients, the detection and assay of these ingredients are technically difficult and not reasonably accurate. The petitioner stated that for some products at the 6X attenuation, the active ingredients could comprise only one-trillionth of the original drug substance. The petitioner points out that the absence of a requirement for testing active ingredients in finished homeopathic drug products in an official compendium, "The Homeopathic Pharmacopoeia of the United States," is further evidence of the impracticality of requiring such testing.

The petitioner acknowledged that testing finished homeopathic drug products for the strength and identity of their active ingredients is possible with sophisticated equipment, but estimated that the purchase price and operating costs of such equipment would be over $1 million for each homeopathic drug manufacturer. The petitioner claims that because the entire homeopathic drug industry has total sales in the United States of only $2 million (presumably annual sales), expenditures for this equipment would be prohibitive and would drive homeopathic drug manufacturers out of business.

The petitioner also argued that active ingredient testing in finished homeopathic drug products is unnecessary because the simplicity of the manufacturing methods and the quality controls exercised during their manufacture are sufficient to assure the quality of these drug products. Therefore, according to the petitioner, exempting homeopathic drug products from the final testing requirement would not create a substantial possibility of error in the identity or strength of an active ingredient.

Under § 211.165(a), short-lived radiopharmaceuticals may be released

for distribution before sterility and pyrogen testing are completed because the agency recognizes that it may not be possible to obtain test results before the active ingredients degrade below a useful level. The petitioner cited this exemption as an example of the agency's flexibility in applying testing requirements and seeks the exercise of similar flexibility in the application of § 211.165(a) to homeopathic drug products.

FDA has weighed all of the petitioner's contentions, and believes that most of the arguments are well-founded and that the petition should be granted. As explained in detail below, the agency's position is based primarily on the following three factors: First, the agency believes that granting the petition is entirely consistent with the agency's prior recognition of homeopathic drug products as unique entities. Second, the agency is convinced that the benefits to be gained by enforcing the requirement are far outweighed by the potential increase in costs to the industry of conducting the active ingredient tests. Third, the agency believes that the quality controls required by the other portions of the CGMP regulations and the requirements of "The Homeopathic Pharmacopoeia of the United States" are sufficient to ensure the quality of homeopathic drug products.

In the preamble to the final CGMP regulations, (comment 357, in the **Federal Register** of September 29, 1978; 43 FR 45058), FDA formally acknowledged the uniqueness of homeopathic drug products. Accordingly, they were exempted from expiration dating and from complete stability testing due to the imprecise nature of measuring extremely low levels of active ingredients in homeopathic drug substances and because such criteria as potency, absorption, bioavailability, and other measures of effectiveness do not appear to apply to homeopathic drug products. Identical arguments have been presented by the petitioner to support its request. The agency accepts the petitioner's contention that the fundamental justifications for exempting homeopathic drug products from expiration dating and complete stability testing also justifies exempting finished homeopathic drug products from active ingredient testing for identity and strength. Therefore, the agency believes that it would be inconsistent with this position to deny the petitioner's request.

The second basis for granting the petition is that, in the view of the agency, the costs of retaining the requirement for this class of drugs far outweigh the potential benefits. Considering the extremely low level of active ingredients in homeopathic drug products, it is reasonable to assume that highly sophisticated and expensive testing equipment would, in fact, be necessary to conduct active ingredient testing for identity and strength. The agency does not agree, however, with the petitioner's contention that the costs of having these tests conducted would necessarily be prohibitive. The agency believes that these tests could be conducted by contract laboratories or by the use of pooled resources in the industry. Thus, each manufacturer would not be required individually to bear the expenditure of obtaining the equipment and support personnel necessary to conduct the tests. Nonetheless, the agency believes that the benefits of retaining the requirement for these tests does not justify the potential increase in manufacturing cost, particularly when conventional concepts of drug potency cannot be strictly applied to homeopathic drug products. Therefore, because the application of conventional end-product testing standards to homeopathic drug products is of questionable value and would not provide any added assurance of drug quality to the user, the agency tentatively has concluded that the cost of testing homeopathic drug products for identity and strength of their active ingredients is not warranted.

The third basis for granting this petition is the agency's belief that assurance of the quality of this class of drug products can be achieved by applying other controls and standards. Although the agency is cognizant of the homeopathic concept of potency, it is still important for manufacturers of homeopathic drug products to establish with a reasonable degree of certainty that finished products contain the drug substances claimed in the labeling, and at the claimed degree of attenuation. Nonetheless, the agency believes that this objective can be attained for these drug products by adherence to the other requirements of the CGMP regulations and to the quality and production standards of "The Homeopathic Pharmacopoeia of the United States." Accordingly, the agency tentatively has concluded that exempting homeopathic drug products from the required testing for identify and strength of their active ingredients will not diminish the overall quality of these drug products.

Therefore, for the reasons set forth above, FDA is proposing to amend the CGMP regulations by exempting homeopathic drug products from the requirement for testing the active ingredients in final drug products for identity and strength before release for distribution. Homeopathic drug products would continue to be required to meet other final specifications as may be appropriate for the drug product, e.g., clarity, color, and pH, before release.

The agency has determined that because of the nature of the proposed change, it is in the public interest to allow manufacturers to follow the provisions of this proposal pending completion of the rulemaking proceeding. Therefore, homeopathic drug products, on the publication date of this proposal, will no longer be required to comply with the requirement for laboratory determination of identity and strength of each active ingredient in the drug product before release. Pending the receipt of comments on this proposal, and the agency's final decision on this matter, this interim enforcement policy will remain in effect. If the agency determines not to adopt this proposal as a final rule, it will so announce in further rulemaking notices that are published in the **Federal Register.**

The agency has determined pursuant to 21 CFR 25.24(d)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has considered the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291 or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The agency concludes that exempting homeopathic drug products from the required testing for identity and strength will relieve a regulatory burden on the industry and eliminate the cost associated with the requirement for the manufacturers of these drugs. Therefore, the agency concludes that the proposed rule is not a "major" rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 211

Drugs, manufacturing, Labeling, Laboratories, Packaging and containers, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502,

505, 512, 701, 52 Stat. 1049–1051 as amended, 1055–1056 as amended, 82 Stat. 343–351 (21 U.S.C. 351, 352, 355, 360b, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 211 be amended in § 211.165(a) by adding a new sentence immediately after the first sentence, to read as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

§ 211.165 Testing and release for distribution.

(a) * * * For homeopathic drug products, the laboratory determination of identity and strength of each active ingredient is not required. * * *.

* * * * *

Interested persons may, on or before May 31, 1983, submit to the Dockets Management Branch written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 23, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-8298 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-700]

Powered Platforms for Exterior Building Maintenance; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of time for submission of written comments.

SUMMARY: This notice extends the comment period for written responses to the questions OSHA presented in the advance notice of proposed rulemaking: "Powered Platforms for Exterior Building Maintenance" (48 FR 6368, February 11, 1983).

DATES: Written responses to the February 11, 1983 notice must be submitted on or before May 16, 1983.

ADDRESS: Comments should be sent to: the Docket Officer, Docket S–700, Room S–6212, U.S. Department of Labor, Washington, D.C. 20210 (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. P. J. Cattafesta, U.S. Department of Labor—OSHA, Office of Mechanical Engineering Safety Standards, Room N–3506, Washington, D.C. (202) 523–7202.

SUPPLEMENTARY INFORMATION: On February 11, 1983, OSHA published in the **Federal Register** (48 FR 6368) an advance notice of proposed rulemaking, "Powered Platforms for Exterior Building Maintenance." In the advance notice, OSHA solicited information on whether it should revise its standard on powered platforms used for exterior building maintenance to permit use of intermittent stabilization systems, if continuous stabilization systems are not feasible. OSHA also requested written responses to many general and specific issues pertaining to powered platforms. For example, the agency is seeking comments on the need for and content of a revision to its powered platform standard; the cost effectiveness of alternative approaches to stabilizing the platform; available accident and injury data related to the platforms; the need for worker training; and the economic impact of potential changes on small business.

The written responses were to have been received by March 14, 1983. OSHA has been asked to extend the comment period to ensure that interested parties have sufficient time to compile data and prepare responses to the issues raised in the notice. OSHA believes that the information gathering process will be improved if all interested parties are granted additional time for submission of comments. Thus, OSHA has decided to extent the written comment period to May 16, 1983.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C. this March 25, 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 83-8566 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 932

Surface Mining and Reclamation Operations Under a Federal Program for North Carolina

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

ACTION: Postponement of Public Hearing; extension of public comment period.

SUMMARY: The Office of Surface Mining (OSM) is announcing the postponement of the public hearing scheduled on the proposed Federal program for the regulation of surface coal mining and reclamation in North Carolina until April 26, 1983, to allow more time for public comment.

This notice also extends the comment period during which interested persons may submit written comments on the proposed Federal program until close of business on May 6, 1983.

DATES: Comment deadline May 6, 1983. The following hearing is rescheduled. The public hearing on the proposed Federal program for the regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in North Carolina is rescheduled for April 26, 1983, to be held at the original time and place listed below under "ADDRESSES." Request to testify at this hearing should be received by April 19, 1983.

ADDRESSES: Written comments should be mailed or hand delivered to: Administrative Record Room (R&I–29), Office of Surface Mining, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902.

The public hearing on the proposed program will be held at: Holiday Inn, Highway 421, Sanford, North Carolina, at 8:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION: On March 2, 1983, the Office of Surface Mining proposed a Federal program for North Carolina (48 FR 8954) which would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. The proposed Federal

program provided for a public hearing to be held to receive comments. It further provided that if commenters requested a hearing date later than that set, OSM would consider postponing the hearing until a later time. OSM has received a request to postpone the hearing to allow more time to prepare comments. The Director of OSM has determined that the request is reasonable, and is, therefore, rescheduling the public hearing for April 26, 1983, to be held at the original time and location listed above under **"ADDRESSES."** This announcement also extends the time period during which interested persons may submit written comments on the proposed Federal program. Written comments must be received at the location listed above under **"ADDRESSES"** on or before the close of business on May 6, 1983, to be considered.

Public comments: OSM specifically solicits comments as to whether and when there may be the probability of coal mining in North Carolina. Of specific interest, is the Deer River Field in Chatham, Moore, and Lee Counties.

Dated: March 28, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection Office of Surface Mining.

[FR Doc. 83-8536 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 921

Surface Mining and Reclamation Operations Under a Federal Program for Massachusetts

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Massachusetts. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments must be received not later than 5:00 p.m. on June 17, 1983 at the address below. A public hearing will be held on June 9, 1983. Requests to testify at the hearing should be received by June 3, 1983. If commenters request a hearing date later than that set, OSM will consider postponing the hearing until a later time; any new date will be announced by a notice in the Federal Register.

ADDRESSES: Written comments must be mailed or hand-delivered to: Administrative Record Room, R&I-27, Office of Surface Mining, Pennsylvania Field Office, Executive House, Suite L-4, 101 South Second Street, Harrisburg, Pennsylvania 17101.

The public hearing on the proposed program will be held at the John F. Kennedy Federal Building, Government Center, Room 505, Boston, Massachusetts 02203 from 1 p.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW, Washington, D.C. 20240. Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed program are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Public Comment Period

The comment period on the proposed program will extend until June 17, 1983. All written comments must be received at the location above under "ADDRESSES" by close of business on that date.

All written comments received, a transcript of the public hearing, summaries of meetings held at the request of any person or organization to receive advice or recommendations concerning the proposed program with representatives of OSM, and other documents comprising the administrative record on the Federal program for Massachusetts will be made available for public review during regular business hours at the location listed above.

OSM appreciates any and all comments on the proposal, but those that would be most useful should be as specific as possible, focus on the issues of this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this proposal. Nor can OSM ensure consideration of written comments received after the comment period ends or those delivered to an address other than that specified.

Public Hearing

A public hearing on the proposed program will be held at the time and location listed above to hear all those who wish to testify. The hearing may be cancelled if, by June 3, 1983, no person has expressed interest in presenting testimony.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program.

Massachusetts has identifiable coal reserves within its borders, but has failed to submit a program to the Secretary to obtain primary regulatory responsibility. The Secretary believes that it is reasonable to expect coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands in Massachusetts before June 1985. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate a program.

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's

terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (§ 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations, or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act nor the Secretary's regulations protect, then those State standards are specifically preserved. Thus, the Secretary believes that the requirements of Section 505(b) can best be met by identifying State laws and regulations which impose more stringent environmental controls, and by listing them in § 921.700(e).

Also, in promulgating a program for a State, Section 504(g) of the Act specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to the Act will be preempted and superseded by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM.

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes.

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L, and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761, 762, and 764), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act.

The rules for the permanent program are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56060). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323–15463 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507–53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 44 FR 77440–77447 (December 31, 1979); 45 FR 2626–2629 (January 11, 1980); 45 FR 25998–26001 (April 16, 1980); 45 FR 33926–33927 (May 20, 1980); 45 FR 39446–39447 (June 10, 1980); 45 FR 52306–52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780–58786 (September 4, 1980); 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 59934 (December 7, 1981); 47 FR 32942 (July 30, 1982); 47 FR 33431 (August 2, 1982); 47 FR 35620 (August 16, 1982); and 47 FR 38486 (August 31, 1982); 47 FR 44942 (October 12, 1982); 47 FR 47212 (October 22, 1982); 47 FR 51316 (November 13, 1982); 48 FR 1166 (January 10, 1983); and 48 FR 2266 (January 18, 1983).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the **Federal Register** on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447–77455); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547–51550). In two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court were appealed to the Court of Appeals for the District of Columbia Circuit. *In re: Permanent Surface Mining Regulation Litigation*, Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. But the appeals have been remanded in light of the regulatory reform effort mentioned below.

Massachusetts Federal Program

On April 28, 1982, a Federal program was promulgated for Massachusetts which regulated only coal exploration. 47 FR 18232. This proposed rulemaking notice, if adopted as a final rule, would completely replace the current limited regulatory program. As mentioned above, when promulgating a Federal program for a State, the Secretary is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State.

OSM has reviewed Massachusetts laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State. OSM solicits comments on special provisions that should be promulgated and the basis for those provisions.

Pursuant to Section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. OSM's permanent program regulations contain references to "the regulatory authority"

and to "the State regulatory authority," both of which mean the Secretary when a Federal program for a State is involved. Section 701(22) of the Act. The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining and enforcing a Federal program. This proposed program for Massachusetts would not change these responsibilities.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for the preservation of more stringent State environmental protection standards, the listing of other State laws requiring permits for which coordination is mandatory, and identified specific changes necessary to accommodate unique conditions in a State, few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In Janaury 1981, the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive, and unnecesary. Review of the permanent program regulations was initiated and is resulting in a large scale revision of them. See final Environmental Statement, OSM—EIS—1: supplement (January 1983); notice of availability of which was published by OSM on January 22, 1983, 48 FR 2521, and by the Environmental Protection Agency on January 28, 1983, 48 FR 4046.

To take advantage of the results which revision of the permanent program regulations will achieve, OSM proposes to develop and promulgate this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there would be a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining would be provided by the statement that "Part 762 of this chapter * * * shall apply to surface coal mining and reclamation operations." (See proposed § 921.762).

One effect of the proposed cross-referencing to the permanent program regulations would be that as the permanent program regulations are revised, this Federal program would be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. No separate rulemaking would be undertaken or is necessary for revision of this program if the cross-referencing alternative becomes effective, unless OSM determined that special conditions were necessary for a particular State. A notice appeared in the **Federal Register** on July 13, 1982 (47 FR 30267), advising the public that changes in a permanent program rule would also result in a corresponding change in Federal programs absent special conditions. The notice invited comments on necessary modifications to accommodate unique or unusual aspects of surface mining in any State so that the final permanent program rule would be tailored for each Federal program State as necessary. Since the final rule notices of most of the revisions to the permanent program rules are likely to appear shortly before or after this proposed rulemaking notice, comments on those rules as they may affect the Massachusetts Federal program and any recommeded modifications for inclusion in that program are especially solicited.

The promulgation of this cross-referencing program would not result in any modification of the substance of OSM's permanent program rules. Where specific provisions which are different from the permanent program regulations are needed for an individual State's Federal program, a separate paragraph is proposed to be added to the appropriate section of that State's Federal program. Cross-referencing to the permanent program rules may also be used in the promulgation of other Federal programs. Public comment on the cross-referencing method as it affects other Federal programs, however, should be directed to each of those rulemaking notices.

Several provisions of the permanent program regulations are already applicable to the Massachusetts Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. (30 CFR Part 764—State processes for Designating Lands Unsuitable for Surface Coal Mining, would be included in the Massachusetts program by a cross-reference under § 921.764, to provide a petition process on non-Federal and non-Indian lands in that State.)

With regard to the bonding regulations (Subchapter J), only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981).

Content and Organization of the Program

The content and organization of the proposed Federal program for Massachusetts would generally follow the permanent program regulations. It should be noted, however, that this program follows the sectioning scheme of the current regulations published in the **Federal Register** on March 13, 1979 (44 FR 15312). OSM is revising the program standards. The preferred alternatives for regulatory change appeared in Volume III of the final Environmental Statement, OSM—EIS—1: supplement (Janaury 1983). Should the ultimate revision result in a change of Parts numbers or names, the sections in this and other Federal programs will be modified to conform to the new system.

As discussed above, instead of the full text appearing, each section of this proposed program would include only a reference to the pertinent permanent program regulation. Sections 921.700 (e) and (f), respectively, list Massachusetts statutes, which are more stringent than, and those which are inconsistent with, the Act. Where specific provisions which differ from the permanent program regulations are needed for each proposed Federal program for a State, a separate paragraph is proposed to be added to the appropriate section.

Detailed Discussion

Since Section 504(a) of the Act obligates the Secretary to take into account the nature of the terrain and the climate, in addition to biological, chemical, and other relevant physical conditions in each State, OSM reviewed pertinent Massachusetts statutes in the process of developing this proposed Federal program. OSM has determined that there are no Massachusetts statutes which set more stringent land use and environmental controls for surface mining, and proposed § 921.700(e) makes a statement to that effect. OSM requests comments, however, identifying any State laws which establish more stringent land use or environmental controls than the permanent Federal program.

OSM examined the Massachusetts statutes listed in § 921.700(f) of the proposed Federal program and determined that those State laws on coal mining and coal exploration would interfere with achievement of the goals of the Act and the purposes of the

proposed Federal program. In accordance with 30 CFR 736.23, OSM proposes that the following Massachusetts statutes be preempted once this Federal program becomes effective:

(a) The Coal Mining Regulatory Reclamation Act of 1977, as amended, Mass. Gen. Laws, Ch. 21B, Sections 1–15, governs all coal mining operations conducted in the State of Massachusetts. This statute would be preempted to the extent that it empowers the Commissioner of the Department of Environmental Quality Engineering to license all coal mining and coal exploration, oversee all reclamation procedures, and protect the citizens and the environment of Massachusetts against potential public health hazards or significant damage occurring from operation of coal mines within the State on areas larger than two acres. OSM would become the permitting authority for surface coal mining or coal exploration and would have full responsibility for protection of public health and the environment, as well as enforcement of the reclamation of surface-mined coal lands, under the proposed Federal program on areas larger than two acres.

(b) Mass. Gen. Laws, Ch. 21, Sections 54–56, authorize the Division of Minerals Resources in the Department of Environmental Quality Engineering to license exploration for, and regulate extraction of, mineral resources in coastal waters or on subsurface lands. These statutes would be preempted only to the extent the State of Massachusetts interprets them as authority for the Division of Mineral Resources to issue permits for prospecting for and extracting underground coal. OSM would become the exclusive permitting authority for all coal mining and coal exploration activities on areas larger than two acres, including the surface effects of underground mining and exploration for coal, once the proposed Federal program for Massachusetts becomes effective. Since the proposed Federal program would not regulate mineral leases, the Massachusetts Division of Mineral Resources would retain its authority to lease exclusive rights to extract any minerals, including coal, found on State lands.

The Massachusetts statutes summarized above constitute the body of Massachusetts law on exploration and surface mining of minerals and reclamation of mined land. Administration and enforcement of these statutes are the responsibilities of the Department of Environmental Management. These statutes are inconsistent with the Federal Act or the permant program regulations and interfere with attainment of the goals and purposes of the Act. Accordingly, OSM proposes that these statutes be preempted to the extent that Massachusetts interprets them as authority to regulate coal exploration or surface coal mining and reclamation operations in Massachusetts, except insofar as they govern operations affecting two acres of land or less or which are not otherwise subject to regulation under the provisions of the Surface Mining Control and Reclamation Act of 1977.

To coordinate the Federal program permitting process with the permitting requirements of Massachusetts and those imposed by other Federal statutes, § 921.770(b) of the proposed Federal program tentatively identifies the various permits, statutes, and rules which may, expressly or by implication, impact on coal exploration or surface coal mining and reclamation of lands. The pertinent permits, statutes, and rules are:

(a) Mass. Ann. Laws. Ch. 21, Sections 8–17B, authorize the Water Resources Commission to designate waterways within Massachusetts as scenic or historic rivers and streams which may not be dredged, diverted, or altered without a prior order of approval from the Commission. Mass. Ann. Laws, Ch. 21, Section 17B. Violations of the Commission's orders prohibiting or restricting dredging or otherwise altering Massachusetts's waterways and streams are punishable by a fine or imprisonment, or both. *Id.* Mass. Ann. Laws, Ch. 21, Section 16, renders it illegal for any person to engage in the business of digging or drilling wells within the State unless he has first obtained a certificate of registration from the Commission.

(b) Mass. Ann. Laws, Ch. 21, Sections 26–27D, prohibit exploration or excavation operations from being conducted on any site designated as a historical or archeological landmark by the State Historical Commission and on land owned or controlled by the State, its agencies, or political subdivisions without first securing a field investigation permit from the State Archeologist. It is unlawful to conduct exploration or excavation operations on private property reserved for agricultural, conservation, or recreational uses except when approved by the property owner and authorized under a field inspection permit obtained from the State Archeologist. Mass. Ann. Laws, Ch. 9, Section 27D.

(c) Mass. Ann. Laws, Ch. 184, Sections 31–32, grant owners of private property within the State the right to impose prohibitions against, *inter alia*, mineral exploration or mining activities which may affect the surface and to impose restrictions limiting the surface land to uses for conservation, recreational, or agricultural purposes to preserve those lands or improvements in their historic or natural conditions.

(d) Mass. Ann. Laws, Ch. 132, Sections 40–46 make it unlawful for any person to cut or cause timber to be removed from Massachusetts's forest lands unless cutting and, where approporiate, reseeding are done in accordance with an approved operational plan developed and promulgated by the Division of Parks and Forest. Persons are required to give the Division prior written notice of their intention to remove any timber. Failure to give the requisite notice of failure to follow the approved plan of operations is punishable by a maximum fine of $25.00 for each acre of land on which the unauthorized cutting occurs.

(e) The Wetlands Protection Act, Mass. Ann. Laws, Ch. 131, Sections 31–48, makes it unlawful to alter or dredge wetlands or floodplains which are determined to be areas of significance for flood control, water supply, or pollution control, without first obtaining and complying with an order of conditions for the proposed alteration. The State Conservation Commission is responsible for adopting, repealing, or modifying orders governing coastal wetlands. Mass. Ann. Laws, Ch. 131, Section 40. Orders governing inland wetlands are issued by the Board of Environmental Management. Mass. Ann. Laws, Ch. 131, Section 40A.

Section 42 prohibits the discharge of any waste or other material in violation of Section 40 or any provision of the Massachusetts Clean Water Act which may injure or kill fish or fish spawn within the State's inland waters. Nor shall a person alter or manipulate the flows or water levels in any of the State's inland waters to the exent that such manipulation injures or kills fish or fish spawn. This statute renders the use of explosives for engineering and public purposes exempt from the general prohibition only if an approved blasting permit has been granted by Federal, State, or municipal government authorities. Any person who violates either of Section 42's prohibitions is deemed liable in tort to the State's Division of Fisheries and Wildlife for damages in the amount of double the current commercial value of the fish killed. Section 48 makes it unlawful for a person to drain any pond, reservoir, or

body of water within the State, unless he gives the Division of Fisheries and Wildlife written notice of his intention at least 10 days before commencing the drainage project. Exceptions to this prohibition are provided for emergencies and for drainage of any body of water used for insect control, irrigation, or public water supply.

(f) Mass. Ann. Laws, Ch. 21A, Section 14, prohibits the disposal of dredged materials within the marine boundaries of the State unless disposal is done pursuant to, and in accordance with, the terms and conditions of an approved permit issued by the Department of Environmental Quality Engineering. Disposal of dredged material within the State must comply with the Division's rules and regulations at 310 Code of Massachusetts Regulations (CMR) 9.01 *et seq.*

(g) The Massachusetts Hazardous Waste Management Act, Mass. Ann. Laws, Ch. 21C.

(1) Sections 1–14, makes it unlawful for any person to collect, transport, treat, or dispose of hazardous waste in the absence of a valid license from the Department of Environmental Quality Engineering.

(2) Section 37. Hazardous waste may be disposed of in a landfill only after treatment in accordance with the Department's regulations, and then only if the Department determines that the waste cannot be recycled or disposed of by some other means authorized by the Department's regulations.

(h) The Massachusetts Clean Water Act, Mass. Ann. Laws, Ch. 21, Sections 26–53, prohibits any person from discharging any pollutants into any of the State's waterways, except in conformity with a valid permit issued by the Division of Water Pollution Control. Permits are also required to operate, install, or maintain a treatment facility or discharge outlet for pollutants. Mass. Ann. Laws, Ch. 21, Section 43.

(i) A person owning quarries, mines, or mineral deposits, which cannot be reached or used in the ordinary manner without crossing adjacent lands belonging to another person or occupied as a highway, must petition the commission for the county in which the land lies for approval to construct roads, drains, or ditches across the adjacent lands or roads. Mass. Ann. Laws, Ch. 252, Sections 15–18.

(j) Drilling or removal of sand or any minerals is prohibited in any area designated an ocean sanctuary by the Department of Environmental Management. Mass. Ann. Laws, Ch. 132A, Sections 13–18.

(k) Mass. Ann. Laws, Ch. 148, Sections 9–19, authorize the State Fire Prevention Board to promulgate rules and regulations governing the use, transportation, and storage of explosives. Section 13 prohibits the use or storage of explosives in the absence of a license from the local licensing authority. Holders of licenses are also required to obtain certificates of registration from the Fire Commissioner of the city or county in which the explosives are to be used. Mass. Ann. Laws, Ch. 148, Section 13. An applicant for a blasting permit must post an approved surety bond in favor of the licensing authority to cover the risk of damages that may ensue from his blasting activities. Mass. Ann. Laws, Ch. 148, Section 19.

OSM asks the public and Massachusetts agencies to submit comments as to whether there are other matters requiring consultation and whether there are other State agencies which OSM should consult on a regular basis during the permitting process under the proposed program.

Paragraph (g) of § 921.700, as proposed, would authorize the Secretary to grant a limited variance from the performance standards of the permanent program rules based on a showing by a permit applicant or permittee that the variance is necessary due to the unique nature of Massachusetts terrain, climate, biological, chemical, or other relevant physical conditions. This provision would give effect to Section 504(a), which directs the Secretary to take these physical characteristics into consideration in promulgating a Federal program for a State. In promulgating Federal programs for a State, the Secretary reviews State laws to determine whether any must be superseded because they would interfere with achievement of the purposes of a Federal program, and whether any establish more stringent standards for environmental protection and must be preserved. The presumption is that State laws are a reflection of the particular environmental conditions in the State. There may, however, be conditions present which are not specifically covered by State law, but which must be accommodate pursuant to the requirement in Section 504(a). Paragraph (g) would authorize the Secretary to do so. The permit applicant would have to show evidence of special environmental conditions in Massachusetts justifying the grant of the limited variance under the proposed rule. Section 921.700(g), as proposed, would not authorize a general variance. Congress did not provide for a general variance from standards set in the Act. Congress was concerned that States not be allowed to grant variances from Federally-set minimum standards. The variance proposed here is intended for unique or special environmental conditions found in Massachusetts which are not adequately provided for in OSM's permanent program regulations.

Under Section 504(a) of the Act, Section 522 (a), (c), and (d), which govern the process for designating land unsuitable for surface coal mining, take effect one year after implementation of a Federal program for a State. The Secretary promulgated a Federal exploration program for Massachusetts on April 28, 1982 (47 FR 18232) which became effective on May 28, 1982. Therefore, proposed Section 921.764 would specify that the process for designating land unsuitable in Massachusetts takes effect on May 28, 1983.

OSM has removed Part 850 from the permanent program rules. To ensure that blaster training and certification is preserved in States with Federal programs, OSM will promulgate standards for blaster training and certification at a later date.

Copies of the Massachusetts statutes referenced in this notice have been placed in the administrative record and are available for review at the places listed above under "ADDRESS."

OMB Review

The recordkeeping and reporting requirements of the proposed rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Although this rule would contain information and recordkeeping requirements, OSM anticipated less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms are required only when ten or more respondents are expected. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already approved, will be submitted to the Office of Management and Budget with accompanying notices in the Federal Register, in accordance with the requirements of 44 U.S.C. Chapter 35.

Other Information

The information collection requirements contained in §§ 921.764, 921.770, 921.771, 921.795, and 921.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507, because there are fewer than ten respondents annually.

The Department of the Interior has determined that this document is not a

major rule under E.O. 12291 and certifies that this document 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.*).

The reasons underlying this determination are as follows:

This Federal program would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or foreign markets; nor would it increase costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions. The Department certifies that there will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs, or aggregate effects on small entities.

The Office of Surface Mining and Reclamation and Enforcement has determined that this rule is categorically excluded from compliance with the National Environmental Policy Act in accordance with 40 CFR 1507.3.

List of subjects in 30 CFR Part 921

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

Drafting Information

These regulations were drafted by Patricia McHugh, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

March 8, 1983.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

OSM proposes to revise Part 921 of 30 CFR Chapter VII to read as follows:

PART 921—MASSACHUSETTS

Sec.

921.700 Massachusetts Federal Program.
921.701 General.
921.707 Exemption for coal extraction incident to Government-financed highway or other construction.
921.761 Areas designated unsuitable for surface coal mining by Act of Congress.
921.762 Criteria for designating areas as unsuitable for surface coal mining operations.
921.764 Process for designating areas as unsuitable for surface coal mining operations.
921.770 General requirements for permits and exploration procedures.
921.771 General requirements for permits and permit applications.
921.776 General requirements for coal exploration.
921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
921.779 Surface mining permit applications—minimum requirements for information on environmental resources.
921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
921.783 Underground mining permit applications—minimum requirements for information on environmental resources.
921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
921.785 Requirements for permits for special categories of mining.
921.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
921.787 Administrative and judicial review of decisions on permit applications.
921.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
921.795 Small operator assistance.
921.800 General requirements for bonding of surface coal mining and reclamation operations.
921.815 Performance standards—coal exploration.
921.816 Performance standards—surface mining activities.
921.817 Performance standards—underground mining activities.
921.818 Special performance standards—concurrent surface and underground mining.
921.819 Special performance standards—auger mining.
921.823 Special performance standards—operations on prime farmland.
921.824 Special performance standards—mountaintop removal.
921.826 Special performance standards—operations on steep slopes.
921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
921.828 Special performance standards—in situ processing.
921.842 Federal inspections.
921.843 Federal enforcement.
921.845 Civil penalties.
921.850 Blaster training and certification.

Authority: Pub. L. 95-87, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 921.700 Massachusetts Federal Program.

(a) This Part contains all rules that are applicable to surface coal mining operations in Massachusetts which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Massachusetts Federal program.

(c) The rules in this part apply to all surface coal mining operations in Massachusetts conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Massachusetts.

(d) The information collection requirements contained in §§ 921.764, 921.770, 921.771, 921.795, and 921.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) There are no Massachusetts laws which provide more stringent environment control and regulation of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in 30 CFR Chapter VII.

(f) The following are Massachusetts laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded insofar as they apply to surface coal mining operations regulated under the Act:

(1) The Coal Mining Regulatory and Reclamation Act of 1977, as amended, Mass. Ann. Laws. Ch. 21B, Sections 1–15.

(2) Statutes governing licenses for minerals exploration, Mass. Ann. Laws Ch. 21, Sections 54–56.

(g) The Secretary may grant a licensed variance from the performance standards of §§ 921.815 through 921.828 of this Part if the application for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.770 through 921.788 of this Part can demonstrate in the application that a variance is necessary because of the unique nature of Massachusett's terrian, climate, biological, chemical or other relevant physical conditions.

§ 921.701 General.

§§ 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in Massachusetts.

§ 921.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-

Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 921.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 921.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations.

§ 921.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, are applicable in Massachusetts beginning on May 28, 1983.

§ 921.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770 and applicable permits issued pursuant the laws of the State of Massachusetts, including: the Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, Sections 8–17B; historical preservation statutes, Mass. Ann. Laws Ch. 9, Sections 26–27(D); real property statutes, Mass. Ann. Laws Ch. 184, Sections 31–32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, Sections 40–46; the Wetlands Protection Act Ch. 131, Sections 40–46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; Section 14, 310 CMR 9.01 *et seq.*; the Massachusetts Hazardous Waste Management Act Ch. 21C, Sections 1–14; the Massachusetts Clean Water Act Ch. 21, Sections 26–53; statutes governing the construction of roads, drains, or ditches, Mass. Ann. Laws Ch. 252 Sections 15–18; statutes governing drilling of removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13–18; and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9–19. The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this Subpart and Part 770 of this chapter.

§ 921.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 921.776 General requirements for coal exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 921.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 921.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamations and Operation Plan, shall apply to any person who makes applications to conduct underground coal mining operations.

§ 921.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 921.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, Review, Public Participation, and Approval of Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 921.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial

review in accordance with Part 787 of this chapter and Sections 520, 525, and 526 of the Act.

§ 921.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 921.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making applications for assistance under the small operator assistance program.

§ 921.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 921.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

§ 921.816 Performance standards—surface mining activities.

Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 921.817 Performance standards—underground mining activities.

Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining operations.

§ 921.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining, shall apply to any person who conducts combined surface and underground coal mining operations.

§ 921.819 Special performance standards—auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 921.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 921.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 921.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 921.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§ 921.842 Federal Inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement actions taken to the Massachusetts Department of Environmental Management upon request.

§ 921.843 Federal Enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any enforcement document to the Massachusetts Department of Environmental Management upon request.

§ 921.845 Civil Penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 947.850 Blaster Training and Certification.

Part 850 of this chapter, Programs for Blaster Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining operations.

[FR Doc. 83-8564 Filed 3-31-83; 8:45 am]
BILLING CODE 4310-05-M

---

30 CFR Part 942

Permanent State Regulatory Program of Tennessee

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is considering modifying the deadline for Tennessee to meet a condition of approval of the State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition relates to procedures for hearings and appeals. In accordance with the State's request the Secretary is proposing to extend the deadline for Tennessee to resolve the condition of approval from April 30, 1983, to September 30, 1983.

DATE: Comments must be received by May 2, 1983 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 400, Knoxville, Tennessee 37902.

A copy of the Division of Surface Mining's request for an extension of the deadline to meet the condition of approval will be available for review at the OSM Tennessee Field Office, listed above, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 400, Knoxville, Tennessee 37902. Telephone: (615) 524-7648.

SUPPLEMENTARY INFORMATION: The Tennessee program under SMCRA was conditionally approved by the Secretary on August 10, 1982 (47 FR 34724-34754). 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 explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 **Federal Register** (47 FR 34724-34754).

On March 2, 1983, Tennessee requested an extension of the deadline to satisfy condition (k) of the Secretary's approval of the Tennessee program as listed at 30 CFR 932.11(k) from April 30, 1983 to June 30, 1983. By letter dated March 23, 1983, Tennessee modified its request and asked for an extension until September 30, 1983.

Condition (k) of the Secretary's approval of Tennessee's program stipulates that the State must submit copies of promulgated regulations, policy statements, Attorney General's opinions or other sufficient proof that the State program is no less effective than 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280 and 4.1281. The first five sections relate to general administrative hearings and functions of administrative appellate bodies. The last two sections regard specific hearings and appeals procedures in the State's Small Operators Assistance Program (SOAP). Tennessee's permanent program submission of February 3, 1982, contained regulations which were counterparts to the above listed sections of 43 CFR Part 4. Tennessee's Attorney General, however, removed these regulations from the program submission because the State's system of administrative boards does not parallel the Federal Government's and the regulations proposed did not, apparently, fit the State's system. Tennessee has indicated that satisfaction of condition (k) will require the Division of Surface Mining (DSM) to work with the Attorney General's office to reach a satisfactory solution. Because the remedy will most likely require an Attorney General's opinion, DSM believes it will be unable to meet the April 30, 1983, deadline and, thus, has requested an extension to September 30, 1983 to meet condition (k). The Secretary requests comments on the proposal to extend the time period allowed for the State to satisfy this condition.

Additional Determinations

1. *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. *Executive Order 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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 rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

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

Dated: March 29, 1983.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 83-8563 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

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

Federal Grain Inspection Service

Renewals of Designation of Detroit Grain Inspection Service, Inc., (MI), and Grain Inspection Services, Inc. (MI)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewals of designation of the Detroit Grain Inspection Service, Inc. (Detroit), and Grain Inspection Services, Inc. (Battle Creek), as official agencies responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: May 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The November 1, 1982, issue of the **Federal Register** (47 FR 49432) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Detroit's and Battle Creek's designations would terminate on April 30, 1983, and requesting applications for designation as the agency to provide official services within each specified assigned area. Applications were to be postmarked by December 1, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on them in the January 3, 1983, issue of the **Federal Register** (48 FR 44). Comments were to be postmarked by February 17, 1983.

One favorable comment was received regarding Detroit's designation renewal; ten favorable comments were received regarding Battle Creek's designation renewal. Both agencies were the only applicant's for each respective designation.

After considering all available information in relation to the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), it has been determined that Detroit and Battle Creek are able to provide official services in the geographic area for which their designations are being renewed. Each assigned area is the entire geographic area, as described in the November 1 issue of the **Federal Register**.

Effective May 1, 1983, and terminating April 30, 1986, the responsibility for providing official inspection services in each geographic area, as specified above, will be assigned to Detroit and Battle Creek, respecitvely.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agencies at the following addresses:

Detroit Grain Inspection Service, Inc., P.O. Box 176, Emmett, MI 48022

Grain Inspection Services, Inc., 24 First Street, Battle Creek, MI 49017

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 22, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-8130 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc. (IA), and Keokuk Grain Inspection Service, Inc. (IA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc., and Keokuk Grain Inspection Service, Inc. The designations terminate July 31, 1983.

DATE: Comments to be postmarked on or before May 16, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in executive Order 12291 and Secretary's Memorandum 1512-1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The February 1, 1983, issue of the **Federal Register** (48 FR 4496) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies.

Applications were to be postmarked by March 3, 1983.

Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), the only applicant, requested designation for all of the geographic area currently assigned to that agency. Keokuk Grain Inspection Service, Inc., the only applicant, requested designation for all of the geographic area currently assigned to that agency. Eastern Iowa and Keokuk each applied for a renewal of designation for a 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicant for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than May 16, 1983.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 22, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-8131 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Applicants for Designation To Perform Official Services in the Geographic Areas Currently Assigned to Fostoria Grain Inspection (OH), Louisiana Department of Agriculture (LA), and North Carolina Department of Agriculture (NC)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designations of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, who are interested in being designated as official agencies to conduct official services in the geographic area currently assigned to each of the specified agencies. The official agencies are Fostoria Grain Inspection, Louisiana Department of Agriculture, and North Carolina Department of Agriculture.

DATE: Applications to be postmarked on or before May 2, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, D.C. 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action

Section 7(f)(1) of the Act [7 U.S.C. 71 *et seq.*, at 79(f)(1)] specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection, official weighing, and supervision of weighing services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Fostoria Grain Inspection (Fostoria), P.O. Box 864, Fostoria, Ohio 44830, was designated as an official agency under the Act for the performance of inspection functions on October 25, 1978. Louisiana Department of Agriculture (Louisiana), P.O. Box 44456, Capitol Station, Baton Rouge, Louisiana 70804, was designated as an official agency under the Act for the performance of inspection functions on November 16, 1978; weighing functions on May 12, 1980. North Carolina Department of Agriculture (North Carolina), P.O. Box 27647, Raleigh, North Carolina 27611, was designated as an official agency under the Act for the performance of inspection functions on November 10, 1978.

The agencies' designations will terminate on September 30, 1983. This date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Fostoria, in Ohio, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded: on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded: on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded: on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

The geographic area presently assigned to Louisiana, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the entire State of Louisiana, except those export port locations within the State.

The geographic area presently assigned to North Carolina, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the entire State of North Carolina.

Interested parties, including Fostoria, Louisiana, and North Carolina, are hereby given opportunity to apply for designation as the official agency to perform the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in each specified geographic area are for the period beginning October 1, 1983, and ending September 30, 1986. Parties wishing to apply for these designations should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than May 2, 1983 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide

official services in a geographic area, consideration will be given to applications submitted and other available information.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875)

(7 U.S.C. 79, 79(a))

Dated: March 22, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-8132 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Applicants for Designation To Perform Official Services in the Geographic Areas Currently Assigned to William F. Christen Grain Inspection (IN), Fremont Grain Inspection Department, Inc. (NE), and Titus Grain Inspection, Inc. (IN); Correction and Extension of Time for Applications; Correction

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: This document corrects the termination date cited in error for William F. Christen Grain Inspection, Fremont Grain Inspection Department, Inc., and Titus Grain Inspection, Inc., and an omission from the geographic area description for Fremont Grain Inspection Department, Inc., contained in a notice which was published March 1, 1983 (48 FR 8519). Due to these corrections, the March 31, 1983, date for applications is extended to April 15, 1983.

DATES: Applications to be postmarked on or before April 15, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1983, issue of the **Federal Register** (48 FR 8519) stated that the designation termination date for William F. Christen Grain Inspection, Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc., was July 31, 1983; the correct date should have been August 31, 1983.

Also, a portion of the geographic area assigned to Fremont was inadvertently omitted from the March 1 issue of the **Federal Register.** The omitted geographic area, together with the area described in the March 1 **Federal Register** for Fremont is the entire area presently assigned to such agency and as such may be assigned to the applicant selected for designation, is the following:

In Iowa: Clay (west of U.S. Route 71); Dickinson (west of U.S. Route 71); O'Brien (north of B24 and east of U.S. Route 59); and Osceola (east of U.S. Route 59) Counties.

Due to the above corrections, the time period for submitting applications for designation as official agencies is extended from March 31, 1983, to April 15, 1983.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 24, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-8133 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Berrien Township Park Critical Area Treatment and Public Water-Based Recreation Development RC&D Measure, Michigan; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared from the Berrien Township Park RC&D Measure, Berrien County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for critical area treatment and public water-based recreation. Critical area treatment measures will include: Two erosion control structures, a diversion, a trail, and a walkway. Public water-based recreation measures will include: two picnic areas, one picnic shelter, a recreation trail, a parking lot, toilets, fencing, playground equipment, a well, and a park sign. Total construction cost is estimated to be $59,000; $31,000 RC&D funds and $28,000 local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy request at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects if applicable.)

Dated: March 24, 1983.

Homer R. Hilner,

State Conservationist.

[FR Doc. 83-8282 Filed 3-3-83; 8:45 am]

BILLING CODE 3410-16-M

Little Wyaconda-Sugar Creek Watershed, Missouri; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Wyaconda-Sugar Creek Watershed, Lewis, Clark and Scotland Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri, 65202, telephone 314/875-5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include grade stabilization structures, grassed waterways, critical area planting, underground outlets, terraces, water and sediment control measures, diversions, pasture and hayland planting, conservation tillage systems and contour farming.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul F. Larson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects is applicable.)

Russell C. Mills,

Deputy State, Conservationist.

March 21, 1983.

[FR Doc. 83-8145 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-16-M

Riley Park Water Based Recreation RC&D Measure, Indiana; Finding of No Significant Impact.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone (317) 248-4350.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Riley Park Water Based Recreation RC&D Measure, Hancock County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water based recreation for Riley Park. The planned works of improvement include the construction of 3 deflectors and fish pools, the placement of rip rap on about 200 feet of creek bank, the removal of about 50 feet of debris from the creek channel, silt removal and bank shaping on 1100 feet of channel and seeding, fertilizing and mulching of 900 feet of creek bank after construction is completed.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Robert L. Eddleman,

State Conservationist.

[FR Doc. 83-8283 Filed 3-31-83; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Economic Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409), notice is hereby given that the Census Advisory Committee of the American Economic Association will convene on April 22, 1983, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Economic Association advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and census; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The Committee is composed of 15 members of the American Economic Association.

The agenda for the meeting, which is scheduled to adjourn at 3:45 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and major budget program developments; (2) underground economy; (3) proposed procedures for user access to longitudinal establishment data, and report on diversification measurement; (4) update on the Survey of Income and Program Participation; (5) update on planning the 1990 census; (6) automated geographic support for the 1990 census; (7) general discussion and Committee recommendations; and (8) plans and date for the next meeting.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Barry Rappaport, Bureau of the Census, Room 3061, Federal Buidling 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–5483.

Dated: March 28, 1983.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 83-8499 Filed 3-31-83; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Susan E. Silver, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202 377–2786).

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which programs were identified in the January 1, 1983, annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: March 28, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

(Cents per pound)

Country and Program(s)	Gross subsidy[1]	Net subsidy[2]
Belgium: European Community (EC) restitution payments	8.0	8.0
Canada:		
Export assistance on Swiss cheese	16.2	16.2
Export assistance on aged cheddar, N/Ov. 2.7 kg./pkg.	28.4	28.4
Export assistance on all NSPF cheeses	16.2	16.2
Denmark: EC restitution payments	3.7	3.7
Finland:		
Export subsidy	73.5	73.5
Indirect subsidies	20.4	20.4
	93.9	93.9
France: EC restitution payments	5.6	5.6
Ireland: EC restitution payments	4.2	4.2
Italy: EC restitution payments	17.7	17.7
Luxembourg: EC restitution payments	8.0	8.0
Netherlands: EC restitution payments	1.9	1.9
Norway: Indirect (milk) subsidy	21.0	21.0
Consumer subsidy	38.5	38.5
	59.5	59.5
Portugal: Direct subsidy on all sales of Gouda cheese	13.3	13.3
Switzerland: Deficiency payments	67.2	67.2
U.K. EC restitution payments	4.0	4.0
W. Germany: EC restitution payments	4.5	4.5

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 83-8538 Filed 3-31-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Portland Hydraulic Cement and Cement Clinker From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before June 1, 1983.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–1756.

SUPPLEMENTARY INFORMATION:

Petition

On March 8, 1983, we received a petition filed on behalf of the U.S. industry producing portland hydraulic cement and cement clinker. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Mexico of portland hydraulic cement and cement clinker receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Mexico is not a "bounty under the Agreement" within the meaning of section 701(b) of the Act, and therefore section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable, and there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico. Therefore, under this section the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a

petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on portland hydraulic cement and cement clinker, and we have found that the petition meets these requirements.

Therefore we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by June 1, 1983.

Scope of the Investigation

Portland hydraulic cement and cement clinker enter the United States duty free and are currently classified under item numbers 511.1440 and 511.1420 of the *Tariff Schedules of the United States Annotated*. This investigation covers portland hydraulic cement and cement clinker other than white, non-staining.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker receive the following benefits which constitute bounties or grants: Preferential prices on petroleum products and electricity used as a fuel to manufacture portland hydraulic cement and cement clinker; preferential federal tax credits and exemptions; preferential development incentives related to the federal tax credits; reduction of import duties; stock purchases and preferential "convertible loans"; grants to finance technological services; preferential state tax rates and other state incentives; government marketing and technical assistance to exporters; and preferential rebates or discounts on shipping expenses.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

March 28, 1983.

[FR Doc. 83-8441 Filed 3-31-83; 8:45 am]

BILLING CODE 3510-25-M

Numerically Controlled Machine Tool Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving: (A) Technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to numerically controlled machine tools or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

Time and Place: April 28, 1983, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM Control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: 202-377-2583.

Dated: March 24, 1983.

John K. Boidock,

Director, Office of Export Administration.

[FR Doc. 83-8537 Filed 3-31-83; 8:45 am]

BILLING CODE 3510-25-M

Office of the Secretary

President's Private Sector Survey on Cost Control; Meeting

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of open meeting of the Subcommittee of the President's Private Sector Survey on Cost Control (PPSSCC).

SUMMARY: The Subcommittee was established by the Executive Committee of the PPSSCC to: (i) Review the recommendations submitted, including task force reports and public comments, and (ii) determine which recommendations should be made to the President and the Departments and Agencies.

Time and Place: April 15, 1983, beginning at 10 a.m. The meeting will be held at the U.S. Department of Commerce Auditorium, First Floor, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Agenda

1. Draft reports from the following Task Forces of the PPSSCC will be discussed by Subcommittee members:

A. Department of Commerce;

B. Department of Agriculture;

C. Department of Energy and Nuclear Regulatory Commission;

D. Department of Health and Human Services—Office of the Secretary, Human Resources Development and ACTION;

E. Environmental Protection Agency, Small Business Administration, Federal Emergency Management Agency; and

F. Personnel.

2. Comments and recommendations received from public and other interested parties will be discussed by Subcommittee members.

Copies of the draft reports will be available on April 5 at the Department's Central Reference and Records Inspection Facility, Room 6628 Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Please call Ms. Geraldine P. LeBoo on (202) 377-3271 for information concerning fees and procedures for obtaining copies by mail.

SUPPLEMENTARY INFORMATION: The Subcommittee will hold additional public meetings in May and June, 1983.

Exact dates will be noticed in the **Federal Register**. Copies of all materials, including Task Force reports, to be considered at these meetings will be available approximately two weeks prior to each meeting at the Department's Central Reference and Records Inspection Facility, address above.

Public Participation: The April 15 meeting will be open to the public. Seating will be on a first-come, first-served basis, up to the safe capacity of the meeting room. Media representatives are encouraged to call Mr. Malcolm Barr, Director, News Relations, Department of Commerce, 377–4901 to arrange for coverage of the meeting.

The public may file written statements for consideration by the Subcommittee any time before, at, or after the meeting. It is strongly recommended that statements concerning the matters to be considered at each meeting be filed before such meeting to ensure that they are considered by the Subcommittee before adoption of a report. The statements should be filed at the Department of Commerce's Central Reference and Records Inspection Facility, address and phone number as above. Because of the number of recommendations to be discussed, the meeting agenda will not include time for oral statements from public attendees. All public statements received will be available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Colson, Committee Control Officer for the Executive Committee of the President's Private Sector Survey on Cost Control, telephone (202) 466–4665.

Dated: March 29, 1983.

Marilyn S. McLennan,

Chief, Information Policy and Management Division, Office of the Secretary.

[FR Doc. 83-8665 Filed 3-31-83; 8:45 am]

BILLING CODE 3510-CW-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1983 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before May 4, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1983, November 18, 1982 (47 FR 52101):

CLASS 6520

Mirror, Mouth Examining
6520–00–935–4135

CLASS 7520

Trimmer, Paper
7520–00–224–7620
(GSA Regions 1, 3, W, 4, 5, and 6 only)

CLASS 7530

Paper, Carbon, Typewriter
7530–00–244–4035
(GSA Regions 1, 2, 3, 6, 7, and 8 only)

CLASS 8445

Belts, Trouser, Cotton Web
8445–01–075–0013
8445–01–075–0014
8445–01–075–0015

SIC 7349

Janitorial/Custodial Service, William M. Colmer Federal Building and Courthouse, 701 Main Street, Hattiesburg, Mississippi

SIC 9199

Administrative Services, Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pennsylvania

C. W. Fletcher,

Executive Director.

[FR Doc. 83-8539 Filed 3-31-83; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1983; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1983 commodities and military resale commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: April 1, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 23, 1982, August 6, 1982, November 12, 1982, December 23, 1982, January 7, 1983 and January 21, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (47 FR 31915, 47 FR 34181, 47 FR 51180, 47 FR 57324, 48 FR 859, and 48 FR 2816) of proposed additions to Procurement List 1983, November 18, 1982 (47 FR 52101):

After consideration of the revelant matter presented, the Committee has determined that the commodities, military resale commodities, and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities, and services listed.

c. The actions will result in authorizing small entities to produce or provide commodities, military resale commodities, and services procured by the Government.

Accordingly, the following commodities, military resale commodities, and services are hereby added to Procurement List 1983:

CLASS 8415

Mask, Extreme Cold Weather
8415–00–243–9844
8415–01–006–3468

Military Resale Item Nos. and Names

No. 068 Pencil, Mechanical, 0.5mm lead
No. 520 Fabric Softener Sheets, Reusable (8¾ x 4")
No. 564 Scrubber, Stainless Steel
No. 568 Board, Ironing, Table Top

SIC 7349

Janitorial/Custodial for the following locations in Chicago, Illinois:
U.S. Customhouse, 610 South Canal Street,
Interagency Motor Pool, 701 South

Clinton Street, Federal Parking Facility, 450 South Federal Street.
Janitorial Service, U.S. Courthouse, 123 East Walnut Street, Leased Space, 603–11 East 2nd Street, Des Moines, Iowa.

SIC 7369

Commissary Shelf Stocking, Naval Air Station, Alameda, California.
Commissary Shelf Stocking, Naval Station, Long Beach, California.
Commissary Shelf Stocking, Naval Station, Treasure Island, San Francisco, California.
Commissary Shelf Stocking, Rough and Ready Isle, Stockton, California.
Commissary Shelf Stocking, Mare Island Naval Shipyard, Vallejo, California.
Commissary Shelf Stocking, Naval Air Station, Patuxent River, Maryland
Commissary Shelf Stocking, Naval Education Training Center, Newport, Rhode Island.
Commissary Shelf Stocking, Naval Station and Naval Weapons Station, Charleston, South Carolina.

C. W. Fletcher,

Executive Director.

[FR Doc. 83-8540 Filed 3-31-83; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Live Hog Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The MidAmerica Commodity Exchange ("MCE") has applied for designation as a contract market in live hogs for cash settlement. Any contracts remaining open in the proposed contract after the expiration of trading in a given contract month would be liquidated through a monetary settlement based on the settlement prices of the Chicago Merchantile Exchange's live hog contract, with no provision for the physical delivery of hogs.[1] The Commission has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the MCE live hog futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. (202) 254–6990.

A copy of the terms and conditions of the MCE proposed live hog futures contract will be available for inspection at the Office of the Secretariat, Commdity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the MCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested is submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the MCE in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by May 31, 1983. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on March 28, 1983.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-8451 Filed 3-31-83; 8:45 am]

BILLING CODE 6351-01-M

[1] The MidAmerica Commodity Exchange currently trades a live hog contract for physical delivery. The proposed cash settlement contract would be a separate designation. The Exchange intends to continue to conduct trading in the existing live hog contract for physical delivery in addition to the proposed live hog contract for cash settlement.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: Monday and Tuesday, April 25 & 26, 1983.

Times: 0830–1700 hours (Closed)—both days.

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Balancing Protection for the Individual Soldier will meet for classified briefings and discussions to assess the adequacy of the Army's strategies for minimizing exposure and maximizing protection of the individual soldier. Threat briefings and research and development briefings on individual and collective protection will be presented. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassfied matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-8506 Filed 3-31-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of the Committee. Army Science Board (ASB).

Dates of Meeting: Monday April 18, 1983.

Times: 0830–1700 hours (Closed).

Place: U.S. Army Intelligence and Security Command (INSCOM), Arlington Hall Station, Arlington, Virginia.

Agenda: The Army Science Board Ad Hoc Functional Subgroup on Human Capabilities and Resources will meet for classified briefings and discussions regarding the study of human technologies recently completed by the INSCOM High Performance Task Force.

This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-8507 Filed 3-31-83; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

The Department of the Navy has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Drug Statement for NROTC Application (NAVCRUIT 1131/5).

Used to make an assessment of an applicant's history of drug usage to determine the need and eligibility for a drug waiver.

Only individual applicant's for a NROTC Scholarship respond: 12,000 responses, 2,400 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3234, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), IRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from CDR Maryanne Hayes, Navy Recruiting Command (Code 314), 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (202) 696–4581.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 29, 1983.

[FR Doc. 83-8546 Filed 3-31-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collections Requirement Submitted to OMB for Review

The Department of the Navy has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

NROTC Navy-Marine Corps Scholarship Application

Used to collect information by which to make a determination as to an individual's basic eligibility for the NROTC Scholarship Program.

Highschool students and active duty enlisted personnel who wish to apply for the Four-Year NROTC Scholarship Program: 40,000 responses, 13,300 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3234, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), IRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from CDR Maryanne Hayes, Navy Recruiting Command (Code 314), 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (202) 696–4581.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 29, 1983.

[FR Doc. 83-8547 Filed 3-31-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Business and International Education Program; Application Notice for New Awards for Fiscal Year 1983

Applications are invited for new awards under the Business and International Education Program.

Authority for this program is contained in Sections, 611, 612, and 613 of Part B of Title VI of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. 1130–1130b.

The Secretary is authorized to make matching grants under this program to qualified institutions of higher education.

The purposes of the awards are: (1) To enhance the broad objective of this act by increasing and promoting the Nation's capacity for international understanding and economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development; and (2) to promote institutional and noninstitutional educational and training activities that will contribute to the ability of United States business to prosper in an international economy.

Closing Date for Transmittal of Applications

An application for a grant award must be mailed or hand delivered by June 3, 1983.

Applications Delivered by Mail

An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.153 (Business and International Education Program), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered mail or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

Under the Business and International Education Program, the Secretary is authorized to make grants to institutions of higher education to pay up to 50 percent of the cost of programs designed to promote linkages between institutions and the American business community engaged in international economic activities. The purposes of each grant is to enhance the international academic programs of institutions of higher education, and provide appropriate services to the business community which will enable it to expand its capacity to engage in commerce abroad.

Under Section 612(b) of the Higher Education Act, the Secretary may support the following activities:

(1) Innovation and improvement in international education curricula to serve the needs of the business community, including development of new programs for nontraditional, midcareer, or part-time students;

(2) Development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

(3) Internationalization of curricula at the junior and community college level, and at undergraduate and graduate schools of business;

(4) Development of area studies programs and interdisciplinary international programs;

(5) Establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

(6) Research for and development of specialized teaching materials, including language materials, and facilities appropriate to business-oriented students;

(7) Establishment of student and faculty fellowships and internships for training and education in international business activities;

(8) Development of opportunities for junior business and other professional school faculty to acquire or strengthen international skills and perspectives; and

(9) Development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity.

Section 612(c) of the HEA requires that an institutional grantee enter into an agreement with a business enterprise, trade organization or association engaged in international economic activity, or a combination or consortium of such enterprises, organizations or associations, for the purpose of establishing, developing, improving, or expanding activities eligible for assistance under the program. Section 612(c) further requires each institutional application for a grant to be accompanied by a copy of one of these agreements.

Because this program will be funded the first year without specific program regulations, the Secretary does not propose to establish funding priorities. Even though the Secretary does not set priorities on those activities listed in the legislation which are most in need of Federal financial support, *the Secretary does strongly encourage applicants to select those authorized activities, which are most useful in developing, enhancing or promoting excellence in export trade programs.*

Available Funds

The Department of Education Appropriation Act, 1983, P.L. 97-377, authorizes $1 million for new awards under the Business and International Education Program in Fiscal Year 1983.

No average grant amount or range of grant amount is specified for the program. Applicants are asked to keep in mind both the modest amount of the Fiscal Year 1983 program appropriation and the intense interest expressed in the program by institutions of higher education and the business community. Because grants will be for one year's duration and no new appropriation for the program is anticipated for Fiscal Year 1984, applicants are encouraged to request funds for those activities which have the greatest possibility of support from other sources after the first year of the project.

Application Forms

Application forms and program information packages are expected to be ready for mailing by April 1, 1983.

Application packages may be obtained by contacting the International Studies Branch, Division of International Services and Improvement, U.S. Department of Education, (ROB-3, Room 3916) 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-2794.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations. The Secretary suggests that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that only the information required by application forms be submitted.

Applicable Regulations

The program will be governed by the provisions in (34 CFR Parts 74, 75, 77, 78), Education Department General Administrative Regulations (EDGAR).

The applications for new awards will be evaluated competitively under the selection criteria for a grant program that does not have regulations (34 CFR 75.210). Under Section 75.210 (c) of EDGAR, the Secretary is authorized to distribute an additional 15 points to those already assigned to each criterion. The distribution of these points results in the following values for each criterion:

(1) Meeting the Purposes of the Authorizing Statute (30).

(2) Extent of Need for the Project (20).

(3) Plan of Operation (25).

(4) Quality of Key Personnel (10).

(5) Budget and Cost Effectiveness (5).

(6) Plan of Evaluation (5).

(7) Adequacy of Resources (5).

Further Information

For further information contact Stanley B. Patterson, International Studies Branch, Division of International Services and Improvement, U.S. Department of Education, (ROB-3, Room 3916) 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-2794.

(20 U.S.C. 1130–1130b)

(Catalog of Federal Domestic Assistance Number: 84.153—Business and International Education Programs)

Dated: March 25, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-0835 Filed 3-31-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Case No. 53146-3804-03-04-82]

Notice and Issuance of Final Prohibition Orders; Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and Issuance of Prohibition Orders to Virginia Electric and Power Company.

SUMMARY: In accordance with former section 301(b) and section 702(a) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of its issuance of final prohibition orders to the Virginia Electric and Power Company's (VEPCO) Possum Point Generating Station Units 3 and 4 (hereafter referred to as "Possum Point 3 and 4"), located in Dumfries, Virginia. The orders prohibit Possum Point 3 and 4 from burning natural gas or petroleum as their primary energy source, in accordance with the effective dates of the prohibitions applicable to each order, set forth in the **EFFECTIVE DATES** section, below.

The prohibition order procedures for powerplants electing continued coverage under section 301 of FUA [1] are found at 10 CFR 501.31, 501.51, and 504.6. Additional information on the proceedings, together with the final prohibition orders at Possum Point 3 and 4 appear under **SUPPLEMENTARY INFORMATION**, below.

EFFECTIVE DATES: The final prohibition orders shall take effect on May 31, 1983 and their prohibitions shall take effect as follows: For Possum Point 3, April 1, 1985 and for Possum Point 4, April 1, 1984, if the respective units are able to burn coal in compliance with all applicable air pollution laws, regulations, ordinances, and orders on those respective dates; otherwise, the prohibitions for each unit shall become effective when VEPCO completes construction, tie-in and testing of new particulate emission control equipment on each unit, respectively, and such testing demonstrates that the respective unit is able to burn coal in compliance with all applicable State, Federal and local air pollutioin control requirements.

FOR FURTHER INFORMATION CONTACT:

Steven E. Ferguson, Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, Forrestal Building, Room GA–093, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone: (202) 252–1316

Marya Rowan, Esq., Department of Energy, Office of the General Counsel, Forrestal Building, Room 6B–222, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone: (202) 252–2967.

The public file containing a copy of this Notice and all other documents and supporting materials related to the proceeding is available for inspection upon request Monday through Friday from 8:00 a.m. to 4:00 p.m. at: Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone: (202) 252–6020.

SUPPLEMENTARY INFORMATION: (1) *Procedures.* ERA issued proposed prohibition orders to VEPCO's Possum Point 3 and 4 on May 16, 1980 (45 FR 34346 (May 22, 1980)) and January 17, 1980 (45 FR 5356 (January 23, 1980)), respectively, commencing proceedings designed to prohibit the use of petroleum or natural gas as the primary energy source in these units if the required findings of then-effective section 301(b) of FUA (hereafter referred to as "former section 301(b)"), discussed below, could be made.

In accordance with 10 CFR 501.51(b) of the FUA procedural regulations applicable to existing powerplants, the issuance of the proposed prohibition orders to Possum Point 3 and 4 commenced an initial three-month public comment period in each case, during which interested parties could challenge ERA's initial finding that Possum Point 3 and 4 have or previously had the technical capability to use coal as their primary energy source and could comment upon the proposed statutory findings which former section 301(b) required ERA to make prior to the issuance of any final prohibition orders.

During these periods neither VEPCO nor any other interested persons submitted information contrary to ERA's initial finding that Possum Point 3 and 4 have or previously had the technical capability to burn coal as a primary energy source.

In accordance with a then-effective provision in 10 CFR § 501.51(b)(3),[2] VEPCO submitted evidence relating to the other findings that ERA are required to make under former section 301(b) and identified the following exemptions for which Possum Point 3 and 4 might qualify: The temporary exemptions authorized by section 311 of FUA based upon: (1) Site limitations, (2) inability to comply with applicable environmental requirements, (3) public interest, and (4) reliability of service; and the permanent exemptions authorized by section 312 of FUA based upon: (1) Site limitations, (2) inability to comply with applicable environmental requirements, and (3) State or local requirements.

Having determined on the basis of the available evidence that the proceedings should go forward, ERA issued Notices of Intention to Proceed for Possum Point 3 and 4 on July 9, 1982 (47 FR 31040 (July 16, 1982)) and January 8, 1981 (46 FR 3269 (January 14, 1981)), respectively, commencing a second three-month public comment period. No comments adverse to ERA's proposed findings were received during this period and VEPCO did not demonstrate the entitlement of Possum Point 3 or 4 to any of the potential exemptions initially identified.

On March 7, 1983, ERA issued a Notice of Availability of Tentative Staff Analysis (TSA) (48 FR 10423 (March 11, 1983)), in accordance with 10 CFR 501.51. The TSA concluded that the findings of technical and financial feasibility required by former section 301(b) of FUA could be made with

[1] The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 (OBRA), which became law on August 13, 1981, amended Title III of FUA in several important respects, including the limitation of DOE's unilateral authority to issue orders prohibiting the use of petroleum and natural gas or certain mixtures including these fuels as a primary energy source in an existing electric powerplant. Under former section 301, DOE could order the involuntary conversion of such powerplants. On October 1, 1981, ERA issued final rules pursuant to OBRA (46 FR 48118), providing procedures whereby an existing powerplant issued a proposed prohibition order under former section 301 (b) or (c) of FUA as of August 13, 1981, the date of enactment of OBRA, could elect to continue the prohibition order proceeding under the provisions of former section 301. In accordance with the procedures provided, VEPCO, on November 23, 1981 notified ERA of its election to have Possum Point 3 and 4 remain subject to former section 301(b) of FUA and thus to become "electing powerplants" as defined in 10 CFR 500.2.

[2] The requirement that a proposed order recipient identify any exemptions for which the powerplant might qualify during the initial three-month comment period was deleted from 10 CFR 501.51(b)(3), effective May 21, 1982 (47 FR 17037 (April 21, 1982)).

respect to Possum Point 3 and 4 and recommended that final prohibition orders be issued to the units. The staff conclusions were based upon information provided by VEPCO and other information available to ERA, all of which is included in the administrative record of the proceedings. No comments on the TSA were received during the 14-day comment period provided.[3]

2. *NEPA Compliance.* In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), DOE has performed an environmental review of these actions and has concluded that the prohibitions contained in these Orders to Possum Point 3 and 4, when they become effective, are not major Federal actions significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of NEPA (42 U.S.C. 4332(C)).

Prohibition Orders

After review and consideration of the whole record in this proceeding, and finding its proposed actions to be supported by reliable, probative, and substantial evidence, ERA issues the following prohibitions:

Virginia Electric and Power Company, Possum Point Generating Station, Unit 3, Dumfries, Virginia, Docket No. 53146–3804–03–82.

Virginia Electric and Power Company, Possum Point Generating Station, Unit 3, Dumfries, Virginia, Docket No. 53146–3804–04–82.

Pursuant to former section 301(b) of FUA and 10 CFR 504.6, ERA hereby prohibits the above-named powerplants from burning petroleum or natural gas as a primary energy source.

As provided in former section 301 (b)(1) and (2) of FUA and 10 CFR 504.6 (c), (d), (e), and (f), these prohibition orders are based upon the following findings:

Finding of Technical Feasibility: In accordance with former section 301(b) (1) and (2) of FUA, ERA has found that it is technically feasible for Possum Point 3 and 4 to use coal or another alternate fuel as their primary energy source without substantial physical modification of the units and without substantial reductions in the rated capacities of the units.

This finding is based upon information contained in the public record and cited in the TSA (48 FR 10423 (March 11, 1983)), which indicates that Possum Point 3 and 4 were designed and constructed to use coal as their primary energy source (Contract Data Sheets, November 27, 1961 and December 21, 1954), and that they have in the past been so operated (VEPCO letter, February 24, 1983, submitted in response to an ERA request for additional information). Additionally, the evidence of record indicates that post-conversion operations will involve no annualized derating of either unit and that, accordingly, no substantial reduction in rated capacities, within the meaning of FUA, will be suffered due to the conversions (VEPCO letter, *supra.*).

The evidence, taken together, supports ERA's initial finding of coal-capability and supports ERA's proposed finding that both Possum Point 3 and 4 are technically capable of physical conversion to permit the use of coal as their primary energy source.

Finding of Financial Feasibility: In accordance with former section 301(b) of FUA, ERA has also found that it is financially feasible for Possum Point 3 and 4 to use coal as their primary energy source. This finding is based upon ERA staff calculations of record, using the general cost calculation formula prescribed in 10 CFR 504.12, the result of which indicates that the use of coal as the primary energy source for Possum Point 3 and 4 will not substantially exceed the cost of using imported petroleum. The TSA contains the ERA staff's reasoned conclusion that this result, taken in conjunction with the presumption of financial feasibility established in 10 CFR 504.6(f)(1),[4] permits ERA to find that the use of coal as the primary energy source for the units is financially feasible. It is noted that the costs employed by the ERA staff in its calculations are consistent with, and confirmed by the cost data contained elsewhere in the record (VEPCO letter, *supra.*). Furthermore, the ERA staff's review of the entire record revealed no evidence of any potential inability on VEPCO's part to raise the capital necessary to finance the conversions (TSA, *supra.*) and did reveal evidence that the conversion of Possum Point 3 had been commenced in 1981 and that of Possum Point 4 in 1980 (VEPCO letter, *supra.*).

The evidence, taken together, thus supports ERA's proposed finding that it is financially feasible for Possum Point 3 and 4 to use coal as their primary energy source.

The prohibitions stated above shall be effective for Possum Point 3, April 1, 1985 and for Possum Point 4, April 1, 1984, if the respective units are able to burn coal in compliance with all applicable air pollution laws, regulations, ordinances, and orders on those respective dates; otherwise, the prohibitions for each unit shall become effective when VEPCO completes construction, tie-in and testing of new particulate emission control equipment on each unit, respectively, and such testing demonstrates that the respective units are able to burn coal in compliance with all applicable State, federal and local air pollution control requirements.

Furthermore, the prohibitions affecting Possum Point 3 and 4 shall not be effective under the following circumstances:

1. During any period that VEPCO, due to circumstances beyond its reasonable control, is unable to burn coal in the units, or either of them, in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that VEPCO, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the units in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders; and

3. During any other periods, as provided or permitted by FUA or applicable ERA regulations, rules or orders.

These orders shall be effective on May 31, 1983.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69, any person aggrieved by these Orders may petition for judicial review thereof at any time before the 60th day following publication in the Federal Register.

Issued in Washington, D.C. on March 25, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-8516 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

[3] By letter of February 28, 1983, VEPCO requested that ERA reduce the public comment periods to the minimum legally required, which is 45 days from date of publication of the proposed orders, where the proposed order recipient so requests (10 CFR 501.51(b)). At the time of VEPCO's request, the prescribed minimum comment period had already been exceeded. Accordingly, in granting the request, ERA determined that a 14 day comment period on the TSA was sufficient to permit any other interested parties to submit comments, requests for a hearing, or any requests for extension of the comment period, should an interested party believe such extension to be necessary.

[4] 10 CFR 504.6(f)(1) reads as follow:

ERA will presume that it is financially feasible for a unit to use an alternate fuel as its primary energy source if the cost of using an alternate fuel does not substantially exceed the cost of using imported petroleum as calculated using the general cost calculation described in § 504.12 of the regulations * * *.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP83-229-000]

Columbia Gas Transmission Corp.; Application

March 29, 1983.

Take notice that on March 14, 1983, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP83-229-000 an application pursuant to Section 7 the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and for permission and approval to abandon certain other natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes six main line construction and abandonment projects. Applicant states that the construction projects proposed are primarily designed to maintain service to Applicant's existing wholesale customers at levels presently authorized by the Commission. In addition, Applicant avers that the abandonment projects proposed are necessary in order to retire facilities no longer required in Applicant's operations.

Specifically, Applicant proposes the following:

(1) The construction and operation of approximately 4.4 miles of 16-inch pipeline replacing a like amount of 12-inch pipeline located in Muskingum County, Ohio.

(2) The construction and operation of approximately 1.1 miles of 20-inch pipeline replacing a like amount of 18-inch pipeline located in Clark and Greene Counties, Ohio.

(3) The construction and operation of a 2,200 horsepower addition at the Gala compressor station, located in Botetourt County, Virginia.

(4) The alteration of Unit No. 8 at the Cevedo compressor station located in Wayne County, West Virginia, reducing its horsepower rating from a 10,500 (NEMA) horsepower rating to a 10,200 (ISO) horsepower rating.

(5) The abandonment of approximately 3.7 miles of 20-inch pipeline and the installation of interconnecting pipeline facilities in order to operate approximately 3.7 miles of existing 26-inch pipeline located in Howard County, Maryland.

(6) The abandonment of approximately 12.9 miles of 20-inch pipeline and a .6 mile river crossing consisting of five lines of 10 and 12-inch pipeline each located in Summers and Monroe Counties, West Virginia.

Applicant estimates the cost of construction of the proposed projects to be $2,721,850 which cost Applicant proposes to finance from funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 19, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the 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 motion 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 motion 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. 83-8811 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP 83-22-000]

Commonwealth of Pennsylvania, Section 103 NGPA Determination, J.G.M. Gas & Oil Inc., D. Schultz #2, FERC JD. No. 82-52478; Petition To Reopen Final Well Category Determination

Issued: March 29, 1983.

Take notice that on March 16, 1983, the Division of Oil and Gas Regulation of the Commonwealth of Pennsylvania (Pennsylvania) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen the application of J.G.M. Gas & Oil Inc. for a final well category determination, that the D. Schultz #2 Well qualifies as a new, onshore production well pursuant to section 103 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1982). The section 103 determination became final on October 17, 1982 pursuant to NGPA section 503(d) and 18 CFR 275.202(a). Pennsylvania requests reopening of their determination because in making the determination, Pennsylvania states it relied on an untrue statement of material fact and that there was omitted a statement of material fact necessary in order to make the statements not misleading.

Specifically, Pennsylvania alleges that the untrue statement of material fact was the statement of J.G.M. that "Ven-26760 was spudder (sic) after Schultz #2 and therefore Schultz is eligible for 103." Pennsylvania states that the omitted statement should have provided the "Ven-26760 was spudded before the Schultz #2 Well." Pennsylvania contends that the D. Schultz #2 Well is ineligible for an NGPA section 103 determination because the well does not meet the state's well spacing requirements. Pennsylvania contends further that the D. Schultz #2 Well was previously disapproved for a section 103 determination under different operatorship.

Notice is hereby given that, in the event the subject determination is reopened, the question of whether the Commission will require refunds, plus interest computed under §154.102(c) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion

to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenenth F. Plumb,

Secretary.

[FR Doc. 83-8512 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-25-002]

Louisiana Intrastate Gas Corp.; Extension Reports

March 29, 1983

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before April 25, 1983 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 385.211 or 385.214).

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 party to a 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8513 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

Docket No. and transporter/seller		Recipient	Date filed	Part 284 subpart	Effective date
ST79-25-002	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301 [1]	United Gas Pipe Line Co.	2/22/83	D	5/19/83
ST81-165-001	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301 [1]	Columbia Gas Transmission Corp.	2/23/83	C	2/25/83
ST81-256-001	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	Southern Natural Gas Co.	2/11/83	C	5/12/83
ST81-283-001	The East Ohio Gas Co., 1717 East Ninth Street, Cleveland, OH 44114 [1]	Fitchburg Gas and Electric Light Co.	2/17/83	G	5/14/83
ST81-293-001	Natural Gas Pipeline Co. of America, 122 South Michigan Avenue, Chicago, IL 60603. [1]	United Gas Pipe Line Co.	2/18/83	G	5/18/83
ST81-318-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Northern Natural Gas Co.	2/18/83	G	5/19/83
ST81-387-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Southern Natural Gas Co.	2/16/83	G	7/29/83
ST81-391-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Northern Natural Gas Co.	2/16/83	G	7/16/83
ST81-427-001	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Colorado Interstate Gas Co.	2/28/83	G	6/1/83
ST81-464-001	Seagull Pipeline Corp., 1100 Louisiana, Houston, TX 77002	United Gas Pipe Line Co.	2/24/83	C	5/29/83
ST83-259-000	Consolidated Gas Supply Corp., 445 West Main St., Clarksburg, WV 26301	Bay State Gas Co.	2/14/83	B	5/14/83

[1] These extension reports were filed after the date specified by the commission's regulations, and shall be the subject of a further commission order.
Note: The noticing of these filings does not constitute a determination of whether the filings comply with the commission's regulations.

[FR Doc. 83-8513 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-34-003]

Northern Natural Gas Company, Division of InterNorth, Inc.; Petition to Amend

March 29, 1983

Take notice that on March 11, 1983, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-34-003 a petition to amend the order issued June 4, 1982, in Docket No. CP82-34-000 pursuant to Section 7(c) of the Natural Gas Act, so as to authorize an increase in the level of firm entitlement currently sold to Westar Transmission Company, a Division of Pioneer Corporation (Westar) under Northern's Rate Schedule X-17 and the utilization of an additional existing delivery point to facilitate such sale, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northern states that the order issued June 4, 1982, authorized it, *inter alia*, to sell and deliver to Westar 21 Mcf and 16,500 Mcf of firm entitlement gas per day during the billing months of November through March and April through October, respectively. It is states that subsequent to such time Northern and Westar entered into an amendment to the gas sales agreement whereby Northern agreed to sell and deliver 75,000 Mcf of firm entitlement gas per day to Westar for a ten-year period ending October 26, 1982, and year-to-year thereafter. It is asserted that a minimum annual bill provision reflecting 75 percent of Westar's daily firm entitlement and a minimum monthly bill provision reflecting 50 percent of Westar's daily firm entitlements for April through October would be included.

It is stated that the rate to be paid for each Mcf of gas delivered would be the currently effective service area rate approved by the Commission as detailed in Original Volume No. 2 of Northern's F.E.R.C. Gas Tariff. It is further stated that Westar is given the option to renegotiate such rate if the currently effective service area rate excceds certain market clearing prices in Texas as more fully detailed in the application.

In addition to the delivery points currently authorized under Northern's Rate Schedule X-17, Northern proposes to operate the existing delivery point

between Northern and Westar located at Labor 15, League 323, LaSalle County School Land, Martin County, Texas, to accommodate the sale.

It is stated that Westar would utilize the additional firm entitlement to provide natural gas service to approximately 280,000 residential, commercial and industrial customers served directly by Westar or by local distribution companies.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 19, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8514 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-20-000]

Oklahoma Corporation Commission, Section 108 NGPA Determination, Mobil Producing Texas and New Mexico, Inc., Daily No. 2 Well, FERC J.D. No. 82-50616; Petition to Reopen Final Well Category Determination and Request for Withdrawal

Issued: March 29, 1983.

On March 10, 1983, Mobil Producing Texas and New Mexico Inc. (Mobil) filed with the Federal Energy Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination, that gas from the Daily No. 2 Well, located in Beaver, Oklahoma qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1982). This determination made by the Oklahoma Corporation Commission (OCC) became a final on October 7, 1983, pursuant to NGPA section 503(d) and 18 CFR 275.202(a) of the Commission's regulations.

Mobil requests reopening of this final determination so that it can withdraw its application for said determination. Mobil states that subsequent to filing for a section 108 well category determination, Mobil, as part of its continuing review of well filings, found that the production volumes used to qualify this well were not accurate, and do not meet the Commission's regulations. Therefore, Mobil requests that the Commission reopen the determination for the subject well under section 108 of the NGPA, and allow Mobil to withdraw its application.

Mobil avers that no section 108 payments have been received for this well. Notwithstanding this allegation, the Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Rules of Practice and Procedure. All protests will be considered in determining the appropriate action to be taken, but will not make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8515 Filed 3-31-83; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary

Compliance with the National Environmental Policy Act: Intent To Prepare Environmental Impact Statement—Disposal of Radioactive Defense High-Level and Transuranic Wastes at Hanford

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) pertaining to the disposal of certain radioactive defense wastes stored at the Hanford Site near Richland, Washington.[1]

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS, in accordance with Section 102 (2) (C) of the National Environmental Policy Act, to provide environmental input to the decision on the proposed selection and implementation of a disposal strategy for certain radioactive defense wastes at the Hanford Site. These wastes consist primarily of high-level radioactive wastes (HLW) from chemical processing of spent fuels, transuranic (TRU) wastes, and capsules containing strontium (^{90}Sr) and cesium (^{137}Cs) salts that have been separated from HLW. Excluded from consideration in this EIS are: low-level radioactive wastes (LLW) in burial grounds; and wastes generated by decontamination and decommissioning after the year 1980.

DATE: Comments are due within 30 days of the date of this notice.

Alternatives

1. *Geologic Disposal.* Geologic disposal is the reference disposal method for immobilized high-level waste. DOE's National Waste Terminal Storage (NWTS) program is expected to begin operating a geologic repository for commercial nuclear waste by 1998. There is no known technical reason why such a repository could not accommodate defense high-level wastes which are to be committed to geologic disposl. This course will be pursued unless it should cause unacceptable adverse impacts to national security programs, facilities, or information. The Nuclear Waste Policy Act of 1982, Section 8, requires an evaluation of this issue, considering factors relative to health and safety, regulation, cost efficiency, transportation, public acceptance, and national security. In the meantime, close liaison between the Defense Waste and NWTS programs will continue to assure technical and scheduling compatibility.

It is recognized that site specific factors must be considered in making the decision on the appropriate disposal actions to be taken for various types of waste at each of DOE's major waste sites. Hanford's high-level waste tanks are isolated from the water table and contain much less radioactivity than tanks at Savannah River and Idaho. Potentially hazardous and readily retrievable high-level waste at Hanford will be evaluated for disposal in a geologic repository. The retrievable waste that requires repository disposal will be stored pending immobilization. If

[1] This Notice of Intent (NOI) supersedes an NOI issued October 26, 1977, in the **Federal Register** (42 FR 56538), announcing the DOE intention to prepare an EIS for the long-term management and disposal of Hanford defense HLW only.

practical, immobilization capabilities will be incorporated into existing facilities. Some categories of less hazardous (but previously designated HLW) and/or not readily retrievable wastes will be evaluated for in-place stabilization and isolation, or for retrieval and immobilization.

With respect to transuranic (TRU) wastes, the objective is to end interim storage and achieve permanent disposal. Newly generated and stored defense TRU waste will be certified for compliance with waste acceptance criteria, after processing if necessary, and eventually sent for emplacement in the Waste Isolation Pilot Plant (WIPP). Certification of newly generated waste will be initiated in 1983. Stored waste will be retrieved, examined, processed if necessary, and certified. After WIPP is operational, in 1989, waste generating sites will send certified waste directly to WIPP.

Before 1970, TRU contaminated solid material was disposed of by burial as low-level waste. The National Academy of Sciences and others have found that retrieval of this waste can be more hazardous than leaving it in place. The reference plan for such buried waste is to monitor and reevaluate it periodically and to take remedial actions if necessary.

2. *Onsite stabilization and isolation.* In this alternative, the majority of radioactive wastes are isolated in place and appropriate engineered barriers established between the waste and the biosphere. Wastes stored in tanks, drained liquid sites, and burial grounds, etc., are stabilized and isolated in place, where retrieval would be more hazardous or would not warrant the cost and risk. Environmental, safety, and economic evaluations will be made to determine if stored TRU (post 1970 generated) should be retrieved for repository disposal consistent with the reference plan, or be stabilized and isolated onsite. Examples of engineered improvements being considered include soil, rip-rap, clay, asphalt, and concrete covers over sites to reduce soil erosion and prevent surface water intrusion, and sub-surface grouting to restrict groundwater intrusion and immobilize wastes in place. After use, (unusable) cesium (Cs) and strontium (Sr) capsules are disposed in a geologic repository or in a near-surface disposal facility. Encapsulated and some other high heat-producing wastes may be allowed to decay further before implementation of the disposal mode.

3. *Continued Storage (No-Action).* Under this alternative, the existing program of interim storage and active institutional control is continued indefinitely. Continued present waste management practices would allow use of a near-surface, dry-well storage facility (DWSF) for Cs and Sr capsules to assure safe storage with minimal institutional control. The potential impacts of not embarking on a waste disposal program are illustrated by this alternative.

Because of the diversity of waste types (i.e., HLW, TRU), sites, and radionuclide inventories, it may not be possible to select a single alternative for all wastes. Retrieval, stabilization methods, waste forms, immobilization processes, and packaging techniques may differ appreciably within the various alternatives.

Background Information

In 1943, the U.S. Army Corps of Engineers selected the 570-square mile Hanford Site in southeastern Washington for production of special nuclear materials, principally plutonium, for national defense activities. Hanford facilities were operated by the U.S. Atomic Energy Commission (1947–1974) and its successors, the U.S. Energy Research and Development Administration (ERDA) (1974–1977) and the U.S. Department of Energy.

Nine plutonium production reactors were constructed and operated along with companion chemical processing plants and waste management facilities. By the end of 1971, eight of the reactors and related facilities were shut down, leaving only the N Reactor in operation, with one chemical processing plant (PUREX) placed in standby in 1972. Fuel discharged from the reactors was processed, to recover source and special nuclear materials, leaving a wide variety of radioactive wastes. These defense wastes include HLW and TRU.

After PUREX startup, and at the completion of currently anticipated fuel processing in the early 1990's, the amount of HLW and suspect HLW stored will consist of approximately 200,000 m^3 of liquids, damp solids, and slurries stored in about 177 underground tanks (eight of these tanks are now under construction); and about 4 m^3 of major heat source fission products (^{90}Sr and ^{137}Cs) recovered from the HLW and stored underwater in about 3,600 sealed metal capsules. Of the total amount of radioactivity, less than one percent is located in cribs, ponds, burial trenches, reverse wells, etc., consisting of several million cubic meters of contaminated soils and sediments. Most of the TRU waste is contained in about 25 of these sites. Consistent with the national program before 1970, TRU contaminated solid waste was not distinguished from other low-level solid waste and was disposed of by shallow-land burial. The U.S. Atomic Energy Commission then declared that TRU waste be stored retrievably in packages designed to last 20 years or more, pending decisions on its permanent disposal.

Radioactive waste has been managed at the Hanford Site since 1944. The impacts associated with these continuing operations were assessed in an EIS entitled *Waste Management Operations, Hanford Reservation,* published in December 1975 (ERDA–1538). In that document, the environmental impacts from waste management operations at the Hanford Site were determined to be acceptable and the actions being carried out for reducing the mobility of HLW were found to be satisfactory in terms of storage. Technical alternatives for disposal of high-level radioactive wastes at Hanford were examined in *Alternatives for Long-Term Management of Defense High-Level Radioactive Wastes, Hanford Reservations, Richland, Washington* (September 1977), ERDA 77–44. This document is a significant reference in the identification of the alternatives presented in this NOI.

Important Issues for Comparing Alternatives

The following issues will be analyzed for each of the alternatives during the preparation of the EIS. This list is neither intended to be all inclusive, nor a predetermination of impacts.

1. Effects of implementation of the alternative on the communities surrounding the Hanford Site.
2. Potential health effects from radiation exposure to the worker, the public, and the environment from implementing the alternative.
3. Radiological and nonradiological risks of potential accidents from man-made and natural events.
4. Nonradiological impacts of implementing the alternative.
5. Level of radioactivity to stabilize and isolate in place; i.e., degree of retrieval.
6. Transportation impacts.
7. Resource commitments (land, water, etc.).
8. Categorization of waste sites.
9. Effects of time on decision variables and parameters.
10. Measures to mitigate adverse environmental impacts.

Schedule of EIS Preparation

Following receipt of comments on this

NOI, a draft environmental impact statement (DEIS) will be prepared and made available to state and Federal agencies and the public for review and comment. Completion of the DEIS is tentatively scheduled by the end of 1983. Following the comment period on the DEIS, a final EIS that will take into consideration comments received will be prepared and distributed to state and Federal agencies and members of the public expressing an interest in the final EIS. Based on the final EIS, a decision will be made as to which alternative will be pursued by DOE.

Comments and Scoping

All interested parties are invited to submit comments or suggestions in connection with the preparation and scoping of the EIS. Those desiring to submit comments or suggestions for issues to be addressed in the DEIS should submit them within 30 days of the date of this notice to the following address: Outline for Hanford Defense Waste EIS, Attn: John J. Schreiber, Director, Waste Management Division, U.S. Department of Energy, Richland, Washington 99352.

A copy of the comments received on this Notice of Intent will be retained by DOE and made available for inspection at the Public Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, NW, Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, and at the Richland Public Reading Room, Federal Building, 825 Jadwin Avenue, Richland, Washington, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A public scoping meeting is not planned.

Copies of the documents currently planned to be used in the preparation of the DEIS are available for public inspection at the Richland Public Reading Room, Federal Building, 825 Jadwin Avenue, Richland, Washington.

Upon completion of the DEIS, its availability will be announced in the Federal Register, and public comments will again be solicited.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the DEIS for review and comments should notify John J. Schreiber at the above address. Those seeking further information on the environmental process may contact: Raymond F. Pelletier, Office of Environmental Compliance, EP-362, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-4600.

Dated at Washington, D.C., this 25th day of March 1983, for the Department of Energy.

William A. Vaughan,

Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83-8525 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the return of 7.0 kilograms of highly enriched uranium contained in research reactor fuel from the HMI reactor, in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This arrangement for the return of U.S. origin highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8526 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the export of 961,632 kilograms of natural uranium to various sites within the European Community for subsequent enrichment and utilization for fuel in light water power reactors within the European Community.

This subsequent arrangement is to be carried out under the above mentioned agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for Inrternational Affairs.

[FR Doc. 83-8519 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Government of Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer: RTD/SW(JA)-3, from Japan to Sweden, 2,115 grams of uranium, enriched to 3.1% in U-235, in the form of fuel rods, for irradiation in the R-2 material test reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security

This subsequent arrangement will take effect no sooner than fifteen days

after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8517 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Government of Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/JA (EU)-24, from France to Japan, 188 grams of uranium, enriched to 68.1% in U-235, and 46 grams of plutonium, contained in one unirradiated fuel pin, and in one irradiated fuel pin and associated waste, for post-irradiation examination associated with the fast breeder reactor program. The material is to be recovered following the examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8520 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Proposed Subsequent Arrangement; European Atomic Energy; Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the enrichment within the European Community of 1,300,000 pounds of natural uranium of United States origin, and its subsequent utilization for light water power reactor fuel within the European Community.

This subsequent arrangement is to be carried out under the above mentioned Agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8521 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-765, to Central Bureau for Nuclear Measurements, Geel, Belgium, 11.26 grams of plutonium enriched in the isotope 239, and 20.5 grams of uranium, enriched to 72% in U-235, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8522 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the export of 1,200,000 kilograms of natural uranium to various sites within the European Community for subsequent enrichment and utilization for fuel in light water power reactors within the European Community.

This subsequent arrangement is to be carried out under the above mentioned agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8523 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–EU–766, to British Nuclear Fuels, Ltd., 0.005 grams of plutonium–244, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8524 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Government of Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–A–332, to the Japan Atomic Energy Research Institute, 10 milligrams of uranium–234 and 100 milligrams of uranium–236, for use in the measurement of isotopes at the fast critical assembly.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 29, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-8518 Filed 3-31-83; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Southeastern Power Administration (SEPA), DOE.

ACTION: Notice of Approval on an Interim Basis of Kerr-Philpott Projects' Rates.

SUMMARY: On March 28, 1983, the Assistant Secretary for Conservation and Renewable Energy confirmed and approved, on an interim basis, an adjustment of two of the rate schedules for Kerr-Philpott Projects' power. The rates were approved on an interim basis through March 31, 1984, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATE: Approval of rates on an interim basis is effective on April 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

John J. DiNucci, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: The Federal Power Commission by Order issued February 18, 1976, in Docket No. E–7002 confirmed and approved Wholesale Power Rate Schedules KP–1–B, KP–2–B, and JHK–1–B through September 30, 1980. The Federal Energy Regulatory Commisison by orders issued January 29, 1981, and March 19, 1982, in Dockets EF80–3041 and EF81–3041, respectively, extended through September 30, 1982, approvals of Rate Schedules KP–1–B and KP–2–B and approved Rate Schedule JHK–1–C as a substitute for JHK–1–B. On March 4, 1983, the Commission approved through March 31, 1983, extension of Rate Schedules KP–1–B and KP–2–B and approved Rate Schedule JHK–1–D as a substitute for JHK–1–C. Rate Schedule KP–1–C replaces KP–1–B. Rate Schedule JHK–1–E replaces JHK–1–D and KP–2–B is eliminated.

Issued in Washington, D.C., March 28, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of Southeastern Power Administration—Kerr-Philpott Projects' Power Rates; Rate Order No. SEPA–15; Order Confirming and Approving Power Rates on an Interim Basis.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP–1–B, KP–2–B, and JHK–1–D confirmed and approved through March 31, 1983. The approval of these rate schedules interimly on September 2, 1982, and finally on March 4, 1983, was to allow SEPA time to complete negotiations under its interim power policy and to present revised rate schedules which would recover reveneues sufficent to accomplish timely payout of all project power costs.

Public Notice and Comment

Opportunities for public review and comments on the proposed revised Rate Schedules KP–1–C and JHK–1–E were announced by Notice published in the **Federal Register** on January 6, 1983, and all customers were notified by mail. A Public Information and Comment Forum was held in South Hill, Virginia, on February 8, 1983, and written comments were invited by the Notice through February 25, 1983. No oral or written comments were received.

Discussion

System Repayment

SEPA's system Power Repayment Study, prepared in January 1983, for the Kerr-Philpott Projects, shows that with an annual revenue increase of $4,426,000 over the revenues shown in its previously referenced June 1982 repayment study, all system costs associated with implementation of SEPA's Interim Power Marketing Policy are paid within their repayment life. Rate Schedules KP-1-C and JHK-1-E are so designed as to produce revenue adequate to recover on a timely basis all system power costs.

Rate Design

In Rate Schedules KP-1-C and JHK-1-E these charges are divided between capacity, energy and wheeling charges. The capacity charge has been increased by $0.27 per kilowatt of monthly demand to a rate of $1.52 per kilowatt per month which amounts to a 22 percent increase. A portion of the increase is due, however, to the fact that under the Interim Policy no capacity is sold the companies and because SEPA must provide reserves for capacity sold the preference customers, fewer kilowatts are actually revenue producing. The energy rate has been increased by 1.25 mills per kilowatt-hour to a rate of 6.25 mills per kilowatt-hour which amounts to a 25 percent increase.

The wheeling charges in the rate schedules are those charged SEPA by VEPCO and CP&L and are simply passed through directly to affected preference customers. The wheeling charges may be adjusted annually and adjustments will become effective at the time the companies' adjusted charges become effective to SEPA. The effect of these rates will be that 57 percent of the costs of generation will be allocated to capacity and 43 percent to energy. The wheeling charges are tied to the costs of providing the necessary transmission and distribution services.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environemntal Impact Statement is required.

Availability of Information

Information regarding these rates including studies, and other supporting materials are available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning on April 1, 1983, and ending no later than September 30, 1986.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective April 1, 1983, attached Wholesale Power Rate Schedules KP-1-C and JHK-1-E. The rate schedules shall remain in effect on an interim basis through March 31, 1984, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, D.C., this 28th day of March 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

United States Department of Energy; Southeastern Power Administration

Wholesale Firm Power Rate Schedule JHK-1-E

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 165 mile radius of the existing interconnection point between the Virginia Electric and Power Company and the Carolina Power and Light Company (hereinafter called the Company) at the Virginia-North Carolina State line in the vicinity of John H. Kerr Project (hereinafter called the Project), purchasing power from the Project in wholesale quantities under appropriate contracts and served through the facilities of the Company. This rate schedule may become available to other public bodies and cooperatives as determined by Southeastern Power Administration pursuant to promulgation of a final power marketing policy for the Kerr-Philpott System of Projects.

Applicability: This rate schedule shall be applicable to Project firm power and accompanying energy, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

Character of Service: Electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at existing or future delivery points on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.52 per kilowatt of contract demand.

Energy Charge: 6.25 mills per kilowatt-hour.

An additional rate for wheeling service provided under this rate schedule shall be the rate charged Southeastern Power Administration by the Company and future adjustments to that rate will become effective annually pursuant to a rate formula filed with the Federal Energy Regulatory Commission or upon acceptance for filing by the Federal Energy Regulatory Commission. The initial charges shall be:

Wheeling Charge: $1.99 per kilowatt of contract demand.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the customer and the customer will purchase from the Government a portion of the energy available to the Company area from the Projects in any billing month determined by multiplying the total energy available less 6 percent losses by the ratio of the customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

Billing Month: End-of-month meter readings for billing under this schedule shall be made on the last regular working day of each month or as near thereto as may be practicable.

United States Department of Energy; Southeastern Power Administration

Wholesale Firm Power Rate Schedule KP-1-C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is heeinafter called the Customer) within a 150 mile radius of the John H. Kerr Project, purchasing power generated at the John H. Kerr and Philpott Projects in wholesale quantities under approriate contracts and served through the facilities of the Virginia Electric and Power Company (hereinafter called the Company). This rate schedule may become available to other public bodies and cooperatives as determined by Southeastern Power Administration pursuant to promulgation of a final power marketing policy for the Kerr-Philpott System of Projects.

Applicability: This rate schedule shall be applicable to firm power and accompanying energy generated at the John H. Kerr and Philpott Projects, purchased in wholesale quantities under approrpriate contracts for a specified number of kilowatts of capacity and shall be applied to each customer's system consisting of one or more delivery points.

Character of Service: The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.52 per kilowatt of contract demand.

Energy Charge: 6.25 mills per kilowatt-hour.

An additional rate for wheeling service provided under this rate schedule shall be the rate charged Southeastern Power Administration by the Company and future adjustments to that rate will become effective upon acceptance for filing by the Federal

Energy Regulatory Commission of the Company's rate. The initial charge shall be:

Wheeling Charge: $1.74 per kilowatt of contract demand.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the government is obligated to supply and the customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government a portion of the energy available to the Company area from the projects in any billing month determined by multiplying the total energy available less five percent losses by the ratio of the Customer's contract demand to the sum of the contract demands of all customers served under this rate schedule.

Billing Month: The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

[FR Doc. 83-8429 Filed 3-31-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51460; TSH-FRL 2337-3]

Certain Chemicals Premanufacture Notices

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-570, 83-571, 83-572, 83-573, 83-574, 83-575 and 83-576, June 15, 1983.

PMN 83-577, 83-578, and 83-580, June 18, 1983.

PMN 83-581, 83-582, 83-583 and 83-584, June 19, 1983.

PMN 83-585 and 83-586, June 20, 1983.

PMN 83-587, June 21, 1983.

Written comments by:

PMN 83-570, 83-571, 83-572, 83-573, 83-574, 83-575 and 83-576, May 16, 1983.

PMN 83-577, 83-578 and 83-580, May 19, 1983.

PMN 83-581, 83-582, 83-583 and 83-584, May 20, 1983.

PMN 83-585 and 83-586, May 21, 1983.

PMN 83-587, May 22, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51460]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-570

Manufacturer. Confidential.

Chemical. (G) Substituted alkane diols.

Use/Production. (G) Open use. Prod. range: 500-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation and ocular, a total of 88 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-10,000 kg/yr to land. Disposal by incineration.

PMN 83-571

Manufacturer. Confidential.

Chemical. (G) Fatty acids, carbomonocyclic ester.

Use/Production. (S) Captive intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers.

Environmental Release/Disposal. Release to water.

PMN 83-572

Manufacturer. Confidential.

Chemical. (G) Polyester poly carboxylate salt.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air. Disposal by incineration.

PMN 83-573

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manfacture and processing: dermal, a total of 13 workers, up to 1 hr/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air. Disposal by incineration.

PMN 83-574

Importer. Confidential.

Chemical. (S) Polymer of malonic acid, diethyl ester, trimethylolpropane, 1,6-hexanediol, neopentylglycol.

Use/Import. Confidential. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 20-40 workers, up to 2,000-4,000 manhours/yr.

Environmental Release/Disposal. No release.

PMN 83-575

Importer. Confidential.

Chemical. (S) Polymer of bisphenol A-oxirane polymer, neodecanoic acid, 2,3-epoxpropyl ester, diethylamino-propylamine, diethanolamine.

Use/Import. Confidential. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 20-40 workers, up to 2,000-4,000 manhours/yr.

Environmental Release/Disposal. No release.

PMN 83-576

Manufacturer. Confidential.

Chemical. (G) Polymer of diphenylmethane diisocyanate alkyl epoxides, alkane triol, and trisubstituted alkanol.

Use/Production. (S) Industrial prepolymer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture maintenance and disposal: dermal and inhalation, a total of 52 workers, up to 8 hrs/da, up to 6 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-100 kg/yr to land. Disposal by incineration or approved landfill.

PMN 83-577

Importer. Confidential.

Chemical. (G) 2-(2-haloaryl)amino-6-(N,N-dialkylamino) fluoran.

Use/Import. (S) Thermal paper for industrial, commercial and consumer uses. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 5,000 mg/kg; Ames Test: Negative.

Exposure. Processing and use: dermal.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water. Disposal by incineration.

PMN 83-578

Manufacturer. Confidential.

Chemical. (G) Alkoxymethyl polysilazanes.

Use/Production. (S) Curing agent, an industrial, commercial and consumer use. Prod. range: Confidential.

Toxicity Data. Acute dermal: > 2,000 mg/kg; Irritation: Skin—Severe, Eye—Slight.

Exposure. Confidential.

Environmental Release/Disposal. No release.

PMN 83-580

Manufacturer. Confidential.

Chemical. (G) Thio-substituted aromatic amine.

Use/Production. (G) Coating for commercial materials. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 52 workers, up to 30 min/da, up to 2 wks/yr.

Environmental Release/Disposal. Disposal by incineration.

PMN 83-581

Importer. Confidential.

Chemcial. (G) (Substituted-acetacetanilidylazophenyl)—(substituted benzothiazole alkanolamine salt.

Use/Import. (S) Industrial colorant for paper. Import range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 48 hr. (minnow)—> 500 mg/1.

Exposure. Processing, use and disposal: dermal, a total of 4 workers, up to 2 hrs/da, up to 60 da/yr.

Environmental Release/disposal. Maximum of 150 kg/yr released to water. Disposal by publicly owned treatment works (POTW) and incineration.

PMN 83-582

Manufacturer. Petrarch Systems, Inc.

Chemical. (S) Dimethylsila-14-crown-5.

Use/Production. (S) Phase transfer catalyst. Prod. Range: 500–2,000 kg/yr.

Toxicity Data. Acute oral: 9.9 g/kg.

Exposure. Manufacture: dermal, a total of 3 workers, up to 5 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to water.

PMN 83-583

Manufacturer. Petrarch Systems, Inc.

Chemical. (G) Organotrimethoxysilane.

Use/Production. (S) Monomer for silicone production. Prod. Range: 500–10,000 kg/yr.

Toxicity Data. Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Manufacure and use: dermal, a total of 6 workers, up to 60 da/yr.

Environmental Release/Disposal. Less than 20 lbs/yr released to water with less than 10 kg/yr to land.

PMN 83-584

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (S) Adhesive component. Prod. range: 20–500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 7 persons/batch, 6 hrs/batch, 10 batches/yr.

Environmental Release/Disposal. No release. Disposal by Resource Conservation Recovery Act (RCRA).

PMN 83-585

Manufacturer. E. I. du Pont de Nemours & Co., Inc.

Chemical. (G) Polymer of styrene, mixed acrylates and acrylic amide.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 persons/shift, 8 hrs/shift, 3 shifts/da, 1 da/yr.

Environmental Release/Disposal. Disposal by incineration.

PMN 83-586

Manufacturer. E. I. du Pont de Nemours & Co., Inc.

Chemical. (G) Mixed acrylic copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 persons/shifts, 8 hrs/shift, 3 shifts/da, 3 da/yr.

Environmental Release/Disposal. Disposal by incineration.

PMN 83-587

Manufacturer. Confidential.

Chemical. (G) Mixed metal oxide.

Use/Production. (S) Pigment for paints and plastics. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation.

Environmental Release/Disposal. 10–100 kg/yr released to air, less than 10 kg/yr to water and 100–1,000 kg/yr to land. Disposal by biological treatment system.

Dated: March 28, 1983.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 83-8476 Filed 3-31-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59121; TSH-FRL 2337-2]

Certain Chemicals, Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemptions provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by April 18, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59121]" and the specific TME number should be sent to:

Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-34

Manufacturer. Confidential.
Chemical. (G) Substituted alkane diols.
Use/Production. (G) Open use. Prod. range: 1 yr, min 500 kg, max 10,000 kg.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and ocular, a total of 25 workers, up to 6 hrs/da, up to 15 da/yr, Use: dermal, ocular and inhalation, a total of 10 workers up to 8 hrs/da, up to 45 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10 –100 kg/yr to land. Disposal by incineration.

TME 83-6

Manufacturer. Confidential.
Chemical. (G) Ester of gluco-heptonic acid.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. No data submitted.

TME 83-37

Manufacturer. Confidential.
Chemical. (G) Substituted amine-boron compound.
Use/Production. Confidential Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. Confidential.

TME 83-38

Manufacturer. Allied Chemical Corporation.
Chemical. (G) Substituted borazole polymer.
Use/Production. (S) Industrial boron dopant for semiconductor fabrication. Prod. range: Confidential.
Toxicity Data. No data.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: March 28, 1983.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 83-8477 Filed 3-31-83; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2336-5]

Availability of Environmental Impact Statements Filed March 21 Through March 25, 1983 Pursuant to 40 CFR 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5075 or 382-5076

Corps of Engineers:
EIS No. 830168, FSuppl, COE, MN, Mankato-North Mankato-Le Hillier, Main St./TH-60 Bridge Replacement, Due: May 2, 1983.
Department of the Interior:
EIS No. 830172, Draft, BLM, ID, Eastern Idaho Wilderness Study Areas, Designation, Due: May 31, 1983.
EIS No. 830157, Final, BLM, SEV, WY CO Savery Project Preference Right Coal Lease Applications, Due: May 2, 1983.
EIS No. 830165, Final, MMS, SEV, ATL NC SC GA FL 1983 OCS Oil and Gas Lease Sale No. 78, Due: May 2, 1983.
EIS No. 830169, Final, BIA, NM, Navajo RR Coal Transportation, Right-of-Way, San Juan & McKinley Cos., Due: May 2, 1983.
Department of Transportation:
EIS No. 830132, Final, FHW, NJ, I-295/US 130 Upgrading, Hessian Avenue to Repaupo Rd., Gloucester Co., Due: May 2, 1983.
EIS No. 830161, Draft, FHW, WI, South Madison Beltline Improvement, Fish Hatchery Rd to I-90, Dane Co., Due: May 16, 1983.
EIS No. 830167, Draft, FHW, FL, 39th Avenue Improvement, I-75 to Gainesville Airport, Alachua County, Due: May 16, 1983.
EIS No. 830171, Draft, FHW, NV, US 395 Relocation and Reconstruction, Carson City County, Due: May 23, 1983.
Department of Housing and Urban Development:
EIS No. 830162, Final, CDB, MI, Near East Riverfront No. 2 Development (Stroh Project), UDAG, Wayne Co., Due: May 2, 1983.
EIS No. 830163, Final, CDB, MI, Chene St. Housing Site/Near East Riverfront No. 3, UDAG, Wayne County, Due: May 2, 1983.
EIS No. 830164, Final, CDB, MI, American Natural Resources/Near East Riverfront No. 1 Development, UDAG, Due: May 2, 1983.
Environmental Protection Agency:
EIS No. 830158, Final, EPA, ME, ATL Portland Ocean Dredged Material Disposal Site, Designation, Due: May 2, 1983.
EIS No. 830170, Final, EPA, TX, ATL Sabine-Neches Dredged Disposal Site, Designation, Jefferson Co., Due: May 9, 1983.
Tennessee Valley Authority:
EIS No. 830166, Final, TVA, SD, Adoption-Edgemont Uranium Mill Decommissioning, Falls River/Custer Co., Due: May 2, 1983.
Department of Defense, Army:
EIS No. 830159, Final, USA, WA, Fort Lewis/Yakima Firing Center Ongoing Mission, Yakima/Kittitas Cos., Due: May 2, 1983.
Department of Agriculture:
EIS No. 830160, Draft, AFS, OR, Breitenbush II Geothermal Area, Leasing, Willamette and Mt. Hood, NFs, Due: May 20, 1983.

Dated: March 29, 1983.

Pasquale A. Alberico,

Acting Director, Office of Federal Activities.

[FR Doc. 83-8491 Filed 3-31-83; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL 2337-8]

National Workshop on Radioactivity In Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency will conduct a national workshop on radioactivity in drinking water. The workshop will provide input from a wide range of national and international experts on issues that relate to the development of National Revised Primary Drinking Water Regulation (NPDWR) for radioactivity in Drinking Water. The workshop is being conducted to surface the relevant issues, determine the completeness of existing data and information and determine research needs.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Lappenbusch, Chief, Health Effects Branch, Criteria and Standards Division, Office of Drinking Water (WH-550), 401 M Street SW., Washington, D.C., 20460, (202)-382-7571.

SUPPLEMENTARY INFORMATION: [The U.S. Environmental Protection Agency through its Office of Drinking Water will be conducting a scientifically oriented workshop on radioactivity in drinking water. The participants in the workshop will consider issues and recommendations concerning revision of the NPDWR under the Safe Drinking Water Act for radioactivity in drinking water. Subject areas include: occurrence, sampling and analysis, health effects, treatment costs and waste management. The workshop will be held in Easton, Maryland, May 24–25, 1983. Space is limited but a limited number of interested observers and participants can be accepted. Individuals who are interested in attending the workshop, should contact Ms. Gail Cioban at (301)-381-2500. Dynamac, Inc. the Contractor conducting the workshop for EPA.

Dated: March 16, 1983.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water (WH-556).

[FR Doc. 83-8474 Filed 3-31-83; 8:45 am]

BILLING CODE 6560-50-M

[SA-FRL 2336-6]

Science Advisory Board; Environmental Effects, Transport and Fate Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board, will be held on April 25 and 26 at U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., in Room S-247. The meeting will start at 9:00 a.m. both days and will adjourn not later than 4:30 p.m. on April 26.

A principal purpose of the meeting is to allow the Committee to continue reviewing and providing its scientific advice to EPA on the scientific adequacy of the Water Quality Standards Handbook, Chapter 3, "Guidelines for Deriving Site-Specific Water Quality Criteria for the Protection of Aquatic Life and its Uses" included in the Committee's review will be the following topics: the scientific rationale for the development of site specific criteria; the definition of site; assumptions associated with the site-specific criteria; and four procedures utilized for developing site-specific criteria.

These procedures include: (1) The *recalculation procedure* to account for differences in resident species sensitivity to a chemical. (2) The *indicator species procedure* to account for differences in bioavailability, and therefore toxicity, of a chemical due to water quality variability. (3) The *resident species procedure* to account for differences in resident species sensitivity and differences in the bioavailability, and therefore toxicity, of a chemical due to water quality variability; and (4) The *heavy metal speciation procedure* to allow for the comparison of ambient soluble or biologically available metal concentrations to criteria in State water quality standards.

This will be a working meeting to continue discussion on issues raised during preceding meetings. These include, but are not limited to: definition of environmental integrity and site-specific; the use of surrogate species or families instead of local resident species; organizing by taxonomic lines, or trophic levels and related biological monitoring approach; and the assumptions in the national guidelines.

It is expected that public comment of a scientific nature, that was presented to the Agency during the recent public comment, will be available for examination by the Committee. It is expected that nineteen draft reports for field validation of the site-specific protocols will have been examined by various committee members and they will give an initial report at the time of the meeting.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Douglas B. Seba, Executive Secretary, Environmental Effects, Transport and Fate Committee, Science Advisory Board (202) 382-2552 or Dr. Terry F. Yosie, Staff Director, Science Advisory Board (202) 382-4126 by c.o.b. April 18, 1983.

Dated: March 25, 1983.

Ernst Linde,

Acting Staff Director Science Advisory Board.

[FR Doc. 83-8479 Filed 3-31-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-677-DR]

California; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA-677-DR), dated February 9, 1983, and related determinations.

DATE: March 23, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: The notice of a major disaster for the State of California dated February 9, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1983.

For Public Assistance, the Counties of: Del Norte, Glenn, Kern, Kings, Merced, Napa, Shasta, Sutter, and Tehama.

That portion of Contra Costa and San Joaquin not previously designated.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-8431 Filed 3-31-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-677-DR]

California; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA-677-DR), dated February 9, 1983, and related determinations.

DATE: March 21, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: The notice of a major disaster for the State of California dated February 9, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1983.

Madera, Napa, Placer, Stanislaus, and Tulare Counties for Individual Assistance, and Merced County as an adjacent County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-8432 Filed 3-31-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-672-DR]

Missouri; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Missouri (FEMA-672-DR), dated December 10, 1982, and related determinations.

DATE: March 21, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: The notice of a major disaster for the State of Missouri dated December 10, 1982, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 10, 1982.

The Counties of Butler, Lincoln, and Madison for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-8433 Filed 3-31-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-4101.

Title: Seattle/Sea-Land Lease.

Parties: Port of Seattle (Port)/Sea-Land Service, Inc. (Sea-Land).

Synopsis: Agreement No. T-4101 provides for the lease by Port to Sea-Land of 43,560 square feet of land at Terminal 107 for the storage of chassis and empty containers. Upon approval, Agreement No. T-4101 will supersede Agreement No. T-4056, approved by the Commission September 10, 1982.

Filing Party: H. H. Wittren, Associate Director of Real Estate, Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

By Order of the Federal Maritime Commission.

Dated: March 29, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-8541 Filed 3-31-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities; Multibank Financial Corp., et al.

The organizations identified 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 these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment 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.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing 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.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Multibank Financial Corp.*, Quincy, Massachusetts (mortgage banking activities; New England and New York): To engage, through its subsidiary, Multibank Mortgage Company, Inc., in mortgage banking activities, including making, acquiring and servicing, for its own account or for the account of others, loans and extensions of credit secured by real estate including first and second mortgages secured by one to four family residential properties and commercial properties), and selling mortgages in the secondary market. These activities would be conducted from offices in Quincy, Massachusetts and each of the branch offices of the following Multibank subsidiary banks throughout Massachusetts: South Shore Bank, First Agricultural Bank, Mechanics Bank, Durfee Attleboro Bank, Multibank National of Western Massachusetts and The Falmouth National Bank; and serving the states of Massachusetts, New York, Connecticut, Rhode Island, New Hampshire, Vermont, and Maine. Comments on this application must be received not later than April 27, 1983.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Washington): To continue to engage, in conformance with Section 601(A) of the Garn-St Germain Depository Institutions Act of 1982, in the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others of extensions of credit to individuals secured by liens on residential or non-residential real estates; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The above previously approved credit life and credit accident had health insurance activities may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp-Homeowners, Inc. authorization to offer consumer financial management courses was granted by Board Order of February 26, 1979. These activities will be conducted from two existing offices

of Citicorp Homeowners Inc. located in Portland, Oregon,serving an expanded service area encompassing the State of Washington. Comments on this application must be received not later than April 27, 1983.

2. *Fidelity Union Bancorporation,* Newark, New Jersey (trust company; Florida): Proposes to acquire all the outstanding stock of Fidelity Service Corporation, Newark, New Jersey and to engage through a subsidiary of the acquired corporation, Fidelity Union Trust Company of Florida, National Association, to engage in trust and private financial services and other functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary agency, or custodian nature) in the particular manner authorized by applicable Federal and state law except that the proposed subsidiary shall not make loans, investments or accept deposits other than as authorized by 12 C.F.R. § 225.4(a)(4). These activities would be conducted in Boca Raton, Florida, serving the State of Florida. Comments on this application must be received not later than April 20, 1983.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation,* Baltimore, Maryland (mortgage banking and credit insurance activities; Virginia): To engage through its subsidiary , Maryland Mortgage Corporation in the following activities: conducting business generally such as would be conducted by a mortgage banker, mortgage broker and mortgage servicing firm; originating, buying, selling and otherwise dealing in mortgage loans as principal or agent; servicing mortgage loans for affiliated or non-affiliated entities; acting as adviser in mortgage loan transactions; and selling as agent credit life, credit disability and credit accident and health insurance in connection with extensions of credit by bank and non-bank subsidiaries of the holding company. These activities would be conducted from an office in McLean, Virginia serving the northern Virginia counties of Fairfax, Loudoun and Prince William as well as the cities of Alexandria, Arlington, Falls Church and Vienna. Comments on this application must be received not later than April 27, 1983.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin (mortgage banking activities; all 50 states): To engage, through its subsidiary, M&I Mortgage Company, Inc., in originating, acquiring, selling and servicing residential and commercial mortgage loans for its own account or for the account of others, as well as making construction and development mortgage loans and performing such other incidental activities necessary to conduct a mortgage banking business. These activities would be conducted from an office in Milwaukee, Wisconsin, and will serve all 50 states. Comments on this application must be received not later than April 21, 1983.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Commercial Bancshares, Inc.,* Houston, Texas) leasing and financing activities; Texas): To engage in making or acquiring loans and other extensions of credit such as would be made by a commercial financial company, including commercial loans secured by a borrower's equipment, inventory, accounts receivable, or other assets, servicing such loans for others; and making leases of personal property in accordance with the Board's Regulation Y. These activities would be performed in the State of Texas and would serve the entire state. Comments on this application must be received not later than April 25, 1983

Board of Governors of the Federal Reserve System, March 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-8440 Filed 3-31-83; 8:45 am]
BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Newton Financial Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Newton Financial Corporation,* Newton, New Jersey; to become a bank holding company by acquiring 99.8 percent of the voting shares of The Newton Trust Company, Newton, New Jersey. Comments on this application must be received not later than April 27, 1983.

2. *Village Bancorp., Inc.,* Ridgefield, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Village Bank Trust Company, Ridgefield, Connecticut. Comments on this application must be received not later than April 27, 1983.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Jessup Corp.,* Jessup, Jessup, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Jessup, Pennsylvania. Comments on this application must be received not later than April 27, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens Union Bancorp., Inc.,* Rogersville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Union Bank, Rogersville, Tennessee. Comments on this application must be received not later than April 28, 1983.

2. *F & M Bancshares, Inc.,* Leslie, Georgia; to become a bank holding company by acquiring 80.15 percent of the voting shares of Farmer & Merchants Bank, Leslie, Georgia. Comments on this application must be received not later than April 27, 1983.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BancUnion Corp.,* Lancaster, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Union Bank and Trust, Lancaster, Wisconsin. Comments on this application must be received not later than April 21, 1983.

2. *JAW Bancshares Corp.,* Stanhope, Iowa; to become a bank holding company by acquiring 86 percent of the voting shares of Farmers State Bank, Stanhope, Iowa. Comments on this

application must be received not later than April 27, 1983.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fidelity Bancorp, Inc.*, West Memphis, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Fidelity National Bank of West Memphis, West Memphis, Arkansas. Comments on this application must be received not later than April 25, 1983.

2. *Linn Holding Company*, Linn, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Linn State Bank, Linn, Missouri. Comments on this application must be received not later than April 27, 1983.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Baileyville Bancshares, Inc.*, Baileyville, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Baileyville State Bank, Baileyville, Kansas. Comments on this application must be received not later than April 27, 1983.

2. *Missouri Farmers Bancshares, Inc.*, Maitland, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Maitland Bancshares, Inc., Maitland, Missouri, and thereby indirectly acquire 87.9 percent of the voting shares of Missouri Farmers Bank, Maitland, Missouri. Comments on this application must be received not later than April 27, 1983.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Breckenridge Bancshares, Inc.*, Breckenridge, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Breckenridge, Breckenridge, Texas. Comments on this application must be received not later than April 27, 1983.

H. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *KSAD, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank of Council Bluffs, Council Bluffs, Iowa. This application may be inspected at the offices of the Board of Governors, or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than April 27, 1983.

2. *Western Bancshares of Albuquerque*, Albuquerque, New Mexico; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Western Bank, Albuquerque, New Mexico, and at least 80 percent of the voting shares of the Citizens Bank, Albuquerque, New Mexico. This application may be inspected at the offices of the Board of Governors, or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than April 27, 1983.

Board of Governors of the Federal Reserve System, March 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-8439 Filed 3-31-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies; First Wisconsin Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Bank of Two Rivers, Two Rivers, Wisconsin. Comments on this application must be received not later than April 27, 1983.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *St. Charles Bancshares, Inc.*, St. Charles, Minnesota; to aquire 87.9 percent of the voting shares or assets of The First National Bank of Stewartsville, Stewartsville, Minnesota. Comments on this application must be received not later than April 27, 1983.

Board of Governors of the Federeal Reserve System, March 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-8438 Filed 3-31-83; 8:45 am]

BILLING CODE 6210-01-M

Whitmore Company, Inc.; Merger of Bank Holding Companies

Whitmore Company, Inc., Corning, Iowa, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Whitmore Bancorporation, Inc., Corning, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Whitmore Company, Inc., Corning, Iowa, has also applied to acquire Whitmore Investment Company, Corning, Iowa, a company whose activities are exempt pursuant to section 4(c)(5) of the Act. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 27, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-8437 Filed 3-31-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the

Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) Transaction Number 83-0120. Raytheon Company's proposed acquisition of all voting securities of Hangar One, Inc.	Mar. 8, 1983.
(2) Transaction Number 83-0147. The Goodyear Tire & Rubber Company's proposed acquisition of all voting securities of Celeron Corporation.	Mar. 9, 1983.
(3) Transaction Number 83-0136. DWG Corporation's proposed acquisition of certain voting securities of Peabody International Corporation.	Mar. 16, 1983.
(4) Transaction Number 83-0086. International Thomson Organization Limited's proposed acquisition of all voting securities of American Banker, Inc. and Bond Buyer, Inc., (Trust under Article Third of the will of Charles Otis, UPE).	Mar. 11, 1983.
(5) Transaction Number 83-0149. Lomas & Nettleton Financial Corporation's proposed acquisition of certain voting securities of Braewood Development Corporation.	Mar. 10, 1983.
(6) Transaction Number 83-0144. Roxboro Investments (1976) Ltd.'s proposed acquisition of certain voting securities of Towner Petroleum Company.	Mar. 11, 1983.
(7) Transaction Number 83-0161. The Reliable Life Insurance Company's proposed acquisition of all voting securities of Rockford Insurance Company, (Torchmark Corporation, UPE).	Mar. 11, 1983.
(8) Transaction Number 83-0122. KKR Associates' proposed acquisition of all voting securities of Golden West Television Inc. (Mr. Gene Autry, UPE).	Mar. 10, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-8430 Filed 3-31-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 76P-0224]

Availability of Approved Variance Extension for Laser Range Pole System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for laser products has been approved by the Acting Director, Office of Radiological Health (formerly the Bureau of Radiological Health) of FDA's National Center for Devices and Radiological Health for the Laser Range Pole System manufactured by RCA Corp., Automated Systems Division. The electronic product is designed for surveying applications to determine the exact heading between two adjacent corner markers typically located either one-half mile or 1 mile apart.

DATES: The variance extension became effective April 25, 1982, and ends April 25, 1987.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, National Center for Devices and Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), the RCA Corp., Automated Systems Division, P.O. Box 588, Burlington, MA 01803, has been granted an extension to its variance from § 1040.11(b)(1) (21 CFR 1040.11(b)(1)) of the performance standard for laser products for the RCA Laser Range Pole System. The original variance became effective on April 25, 1977, and was published in the **Federal Register** of March 25, 1977 (42 FR 16191).

The Acting Director, Office of Radiological Health, has determined in accordance with § 1010.4(a) (21 CFR 1010.4(a)) to grant an extension to the variance from § 1040.11(b)(1) because the product is intended for a special purpose which cannot be performed or accomplished with equipment meeting all requirements of the applicable standard. Section 1040.11(b)(1) requires that surveying, leveling, or alignment laser products not permit human access to laser radiation in the wavelength range of greater than 400 nanometers (nm) but less than or equal to 700 nm with a radiant power that exceeds 5.0 X 10^{-3} watts for any emission duration greater than 3.8 X 10^{-4} seconds. Section 1040.11(b)(2) requires that such products not permit human access to laser radiation in excess of the accessible emission limits of Class I laser radiation for any other combination of emission duration and wavelength. Under the terms of the variance, the Laser Range Pole System deviates from these requirements in that the radiation emissions from such system exceeds the specified emission limits but does not emit a level of laser radiation that is above Class III. The Acting Director has concluded that under the conditions prescribed in the variance, the Laser Range Pole System (part number 2381395-501) manufactured by the applicant uses alternate and suitable means for providing radiation protection equal to or greater than that provided by products meeting all requirements of the applicable standard. Therefore, on April 27, 1982, FDA approved the requested extension by letter to the manufacturer from the Acting Director of the Office of Radiological Health.

The product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) the docket number appearing in the heading of this notice and the effective date of the variance to associate the product with the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above), and may be seen in that office between 9 a.m., and 4 p.m., Monday through Friday.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8423 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 78P-0173 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that variances from the performance standard for laser products have been approved by the Acting Director, Office of Radiological Health (formerly the Bureau of Radiological Health) of FDA's National Center for Devices and Radiological Health, for certain laser light shows or laser light show projectors manufactured and produced by 41 organizations. The projector provides a laser display to produce a variety of special lighting effects principally to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table under "Supplementary Information."

ADDRESS: The applications and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Norbert P. Heib, National Center for Devices and Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the organizations listed in the table below has been granted a variance from § 1040.11(c) of the performance standard for laser products (21 CFR 1040.11(c)). Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product which is the manufacturer's particular variety of laser light show, or laser light show projector or both, assembled and produced by it. All the laser products will have levels of accessible laser radiation in excess of the Class II levels permitted by § 1040.11(c), but not exceeding those required to perform the intended function of the product.

Suitable means of radiation protection will be provided by constraints on the physical and optical design of the products, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Acting Director of the Office of Radiological Health.

So that the product will bear evidence of the variance granted to the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) the docket number and effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser products	Effective date/ termination date
78P-0173 (Amendment) (Extension)	Laser Images, Inc., 6907 Hayvenhurst Avenue, Van Nuys, CA 91406.	Laser Light Shows Incorporating the Concert System and/or the Laserium (Krypton). The Concert System May Contain Class IV Argon, Krypton, or Mixed Gas Ion Lasers.	Dec. 9, 1982, Aug. 22, 1984.
79P-0346 (Amendment) (Extension).	LaserVision Productions, Inc., 72-1 Shawnee Avenue, Yonkers, NY 10710.	Laser Light Shows Incorporating Class IV Model ALVA 2000 Series and/or IKON L-174 Series Laser Projectors May Contain Argon and/or Krypton, Copper Vapor or Helium-Neon.	May 17, 1982, May 19, 1984.
79P-0462 (Extension)	Laser Systems Development Corp., 2240 East Bijou, Colorado Springs, CO 80909.	Model R-2, and C-3 Laser Projection System and Laser Light Shows Utilizing the Projectors.	Aug. 20, 1982, Aug. 20, 1984.
80P-0008 (Amendment) (Extension).	M.A.S.S. Laser, Inc., 1150 First Avenue, Valley Forge Plaza, Suite 390, King of Prussia, PA 19406.	Bus-001 With Five Control 558-K Krypton Ion Laser Projectors and Laser Light Shows.	Sept. 23, 1982, May 6, 1984.
80P-0024 (Extension)	Mr. Brian B. O'Brien, 15 Country Drive, Weston, MA 02193	Model #100 Laser Projector and Laser Light Shows	Aug. 14, 1982, Aug. 14, 1984.
80P-0065 (Amendment) (Extension).	Laserama, 411 Camino del rio South, San Diego, CA 92108	Laser Fantasy Show (B) Incorporating the Laserama Class IIIb Krypton Laser Projection System.	June 4, 1982, June 4, 1984.
80P-0114 (Extension)	Laser Fair, Inc., P.O. Box 903, Sterling, CO 80751	Laser Light Shows Incorporating the Laser Presentations Projectors LP-4 or LP-4K(1).	June 4, 1982, June 4, 1984.
80P-0157 (Extension)	Image Engineering Corp., 60 Aberdeen Avenue, Cambridge, MA 02138.	Laser Light Shows and the Model Series 300 Laser Projectors	Aug. 23, 1982, June 10, 1984.
80P-0174 (Extension)	Laser Artistry, Inc., 9156 North 70th Street, Milwaukee, WI 53223.	Laser Light Shows Incorporating the Laser Productions Model L-100 Laser Lighht Show Projector.	Oct. 30, 1982, Oct. 30, 1984.
80P-0175 (Extension)	Laser Group, Inc., 1114 Stewart Street, Madison, WI 53713	Laser Light Shows Incorporationg the LGI Family, Systm I-IV Laser Projectors.	Dec. 8, 1982, Dec. 8, 1984.
80P-0197 (Extension)	Embacadero Corp., dba The Pier, 1824 Half Street, S.W. Washington, D.C. 20024.	Pier Laser Light Show Incorporating a Laser Presentations' Model LP-4 Laser Projector.	Aug. 27, 1982, Aug. 27, 1984.
80P-0201 (Extension)	Mr. Rockne Krebs, P.O. Box 6508, Washington, D.C. 20009	Source MOG 0043 Laser Light Show and Similar Type Laser Lighe Displays and the Incorporated Projectors.	June 2, 1982, June 2, 1984.
80P-0203 (Extension)	Laser Concerts, Division of Omega Organization, P.O. Box 5452, Seattle, WA 98105.	Laser Light Shows Incorporating the Lumatron and Lumaria 440 Laser Projection System.	Oct. 15, 1982, Oct. 15, 1984.
80P-0214 (Extension)	Laser Presentations, Inc., 1392 King Avenue, Columbus, OH 43212.	Laser Space Theatre Sky Beacon Display Incorporating and Argon Ion Laser With a Maximum Output of 2 Watts (All Specral Lines).	Oct. 7, 1982, Oct. 7, 1984.
80P-0350 (Extension)	Agence Publicitaire Le P.G. De Granby, Inc., 89 Alexandria Street, Granby, Quebec, CANADA J2G 2P4.	Laser Light Shows Incorporating a Class IV Argon-Ion Laser and a Science Faction Corporation Model Series SFC-2000 Scanning System.	Oct. 14, 1982, Oct. 14, 1983.
80P-0473 (Amendment)	Creative Lighting, Inc., 11 Kensington Avenue, Springfield, MA 01108.	Laser Light Shows Incorporating a Class IV Laser Presentations Model LP-1W3P Laser Projector With a Coherent CR-500K Krypton Laser.	June 23, 1982, Feb. 4, 1984.
81P-0195 (Amendment)	LaserDream Productions, 3318 Hancock Street, San Diego, CA 92110.	Laser Light Shows Incorporating Laser Projector Model 0002 and/or the Electronic Counter Co. Model 3600.	June 23, 1982, July 29, 1983.
81P-0232 (Extension)	Dancin' Machine Productions, Inc., 256 S. Robertson Blvd., Beverly Hills, CA 90211.	Laser Light Show (named Jeff Kutach's "Can You Feel It" at the Playboy Club, Los Angeles) Incorporating the Class IV Laser Media Model LMS Argon Laser Projector.	Sept. 28, 1982, Sept. 28, 1984.
81P-0389 (Extension)	Laser Affiliates/L.A.S.E.R., 973 Page Street, San Francisco, CA 94117.	Laser Light Show Incorporating Class II and/or Class III Helium-Neon, Argon, Helium-Neon, Argon, Helium-Cadmium, and Krypton Laser.	Dec. 8, 1982, Dec. 8, 1984.
81P-0412 (Amendment) (Extension)	Center for Advanced Visual Studies, M.I.T., 40 Massachusetts Avenue, Cambridge, MA 02139.	Laser Light Shows and the Incorporated Projection Systems Assembled and Produced by the M.I.T. Center for Advanced Visual Studies at Various Indoor and Outdoor Unenclosed Locations. Argon, Kyrpton, Dye, and Helium-Neon Laser May Be Used to Produce Front and Rear Screen Projections and Multiple Reflections.	Jan. 13, 1982, Jan. 13, 1984.
82P-0137 (Amendment)	Mr. Patrick Spiller, #109, 1818 Riggs Place, N.W., Washington, D.C. 20009.	Laser Light Shows Incorporating A Class IIIb HeNe Laser Projectors	May 17, 1982, May 17, 1983.
82P-0137 (Amendment)	Mr. Patrick Murphy, #109, 1818 Riggs Place, N.W., Washington, D.C. 20009.	Laser Light Shows Incorporating a Class IIIb Helium Neon or Class IIIb or IV Argon-Ion Laser Projection System.	Nov. 8, 1982, May 17, 1984.
82P-0141	Fiske Planetarium, University of Colorado, Box 408, Boulder, CO 80309.	Laser Light Shows Incorporation a "Class IV Argon-Krypton Laser Projection System.	June 8, 1982, June 8, 1984.

Docket No.	Manufacturing organization	Demonstration laser products	Effective date/ termination date
82P-0146 (Amendment)	The Kansas Comosphere and Discovery Center, 1100 North Plum, Hutchinson, KA 67401.	Laser Light Show Incorporating the K.C. Model 400 Series Laser Projectors Containing Class IV Argon, Krypton, and/or Dye Lasers.	June 8, 1982, June 8, 1984.
82P-0176	Prism Productions P.O. Box 85, Plymouth, NH 03264	Laser Light Shows incorporating a Laser Presentation Model LP-4 Class IIIb Krypton-Ion Laser Projector.	Nov. 8, 1982, Nov. 8, 1984.
82P-0177	The Children's Museum, 3000 N. Meridian, Indianapolis, IN 46206.	Laser Light Display Incorporating a Projection System Containing Class II and Class IIIb HeNe Lasers.	June 18, 1982, June 18, 1984.
82P-0182	American Laser Promotions, 1150 First Avenue, Valley Forge Plaza, King of Prussia, PA 19406.	Laser Light Shows Incorporating their own Class IV Ar-ion Laser Projector Systerm and/or the M.A.S.S. Laser Inc. Model BUS-001 Projection System.	Sept. 24, 1982, Sept. 24, 1984.
82P-0191	Redmond Productions, P.O. Box 14607, San Francisco, CA 94114.	Laser Light Shows and the Incorporated Projection System Containing a Class IV Argon Ion Laser.	June 18, 1982, June 18, 1984.
82P-0225	Celestial Creations, 1533 Sierraville Avenue, San Jose, CA 95132.	Lasor Light Shows and the Incorporated Projection Systems Assembled and Produced by Celestial Creations.	Aug. 12, 1982, Aug. 12, 1983.
82P-0226	Panama Twister Corporation, 1745 Stout Street, Suite 201, Denver, CO 80202.	Laser Light Show, Containing a Laserama Class IIIb Krypton Laser Projection System, Including the Projection Dome Structure.	Aug. 19, 1982, Aug. 19, 1984.
82P-0230	Crosby/Thornton/Marshall Associates, Architects, 222 Kearny Street, San Francisco, CA 94108.	Laser Light Display Incorporating a Class IIIb Helium-Neon and Class IV Argon Lasers.	July 27, 1982, July 27, 1983.
82P-0234	Hollywood Art Center, Inc., 2015 Hollywood Blvd., Hollywood, FL 33020.	Laser Light Shows and the Incorporated Laser Projectors Assembled and Produced by Hollywood Art Center, Inc. The Light Show Will Contain Class IIIb Helium-Neon Lasers.	July 30, 1982, July 30, 1984.
82P-0237	Mr. Gary J. Platek, P.O. Box 236, Lagunitas, CA 94938	Gary J. Platek Model TS-2000 through TS-2100 Laser Projection Systems and for Laser Light Shows Assembled and Produced by Gary J. Platek. The Projection System May Contain Class III or IV HeNe, Ar, or Kr Ion Lasers.	July 26, 1982, July 26, 1984.
82P-0238	Laser Lights International, Box 67, Cherry Grove, NY 11782	Laser Light Show Incorporating the Spirographic Laser Light Generator Model 1000 Series, Which is a Class IIi HeNe Laser Projector.	Aug. 16, 1982, Aug. 16, 1984.
82P-0238 (Amendment)	Laser Lights International, Box 67, Cherry Grove, NY 11782	Laser Light Show Incorporating Spirographic Laser Light Generator Model 1000 Series. The Projector May be Class IIIb and May Contain a HeNe or HeCd Laser Systerm.	Dec. 14, 1982, Aug. 16, 1984.
82P-0248	Yellow Brick Road, Inc., dba Numbers Disco., 2777 Allen Parkway, Suite 984, Houston, TX 77019.	Laser Light Show at Numbers Disco Incorporating an LMS Krypton Laser Projector Manufactured by Laser Media, Inc.	Aug. 19, 1982, Aug. 19, 1984.
82P-0296	Walt Disney Production, 500 S. Buena Vista Street, Burbank, CA 91527	The EPCOT Center Transportation Laser Display Containing a Class IIIb HeCd Laser Projection System; (2) the EPCOT Center Imagination Light Writer Containing Class IIIb HeNe and HeCd Laser Projection Systerms; and (3) the EPCOT Center Imagination Laser Display Scene 7 Containing A Class IV Kr-ion Laser Projection System.	Sept. 20, 1982, Sept. 20, 1992.
82P-0298	Ad Laser, Inc., 1554 Kingston Drive, Escondido, Ca 92027	Laser Light Shows and Displays Manufactured, Assembled, and Produced by Ad Laser, Inc. Which Incorporates an Ad Laser Class IV Laser Projector Containing A Class IIIb HeNe Laser and a Class IV Argonion Laser With an Output Power up to 14 Watts.	Nov. 29 1982, Nov. 29, 1984.
82P-0368	Infinity Projections, Inc., 337 Jupiter Drive, Littleton, CO 80124.	Laser Light Show Incorporating a Laser Pattern Generator, Model 550-4 and Contains a Class IIIb HeNe Laser.	Dec. 14, 1982, Dec. 14, 1984.
82P-0376	Malarkey's, 4701 N. 16th Street, Phoenix, AZ 85061	Laser Light Show Incorporating Laser Presentations Laser Projector Model LP-1-1K.	Jan. 26, 1983, Jan. 26, 1985.
82P-0379	Chi-Rho Trust, Inc., 6008 Chase Road, Millington, TN 38053	Laser Light Shows Incorporating the Jodon Model HE2H Laser System Containing Class IIIb Helium-Neon Laser System.	Dec. 16, 1982, Dec. 16, 1984.

In acordance with § 1010.4, the application and all correspondence (including the written notices of approval) on the various applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8235 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0094]

CILCO™, Inc.; Premarket Approval of the CILCO™, Inc., Simcoe-Style Planar Open Loop Posterior Chamber Intraocular Lens (Models S2 and S2-B)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the CILCO™, Inc., Simcoe-Style Planar Open Loop Posterior Chamber Intraocular Lens (Models S2 and S2-B), sponsored by CILCO™, Inc., Huntington, WV. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the supplemental application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 2, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Office of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 15, 1981, CILCO™, Inc., submitted to FDA a supplemental application for premarket approval of the CILCO™ Simcoe-Style Planar Open Loop Posterior Chamber Intraocular Lens (Models S2 and S2-B). The original application for the Shearing-Style Planar and Angled Lens (Models PC11/PB11 and PC12/PB12) was approved by FDA on July 16, 1982. (See 47 FR 38406; August 31, 1982.) Model S2-B contains blue haptics (attachment loops) made of polypropylene suture material and pigmented with the color additive [phthalocyaninato (2-)] copper. FDA has listed this color additive for use in coloring polypropylene suture material used in ophthalmic surgery (21 CFR 74.1045). The supplemental application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the supplemental application for the use of this device in patients 60 years of age and older following extracapsular cataract extraction and who are receiving the device as a primary

implant. On March 10, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 2, 1983, file with the Dockets Management Branch (HFA–305) (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8420 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 76N-0366 and 83C-0102]

Color Additives; Denial of Petition for Listing of D&C Orange No. 17 for Use in Ingested Drugs and Cosmetics; Withdrawal of Petition for Use in Costmetics Intended for Use in the Area of the Eye

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying that portion of a color additive petition (CAP 9C0090) that requests the "permanent" listing of D&C Orange No. 17 as a color additive for use in ingested drugs and cosmetics. FDA is taking this action because of evidence indicating that this color additive is an animal carcinogen. Published elsewhere in this issue of the **Federal Register** is a document announcing the expiration of the provisional listing of D&C Orange No. 17 for use in ingested drugs and cosmetics. FDA also is announcing the withdrawal of that portion of the petition that requested the listing of this color additive for use in cosmetics intended for use in the area of the eye. The portion of the petition requesting the permanent listing of D&C Orange No. 17 for coloring external drugs and cosmetics is still under consideration, and the color additive will remain provisionally listed for external drug and cosmetic uses until the agency completes its evaluation of the data on the external uses. Published elsewhere in this issue of the **Federal Register** is a regulation extending the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics until May 31, 1983.

DATE: Objections by May 2, 1983.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

D&C Orange No. 17 is the subject of a color additive petition (CAP 9C0090) that was submitted on April 14, 1969, by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005). FDA published a notice of filing of the petition in the **Federal Register** of August 6, 1973 (38 FR 21199). The petition, filed under the provisions of section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376), requested the permanent listing of D&C Orange No. 17 for coloring lipsticks, ingested drugs, and externally applied drugs and cosmetics.

In a letter dated May 14, 1974, the petitioner requested that the petition be amended to include listing D&C Orange No. 17 for eye-area use. FDA published an amended filing notice for the petition in the **Federal Register** of March 5, 1976 (41 FR 9584), to include the listing of D&C Orange No. 17 for eye/area use. FDA notified the petitioner by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Orange No. 17 in cosmetics intended for use in the area of the eye. In the latest letter, dated October 24, 1978, FDA advised the petitioner to consider withdrawing that portion of the petition that sought approval of the use of D&C Orange No. 17 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies would not be readily available.

The petitioner has not submitted the required data on eye-area use. Therefore, FDA considers that portion of the petition that relates to the listing of D&C No. 17 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Use of D&C Orange No. 17 in the area of the eye has never been covered by the provisional listing of this color additive. Future consideration by FDA of the permanent listing of D&C Orange No. 17 for eye-area use will require the submission of a new color additive petition for that use.

II. Regulatory History

The color additive D&C Orange No. 17 has been in use for many years. Because D&C Orange No. 17 was in use at the time the Color Additive Amendments of 1960 were enacted, it was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759).

In the **Federal Register** of February 4, 1977 (42 FR 6991), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Orange No. 17, as a condition for

continued provisional listing of these additives. FDA required the new chronic studies because the toxicity studies that the petitioners had submitted were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

In the February 4, 1977 order, FDA postponed the closing date for the provisional listing of D&C Orange No. 17 until January 31, 1981, for the completion of the new chronic toxicity studies. In the **Federal Register** of March 27, 1981 (46 FR 18958), the agency established a new closing date of March 31, 1983, for the completion of the chronic toxicity studies and the submission of data to FDA on a prescribed schedule. Published elsewhere in this issue of the **Federal Register** is a document announcing in this issue of the provisional listing in § 81.1(b) (21 CFR 81.1(b)) of D&C Orange No. 17 for use in ingested drugs and cosmetics. An order postponing the closing date for the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics to May 31, 1983, is also published elsewhere in this issue of the **Federal Register**.

III. Chemistry and Uses

D&C Orange No. 17, a bright orange color of the monoazo class, is identified in *Chemical Abstracts* as 1-[(2,4-dinitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 3468-63-1). It is identified in § 82.1267 (21 CFR 82.1267) as 1-[(2,4-dinitrophenyl)azo]-2-naphthalenol. Other names include C.I. Pigment Orange 5 (Colour Index, C.I. No. 12075), Permanent Orange, and Permanent Red 2G.

The manufacture of D&C Orange No. 17 is accomplished by the coupling of diazotized 2,4-dinitrobenzenamine and 2-naphthalenol. D&C Orange No. 17 is insoluble in water and alcohols and has excellent fastness properties.

This color additive and its lakes presently have no known use in ingested drug preparations but have very extensive uses in cosmetic products such as lipsticks, blushers, rouges, foundations, face powders, hair rinses, and nail lacquers. Data from FDA's Voluntary Cosmetic Regulatory Program computer file indicate that a total of 74 cosmetic formulations contain D&C Orange No. 17, and that a total of 499 cosmetic formulations contained D&C Orange No. 17 lakes as of December 22, 1981.

IV. Toxicological Testing

To establish that D&C Orange No. 17 is safe for use in drugs and cosmetics, the petitioner submitted reports on a number of animal toxicity studies for the color additive. Among these studies were chronic and subchronic feeding studies in dogs and rats, a three-generation reproduction study in rats, teratology studies in rats and rabbits, and a dermal study in rabbits. These studies did not produce any evidence that the use of this color additive, for the petitioned uses, would be unsafe.

Although no evidence of compound-related neoplastic responses was found in these chronic feeding studies, FDA concluded that the sensitivity of these studies was insufficient under current standards to provide the requisite demonstration of safety for ingested use. Therefore, in the February 4, 1977 order, FDA required additional chronic feeding studies on D&C Orange No. 17. The studies were conducted for the petitioner at Bio/dynamics, Inc., East Millstone, NJ. These studies included a long-term feeding study in mice and a chronic toxicity/carcinogenicity study, with in utero exposure to D&C Orange No. 17, in rats. The final reports for these studies (CAMF #9, Entries 510, 511, 512) were received by the agency on March 31, 1982.

The new long-term chronic studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of two species tested significantly increases the power of these tests to detect dose-related effects. The studies were designed and conducted in compliance with FDA's good laboratory practice regulations and were subject to inspections by FDA officials during their course.

1. *Long-term feeding study in rats.* The long-term feeding study in rats included in utero exposure to D&C Orange No. 17. Charles River Albino (CD) rats (parental animals) were randomly assigned (60 males and 60 females per group) and mated to produce the F_1 generation. D&C Orange No. 17 was mixed with standard laboratory chow and fed ad libitum to the parental animals during their mating and gestation period and to their offspring (the F_1 generation animals) during the long-term feeding study. Two separate groups of rats served as controls.

The petitioner, in a meeting with FDA on September 12, 1977, discussed the adequacy of the protocol for this chronic feeding study. FDA's scientists indicated that the proposed dosage levels (i.e., 0.00, 0.02, 0.05, and 0.10 percent) were too low. On the basis of data from earlier studies on D&C Orange No. 17, FDA's scientists concluded that survival and weight data suggested that lifetime studies could be successfully carried out in rats using 1.0 percent as the maximum dosage level. The agency, therefore, asked the petitioner to conduct an additional rat chronic feeding study with a 1.0 percent dosage level of D&C Orange No. 17 (Ref. 1). This study was carried out with the same strain of rats and with the same experimental design as the original study. It included a treatment group and a concurrent control group.

Seventy F_1 rats of each sex, obtained from the reproduction phase of the study, were randomly selected and distributed into dosage groups similar to those described above for their parental animals and were used for the chronic feeding phase of the study (26 months for males and 30 months for females). Survival and body weights of female rats from the chronic feeding phase were unaffected by treatment. However, treated male rats in this phase exhibited decreased survival as well as decreased body weights at the highest dose (1.0 percent diet). [1] Except for discoloration

[1] The decreased survival and decreased body weights among male rats might raise a question about whether the maximum tolerated dose was exceeded in this study. The National Cancer Institute defines the maximum tolerated dose as "the highest dose that can be given that would not alter the animal's normal lifespan from effects other than cancer." (Ref. 2.) The purpose of the maximum tolerated dose is to assure that the test animals are appropriately challenged and yet not killed by the noncarcinogenic toxic effects of high doses of a

of the urine, there were no hematological or clinical findings that could be ascribed to treatment. Increased deposition of pigment in the spleen of female rats was noted in the 1.0 percent group.

Among female rats, at the 1.0 percent dietary level of D&C Orange No. 17, there was a marked and statistically significant increase in animals with hepatocellular tumors (neoplastic nodules and carcinomas combined) compared to the concurrent control group animals (21/70 in the 1.0 percent dose group versus 3/70 in the concurrent control group, $p=0.0001$, prevalence analysis). The incidence of animals with non-neoplastic liver lesions (foci of cellular alteration) was also increased among female rats in the 1.0 percent dose group when compared to the control group. Additionally, multiple hepatocellular tumors (neoplastic nodules) were noted only in the 1.0 percent D&C Orange No. 17 treated group females. Moreover, the number of animals with multiple occurrences of foci of cellular alteration (non-neoplastic lesion) and of animals that had multiple classifications, i.e., foci of cellular alteration and neoplastic nodules, present in the same microscopic section of liver was higher among treated group females (1.0 percent dose group) than in the concurrent control group. The 1.0 percent dose group females had increased liver weights as well. The liver data in the 1.0 percent study indicate a clear-cut treatment-related effect in the occurrence of hepatocellular tumors in female rats as a result of the administration of D&C Orange No. 17. Liver weights relative to body weights were also increased in both male and female rats that received 0.10 percent D&C Orange No. 17 in the diet, indicating further that the liver is the target organ for D&C Orange No. 17 toxicity.

The petitioner provided historical control data for hepatocellular tumors in Charles River Albino female rats from 12 separate control groups from studies conducted at Bio/dynamics, Inc. The average incidence of hepatocellular tumors (neoplastic nodules and carcinomas combined) was 9.4 percent. In contrast, the incidence of hepatocellular tumors in the high-dosage (1.0 percent) group was 30 percent, far exceeding the average spontaneous incidence.

substance that would obscure the carcinogenic effects. The fact that a clear carcinogenic effect was found among test animals in the D&C Orange No. 17 rat study means that the purpose of the maximum tolerated dose was achieved and eliminates any question about whether the maximum tolerated dose was exceeded.

Thus, the long-term feeding exposure of Charles River CD Albino rats to a 1.0 percent dose level of D&C Orange No. 17 produced the carcinogenic effect of a significant increase in the number of female rats with hepatocellular neoplasms compared to the control groups.

2. *Long-term feeding study in mice.* Charles River CD–1 mice of both sexes were randomly assigned to one of three treatment groups receiving D&C Orange No. 17 in the diet at concentrations of 0.025, 0.25, and 1.0 percent or to one of two control groups and fed the test diets for approximately 23 months for the males and 25 months for the females. The selection of these dosage levels was based on the results of a 90-day rangefinding study.

The incidence of hepatocellular neoplasms (adenomas and carcinomas) among male mice was increased in a dose-related manner ($p=0.00004$, trend test). The incidence of hepatocellular neoplasms in male mice was 8/58 and 8/59 or 16/117 for the two control groups, and 11/58, 13/57, and 19/56 for the low-, medium-, and high-dose groups, respectively. A small increase, compared to the corresponding control group animals, in the number of female mice with hepatocellular neoplasms in the mid- and high-dose groups was also reported.

Survival of male mice fed the D&C Orange No. 17 diets was decreased in a dose-related manner ($p=0.0005$, Cox's time-adjusted trend test), but survival of female treated mice apparently was not adversely affected by treatment. Similarly, body weights of high dose male mice were slightly less than controls, but no effect on body weights of treated female mice was seen. Treatment-related pigment deposition was reported in the brain, spinal cord, thyroid, heart, and stomach of the male and female mice at all dose levels of D&C Orange No. 17. In both sexes at the high dose, neuronal basophilia was reported to be present in both the brains and spinal cords in association with pigment deposition. In addition, treatment-related pigment deposition was also reported in the spleen, liver, and cecum of male and female mice that received diets containing 1.0 percent of the color additive.

Thus, the long-term feeding exposure of Charles River CD–1 mice to D&C Orange No. 17 produced the carcinogenic effect of a significant dose-related increase in the number of male mice with hepatocellular neoplasms compared to the control groups.

In addition to the results from the long-term feeding studies, D&C Orange No. 17 has been reported to be mutagenic to all standard tester strains of *Salmonella typhimurium*. One of its probable metabolites, 2,4-dinitroaniline, is also mutagenic to all tester strains, and another probable metabolite, 1-amino-2-naphthol, belongs to a chemical class that includes known carcinogens.

V. Conclusion

For D&C Orange No. 17, after a full evaluation of the data submitted in support of the petition and other pertinent data related to the use of this color additive, including the fact that it caused an increased incidence of hepatocellular neoplasms in two mammalian species, FDA concludes that this color additive is an animal carcinogen when administered in the diet. In addition, the color additive is reported to be mutagenic to five commonly used tester strains of *S. typhimurium* in the absence of microsomal activation.

The act states that a color additive shall be deemed unsafe "* * * if the additive is found by the Secretary to induce cancer when ingested by man or animal * * *" (21 U.S.C. 376 (b) (5) (B)). In view of the evidence demonstrating that D&C Orange No. 17 is a carcinogen when ingested by animals, the agency concludes that the data before it do not establish that such use of this color additive will be safe. FDA is, therefore, denying those portions of the petition seeking listing of the color additive for use in ingested drugs and cosmetics.

The petitioner has recently submitted to the agency the results of a percutaneous absorption study with human skin in vitro on D&C Orange No. 17 to provide additional support to the request for permanent listing of the color additive in externally applied drugs and cosmetics. The agency has decided to extend the closing date for the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics to provide a short period of time to evaluate the skin penetration data.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from J. Schwing to N. Estrin, October 19, 1977.

2. Sontag, J. M., N. P. Page, and U. Saffratti, "Guidelines for carcinogen Bioassays in Small Rodents," DHEW Publication No. (NIH) 76–801, p. 14, 1976.

Any person who will be adversely affected by the foregoing order may, at any time on or before May 2, 1983, submit to the Dockets Management Branch (address above) written objection thereto. Objections shall show how the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issue for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706(b) (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: March 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-8419 Filed 3-29-83; 11:13 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0064]

Plasma Derived From Therapeutic Plasma Exchange

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is advising interested persons that plasma derived from therapeutic plasma exchange is a biological product subject to the licensing requirements of section 351(a) of the Public Health Service Act.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN–813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Therapeutic plasma exchange is a medical procedure by which a patient's plasma is incrementally removed and replaced with electrolyte and/or protein solutions. The procedure (also known as therapeutic plasmapheresis) is intended to remove harmful elements from a patient's blood.

Patients undergoing therapeutic plasma exchange may suffer from any of a number of disorders, such as paraproteinemic conditions, idiopathic thrombocytopenic purpura, kidney disease, or other disorders that may be caused by agents in the blood that transmit disease.

Plasma obtained from a patient during therapeutic plasma exchange is known as therapeutic exchange plasma (TEP). TEP may contain certain rare antibodies that are not available from any other source. Because TEP obtained during therapeutic plasma exchange is potentially hazardous to human health, FDA believes that use of TEP should be limited to further manufacture of special in vitro diagnostic reagents, such as Anti-Nuclear Antibody, Rheumatoid Factor, Anti-DNA, or other products, when such use of the source material is approved by the Director, Office of Biologics, National Center for Drugs and Biologics, FDA.

FDA has found that certain persons are shipping TEP in interstate commerce to manufacturers of in vitro diagnostic devices without first obtaining a product license for TEP from the Office of Biologics, FDA. FDA also has learned that these persons and others are unaware that TEP is a biological product subject to the licensing requirements of section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)). The agency therefore concluded that it is important to inform all interested persons of the regulatory status of TEP.

FDA advises that TEP offered for sale, barter, or exchange in interstate commerce is a biological product subject to the licensing requirements of section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)). Accordingly, any person who intends to collect and ship TEP in interstate commerce must first obtain a product license from FDA. A licensed manufacturer of Source Plasma (Human) must obtain a separate product license for production of TEP and must amend its establishment license to cover collection and shipment of TEP, if necessary. Because TEP is a blood product, a manufacturer of TEP is subject to the requirements of the current good manufacturing practice regulations for blood and blood components in 21 CFR Part 606. In addition, when TEP is shipped in interstate commerce and intended for use in an in vitro diagnostic device, it is also considered a device component, subject to regulation under the medical device provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 through 392). Further, as provided in 21 CFR 606.110(b) of the biologics regulations, plasmapheresis of donors who do not meet the donor requirements of 21 CFR 640.63, 640.64, and 640.65 for the collection of plasma containing rare antibodies shall be permitted only with the prior approval of the Director, Office of Biologics. Such an FDA approval is made as part of the license approval for the manufacture or shipment of TEP.

Therapeutic plasma exchange is a medical procedure to be used at the discretion of a licensed physician and is not regulated by FDA. Therefore, a product license from FDA is required only when the TEP that is collected during the therapeutic plasma exchange is intended or offered for sale, barter, or exchange in interstate commerce.

Dated: March 24, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-8424 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0009; DESI Nos. 8867 and 9296]

Professional Labeling for Reserpine Drugs; Revised Labeling

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice requires that a precaution statement be included in professional labeling of reserpine-containing drugs, stating that these drugs cause tumors in mice and rats.

DATES: Revised labeling to be used on or before September 1, 1983. Supplements to approved NDA's and ANDA's due on or before May 31, 1983. The revised labeling may be used without advance approval by FDA.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 82N–0009, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN–110), Rm. 16B–45, National Center for Drugs and Biologics.

Supplements to abbreviated new drug applications (identify with ANDA

number); Division of Generic Drug Monographs (HFN–530), National Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), National Center for Drugs and Biologics.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN–501), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Jean Patterson, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is charged with assuring that drugs are safe and effective for their intended use and that their labeling provides adequate information for such use and is not false or misleading. Informing physicians about necessary precautions is an important element in fulfilling that responsibility. The statutory scheme anticipates that new information on the safety and effectiveness of marketed drugs may require that FDA prescribe labeling changes to reveal limitations of use or to warn of previously unanticipated hazards.

Accordingly, the Director of the National Center for Drugs and Biologics has reviewed available data and concludes that a precaution statement should be added to the professional labeling of drug products containing reserpine. The statement is needed to inform physicians and other health professionals that animal carcinogenicity studies in rodents have shown reserpine to be a rodent tumorigen, causing an increased incidence of mammary fibroadenomas in female mice, malignant tumors of the seminal vesicles in male mice, and malignant adrenal medullary tumors in male rats. The breast neoplasms are thought to be related to reserpine's prolactin-elevating effect. This action is being taken under the National Center's continuing review of the relationship between the use of drugs that elevate prolactin levels and mammary carcinogenesis. (A notice requiring precautionary statements in the labeling of certain neuroleptic drugs was published in the **Federal Register** of August 8, 1980 (45 FR 52931), and amended on September 8, 1981 (46 FR 44886)).

The issue of whether reserpine is tumorigenic has been considered by several advisory committees. An Ad Hoc Committee on Reserpine and Breast Cancer was appointed by FDA to evaluate all available data from animal, laboratory, clinical, and epidemiological studies suggesting that the use of reserpine increases the risk of breast cancer. In June 1978 the Committee issued a summary statement that the possibility of an underlying causal relationship between reserpine use and breast cancer could not be rejected. They stated: "The lack of consistency of the findings between studies of differing designs, the inconsistent findings of a dose-response relationship, the relatively low order of magnitude of the risk ratio, and the absence of a currently defensible biological rationale are all factors operating against an etiologic interpretation. However, while the risk ratio is of a relatively low order of magnitude, it is not inconsequential, at least half the studies looking for a dose response relationship found some evidence to support its existence, and there is some uniformity across studies with respect to an association with 'recent use'."

The FDA Toxicology Advisory Committee's Report on Antipsychotic Drugs stated that all prolactin-elevating drugs are considered to have carcinogenic potential for the mammary glands in rats and mice. These conclusions were published in the **Federal Register** of May 16, 1978 (43 FR 21051).

At the June 22, 1979, and November 20, 1979 meetings of FDA's Cardiovascular and Renal Drugs Advisory Committee, data were also presented and discussed from animal carcinogenicity studies conducted for the National Cancer Institute. These studies, in which reserpine was administered to rodents for 2 years, showed treatment-related increases in the incidence of mammary fibroadenomas, malignant tumors of the seminal vesicles, and malignant adrenal medullary tumors.

Proposed labeling revisions for reserpine-containing products were reviewed by the Cardiovascular and Renal Drugs Advisory Committee at their February 22, 1980 meeting. The revision required by this notice reflects their advice.

References

1. Summary Statement of the FDA Ad Hoc Committee on Reserpine and Breast Cancer, June 1978.

2. FDA Toxicology Advisory Committee Report on Antipsychotic Drugs, August 12, 1977.

3. Transcript of the Cardiovascular and Renal Drugs Advisory Committee, June 22, 1979.

4. Minutes of the Cardiovascular and Renal Drugs Advisory Committee, November 19–20, 1979.

5. Minutes of the Cardiovascular and Renal Drugs Advisory Committee, February 22, 1980.

Copies of the above references have been placed in the file on Doc. No. 82N–0009 in the Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

In view of these findings, the Director of the National Center for Drugs and Biologics concludes that the labeling for all drug products containing reserpine should contain a precaution statement on the possible adverse effects of the elevated serum prolactin levels and on animal carcinogenicity associated with administration of these drugs. Accordingly, manufacturers of these drug products shall revise the professional labeling to add the following text to the Precautions section after the existing paragraph:

Animal tumorigenicity: rodent studies have shown that reserpine is an animal tumorigen, causing an increased incidence of mammary fibroadenomas in female mice, malignant tumors of the seminal vesicles in male mice, and malignant adrenal medullary tumors in male rats. These findings arose in 2 year studies in which the drug was administered in the feed at concentrations of 5 and 10 ppm—about 100 to 300 times the usual human dose. The breast neoplasms are thought to be related to reserpine's prolactin-elevating effect. Several other prolactin-elevating drugs have also been associated with an increased incidence of mammary neoplasia in rodents.

The extent to which these findings indicate a risk to humans is uncertain. Tissue culture experiments show that about one-third of human breast tumors are prolactin-dependent in vitro, a factor of considerable importance if the use of the drug is contemplated in a patient with previously detected breast cancer. The possibility of an increased risk of breast cancer in reserpine users has been studied extensively; however, no firm conclusion has emerged. Although a few epidemiologic studies have suggested a slightly increased risk (less than twofold in all studies except one) in women who have used reserpine, other studies of generally similar design have not confirmed this. Epidemiologic studies conducted using other drugs (neuroleptic agents) that, like reserpine, increase prolactin levels and therefore would be considered rodent mammary carcinogens, have not shown an

association between chronic administration of the drug and human mammary tumorigenesis. While long-term clinical observation has not suggested such an association, the available evidence is considered too limited to be conclusive at this time. An association of reserpine intake with pheochromocytoma or tumors of the seminal vesicles has not been explored.

This notice applies to all single-entity and combination reserpine-containing drug products that are the subject of approved new drug applications and also to any identical, related, or similar drug product that contains reserpine (21 CFR 310.6), whether or not it is the subject of an approved new drug application. Any person may request an opinion of the applicability of this notice to a specific drug product the person manufactures or distributes by writing to the Division of Drug Labeling compliance (address given above).

Supplements to approved NDA's or ANDA's providing for appropriate revision of labeling to add the above precaution statement shall be submitted on or before May 31, 1983. Applicants shall put the revised labeling into use by September 1, 1983. The revised labeling may be used without advance approval by the Food and Drug Administration under the provisions of 21 CFR 314.8(d).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 505, 52 Stat. 1041, 1050–1053, as amended (21 U.S.C. 321(n), 352, 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.70).

Dated: March 25, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-8422 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0295]

Clarification of Policy; Over-the-Counter Drug Review

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is clarifying its policy on placing "feedback" communications in the administrative records of appropriate over-the-counter (OTC) drug rulemaking proceeding.

DATE: Comments by May 31, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 1981 (46 FR 47740), FDA published a policy statement concerning (1) the submission and review of proposed protocols to evaluate an ingredient or condition in the OTC drug review, (2) meetings with industry or other interested persons, (3) communications by the agency on submissions of test data and other information, and (4) maintenance of a public record involving these activities.

The policy statement explained that "feedback" information provided by FDA to manufacturers on Category II or III conditions would be placed on public file in the Dockets Management Branch (address above) and be available to all interested persons. However, these communications would not be included in the administrative record for the related OTC drug rulemaking proceeding unless the communication directly influenced an agency decision on a particular matter in the rulemaking or provided the substantiation for the agency's decision on that matter. For example, the results of a study that were communicated to the agency in response to "feedback" would be included in the administrative reecord of a particular OTC drug rulemaking proceeding if the study was relied upon by the agency in reaching a decision on the status of an ingredient covered by that rulemaking.

Questions have arisen concerning the mechanism by which "feedback" material is included in the administrative record of an OTC drug rulemaking proceeding, for example, whether "feedback" material is included in the appropriate rulemaking only in response to a petition by an interested party. The agency advises that when such material directly influences or is used by the agency in reaching a decision on a matter in an OTC drug rulemaking proceeding, the agency will add it to the administrative record prior to publication of the applicable document without the submission of a formal petition by an interested party. Appropriate reference to the material will be included in the relevant proposed rule or final rule document.

Any "feedback" communication that is submitted before a proposed rule is published, but which is not used by the agency in preparing the proposed rule, will be placed in the administrative record when it is opened during the comment period following publication of the proposed rule. As provided in 21 CFR 330.10(a)(7), following publication of a proposed rule, the administrative record is open 60 days for comments or objections, 12 months for the submission of new data and imformation, and an additional 60 days for reply comments on the new data and information. "Feedback" communications that occur after the usual closing of the administrative record following publication of the proposed rule, and which are not relied upon or used by the agency in developing the final rule, will remain part of the public record; however, these communications will not be added to the administrative record unless the agency subsequently determines in response to a petition that they should be.

Notice and comments are not necessary before issuing this clarification. (See 5 U.S.C. 553(b)(B).) Furthermore, the purpose and major aspects of this policy statement were described in the preamble to the May 13, 1980 proposed rule on the agency's Category III regulations (45 FR 31422) and in the "feedback" policy statement of September 29, 1981 (46 FR 47740).

Interested persons may, on or before May 31, 1983, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this clarification. Three copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 80N–0295. Such comments will be considered in determining whether amendments or revisions to the clarification are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-8423 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1983:

Name: Material and Child Health Research Grants Review Committee.

Date and Time: June 9–10, 1983, 9:00 a.m.–5:00 p.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on June 9, 1983, 9:00 a.m. to 10:00 a.m. Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 19, 1982, from 10:00 a.m. to the remainder of the meeting for the review of research grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact GONTRAN LAMBERTY, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-2190.

Agenda items are subject to change as priorities dictate.

Dated: March 28, 1983.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 83-8404 Filed 3-31-83; 8:45 am]

BILLING CODE 4160-15-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 25.

Public Health Service

Food and Drug Administration

Subject: Quick Response Survey—New
Respondents: Individuals
OMB Desk Officer: Richard Eisinger

Health Resources and Services Administration

Subject: Application—Scholarship Program for First-Year Students with Exceptional Financial Need (0915-0028)—Extension/no change
Respondents: Educational insitutions
Subject: Bureau Common Reporting Requirements (0915-0004)—Revision
Respondents: Federally funded health centers
OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for Health

Subject: National Children and Youth Fitness Study (Pilot Test)—New
Respondents: School children 10-17 years of age
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Statement of Appointment of Trainee Form (0925-0011)—Reinstatement
Respondents: Directors of Public Health Service training grant programs
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: National Heart Transplant Study Surveys (HCFA 393)—New
Respondents: Heart transplant recipients and their families, facilities which provide heart transplants, organ procurement agencies, and potential organ donors
Subject: Ownership and Financial Disclosure Statement (HCFA 1513)—Extension/no change
Respondents: Health care institutions which participate in Medicare or Medicaid
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Objective Progress Report—New
Respondents: Administration for Native Americans grantees
OMB Desk Officer: Milo Sunderhauf

Social Security Administration

Subject: Government Pension Questionnaire (SSA-3885)—Revision
Respondents: Individuals receiving Social Security benefits and government pensions
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses: Joseph F. Costa, Acting HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201, OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer)

Dated: March 25, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-7809 Filed 3-31-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Anchorage District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Anchorage District Advisory Council will conduct a meeting in accordance with the Federal Advisory Committee Act. The council will review management plans for the Delta, Gulkana and Unalakleet National Wild and Scenic Rivers. Any member of the public wishing to address the council should write Joette Storm, Anchorage District Public Affairs Officer, prior to the meeting. Phone (907) 267-1284.

DATE: May 5, 1983—9 a.m. to 4 p.m.

ADDRESS: Anchorage District Office Training Room, 4700 East 72nd, Achorage, AK 99507.

SUPPLEMENTARY INFORMATION: .

9:00 Call to Order, Wayne Boden, Selection of Officers.
9:30 History of National River System, David Dapkus, and designation of Alaskan rivers.
10:00 Break.
10:15 Delta River Draft Management Plan, Darryl Fish.
11:30 Lunch.
12:30 Gulkana River Draft Management, Darryl Fish, Plan.
2:00 Break.
2:30 Unalakleet River Draft Management, Louis Waller, Plan.
4:00 Adjourn.

Richard J. Vernimen,

Acting District Manager.

[FR Doc. 83-8436 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I -6129]

Idaho; Order Providing For Opening of Public Land; Correction

In FR Doc. 83–1071, beginning on page 1829 in the issue of Friday, January 14, 1983, make the following correction:

On page 1830, middle column, under I–6129, in T. 29 N., R. 8 E., in the first line sec. 4, "all" should reads "S½SE¼".

William E. Ireland,

Chief, Lands Section.

[FR Doc. 83-8462 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32047, Survey Group 136]

Minnesota; Filing of Plat of Survey

1. On October 8, 1982, the plat representing the survey of one island in T. 128 N., R. 43 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. (90 days from date of publication).

Fifth Principal Meridian, Minnesota

T. 128 N., R. 43 W.,
Tract No. 37.

2. The island Tract No. 37 is similar in all respects to that of the adjacent surveyed lands. The elevation of the tract is about 12 feet above the ordinary high water mark of Schram Lake and is composed of glacial till. Timber consists of elm, box elder, willow, and aspen. Tree stumps were also found on the island.

The elevation of the island, similarity of timber succession on the island and mainland, composition of the soil and character of the channel show conclusively that this body of land existed as an island in 1858, when Minnesota was admitted into the Union, and at all subsequent dates.

3. Tract No. 37 was found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

4. All inquiries relating to this island should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before (90 days from date of publication).

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-8463 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32048, Survey Group 136]

Minnesota; Filing of Plat of Survey

1. On October 8, 1982, the plat representing the survey of one island in T. 127 N., R. 43 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., June 30, 1983.

The island listed below describes the land omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 127 N., R. 43 W.,
Tract No. 37.

2. The island Tract No. 37 is similar in all respects to that of the adjacent surveyed lands. The elevation rises about 13 feet above the ordinary high water mark of Doughty Lake and is composed of glacial till. Timber on the island consists of elm up to 20 inches in diameter and 60 years of age.

The elevation of the island, similarity of timber on the island and mainland, composition of the soil, and character of the channel, show conclusively that this body of land existed as an island in 1858 when Minnesota was admitted into the Union and at all subsequent dates.

3. Tract No. 37 was found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

4. All inquiries relating to this island should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before June 30, 1983.

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-8464 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32049, Survey Group 136]

Minnesota; Notice of Filing of Plat of Survey

1. On October 8, 1982, the plat representing the survey of one island in T. 128 N., R. 42 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. June 30, 1983.

The island listed below describes the land omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 128 N., R. 42 W.,
Tract No. 37.

2. The island Tract No. 37 is similar in all respects to that of the adjacent surveyed lands. The elevation rises about 18 feet above the ordinary high water mark of the lake. Timber consists of elm, oak, basswood, willow, box elder, and ash. The largest of the dominant trees on the island is an elm tree that measures 20 inches in diameter and is approximately 95 years old.

This island was noted in the 1868 survey by Theodore H. Barrett and Orvill Smith, Deputy Surveyors. This, along with the elevation of the island, age of timber, presence of tree stumps, similarity of timber succession on the island and mainland, composition of the soil and character of the channel, show conclusively that this body of land existed as an island in 1858 when Minnesota was admitted into the Union, and at all subsequent dates.

3. The island was found to be more than 50 percent upland within the purview of the Swamp Lands Act of September 28, 1850. Therefore, it is held to be public land.

4. All inquiries relating to this island should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before June 30, 1983.

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-8465 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32050, Survey Group 136]

Minnesota; Filing of Plat of Survey

1. On October 8, 1982, the plat representing the survey of one island in T. 129 N., R. 41 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., June 30, 1983.

The island listed below describes the land omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 129 N., R. 41 W.,
Tract No. 37.

2. The island Tract No. 37 is similar in all respects to that of the adjacent surveyed lands, and is composed of glacial till parent material with large granite boulders. Timber on the island consists of oak, elm, ash, basswood, willow, and box elder. Ground cover consists of choke cherry and sumac. The largest of the dominant trees found was an oak, 16 inches in diameter.

approximately 75 years old. The elevation of Tract 37 rises about 19 feet above the ordinary high water mark of Bah Lake.

This island was noted in the 1861 survey by Richard Strout, Deputy Surveyor. This fact, along with the elevation of the island, presence of tree stumps, similarity of timber succession on the island and mainland, composition of the soil and character of the channel, show conclusively that this body of land existed as an island in 1858 when Minnesota was admitted into the Union and at all subsequent dates.

3. Tract No. 37 was found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

4. All inquiries relating to this island should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before June 30, 1983.

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-8466 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

Eastern Idaho Plan Amendment/ Wilderness Draft Environmental Impact Statement; Public Hearings and DEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Hearing on Eastern Idaho Wilderness Suitability Recommendations.

SUMMARY: Pursuant to Section 102 (2)(c) of the National Environemental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement for a proposed plan amendment as to the suitability or nonsuitability of 5 wilderness study areas (WSA's). The preferred alternative recommends 1 WSA totaling 66,200 acres of public land as suitable for addition to the National Wilderness Preservation System and 4 WSA's totaling 67,908 acres as nonsuitable. Hell's Half Acre (33–15) is recommended as suitable while Hawley Mountain (32–3), Black Canyon (32–9), and Cedar Butte (33–4) WSA's in the Idaho Falls District are recommended nonsuitable. Petticoat Peak (28–1) WSA located in the Burley district is also recommended nonsuitable for wilderness. The DEIS describes the environmental consequences of 5 alternatives varying from all wilderness to no wilderness. Copies of the DEIS are available for inspection at the following locations:

Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone (208) 529–1020

Burley District Office, Bureau of Land Management, 200 South Oakley Highway, Burley, Idaho 83318, Telephone (208) 334–1770

Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, Telephone (208) 334–1770

A limited number of single copies may be obtained from one of the above addresses.

Notice is hereby given that the DEIS will be available for public review and comment for 90 days from the date filed with the Environmental Protection Agency. The Department of Interior invites written comments on the adequacy of the DEIS to be submitted by July 1, 1983.

Notice is also given that public hearings will be held at two locations:

DATES:

May 4, 1983 at 7:30 P.M., Littletree Inn, 888 North Holmes, Idaho Falls, Idaho 83401.

May 5, 1983 at 7:30 P.M., Holiday Inn, Pocatello Creek Road and I–15, Pocatello, Idaho 83201.

Comments must be received on or before July 1, 1983.

ADDRESS: Written comments on the DEIS should be sent to Donald Watson, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, District Manager, or Donald Watson, Team Leader, at the Idaho Falls District office listed above.

SUPPLEMENTARY INFORMATION: Individuals wishing to testify may do so by appearing at the hearing place previously specified. Persons wishing to give testimony will be limited to 10 minutes, with written submissions invited. Prior to giving testimony at the public hearing, individuals or spokesmen are requested to complete a hearing registration form. Registration forms may be obtained by contacting the Idaho Falls District Manager at the above address, or forms will be available before the hearing opens.

Dated: March 21, 1983.

Clair M. Whitlock,

State Director, Idaho.

[FR Doc. 83-8137 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

Montana and North Dakota; Call for Expressions of Leasing Interest in Coal for the Fort Union Coal Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice calling for expressions of leasing interest in Federal coal for the second round of leasing (1985) in the Fort Union Coal Region.

SUMMARY: The Bureau of Land Management (BLM) is seeking input from the public, industry, small business, public bodies, and state and local governments to identify areas where interest in leasing Federal coal exists. This call for expressions of coal leasing interest is to integrate potential lessees' data and needs into the coal activity planning phase of the Federal coal management program in the Dickinson District of North Dakota and the Miles City District of Montana. The data received from this call, along with the data gathered by the BLM, will be used to delineate preliminary tracts that are being considered for possible leasing within the Redwater, New Prairie, and Jordan-North Rosebud Management Framework Plan areas of the Miles City District in Montana and the Golden Valley Management Framework Plan area of the Dickinson District in North Dakota. The proposed lease sale date is currently scheduled for September 1985.

Areas indicated as acceptable for further leasing consideration have all undergone the application of unsuitability criteria based upon existing information during BLM planning. In some cases, additional or more detailed inventory and evaluation will be required before leasing is possible. The gathering of this information will continue during the activity planning process. As a result of the land use planning approximately 8,942 acres have been identified as acceptable for further consideration in the Golden Valley MFP area, 178,009 in the Redwater MFP area, 20,707 in the Jordan-North Rosebud MFP area, and 155,925 in the New Prairie MFP area. Expressions of leasing interest are being sought on the entire 363,583 acres. (See Table I.) An additional call for expressions of coal leasing interest for areas within the Southwest, McKenzie-Williams, and West Central MFP areas (North Dakota) will be made around October 1983 after completion of the land use planning (MFP).

Response to this notice will be accepted until May 20, 1983.

The Fort Union Regional Coal Team meeting is tentatively scheduled for June 1, 1983. Information obtained as a result

of this invitation will be used along with Department information by the Regional Coal Team to advise on delineation of potential lease tracts that could be selected for possible competitive sale under the Department's coal management program. Therefore, the earlier the expressions of interest are received by BLM, the better the coal team will be able to address tract delineation guidance.

All information submitted in response to this call shall be available for public inspection and copying upon request.

Two copies of each expression of interest must be sent to the Montana BLM State Director: Michael Penfold, State Director, Bureau of Land Management, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107.

TABLE I

Coal deposit	Acres	Million tons
Redwater MFP Area:		
Circle	55,827	1,497.5
Sidney	21,864	631.3
Burns Creek/Thirteen Mile Creek	61,446	1,820.6
Southwest Glendive	26,136	414.6
Wibaux-Beach (Montana)	12,736	510.5
Totals	178,009	4,874.7
Golden Valley MFP Area; Wibaux-Beach (North Dakota)	6,942	307.1
Jordan-North Rosebud MFP Area:		
Circle S.W.	20,707	286.3
New Prairie MFP Area:		
Circle S.W.	52,450	670.0
Lance Jones	18,325	279.0
Ismay	58,670	513.0
Knowlton	3,625	124.0
Carlyle	20,400	164.0
Coster Creek	2,455	62.0
Totals	155,925	1,812.0
Grand Totals	363,583	7,280.0

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Emmons, Bureau of Land Management, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107, Telephone: (406) 657–6291.

SUPPLEMENTARY INFORMATION: This notice is to advise the public that the official call for expressions of leasing interest in the areas acceptable for further consideration for coal leasing in the Golden Valley MFP area, Dickinson District, and the Redwater, Jordan-North Rosebud, and New Prairie MFP areas, Miles City District is now in effect. Maps and supplementary information on the areas found acceptable for further consideration for coal leasing may be obtained from the BLM Montana State Office, the Dickinson District Office, or the Miles City District Office. Respondents to this call should make use of these materials to the extent possible in completing their submissions.

Mr. Al Kesterke, Acting District Manager, Bureau of Land Management, P.O. Box 1220, Dickinson, ND 58601

Mr. Ray Brubaker, Miles City District Manager, Bureau of Land Management, P.O. Box 940, Miles City, MT 59301

This call for expressions of interest is the first step inactivity planning in the four MFP areas under the Federal coal management program (43 CFR 3420.3–2). It is being made before any tract boundaries are delineated within the area found suitable for further consideration for coal leasing through the land use planning process. The results of this call will provide significant information that will be used to delineate preliminary tracts within the planning areas that might be offered for sale.

Expressions of interest from small businesses and public bodies are particularly invited in accordance with the provisions of 43 CFR 3420.1–3 which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses.

Entities submitting expressions of interest under the small business or public body provisions should state that the submissions are for possible small business or public body set-asides and should also supply proof of small business or public body status. An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

This expression of interest is not an application for coal leasing. Information obtained as a result of this invitation will be used along with Department information to delineate potential lease tracts that could be ranked, selected, and scheduled for possible inclusion into a lease sale as provided for in 43 CFR 3420.5–1. The information received from this call, along with other information gathered by the BLM, will be used to delineate preliminary tracts that may be considered for possible leasing in the four Management Framework Plan areas.

These expressions of leasing interest should include the following data (where applicable):

1. Location

a. Locate proposed mining project boundaries on a Fort Union coal interest map (available in packets from BLM).

b. If no location is indicated but specific information is provided, the expression can still be considered. In such areas, the BLM tract delineation team may locate the tract.

2. Type of mine

a. Surface or underground.

b. Technique of mining (i.e., longwall, shovel and truck, room and pillar, dragline).

3. Quantity and quality of coal needs including total tonnage, life of mine, average annual production rates, and the year mining production would begin.

4. Proposed use of coal

Identify the likely market and location, or potential alternative locations for coal use including type and size of power plant and synthetic fuel plant, or other use both within and outside the Fort Union coal region.

5. Transportation needs and proposed routes to existing and proposed facilities (i.e., railroads, pipelines, and highways).

6. Information relating to mineral ownership.

a. Information on surface owner consents over federal coal previously granted (i.e., name of qualified surface owner, date of surface lease agreement, description of leased lands, whether agreement is transferable and termination date of consent, etc.)

b. Commitments from fee coal owners or commitments for associated non-federal coal.

7. Contacts. List the name, address, and phone number of the person who may be contacted for clarification or additional information on the area of interest and end use information.

Information considered proprietary should not be submitted as part of this expression of leasing interest. If proprietary information is submitted, please include a signed release stating that the information can be made available for public inspection and copying upon request.

Dated: March 25, 1983.

Michael J. Penfold,

Montana State Director.

[FR Doc. 83-8269 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Public Hearing on Draft Supplemental Environmental Statement; Garrison Diversion Unit, North Dakota

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft supplemental environmental statement. This statement (INT–DES 83–14, dated March 29, 1983) was made available to the public on March 29, 1983.

This draft supplemental environmental statement covers: (1) Fish and Wildlife mitigation and enhancement; (2) operation of Lonetree

Reservoir; (3) not constructing a fish screen on the McClusky Canal; (4) a 2,000 cubic feet per second (ft^3/s) emergency spillway from Lonetree Reservoir; (5) increasing the capacity of the proposed James River Feeder Canal from 450 ft^3/s to 1600 ft^3/s; (6) redirecting return and surplus flows from the New Rockford Service Area to the James River; and (7) changes in the flows of the James River resulting from the above actions. A public hearing will be held at 9:00 a.m., April 26, 1983, at the Kirkwood Inn, Bismarck, North Dakota.

Oral statements at the hearings will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comments have been heard.

Organizations or individuals desiring to present a statement at the hearing should contact the Regional Director, Bureau of Reclamation, Upper Missouri Region, P.O. Box 2553, Billings, Montana 59103, telephone (406) 657–6605 or (406) 657–6558, or Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, North Dakota 58502, telephone (701) 255–4011, ext. 546, and announce their intention to participate prior to 4:30 p.m., April 22, 1983.

Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. The final date for receipt of material submitted for the record will be June 1, 1983.

Comments will be received from other parties present following the presentation of scheduled testimony if time permits.

If further information is needed, phone (701) 244–4011, ext. 541.

Dated: March 29, 1983.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83-8542 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES 83-14]

Draft Supplemental Environmental Statement, Garrison Diversion Unit, North Dakota; Availability

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft supplemental environmental statement on the Garrison Diversion Unit.

This draft supplemental environmental statement covers: (1) Fish and Wildlife mitigation and enhancement; (2) operation of Lonetree Reservoir; (3) not constructing a fish screen on the McClusky Canal; (4) a 2,000 cubic feet per second (ft3/s) emergency spillway from Lonetree Reservoir; (5) increasing the capacity of the proposed James River Feeder Canal from 450 ft3/s to 1,600 ft3/s; (6) redirecting return and surplus flows from the New Rockford Service Area to the James River; and (7) changes in the flows of the James River resulting from the above actions. Written comments may be submitted to the Regional Director or Project Manager by May 27, 1983.

A public hearing will be held beginning at 9:00 a.m., April 23, 1983, at the Kirkwood Inn, Bismarck, North Dakota.

Copies are available at the following offices:

- Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7622, Washington, DC 20240, Telephone: (202) 343–4991.
- Division of Mangement Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3019.
- Regional Director, Bureau of Reclamation, Federal Building, 316 North 26th, Billings, MT 59103, Telephone: (406) 657–6214.
- Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, East Broadway Avenue and North Third Street, Bismarck, ND 58502, Telephone: (701) 255–4011, ext. 541.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director at the above addresses. Copies will also be available for inspection in libraries within the project area.

Dated: March 29, 1983.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83-8543 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-09-M

Galesville Project—Douglas County, Oregon; Public Hearing

Douglas County, Oregon, has applied for a Federal loan under provisions of the Small Reclamation Projects Act (Pub. L. 84–984), as amended), to construct a dam, reservoir, and related facilities at the Galesville site on Cow Creek. Accordingly, the Department of the Interior has prepared a draft environmental statement for the Galesville Project pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969. This statement (INT–DES 83–13, dated March 8, 1983) was made available to the public on March 8, 1983. The draft environmental statement covers impacts of constructing the dam and reservoir and providing storage for irrigation, municipal and industrial water, stream enhancement, and flood control, as well as associated plans for power production and recreation facilities.

A public hearing will be held in Roseburg, Oregon, at the Douglas County Courthouse on April 28, 1983, from 7 p.m. until all presentations have been made. The purpose of the hearing is to receive views and comments from interested organizations and individuals relating to the adequacy of the draft environmental statement. The hearing will also provide the public an opportunity to comment on the effects the project would have on flood-plain management (Executive Order 11988) and protection of wetlands (Executive Order 11990).

Oral statements at the hearing will be limited to a period of 10 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comments after all persons desiring to comment have been heard. The speaking order at the hearing will be determined by the order in which the letter requests are received by the Bureau. Requests for scheduled presentations will be accepted up until 4 p.m. on April 25, 1983. Requests to make oral statements will also be accepted at the hearing, and persons making those requests will be permitted to speak for 10 minutes on a first-come, first-served basis after each person who submitted a letter request has been permitted to make an initial presentation.

Organizations or individuals desiring to present their statements at the hearing should write to the Regional Director, Attention Code 150, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724; or telephone 208/334–1926 and state their intention to participate. Written comments for the hearing record from those unable to attend and from those wishing to supplement their oral presentation at the hearing should be received by May 7,

1983, so that they can be included in the hearing record.

Dated: March 28, 1983.

R. N. Broadbent,

Commissioner.

[FR Doc. 83-8544 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Announcement of Availability of the Report Status and Trends of Wetlands and Deepwater Habitats in the Conterminous United States, 1950's to 1970's

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The Service announces availability of the above mentioned report. The report presents national estimates as to the extent of United States wetlands and deepwater habitats (e.g., lakes and coastal waters) in the mid-1950's and mid-1970's and on their gains and losses during that period.

ADDRESS: Copies of this report are available for review at the National Wetlands Inventory Office, 1375 K Street, NW., Suite 406, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Bill O. Wilen, National Coordinator, National Wetlands Inventory, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202/343-3245).

Dated: March 22, 1983.

Robert E. Gilmore,

Acting Director.

[FR Doc. 83-8496 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Amoco Production Company (USA) has submitted a Supplemental Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0578, Block 215, Eugene Island 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 Regional 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: March 25, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-8468 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-MR-M

4310-MR

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Mid-Atlantic Oil and Gas Lease Offering (April 1983)
Correction Notice/Clarification of Blocks Offered

On Friday, March 25, 1983, at 48 FR 12660, the Federal Register published the Notice for Mid-Atlantic Outer Continental Shelf Oil and Gas Lease Offering (April 1983). While the blocks listed below were mentioned in numerous places in that notice (Paragraph 4, Bidding Systems; Paragraph 11, Official Protraction Diagrams; Paragraph 13, Lease Terms and Stipulations; and Paragraph 14, Information to Lessees), these blocks were inadvertently omitted from Paragraph 12(a), Block Descriptions.

Notice is hereby given that the blocks listed below, each containing 2304 hectares, are offered for lease at the Mid-Atlantic Outer Continental Shelf Oil and Gas Lease Offering (April 1983). Blocks 868 and 912 on Official Protraction Diagram No. NJ 18-3 were not listed in the notice referenced above as a result of the inadvertent omission described above, and therefore will not be included in the Mid-Atlantic Outer Continental Shelf Oil and Gas Lease Offering (April 1983).

All other terms and conditions in the notice referenced above remain unchanged, including the time and location of the offering.

Acting Robert L. Rioux
Director, Minerals Management Service
Robert L. Rioux
Approved:

Daniel N. Miller, Jr.
Assistant Secretary of the Interior
Daniel N. Miller, Jr.

3/30/83
Date

Official Protraction Diagram No. NK 19-10, Block Island Shelf (Approved June 22, 1977).

242-247	456-467	669-687	889-907
285-291	499-511	713-731	933-944
327-335	541-555	757-775	947-951
370-379	584-599	801-819	977-988
413-423	627-643	845-863	991-995

Official Protraction Diagram No. NJ 18-3 (Approved October 31, 1974).

17-35	281-289	412-422	541-557	760-784
61-79	293-299	428-431	560-563	804-814
105-123	325-333	454-466	585-607	816-828
149-167	337-343	473-475	630-651	847-857
193-211	369-378	497-512	673-695	860-867, 869-872
237-255	381-387	516-519	716-739	891-911, 913-916
				934-960
				978-1004

Official Protraction Diagram No. NJ 19-1, Block Canyon (Approved June 22, 1977).

10-27	274-291	538-555	801-819
54-71	318-335	582-599	845-863
98-115	362-379	626-643	889-907
142-159	406-423	670-687	933-951
186-203	450-467	714-731	977-1012
230-247	494-511	757-775	

Official Protraction Diagram No. NJ 19-2, Veatch Canyon (Approved January 25, 1979).

969-974

Official Protraction Diagram No. NJ 18-5, Salisbury (Approved October 31, 1974).

349	515-525	691-701	867-877
392-393	559-569	735-745	911-921
436-437	603-613	779-789	955-965
479-481	647-657	823-833	999-1009

[FR Doc. 83-8694 Filed 3-31-83; 8:55 am]
BILLING CODE 4310-MR-C

Office of the Secretary

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96-487, dated December 2, 1980, Section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, May 11, 1983, at 1689 C Street, Room 107, in the South Kaloa Building, Anchorage, Alaska. The agenda will include recommendations and adoption of the 1983/1984 Work Program Plan; and status reports on the Bristol Bay Cooperative Management Plan, the Kantishna Hills/Dunkle Mine Study, and the Denali Scenic Highway Study. For further information contact: Alaska Land Use Council, P.O. Box 120-100120, Anchorage, Alaska 99510, (907) 272-3422.

William P. Horn,

Deputy Under Secretary.

March 25, 1983.

[FR Doc. 83-8467 Filed 3-31-83; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is a neither 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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Agatha L. Mergenovich,

Secretary.

For status, please call Team 1 at 202-275-7992.

Volume No. OP1-FC-107

By the Commission, Review Board No. 2, Member Carleton, Williams, and Ewing. (Member Carleton not participating.)

MC-FC-81227. By decision of March 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to SUBURBAN MOVING & STORAGE, INC., of Hatboro, PA of Certificate No. MC-30581 issued August 14, 1974, to READ'S VAN SERVICE, INC., of Hatboro, PA, authorizing the transportation of household goods, between Philadelphia, PA, and points within 15 miles of Philadelphia, on the one hand, and, on the other, points in NY, NJ, PA, DE and MD. Representative: William H. R. Casey, 892 Second Street Pike, Richboro, PA. (215) 322-8300.

MC-FC-81237. By decision of March 28, 1983, issued under 49 USC Part 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 2 approved the transfer to M K HOT SHOT, INC., 663 South 4th Ave., Casper, WY 82601, of Certificate No. MC-150461, issued October 4, 1982, to DONALD WILSON, d.b.a. WILSON'S HOT SHOT SERVICE, 1015 South Willow, Casper, WY, 82601, authorizing the transportation over irregular routes of machinery, materials, equipment and supplies used in, or replacing, servicing and repairing machinery and equipment used in or connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, between points in WY, on the one hand, and, on the other, points in OK, CO, ND, SD, MT, UT, NE, ID, KS, TX and NM.

For status, please call Team 2 at 202-275-7030.

Volume No.OP2-143

By the Commission.

MC-FC-81312. By decision of March 25, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to Jet Star, Inc., Indianapolis, IN, of all of the authority Issued to B & C Motor Freight, Inc., Peru, IN, in MC-136182, issued May 7, 1973, Sub 1, issued April 25, 1975, Sub 2, issued June 13, 1975, Sub 3, issued September 26, 1977, Sub 5, issued April 29, 1981, Sub 6, issued December 9, 1980, Sub 9, issued October 20, 1980, Sub 10, issued February 27, 1981, Sub 11, issued February 25, 1981, and Sub 12, issued June 18, 1981, authorizing the transportation of (1) various specified commodities, from, to and between points in IL, IN, KY, MI, WV, IN, OH, MO, WI, PA, VA, TN, NC, SC, AL, and GA, and (2) as a contract carrier, dry fertilizer, from the plant sites of Kaiser Agricultural Chemicals at or near Peru and Butler, IN, to points in OH. Representative: Donald Smith, P.O. Box 40248, Indianapolis, IN.

For status, please call Team 2 at 202-275-7030.

Volume No. OP2-146

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC-81182. By decision of March 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approved the transfer to KNIGHT LINES, INC., Aliquippa, PA, of authority issued to A. ROGER LEASING, LTD.,Coraopolis, PA, in Certificate No. MC-152672 Sub-3, issued July 28, 1981, authorizing the transportation of metal products, between the facilities of Babcock and Wilcox Company, at points in the U.S., on the one hand, and, on the other, points in the U.S., and Permit No. MC-152672 (Sub-No. 10), issued November 23, 1982, authorizing the transportation of such commodities as are dealt in or used by chain stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Giant Eagle Markets, Inc., of Pittsburgh, PA, and Tamarkin Company, of Youngstown, OH. Representative: Barry Weintraub, 8133 Leesburg Pike, Suite 510, Vienna, VA, 22180.

MC-FC-81243. By decision of March 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 2, approved the transfer to SNYDER TRUCKING, INC.,

Parkston, SD, of authority issued to POGER MARQUARDT d/b/a MARQUARDT GRAIN CO., Parkston, SD, in Certificate No. MC-95523, issued March 29, 1976, authorizing the transportation of livestock, from Parkston, SD, and points within 15 miles of Parkston, to Sioux City, IA, and Livestock, seeds, poultry feeds, farm machinery and implements, coal, building materials, and calcium carbide, from Sioux City, IA, to the above-specified origin points. Representative: Mike Braley, P.O. Box G, Parkston, SD, 57366.

MC-FC-81254. By decision of March 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 2 approved the transfer to ZANE KITTLELMANN, OF Miles City, MT, of Certificate No. MC-120763 (Sub-No. 2), issued September 3, 1968, to James A. Ferris, Leroy N. Hyatt and Henry A. Morris, dba Contractor Freight Service, of Miles City, MT, authorizing the transportation, over regular routes, of general commodities (with exceptions), (1) between Miles City and Jordan, MT and (2) between Miles City and Broadus, MT, serving all intermediate points on both routes. Representative: Charles Jardine, 1200 Pleasant St., Miles City, MT 59301, (405) 232-6638.

For status, please call Team 3 at 202-275-5223.

Volume No. OP3-MCFC-125 Decided: March 21, 1983

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing. (Member Ewing not participating.)

MC-FC 81278. By decision of March 21, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181 Review Board Number, approved the transfer to TRUCKING WATER AIR CORPORATION, YONKERS, NY of Certificate No. MC 6415, issued December 14, 1940, MC-6415 Sub 3, issued January 23, 1947, MC 6415 Sub 5, issued December 24, 1959, and MC-6415 Sub 6, issued January 16, 1967, to FEUER TRANSPORTATION, INC., YONKERS, NY, authorizing the transportation of general commodities (except those of unusual value, and except dangerous explosives, household goods (when transported as a separate and distinct service in connection with so called "household moving"), commodities in bulk, commodities requiring special equipment), over regular routes between South Amboy, NY, and Millerton, Rhineback, and Saugerties, NY, serving apecified intermediate points, and off-route points, and New Rochelle, NY and the New York, NY, commercial zone in connection with carrier's otherwise regular routes operations; over irregular routes between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Bergen, Union, Passaci, Middlesex, Monmouth, Somerset and Morris Counties, NY, and between New York, NY, on the one hand, and, on the other, points in Nassau and Suffolk Counties, and a portion of Fairfield County, CT. An application for temporary authority has been filed. Representative: Mr. Arthur Liberstein, 888 Seventh Avenue, New York, NY 10106.

Volume No. OP4-FC-188

For status, please call Team 4 at 202-275-7669.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-81267. By decision of March 25, 1983 issued under U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the transfer to BREIDENBAUGH'S TRANSPORTATION SERVICES, INC., Jasper, IN, of Certificate No. MC-146796 (Sub-No. 3)X, issued November 19, 1981, and the underlying superseded authority in MC-146796 (Sub-No. 2F), issued December 18, 1980, to ROBERT HANSEN, doing business as HANSEN TRUCKING, Danville, IL, authorizing the transportation in MC-146796 (Sub-No. 3)X which superseded MC-146796 (Sub-No. 2F), general commodities (except classes A and B explosives), between points in IL, IN, OH, KY, MO, and WI. Note: The authority in Sub-No. 3X cannot be severed by sale of otherwise from the underlying superseded authority in Sub-No. 2F. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. (317) 846-6655.

MC-FC-81302, filed March 11, 1983. By decision of March 24, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3 approved the transfer to ALL-CONTINENT TRANSPORT, INC., dba A.C.T., of Tucker, GA, of Certificate No. MC-29886 (Sub-No. 385X), issued September 11, 1981, and underlying authorities (Sub-Nos. 311G and 374, issued March 9, 1978, and January 28, 1981, respectively, and letter notices published in the **Federal Register** as follows: E4, September 16, 1974, E6, September 3, 1974, E17, March 13, 1975, E25 and E26, April 9, 1975, E43, E45, E47, and E48, April 3, 1975, E53, March 25, 1975, E64 and E67, April 21, 1975, E71, March 24, 1975, E87, May 29, 1975, E96, E100, and E103, June 24, 1975), issued to DALLAS & MAVIS FORWARDING CO., INC., of Kenosha, WI, authorizing the transportation of commodities which because of size or weight require the use of special equipment or special handling, machinery, and related commodities, between various points in the U.S. An application for temporary authority has been filed. Representative: Paul F. Sullivan, 3408 Wisconsin Ave., NW, Suite 202, Washington, DC 20016.

Volume No. OP5-FC-140

For status, please call Team 5 at 202-275-7289.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC-FC-81068. By decision of March 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to MID-HUDSON MOVING & STORAGE, INC., of Wappingers Falls, NY, of Certificate No. MC 18678 issued August 2, 1967 to WHITE STAR TRANSFER CO., INC., of Port Ewen, NY, authorizing the transportation of household goods, between Kingston, NY and points in New York within 30 miles of Kingston, on the one hand, and, on the other, points in MA, CT, RI, PA, NJ, NY, DE, MD, VT, NH, and DC. Transferee is affiliated with A.M. Kennedy Transportation Co., Inc. Representative: Neil D. Breslin, 11 North Pearl St., Albany, NY 12207.

MC-FC-81284. By decision of March 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules of CFR Part 1181, Review Board Number 1 approved the transfer to CAMPBELL TREE & LAND TRANSPORTATION CORP., of Wautoma, WI, of Certificate No. MC-143619 Sub 10 issued March 26, 1982, to PALS BROS. TRUCKING, INC., of Alexander, IA, authorizing the transportation of *chemicals*, between points in Wood County, TX, Polk County, GA, and Jefferson County, NE, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Transferee holds authority in MC-162231. An application for temporary authority has been filed. Representative: James Spiegel 6333 Odana Road, Madison, WI 53719 for transferee, and James M. Hodge 3730 Ingersoll Avenue, Des Moines, IA, 50312, for transferor.

[FR Doc. 83-8458 Filed 3-31-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public

interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon 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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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.

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. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-145

Decided: March 24, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Carleton not participating.)

FF-673, filed February 25, 1983. Applicant: TRIANGLE CONSOLIDATORS, INC., 2120 New World Dr., Columbus, OH 43207. Representative: Ignatius B. Trombetta, One Public Square Bldg. #1001, Cleveland, OH 44113, 216-589-0448. As a freight forwarder in connection with the transportation of *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 682 (Sub-46), filed March 7, 1983. Applicant: BURNHAM VAN SERVICE, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036-5391, 202-887-5868. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with (a) International Freight Brokers, Inc. and Distribution Technology, Inc., dba Piedmont Distribution Centers, both of Charlotte, NC, (b) Marschall Warehouse Co., of Teterboro, NJ, (c) Foxboro Terminals, Inc., of Foxboro, MA, (d) Port Terminal Co., Inc., of Boston, MA, (e) Weber Truck and Warehouse, of La Mirada, CA, and (f) Yankee Transport, Inc., of Teterboro, NJ.

MC 682 (Sub-47), filed March 7, 1983. Applicant: BURNHAM VAN SERVICE, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036-5391, 202-887-5868. 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 147552 (Sub-16), filed March 3, 1983. Applicant: CAJUN CARTAGE AND WAREHOUSING CORPORATION, P.O. Box 10686, Jefferson, LA 70181-0686. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706, 713-898-8086. Transporting *general commodities* (except classes A and B explosives and household goods), between points in TX, LA, AR, MS, and AL.

MC 166473, filed February 28, 1983. Applicant: JMF, INC., 2111 Birch Lane, Park Ridge, IL 60068. Representative: Irwin Rozner, 134 North LaSalle St., Chicago, IL 60602, 312-782-6937. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, on the one hand, and, on the other, points in WI, MI, MN, MO, IA, OH, and IN.

MC 166493, filed February 28, 1983. Applicant: SMITH-WAY TRANSPORT LINES, INC., P.O. Box M 543, Landing, NJ 07850. Representative: Ray F. Smith

(same address as applicant), 201–398–7–19. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Marie C. Smith, d.b.a. T.R.I. Enterprises, of Landing, NJ.

MC 166513, filed February 24, 1983. Applicant: DON R. EMERSON, d.b.a. EMERSON MOVING & STORAGE, 615 South 6th St., Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902, 501–782–1001. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR and OK.

For the following, please direct status calls to Team 3 at 202–275–5223.

Volume No. OP3–126

Decided: March 21, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 163874 (Sub-1), filed March 7, 1983. Applicant: BENTON MOVERS, LTD., 313 Stiles Ave., Box 22789, Savannah, GA 31401. Representative: Edward J. Benton III, 512 E. 46th St., Savannah, GA 31401, (912) 233–4971. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in GA.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–184

Decided: March 24, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 124236 (Sub-113), filed March 21, 1983. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 N. Central Expressway, Dallas, TX 75205. Representative: Leroy Hallman, 4555 InterFirst One, Dallas, TX 75205, (214) 741–6263. Transporting *building materials*, between LA, OK and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151036 (Sub-8), filed March 18, 1983. Applicant: DECATUR TRANSIT, INC., 161 First Ave., NE, Decatur, AL 35601. Representative: Robert G. Slaton (same address as applicant), (205) 353–9601. Transporting *petroleum products* and *fertilizer products*, between points in AL, GA, MS, and TN.

MC 155677 (Sub-2), filed March 21, 1983. Applicant: AMERICAN TRANSPORTATION ASSOCIATES, INC., 5612 Tall Oaks Dr., Louisville, KY 40214. Representative: Robert L. Hawkins (same address as applicant), (812) 282–2509. 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). Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A), or a petition for exemption under 49 U.S.C. 11343(e) or submit an affadavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority in this proceeding please submit a copy of the affadavit or proof of filing the appropriate application or petition for exemption to Team 4, Room 2410.

MC 157416 (Sub-3), filed March 18, 1983. Applicant: BURGESS TRANSPORTATION COMPANY, INC., Route 2, Box 336, Ashford, AL 36312. Representative: Stephen T. Etheredge, P.O. Box 1193, Dothan, AL 36302, (205) 793–3377. Transporting *clay and clay products*, between points in GA, on the one hand, and, on the other, points in FL, TX, LA, and AR.

MC 158307 (Sub-4), filed March 18, 1983. Applicant: WAYNE BROWN TRANSPORT, INC., 1109 Barlow St., West Lafayette, IN 47906. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *such commodities* as are dealt in by grocery and food business houses, between Baltimore, MD and points in Prince Georges County, MD, Lucas County, OH, Marion County, IN, Wayne County, MI, Windham, County, VT, Hartford County, CT, Nassau County, NY, Middlesex County, NJ, Richmond County, VA, Mecklenburg and Wake Counties, NC, Fulton County, GA, Duval, Gadsden and Orange Counties, FL, and Orleans Parish, LA, on the one hand, and, on the other, those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada.

MC 166847, filed March 17, 1983. Applicant: TRI-COUNTY SUPPLY, INC., R.R. #1, Condo, ND 58324. Representative: Rex Parslow (same address as applicant), (701) 266–5393. Transporting (1) *fertilizer and fertilizer ingredients*, between points in ID, IA, MN, ND, SD, MT, and WI, and (2) *lumber and wood products, and building materials*, (except lumber and wood products), between points in ND, on the one hand, and, on the other, points in ID, MT, and MN.

MC 166866, filed March 17, 1983. Applicant: MARVIN G. FIGGINS, 3101 Airport Rd., Grand Rapids, MN 55744. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *machinery* and *metal products*, between points in the U.S. (except HI), under continuing contract(s) with National Iron Company, div. of Pettiborne Corp., of Duluth, MN.

Volume No. OP4–186

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 67646 (Sub-107), filed March 21, 1983. Applicant: HALL'S MOTOR TRANSIT COMPANY, 6060 Carlisle Pike, Mechanicsburg, PA 17055. Representative: David M. Young, (Same address as applicant), (717) 790–8540. 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 E. I. Du Pont de Nemours & Co., of Wilmington, DE.

MC 108756 (Sub-4), filed March 21, 1983. Applicant: RAY, THE MOVER OF MANCHESTER, INC., P.O. Box 1060, Manchester NH 03105. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036, (202) 785–0024. Transporting *household goods*, and furniture and fixtures, (1) between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, VA, WV, NC, SC, GA, FL, AL, MS, OH, MI, IN, IL, WI, and DC, and (2) between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, VA, WV, NC, SC, GA, FL, AL, MS, OH, MI, IN, IL, WI, and DC, on the one hand, and, on the other, points in KY, TN, IA, MO, AR, LA, TX, OK, KS, NE, and CO.

MC 110567 (Sub-34), filed March 21, 1983. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304, (515) 245–2725. Transporting *such commodities* as are dealt in or used by of grocery and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Cub Foods, of Green Bay, WI.

MC 166947, filed March 21, 1983. Applicant: MASTERCRAFT INDUSTRIES TRANSPORTATION COMPANY, INC., 120 West Allen St., Rice Lake, WI 54868. Representative: James L. Nelson, 1821 University Ave.

#163N, St. Paul, MN 55104, (612) 646–6677. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WI and MN, on the one hand, and, on the other points in WI, MN, IL, MI, IA, MO, ND, SD, NE, KS, OK, TX, NM, CO, WY, UT, AZ, NV, and CA.

MC 166956, filed March 22, 1983. Applicant: K-WY EXPRESS, INC., Winsted MN 55395. Representative: Val M. Higgins, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *machinery and metal products*, between points in MN, on the one hand, and, on the other points in the U.S. (except AK and HI); (2) *food and related products*, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–137

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 166128, filed March 1, 1983. Applicant: RICH LEHMANN, d.b.a., RICH LEHMANN TRUCKING, 2205 Rosewyn Lane, Billings, MT 59102. Representative: Charles A. Murray, Jr., 2822 Third Ave. N, Billings, MT 59101, (406) 252–4165. Transporting (1) *chemicals and related products* and (2) *clay, concrete, glass or stone products*, between points in MT, WY, ND, and SD.

MC 166608, filed March 4, 1983. Applicant: BEN E. DANIELS, d.b.a., BEDCO ENTERPRISES, 29762 Preston Drive, Laguna Niguel, CA 92677. Representative: Ben E. Daniels, (same address as applicant, (714) 831–9146. Transporting (1) *leather, vinyl and cloth products*, between points in CA, NC, NY, and SC, on the one hand, and, on the other, points in CT, CO, FL, GA, IL, LA, OH, MO, NY, and TX, (2) *motor vehicle parts*, between points in CA, on the one hand, and, on the other, points in TX, OH, NJ, and MO, and (3) *household goods and funiture and fixtures*, between points in the U.S. (except AK and HI).

Volume No. OP5–138

Decided: March 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 166119, filed February 4, 1983. Initially published in the F.R. on March 1, 1983. Applicant: A & L DIRECT TRANSPORT, INC., 1065 Prospect Ave., West Islip, NY 11795. Representative: Arthur J. Piken, Queens Office Tower, 95–25 Queens Boulevard, Rego Park, NY 11374, (211) 275–1000. Transporting *aircraft parts and propellers* between points in the U.S. (except AK and HI), under continuing contract(s) with Central Aviation & Marine Corp., and Semsa, Inc., both of Ronkonkoma, NY.

Note—This application is republished to include Semsa, Inc., as a contracting shipper.

Volume No. OP5–142

Decided: March 23, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 1879 (Sub-3), filed March 14, 1983. Applicant: ROBERTS TRANSFER, INC., 2510 North 11 Street, Omaha, NE 68110. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge, Rd., (402) 397–7033. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in CO, NE, KS, SD, IA, MN, MO, WI, IL, IN, MI, and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 28579 (Sub-8), filed March 14, 1983. Applicant: GRIFFITH MOTOR EXPRESS, INC., 1607 S. Rogers Street, Bloomington, IN 47401. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *general commodities* (except household goods, commodities in bulk, and classes A and B explosives), between Indianapolis, IN, on the one hand, and, on the other, points in IN on and south of U.S. Hwy 40.

MC 31389 (Sub-343), filed March 17, 1983. Applicant: McLEAN TRUCKING COMPANY, 1920 West First St., Winston-Salem, NC 27104. Representative: Daniel R. Simmons (same address as applicant), (919) 721–2433. 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 Montgomery Ward & Co., of Chicago, IL.

MC 41098 (Sub-99), filed March 15, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, DC 20006, (202) 833–8884. Transporting *computerized electronic communications switching systems and related parts and components*, between points in the U.S., under continuing contract(s) with InteCom, of Allen, TX.

MC 123218 (Sub-3), filed March 17, 1983. Applicant: KERWIN TANK LINES, INC., 294 Taylorsville Road, Washington Crossing, PA 18977. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110 (215) 561–1030. Transporting (1)*chemicals and related products*, (2) *clay, concrete, glass or stone products*, (3) *building materials*, (4) *pulp, paper and related product*, (5) *rubber and plastic products*, and (6) *petroleum, natural gas and their products*, between those points in the U.S. in and east of MI, IN, KY, TN, and AL.

MC 139269 (Sub-15), filed March 14, 1983. Applicant: C. P. CRASKA, INC., Spruce Street, Ilion, NY 13357. Representative: Louis A. Paulsen, 8 Millet Street, Dix Hills, NY 11746, (516) 667–3258. Transporting *food and related products*, between points in CT, ME, MA, NH, PA, NJ, NY, RI, and VT.

MC 143389 (Sub-17), filed March 15, 1983. Applicant: MERCHANTS DUTCH EXPRESS, INC., 2019 Jackson St., P.O. Box 7554, Monroe, LA 71211. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702 (501) 521–8121. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Charles McAlpin Broderage, Inc., of Decatur, AL.

MC 151878 (Sub-11), filed March 15, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Drive, Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th Street, N.W., Suite 800, Washington, D.C. 20036, (202) 659–4262. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S., under continuing contract(s) with Fairchild MOS, of San Jose, CA.

MC 155759 (Sub-2), filed March 7, 1983. Applicant: BOWSER-REGAL, INC., d.b.a., REGAL SERVICES, P.O. Box 509, North East, PA 16428. Representative: Richard L. Bowser (same address as applicant), 716–736–2111. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in PA, NY, TX, MA, OK, and CO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 156678 (Sub-1), filed March 17, 1983. Applicant: NORTH CENTRAL TRUCKING CORP., Box 822, Cumberland, WI 54829. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *general commodities* (except classes A and B explosives and household goods) between Chicago, IL and points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163028 (Sub-1), filed March 14, 1983. Applicant: JASON ENTERPRISES,

INC., P.O. Box 116, Vinton, VA 24179. Representative: Michael S. Ferguson, 1919 Electric Road, S.W., Roanoke, VA 24018, (703) 774–1197. Transporting *construction, mining and industrial equipment and machinery* and *parts and components* thereof, between points in the U.S. (except AK and HI).

MC 163128 (Sub-1), filed March 17, 1983. Applicant: BMC TRANSPORTATION COMPANY, P.O. Box 569, Columbus, NE 68601. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting (1) *building materials*, (2) *metal products*, and (3) *lumber and wood products*, between points in Pope County, MN, and points in IA, KS, MO, MT, and NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166708, filed March 10, 1983. Applicant: DEWELL W. HOSKINS, d.b.a. HOSKINS TRUCK SERVICE, 5th & Vine Sts., Malvern, AR 72104. Representative: Kay L. Matthews, 401 Pyramid Place, 221 West Second St., Little Rock, AR 72201, (501) 376–8363. Transporting *lumber, wood products, and poles and piling*, between points in AR, LA, MS, MO, OK, TN, and TX.

MC 166719, filed March 10, 1983. Applicant: MICHAEL W. ZEBLEY, d.b.a. FARWELL TRUCKING, #4 Farwell St., Lewiston, ME 04240. Representative: Michael W. Zebley (same address as applicant), (207) 782–5750. 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 Poland Spring Bottling Company, of Poland Spring, ME.

MC 166819, filed March 15, 1983. Applicant: J. J. MAKOOL, d.b.a. SILVER STREAK TRANSPORTATION, Route 1, Box 7, Touchet, WA 99360. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI).

MC 166859, filed March 17, 1983. Applicant: S & S TRUCK LINE, INC., 1410 Intercity Trafficway, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309, (515) 244–2329. Transporting *general commodities* (except clases A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

Volume No. OP5–144

Decided: March 24, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 56538 (Sub-3), filed March 15, 1983. Applicant: UNITED CHARTER SERVICE, INC., 119 Graham Lane, Lodi, NJ 07644. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, (212) 838–0600. Over regular routes, transporting *passengers*, between Ridgefield, NJ, and New York, NY, from Ridgefield south over Interstate Hwy 95 to junction Interstate Hwy 495, then east over Interstate Hwy 495 through the Lincoln Tunnel to New York, NY, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 95978 (Sub-2), filed March 15, 1983. Applicant: JONES WAREHOUSE CORPORATION, d.b.a. BAY WEST TRANSPORT, 2500 Common Lane, Chesapeake, VA 23324. Representative: Frank L. Willard, Suite #1001 First & Merchants National Bank Building, Norfolk, VA 23510, (804) 627–0070. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Springmeier Shipping Company, Inc., of St. Louis, MO; Bailey & Williams, Inc., of Chesapeake, VA; Central Virginia Shippers Association of Chesapeake, VA; Bay Warehouse Corporation of Chesapeake, VA; Famarco Ltd., of Virginia Beach, VA; KMC Foods, Inc., of Queen Anne, MD; Haynes Furniture Corp., of Norfolk, VA; Sydnor & Hundley Furniture Co., of Richmond, VA; Avon Fashions, Inc., of Hampton, VA; and Lone Star, Lafarge, Inc., of Norfolk, VA.

MC 99969 (Sub-6), filed March 15, 1983. Applicant: HUNTLEY TRUCKING CO., Route-Box 66A, New Plymouth, OH 45654. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, 614–228–1541. Transporting (1) *coal*, and (2) *lumber and wood products*, between points in OH, on the one hand, and, on the other, points in IL, IN, KY, MD, MI, NC, NY, OH, PA, SC, VA and WV.

MC 114569 (Sub-381), filed March 8, 1983. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501, (402) 475–4414. 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 Quaker Oats Company, of Chicago, IL.

MC 121119 (Sub-3), filed March 15, 1983. Applicant: HAMNER, INC., Highway 35, P.O. Box 1350, Fulton, TX 78358. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting *farm products; food and related products; waste or scrap not identified by industry producing; nonmetallic minerals; clay, concrete, glass or stone products; metallic ores; forest products; metal products; feed additives; coal products; pulp, paper and related products;* and *chemicals and related products*, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to convert its Certificate of Registration No. MC–121119 Sub 2, and to expand the authority.

MC 121119 (Sub-4), filed March 15, 1983. Applicant: HAMNER, INC., Highway 35, P.O. Box 1350, Fulton, TX 78358. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting (1) *petroleum and petroleum products*, and (2) *Linseed oil*, between those points in the U.S. in and east of ND, SD, WY, UT, and AZ.

Note.—Applicant seeks to convert its Certificate of Registration No. MC–121119 Sub 2, and to expand the authority.

MC 151878 (Sub-12), filed March 15, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Dr., Sunnydale, CA 94086. Representative: Charles H. White, Jr., 1019 19th St., N.W., Suite 800, Washington, DC 20036, 202–659–4262. Transporting *general commodities* (except Classes A and B explosives, and commodoities in bulk), between points in the U.S., under continuing contract(s) with Moore Systems, Inc., of San Jose, CA. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343, (2) file an application under 49 U.S.C. 11343(A), or submit an affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 5, Room 2414.

MC 156778 (Sub-1), filed March 14, 1983. Applicant: 7 HILLS TRANSPORT, INC., P.O. Box 6205, Rome, GA 30161. Representative: Terrell Price, 800 Briar Creek Rd., Suite DD–504, Charlotte, NC 28205, 704–372–8212. Transporting *general commodities* (except classes A and B explosives, household goods, and

commodities in bulk), between points in NC, SC, GA, AL and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 183729 (Sub-1), filed March 14, 1983. Applicant: TRANS-PORT SERVICES, INC., Route 1, Box 490, New Smyrna Beach, FL 32069. Representative: M. C. Hutto III (same address as applicant), (904) 428-8959. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, FL, GA, NC, SC, and TN.

MC 166679, filed March 8, 1983. Applicant: JOLE, INC., 4029 Ridgeway Dr., Indianapolis, IN 46241. Representative: Charles J. Kilby (same address as applicant), 317-244-8775. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Dallas, TX, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Transitaide USA, of D.F.W. Airport, TX.

MC 166759, filed March 14, 1983. Applicant: THE HARRY H. POST COMPANY 1881 Bassett St., P.O. Box 899, Denver, CO 80201. Representative: Daniel W. Crippen (same address as applicant), (303) 296-7676. Transporting *food and related products, pulp, paper and related products, chemicals and related products,* and *rubber and plastic products,* between points in CO, on the one hand, and, on the other, points in UT, ID, WY, NM, and TX, under continuing contract(s) with Randy's Frozen Steaks, Inc., of Arvada, CO, Allied Paper Box Co., Inc., of Denver, CO, Mountain States Plastics, Inc., of Englewood, CO, Camelot Plastics, Inc., of Littleton, CO, and Hadco Chemical Corp., of Denver, CO.

[FR Doc. 83-8461 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These 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.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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.

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 Team Five at 202-275-7289.

Volume No. OP5-143

Decided: March 23, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 166568, filed March 3, 1983. Applicant: ATIR TRANSPORTATION SERVICES, INC., 11551 Schwab Drive, Parma, OH 44130. Representative: Harry T. Hessler (same address as applicant), (216) 845-5055. As a *broker* of *general commodities* (except households goods), between points in the U.S. (except AK and HI).

MC 166738, filed March 11, 1983. Applicant: DONALD E. STERKEN, d.b.a. SCIENTIFIC TRANSPORTATION CONSULTANTS, 4230 Choctow Drive, SE, Grandville, MI 49418. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, (313) 349-3980. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S.

Volume No. OP5-145

Decided: March 24, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 166779, filed March 14, 1983. Applicant: HERMANN CONSULTING CO., INC., P.O. Box 1, North Brunswick, NJ 08902. Representative: Maxwell A. Howell, 2554 Massachusetts Ave., NW., Washington, DC 20008, (202) 483-8633. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S.

For the following, please direct status calls to Team 2 at 202-275-7030.

Volume No. OP2-144

Decided: March 24, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Carleton not participating.)

MC 130092 (Sub-2), filed February 24, 1983. Applicant: GREEN MOUNTAIN TOURS, INC., 128A West Pleasant Ave., Maywood, NJ 07607. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, 212-466-0220. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166492, filed February 28, 1983. Applicant: JEAN SAVAGE and LAVON SAVAGE, d.b.a. J & L ENTERPRISES, 4864 Kings Row Dr., Salt Lake City, UT 84117. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, 801-531-1300. 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 166662, filed March 8, 1983. Applicant: OLIVER CHARTERS INC., 4471 Don Tomaso Dr., Los Angeles, CA 90008. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, 714-667-8107. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA, and extending to points in the U.S. (except AK and HI).

Note.— Applicant seeks to provide privately funded charter and special transportation.

MC 166663, filed March 8, 1983. Applicant: INNER HARBOR WAREHOUSING AND DISTRIBUTION, INC., 1147 Wicomico St., Baltimore, MD 21230. Representative: Reese V. Bean III (same address as applicant), 301-539-2850. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 166672, filed March 7, 1983. Applicant: MARK ROSENTTHAL, d.b.a. MARK'S CHARTERS, 2020 Devonshire, Brea, CA 92621. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, 714-667-8107. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166683, filed March 7, 1983. Applicant: TERRACE LEE AND SANDRA LEA MOORE, 1160 Marsden Rd., Port Angeles, WA 98362. Representative: Lawrence Marquette, P.O. Box 629, Carmel Valley, CA 93924, 408-625-2031. 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), and (2) *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 166703, filed March 10, 1983. Applicant: YELLOWBIRD DEVELOPMENT LTD, d.b.a. YELLOWBIRD, P.O. Box 827, Coaldale, Alberta CD TOK OLO. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055, 206-235-1111. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166712, filed March 10, 1983. Applicant: CHARTER TRAVEL SERVICES, INC., 2335 North Belt St., St. Joseph, MO 64506. Representative: Robert J. Brooks, 1828 L St., N.W., Suite 1111, Washington, DC 20036, 202-466-3892. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166713, filed March 10, 1983. Applicant: RICHARD F. TAYLOR, d.b.a. TAYLOR TRUCKING, Route A, Box 163, Pierre, SD 57501. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, 402-397-7033. 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).

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-187

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 166957, filed March 22, 1983. Applicant: TULIP TRAVEL LTD., 1411 Newbridge Rd., No. Bellmore, NY 11710. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755-9500. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166966, filed March 22, 1983. Applicant: INTERSTATE TRANSFER COMPANY, 307 Meadow St., Chicopee, MA 01014. Representative: Patrick A. Doyle, 40 Sky Ridge Lane, Springfield, MA 01128, (413) 733-6116. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-8460 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. Op-5-139]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided March 23, 1983.

90-Day Intrastate Motor Common Carriers of Passengers.

The following applications, filed on or after November 19, 1982, are governed by Part 1168 of the Commission's Rules of Practice. See 49 CFR Part 1168, published in the **Federal Register** on November 24, 1982, at 47 FR 53275. For compliance procedures, see 49 CFR 1168.6 and 49 U.S.C. 10922(c)(2)(E).

Persons wishing to oppose an application must follow the rules under 49 CFR Part 1168. In addition to fitness grounds, applications may be opposed on the grounds that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on all commuter bus service in the area in which the competing service will be performed. Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three day of a request and upon 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 25 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 30 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 Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are filed under 49 U.S.C. 10922(c)(2)(A) for authority to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has interstate regular-route authority on November 19, 1982.

Please direct status inquiries to Team 5, (202) 275-7289.

MC 147208 (Sub-4), filed March 8, 1983. Applicant: BLUE RIDGE LINES, LTD., One Stoner Rd., P.O. Box 5692, Asheville, NC 28813-5692. Representative: Kingsland Hobein, Jr. (same address as applicant), 704-274-1190. Applicant seeks authority in intrastate commerce to conduct service at all intermediate points on routes in No. MC-147208 (Sub-No.1) in part, as follows: (1) between Johnson City, TN and Bristol, VA, (2) between Boone, NC and Jct. U.S. Hwy 19 and U.S. Hwy 23, (3) between Johnson City, TN and Elizabethton, TN, (4) between Johnson City, TN, and Bluff City, TN (6) between Asheville, NC, and Greenville-Spartansburg Airport, SC (7) between Hendersonville, NC, and Greenville-Spartansburg-Airport, SC, and (8) between Jct. U.S. Hwy 70 and NC Hwy 208 and Knoxville, TN.

[FR Doc. 83-8456 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

The following restriction removal applications, are governed by 49 CFR 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier. Member Parker not participating.

Agatha L. Mergenovich,

Secretary

For status, please call Team 1 at 202-275-7992.

Volume No. OP1-105

Decided: March 28, 1983.

MC 116200 (Sub-19)X, filed March 18, 1983. Applicant: UNITED PARCEL SERVICE, INC., 643 West 43rd St., New York, NY 10036. Representative: Everett Hutchinson, 1150 Connecticut Ave., N.W., Washington, DC 20036, (202) 452-6800. Sub 18X certificate: broaden weight limitation from 50 pounds to "70 pounds".

For status, please call Team 3 at 202-275-5223.

Volume No. OP3-132

Decided: March 28, 1983.

MC 115495 (Sub-43)X, filed March 18, 1983. Applicant: UNITED PARCEL SERVICE, INC., 3755 East Main St., St. Charles, IL 60174. Representative: Everett Hutchinson, 1150 Connecticut Ave., NW, Washington, DC 20036. Sub-42 Certificate: broaden weight restriction from 50 lbs. to 70 lbs.

[FR Doc. 83-8454 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions—OP3-133

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Proposed Exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 28, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

MC-F-15169, JACK LINK TRUCK LINE, INC.—purchase exemption—SAWYER TRANSPORT, INC., (Nathan Yorke, trustee-in-bankruptcy) and WARSAW TRUCKING CO., INC.,

(Nathan Yorke, trustee-in-bankruptcy). Jack Link Truck Line, Inc. (No. MC–128497), seeks an exemption from the requirements under section 11343 of prior regulatory approval for the purchase of a portion of the operating rights of (1) Sawyer Transport, Inc. (Sawyer) (No. MC–123407), authorizing generally the transportation of pulp, paper and related products, and food and related products, between points in specified counties, on the one hand, and, on the other, specified points or States; and (2) Sawyer's subsidiary, Warsaw Trucking Co., Inc. (No. MC–123294), authorizing generally the transportation of pulp, paper and related products, between points in specified counties or cities, on the one hand, and, on the other, points in specified cities or States; and general commodities (with exceptions), between points in nine States. Restricted to the transportation of traffic originating at or destined to the facilities of a named shipper. An application for temporary authority has been filed. Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423 and (2) Petitioner's representative: Carl L. Steiner, 135 S. LaSalle St., Chicago, IL 60603.

Comments should refer to No. MC–F–15169.

[FR Doc. 83-8453 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Hospital Supply Corporation, One American Plaza, Evanston, Illinois 60201.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporations:

(i) Abbey Medical Inc., Delaware
(ii) Abbey Medical/Abbey Rents, Inc., Delaware
(iii) Abbey Endicott, Inc., Delaware
(iv) Accurate Home Medical Services, Inc., Delaware
(v) AHS/International, Inc., Delaware
(vi) Airlife, Inc., California
(vii) American Hospital Supply Corporation de Puerto Rico, S.A., Puerto Rico
(viii) Amo del Caribe, Inc., Delaware
(ix) Arnar-Stone del Caribe, Inc., Delaware
(x) Arnar-Stone, Inc., Delaware
(xi) Bentley Puerto Rico, Inc., Delaware
(xii) Dade Diagnostics, Inc., Delaware
(xiii) Edwards Laboratories, Inc., California
(xiv) Heyer-Schulte del Caribe, Inc., Delaware
(xv) McGaw Laboratories, Inc., Delaware
(xvi) Pharmaseal Corporation, Ohio
(xvii) Pharmaseal Inc., Delaware
(xviii) Pharmaseal Laboratories, Inc., Delaware
(xix) v. Mueller del Caribe, Inc., Illinois
(xx) American Kay, Inc., Delaware
(xxi) American Pharmaseal Laboratories, California
(xxii) American Micro-Scan, Inc., New Jersey
(xxiii) American Bentley, Inc., Delaware
(xxix) American Hospital Supply International Sales Corporation, California
(xxv) Bio-Science Enterprises, California
(xxvi) CLMG, Inc., California
(xxvii) Pathology Associates, Inc., Delaware
(xxviii) Cirmex de Chihuahua, S.A. de C.V., Mexico
(xxiv) Convertors de Mexico, S.A. de C.V., Mexico
(xxx) I–M, Inc., Kentucky
(xxxi) Instranetics, Inc., California
(xxxii) McGaw Supply Ltd., Canada
(xxxiii) Kopp Laboratories Limited, Canada
(xxxiv) Pharmaseal de Mexico, S.A. de C.V., Mexico
(xxxv) Precision Plastics, Inc., Colorado
(xxxvi) Productos Urologos de Mexico, S.A., Mexico

1. Parent corporation and address of principal office: Hannaford Bros. Co., 54 Hannaford Street, South Portland, ME 04106.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) or incorporation:

(1) Hannaford Trucking Company.
(2) Martin's Foods of So. Burlington, Inc.
(3) Progressive Distributors, Inc.
(4) Sampson Supermarkets, Inc.
(5) Wellby Super Drug Stores, Inc., 54 Hannaford Street, South Portland, ME 04106.

1. Parent corporation and address or principal office: Huffy Corporation, 7701 Byers Rd., Miamisburg, OH 45342.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Raleigh Cycle Company of America (an Ohio corporation).

1. Parent corporation: Marchesi Transportation Co., Inc., 118 Peal St., Woburn, MA 01801.

2. Wholly-owned subsidiary: Woburn Concrete Products, Division, 12 Hancock St., Woburn, MA 01801.

Agatha L. Mergenovich,
Secretary.

[FR Doc 83-8459 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15129]

Motor Carriers; Overland Transportation System, Inc.;—Purchase Exemption; Rodgers Express, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the acquisition by Overland Transportation System, Inc. (Overland) (MC–151119) of the operating authority of Rodgers Express, Inc. (Rodgers) (MC–135944), authorizing the transportation of general and specified commodities, over a network of regular and irregular routes, principally between certain points in Indiana, Illinois, Ohio, and Kansas.

DATES: This exemption is effective 30 days after date of publication in the **Federal Register**. Petitions for reconsideration must be filed by 20 days after publication. Petitions for stay must be filed by 10 days after publication.

ADDRESSES: Send pleadings to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioners' representative, Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204.

Pleadings should refer to No. MC–F–15129.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision served concurrently in No. MC–F–15129. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, D.C. 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

Decided: March 28, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-8457 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15195]

Motor Carriers; Ryder Truck Lines, Inc.; Merger Exemption; Pacific Intermountain Express Co., PIE Bulk Transport, Inc., Purchase (Portion); Exemption; Pacific Intermountain Express Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's procedures in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), Ryder Truck Lines, Inc. (Ryder) (MC-2900), PIE Bulk Transport, Inc. (PIEBT) (no present operating authority), and Pacific Intermountain Express Co. (PIE) (MC-730) seek an exemption from the requirement of prior regulatory approval for the merger and ancillary purchase transaction described below. Ryder, PIE, and PIEBT are presently under common control [PIEBT not yet a carrier]. Ryder and PIE are controlled by IU Transportation Services, Inc. (IUTS), a noncarrier, which in turn is controlled by IU International Corporation (IU), a holding company. PIEBT was recently organized as a subsidiary of Ryder Transportation, Inc., also recently formed, which in turn is controlled by IUTS. Additionally, IU controls the following motor carriers: Gemini Trucking, Inc. (MC-150939), Pioneer Trucking, Inc. (MC-151707), Customized Transportation, Inc. (MC-152620), Vanguard Contract Carriers, Inc. (MC-157596), Ligon Specialized Hauler, Inc. (docket no. to be issued), and Independent Freightway, Inc., (MC-161864). Ryder also controls RTL Holdings, Inc. (MC-130636), a property broker, holds a voting trust certificate for the shares of Ryder Forwarding, Inc. (FF-341), a freight forwarder, and has a Canadian subsidiary, Ryder Truck Lines, Ltd.

Both Ryder and PIE hold nationwide general commodities authority, including bulk authority in the case of PIE. Petitioners propose to spin off PIE's bulk authority to PIEBT and then merge PIE into Ryder. The stock of Ryder following consolidation with PIE will be transferred from IUTS to RTI, which will then control directly both Ryder and PIEBT.

While Ryder used to operate primarily as a north-south carrier east of the Mississippi River, it has expanded operations throughout the Rocky Mountain States. PIE was primarily a transcontinental carrier operating in an east-west direction, but has expanded operations throughout the Southeast and lower Mississippi Valley. Petitioners believe their separate operations are highly compatible, and seek to consolidate them in order to provide a truly nationwide service. The reorganization plan calls for the integration of the Ryder and PIE terminal networks (which would result in about 410 terminals), the consolidation of assets where duplications occur, and the use of resources obtained from the disposition of surplus assets to establish a more comprehensive network of terminals. These improvements in cost and efficiency are expected to result in better, more comprehensive service to the public.

In 1982, Ryder had gross operating revenues of about $627 million, and PIE about $394 million (about $27 million of this was attributable to bulk operations). Merger would give the resulting entity about a 5 percent share of the national market (in terms of operating revenues), a little less than that now generated by Roadway Express and Yellow Freight System. Additionally, on a territorial basis, again in terms of operating revenues, the resulting entity would have about a 6.6 percent share of the Southern Motor Carrier Rate Conference (SMC), about 9.8 percent of the Rocky Mountain Motor Tariff Bureau (RMB), about 7.3 percent of the Eastern Central Motor Carriers Association (ECA), about 6.7 percent of the Central & Southern Motor Freight Tariff Assn. (CSA), about 3.1 percent of the Middlewest Motor Freight Bureau (MWB), and about 1.3 percenf of the Central States Motor Freight Bureau (CMB). Presently, Ryder and PIE enjoy respectively a 6.3 and 0.3 percent share of the SMC, a 4.8 and 2.5 percent share of the ECA, a 1.6 and 8.1 percent share of the RMB, a 6.3 and 0.4 percent share of the CSA, a 2.2 and 0.9 percent share of the MWB, and a 1.2 and 0.1 percent share of the CMB. Petitioners argue, that the resultant market share of the combined entity will not permit an abuse of market power, especially as the two carriers are already under common control.

Additionally, temporary authority for Ryder to manage and control PIE pending disposition of the petition for exemption has been granted.

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: John C. Bradley, Rice, Carpenter and Carraway, 1660 Wilson Blvd., Suite 1301, Arlington, VA 22209.

Comments should refer to No. MC-F-15195.

FOR FURTHER INFORMATION CONTACT: Joyce D. Lannon, (202) 275-7992.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 28, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-8455 Filed 3-31-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-14,198]

Character Suburbanwear, Inc., New York, New York; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 10, 1983 in response to a worker petition received on January 4, 1983 which was filed by the Amalgamated Ladies' Garment Cutters' Union, Local 10, ILGWU on behalf of workers at Character Suburbanwear, Incorporated, New York, New York (TA-W-14,198).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated. Signed at Washington, D.C. this 24th day of March, 1983.

Glenn M. Zech,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-8537 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-03-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Maine

This notice announces the beginning of a new Extended Benefit Period in the State of Maine, effective on March 27, 1983.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on March 12, 1983, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 27, 1983.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d) (1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d) (2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on March 25, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-8558 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Periods in the States of Minnesota and Oregon

This notice announces the beginning of new Extended Benefit Periods in the States of Minnesota and Oregon, effective on March 20, 1983.

Background

Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of each State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on March 5, 1983, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, new Extended Benefit Periods commenced in those States with the week beginning on March 20, 1983.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency of each State will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency of each State also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in a State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the

nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on March 23, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-8550 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,977]

Grand Ford, Inc., Bronx, New York; Revised Determination on Reconsideration

On August 31, 1982, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers at Grand Ford, Inc., Bronx, New York. This determination was published in the **Federal Register** on September 10, 1982 (47 FR 39920).

The company in its application for reconsideration contends that the workers' firm, as that term is used in Section 222(3) of the Trade Act of 1974, is the Ford Motor Company by virtue of the fact that Grand Ford is a wholly-owned dealership of the Ford Motor Company.

The Department's review showed that the workers' petition was denied because Grand Ford did not produce an article within the meaning of the Trade Act and the Ford Motor Company cannot be considered to be the workers' firm since the financial arrangements between Ford and Grand Ford did not constitute ownership or control within the meaning of the Act.

As a general rule, workers may not be certified as eligible to apply for worker adjustment assistance if the firm in which they are employed does not produce an article within the meaning of Section 222 of the Trade Act of 1974. However, such workers may be certified if their separation from employment was caused importantly by a reduced demand for their services from a firm which produces an article and which substantially beneficially owns the service workers' firm. In addition, the reduction in demand for services must be determined to have originated at a production facility whose workers independently meet the statutory criteria for certification, and that reduction must directly relate to the product adversely affected by increased imports.

On reconsideration the Department finds that Grand Ford was not a independently owned company but that the Ford Motor Company owns 100 percent of the voting stock in Grand Ford. The manager-operator received overall direction from a three-member Board of Directors who are paid employees of the Ford Motor Company. The manager-operator was hired by the Ford Motor Company to operate Grand Ford until an investor could be found. The manager-operator did not invest any money into the capitalization of the dealership. Therefore, pursuant to section 222(3) of the Trade Act, the Department concludes that Grand Ford is part of the firm, Ford Motor Company.

Grand Ford was exclusively engaged in the sale and service of Ford cars and pick-up trucks during 1979 and the first eight months of 1980. Sales of import-impacted cars and trucks accounted for a significant proportion of the total sales of Grand Ford in 1979 and 1980. Production of import-impacted Ford cars and trucks at several of Ford's assembly plants declined significantly from Model Year 1980 compared to Model Year 1979. Certifications were issued on behalf of workers at Ford Assembly plants located at Mahwah, New Jersey, TA-W-6849, Metuchen, New Jersey, TA-W-6438, Dearborn, Michigan, TA-W-6947 and Chicago, Illinois, TA-W-6958.

These certifications took effect in 1979 and extended into 1981 or 1982. Grand Ford closed for business on October 30, 1980.

Conclusion

After careful review of the fact obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with Ford Motor Company's import-impacted automobiles and pick-up trucks contributed importantly to the decline in sales or production and to the total or partial separation of former workers of Grand Ford, Inc., Bronx, New York. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Grand Ford, Inc., Bronx, New York who became totally or partially separated from employment on or after September 1, 1980 and before December 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., on March 24, 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 83-8553 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 11, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance at the address shown below, not later than April 11, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 28th day of March 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Autland Manganese Corp. (USWA)	Mobile, AL	3/18/83	3/16/83	TA-W-14,468	Manganese-smelter.
Freeport Brick Co. (workers)	Freeport, PA	3/11/83	3/7/83	TA-W-14,469	Refactory bricks.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Duquesne Electric & Manufacturing Co. (workers)	Pittsburgh, PA	3/10/83	3/4/83	TA-W-14,490	Manufacture & re-manufacturor electronic controls, motors & generators & mechanical apparatuses.
GTE Products Corp. (Workers)	Montoursville, PA	2/22/83	3/21/83	TA-W-14,491	Photoflash.
Kennecott Minerals Co., Tintic Div. (USWA)	Eureka, Utah	3/18/83	3/15/83	TA-W-14,492	Mine—copper, gold, silver.
Kennecott Refining Corp. (USWA)	Baltimore, MD	3/18/83	3/15/83	TA-W-14,493	Copper refining.
Maidel Fashions (workers)	N. Babylon, NY	3/17/83	3/14/83	TA-W-14,494	Dresses—sportswear—ladies.
National Garment Co. (company)	Hammonton, NJ	3/,17/83	3/10/83	TA-W-14,495	Blazers, suits & outerwear—ladies.
Robbins & Myers, Inc., Electric Motors Div. (USWA)	Gallipolis, Ohio	3/18/83	3/15/83	TA-W-14,496	Electric motors.
Shulton Industries, Inc. (GBPPAW)	Mays Landing, NJ	3/10/83	3/3/83	TA-W-14,497	Nina Ricci perfumes & toiletries.
Young Squire, Inc. (ACTWU)	Mt. Olive	3/9/83	3/7/83	TA-W-14,498	Boys coats, ladies' blazers.
Ameron, Inc., P.C.D. (IUE)	Buffalo, NY	3/15/83	3/8/83	TA-W-14,499	Epoxy coatings, primers.
Domino Classics (ILGWU)	New York, NY	3/17/83	3/9/83	TA-W-14,500	Coats & suits—ladies.
Exide Corp. (ACTWU)	Buffalo, NY	3/14/83	3/7/83	TA-W-14,501	Batteries—cars, trucks, buses & diesels.
Merchants Metals, Inc. (USWA)	Columbiana, AL	3/11/83	3/7/83	TA-W-14,502	Chain link fencing & components.
Merchants Metals, Inc. (USWA)	Birmingham, AL	3/11/83	3/7/83	TA-W-14,503	Chain link fencing & components.
Mergenthaler Linotype Co. (workers)	Wellsboro, PA	3/17/83	3/3/83	TA-W-14,504	Phototypesetters.
Mergenthaler Linotype Co., Repair Center (workers)	Mansfield	3/17/83	3/3/83	TA-W-14,505	Repair phototypesetters.
Parade Dress Co. (ILGWU)	New York, NY	3/17/83	3/9/83	TA-W-14,506	Dresses.
Viola Sportswear (workers)	El Paso, Texas	3/15/83	3/10/83	TA-W-14,507	Denim jeans & dress slacks.
Westinghouse Electric Corp., Power Circuit Breaker (IUE)	Trafford, PA	3/15/83	3/9/83	TA-W-14,409	Build & test complete power circuit breakers.
Westinghouse Electric Corp., Large Rotating Apparatus Div., Switch gear Div. (IUE).	E. Pittsburgh, PA	3/15/83	3/9/83	TA-W-14,509	LRA—turbo generators, motors & related equipment, water wheel gen. & pumps. Switchgear—assemble wire & test low voltage D.S. breaker & D.C. breakers.
Alleen, Inc. (wprkers)	Monterey, VA	3/17/83	3/11/83	TA-W-14,510	Outerwear—ladies', children.
Aluminum Company of America, Mobile Works (USWA)	Mobile, Alabama	3/18/83	3/16/83	TA-W-14,511	Alumina refinery.
Clark Equipment Co., Industrial Truck Div. (AIW)	Battle Creek, MI	3/17/83	3/14/83	TA-W-14,512	Lift trucks & material handling equipment.
Fairlawn Fashions, Inc. (ILGWU)	Linden, NJ	3/3/83	3/3/83	TA-W-14,513	Sportswear.
Jessop Steel Co. (USWA)	Washington, PA	3/9/83	3/4/83	TA-W-14,514	Stainless plate, alloy & carbon tool steel.
Mercer Forge Company (USWA)	Mercer, PA	3/15/83	3/9/83	TA-W-14,515	Forging steel.
Norton Company (UPIU)	Troy, NY	3/18/83	3/15/83	TA-W-14,516	Coated abrasive sandpaper.
Republic Steel Corp., Steel & Tubes Div. (USWA)	Elyria, Ohio	3/15/83	3/8/83	TA-W-14,517	Welded carbon, steel tubing.
Republic Steel Corp., Steel & Tube Div. (USWA)	Cleveland, Ohio	3/15/83	3/9/83	TA-W-14,518	Stainless, carbon & alloy steel tubing.
Republic Steel Corp., Cleveland District (USWA)	Cleveland, Ohio	3/16/83	3/9/83	TA-W-14,519	Carbon, alloy & stainless steel bars, sheet, strip & plate.
Braeburn Alloy Steel (USWA)	Lower Burrell, PA	3/18/83	3/15/83	TA-W-14,520	Alloy tool steel, primarily high speed steel.
Eaton Corp., Transmission Div. (USWA)	Shelbyville, TN	3/10/83	3/7/83	TA-W-14,521	Transmissions—heavy trucks.
Tonn. Tex Alloy Chemical Corp. (USWA)	Houston, Texas	3/8/83	3/2/83	TA-W-14,522	Ferromanganese & silcomanaganese.

[FR Doc. 83-8554 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

Puna Sugar Co., Ltd., et al.; Negative Determination on Reconsideration

In the matter of TA-W-13,350 Puna Sugar Company, Ltd., Leaau, HI, TA-W-13,526 Theodavies Hamakua Sugar Company, Paauilo, HI, TA-W-13,534 Hawaiian Commercial & Sugar Company, Puunene, HI, TA-W-13,535 Hilo Coast Processing Company, Pepeeko, HI, TA-W-13,539 Kau Sugar Company, Inc., Pahala, HI, TA-W-13,540 Kekaha Sugar Company, Ltd., Kekaha, HI, TA-W-13,541 Lihue Plantation Company, Lihue, HI, TA-W-13,542 Mauna Kea Sugar Company, Inc., Papaikou, HI, TA-W-13,543 McBryde Sugar Company, Ltd., Eleele, HI, TA-W-13,545 Oahu Sugar Company Ltd., Waipahu, HI, TA-W-13,546 Olokele Sugar Company, Ltd., Kaumakani, HI, TA-W-13,547 Pioneer Mill Company, Ltd., Lahaina, HI, TA-W-13,550 Wailuku Sugar Company, Inc., Waialua, HI, TA-W-13,551 Waialua Sugar Company, Inc., Waialua, HI.

On February 2, 1983, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the above mentioned facilities located in Hawaii. This determination was published in the Federal Register on February 28, 1983 (48 FR 5821).

Counsel for the union claims that imports of sugar have contributed importantly to declines in production and employment at the above mentioned firms, regardless of the impact of high fructose corn syrup (HFCS). It is also claimed that the Department's data relevant to the per capita consumption of HFCS is not accurate and that HFCS is not an article which is directly competitive with refined sugar since it has its own market as has refined sugar. Lastly, counsel claims that the certifications issued to workers and former workers of sugar cane and raw sugar at various Hawaiian companies in 1977 (TA-W-1726, 1744 and 1761) were strikingly similar to the denied cases and therefore warrant review.

The Department's original determinations were based on the finding that the "contributed importantly" test of section 222 of the Trade Act was not met. For the past five years there has been a steady trend away from the consumption of refined sugar and toward increased consumption of high fructose corn sweeteners. Declines in sugar consumption and production in the first six months of 1982 have been more than offset by increases in production and consumption of high fructose corn sweeteners. This occurred notwithstanding substantial price reductions that have been in effect since 1980 for refined sugar.

On reconsideration, the Department found that raw sugar imports declined from 1979 to 1980 and increased in 1981. In 1981, the refined sugar equivalent of more than 25 percent of total imports of raw sugar was exported subject to drawback procedures which allowed exporters to be refunded the duties and fees paid to the government on previously imported raw sugar. Raw sugar imports declined in 1982 as a consequence of duty and fee increases that became effective in December 1981 to support higher domestic sugar prices provided in the 1981 Farm Act and the new quota on raw sugar proclaimed by the President on May 5, 1982.

U.S. consumption of refined sugar declined from 10,148,000 short tons in 1980 to 9,370,000 short tons in 1981. U.S. imports of refined sugar have decreased every year since 1977. The ratio for U.S. imports of refined sugar to domestic production has not exceeded one percent in any year from 1978 through 1981.

The claims that HFCS is not directly competitive with refined sugar and was not an important contributing factor to the overall decrease in the sale of refined sugar are not borne out by the facts. Over the past ten years, the HFCS share of the beverage sweetener market has increased to 50 percent. The International Trade Commission reported that many industry observers eventually expect HFCS to supply half of the industrial sweetener needs of the nation.

Raw sugar production coming from the 14 plantations covered in these petitions is refined by the California and Hawaii Sugar Company (C&H) in San Francisco for consumption on the U.S. mainland. C&H shipped most of its refined sugar to industrial users during the period covered by the investigation. C&H officials indicated that the main competition in their industrial market is coming from corn sweeteners, especially HFCS.

The Department's original investigation, erred in its report on growth of per capita use of HFCS; however, the facts, as corrected, strongly support the conclusion that corn sweeteners, particularly HFCS, have made and are making significant inroads into the total sweetener market. The market share of refined sugar dropped 5 percent in 1981 from 1980 while per capita consumption of corn sweeteners increased 10.7 percent during the same period. Per capita consumption of HFCS rose 21.4 percent in 1981. These data indicate that the trend of the past seven years continued in 1981 even though the wholesale price of sugar in 1981 was falling more rapidly than the price of HFCS. The Department's findings show that HFCS now accounts for 25 percent to 30 percent of the total industrial sweetener usage, up from virtually nothing a few years earlier. U.S. imports of HFCS are negligible.

The Department does not consider its earlier certification of workers producing raw sugar at Hawaiian facilities (TA-W-1726, 1744 and 1761) as providing a precedent for the instant cases. It should be noted that the earlier investigations were undertaken at a time when the consumption of HFCS, although increasing in significance, was only equal to 40 percent of current consumption levels and refined sugar was substantially greater.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers at the subject sugar facilities located in Hawaii.

Signed at Washington, D.C. this 24th day of March 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management Unemployment Insurance Service.

[FR Doc. 83-8555 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,199]

Employment and Training Administration, Colorado and Wyoming Railway Co., Northern Division, Sunrise, Wyo.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 10, 1982 in response to a worker petition received on December 27, 1982 which was filed by the Brotherhood of Maintenance of Way Employees, Mountain and Plains Federation on behalf of workers at the Northern Division of Colorado & Wyoming Railway Company, Sunrise, Wyoming.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 24th day of March 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-8556 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistanct in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., room 8000—Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 29th day of March 1983.

Robert S. Kenyon,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING APRIL 2, 1983

Name of applicant and location of enterprise	Principal product or activity
Borintex Manufacturing Corp., Vega Baja, Puerto Rico.	Manufacturing of sweaters and related products.

[FR Doc. 83-8500 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-30-M

Occupation Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

[Note.—This document originally appeared in the **Federal Register** for Wednesday, March 30, 1983. It is reprinted at the request of the issuing agency to meet its Tuesday/Friday publication schedule.]

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register** February 27, 1980 (45 FR 12769), will meet on April 13, 1983 starting at 10:00 AM in Rooms N3437 A, B, C, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of January 12, 1983 Meeting
III. Announcement of Appointments and Reappointments
IV. President's Safety and Health Award Criteria
V. Reports
VI. New Business
VII. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business April 8, 1983, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business April 8, 1983. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, NW., Room N3613, Washington, D.C. 20210, telephone (202) 523–6021.

Signed at Washington, D.C. this 28th day of March, 1983.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 83-8418 Filed 3-29-83; 10:28 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

Blackmore and Glunt, Inc. Profit Sharing Plan, et al.; Proposed Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Blackmore and Glunt, Inc. Profit Sharing Plan (the Plan) Located in Maryland Heights, Missouri

[Application No. D–2773]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of office equipment (the Equipment) by the Plan to Blackmore and Glunt, Inc. (the Employer), provided the terms of the sale are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 38 participants. The trustees of the Plan are P. Gordon Glunt and Cyrus S. Blackmore (the Trustees). The Trustees are also the principal shareholders of the Employer. The Plan had total assets of $1,292,267 as of July 18, 1981.

2. The Equipment was purchased by the Plan during 1973, 1974 and 1975 for a total cost of $9,181. From 1973 until 1975, the Plan entered into 16 lease agreements (the Leases) with the Employer for the rental of the Equipment. The Leases were for terms of 96 or 120 months. The total amount received by the Plan for rental of the Equipment exceeds the total cost of the Equipment to the Plan and the rental amount received for each item of the Equipment exceeds the cost of that individual item.

3. Some of the Leases may be covered by the transitional rules of section 414 of the Act. The applicant represents that it will pay any excise tax due for the rental of the Equipment leased to the Employer after January 1, 1975, and not covered by the transitional rules of section 414 of the Act, within 60 days after the final granting of this exemption.[1]

4. The Employer proposes to purchase the Equipment for the total cash price of $4,714. The total amount the Employer proposes to pay exceeds the fair market value of the Equipment as determined by independent appraisals. Appraisers have determined the value of the Equipment to be $4,168. The applicant represents that the Employer will not pay less than fair market value for each individual item of the Equipment.

5. The fair market value of the Equipment has been established by several independent appraisals including: the Siggins Equipment Company and the Quality Office Machines Company of St. Louis, Missouri; the Rivard Sales Company, Inc. of Shawnee Mission, Kansas, the Business Supply Center, Inc. of Maryland Heights, Missouri, and the Fryer Office Furniture Center of Kansas City, Kansas.

6. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because:

(1) This will be a one-time, cash transaction;

(2) The Plan will receive fair market value for its assets;

(3) The proceeds from the sale of the Equipment will yield more income if invested in money market type funds and the Plan's assets will have more liquidity; and

(4) The Trustees of the Plan have determined that the proposed transaction is in the interest of and protective of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Alaska Laborers-Employers Retirement Trust Fund (the Plan) Located in Anchorage, Alaska

[Application No. D-3114]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective February 17, 1976, to the benefit to William J. Sheffield that resulted from the participation by the Plan in a loan (the Loan) made on February 17, 1976 to Anchorage Hotel Associates (AHA), a California limited partnership. Mr. Sheffield was a 10% limited partner in AHA at the time of the Loan and was also a director of the National Bank of Alaska (the Bank), the Plan's trustee. The exemptive relief proposed herein is limited solely to Mr. Sheffield.

EFFECTIVE DATE: The effective date of the proposed exemption, if granted, will be February 17, 1976.

Summary of Facts and Representations

1. The Plan is a multiemployer defined benefit plan established in accordance with section 302(c)(5) of the Labor Management Relations Act, as amended. The Plan is administered by a joint board of employer and union trustees and had approximately 4,000 participants and $74,300,000 in net assets at the time the Loan was made. The Bank serves as the Plan's trustee.

2. AHA was formed on January 26, 1976 for the purpose of purchasing a 200 room Royal Inns Hotel (the Hotel) located in Anchorage, Alaska. Mr. Sheffield held a 10 percent interest in AHA. The other AHA partners were unrelated to Mr. Sheffield, the Bank or the Plan.

3. On February 17, 1976, the Plan, along with Seattle First National Bank (SFNB) and the Alaska Teamsters Employers Pension Trust (the Trust), collectively made the Loan to AHA, the security for which was a first lien on the Hotel which was appraised at a fair market value of $6.7 million. The three lenders' respective shares in the Loan were as follows: the Plan—$800,000 (20%); SFNB—$1,800,000 (45%); and the Trust—$1,400,000 (35%). The Loan carried an annual interest rate of 10¾% with a term of 15 years and an amortization schedule of 25 years. The Bank received a commitment fee of $40,000 from AHA with respect to the Loan. In addition, the Bank deducted one-eighth of one percent of the interest as a servicing fee. It is represented that the Loan was in all respects commercially reasonable and in customary form and content for mortgage loans made at that time. It is emphasized that all terms and conditions of the Loan were negotiated at arm's-length.

4. The Bank repurchased the Plan's share of the Loan in a transaction effective December 31, 1980 as part of a judicially-approved settlement between the Bank and the Department, pursuant to which the Bank repurchased the interests of various employee benefit plans in a number of loans noted as probable violations by the Department. All payments on the Loan had been made in a timely fashion up to the point of the Bank's repurchase of the Plan's interest in the Loan.

5. Mr. Sheffield served as a director of the Bank at the time of the Loan but did not have or exercise any authority or control respecting the management of Plan assets, nor did he furnish any services to the Plan. Mr. Sheffield has never been an officer or employee of the Bank, nor has he ever been a member of the Bank's Trust Investment Committee. Furthermore, Mr. Sheffield was strictly a limited partner in AHA and as such, had no management responsibility or authority. The applicants emphasize that Mr. Sheffield had no involvement in the Loan transaction other than his 10

[1] The Department expresses no opinion as to the applicability of section 414 of the Act to any of the Leases.

percent limited partnership interest in AHA.

6. The applicants represent that the Loan satisfied the statutory criteria of section 408(a) of the Act due to the following:

(a) Mr. Sheffield had no involvement in the Loan other than as a limited partner in AHA; and

(b) The Loan was negotiated at arm's-length.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Cornell-Carr Co., Inc. Profit Sharing Plan (the Plan) Located in Bridgeport, Connecticut

[Application No. D-3699]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) throught (E) of the Code shall not apply othe loan of $60,000 by the Plan to Cornell-Carr Co., Inc. (the Employer) over a ten year period, provided that the terms of the loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party on the date of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a profit sharing plan established in 1977. The Plan has approximately 34 participants and total assets of $176,990 as of December 5, 1982. Mr. Bernard Costello, CPA (the Trustee) has been appointed as Trustee of the Plan. The Trustee is an independent trustee who is neither an officer, director, shareholder nor employee of the Employer, has had no prior dealings with the Employer, and is not related to any party in interest with respect ot the Plan. The Employer is a Connecticut corporation which provides welding fabricating services.

2. The applicant proposes that the Plan loan $60,000 to the Employer. This amount represents 34% of the total assets of the Plan. The proceeds of the Loan will be used for the purchase of industrial property and a building known as 490 Koussuth Street, 16 Crescent Place, Bridgeport, Connecticut (the Property). The purchase price of the Property is $100,000.

3. The Employer will give a $60,000 term note to the Plan, secured by a recorded first mortgage lien on the Property. The Property has a fair market value of $92,000. This value was established by an independent appraisal performed by Charles D. Pitcher, IFA, CRA, and reflects the fair market value of the Property as of July 21, 1982. Thus, the value of the property represents over 150% of the principal amount of the Loan.

4. The applicant represents that collateral securing the Loan will be maintained at a fair market value of no less than 150% of the outstanding balance of the Loan. The Trustee will periodically review the collateral (no less frequently than annually) and will require the Employer to secure the Loan with additional collateral if and when necessary to maintain said collateral at 150% of the outstanding balance of the Loan. Failure to provide such additional collateral within 30 days after demand by the Trustee will constitute an event of default which will require the Trustee to declare the Loan immediately due and payable.

5. The Employer will repay the Loan over a ten-year period in 120 equal installments. It is now proposed that the Loan will bear interest at the rate of 15¼% per annum. The interest rate for the Loan will be adjusted annually by the Trustee to reflect the prevailing market rate. At the time of the closing of the Loan, the interest rate will be adjusted, if necessary, to reflect the prevailing interest rate, i.e. the interest rate charged by unrelated banks in the area on similar loans.

6. As a condition to closing the Loan, the Employer will be required to take out (and maintain throughout the term of the Loan) a comprehensive "replacement cost" fire, casualty and theft insurance policy naming the Plan as loss payee to the extent of the first $60,000 in losses.

7. Mr. Costello has examined the Plan's investment portfolio with regard to the cash flow needs of the Plan, and has determined that the Loan will not detrimentally affect the cash flow needs of the Plan. He has also determined, in reviewing the Plan's portfolio, that the Plan's assets will remain sufficiently diversified after the making of the Loan in light of the diversification standards imposed by the Act. Mr. Costello has conducted an independent review of the Loan and has determined that (i) all of its terms are in the interests of the Plan and its participants and beneficiaries; (ii) it is administratively feasible; (iii) it provides independent safeguards for the protection of the Plan; and (iv) it will materially increase the yield on the Plan's investment portfolio. Mr. Costello will conduct the same review immediately before the Loan is closed. in addition, Mr. Costello will carefully and conscientiously monitor repayment of the Loan and will exercise his authority to foreclose on the collateral in the event of default. As trustee, Mr. Costello is fully aware of his fiduciary responsibilities and his personal liability under the Act for failure to meet his responsibilities.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The terms of the Loan reflect fair market value;

(2) The Loan will significantly increase the Plan's annual return on its total investment portfolio;

(3) The Loan will be secured by a first mortgage on real property which has been determined by an independent appraiser to have a fair market value in excess of 150% of the principal amount of the Loan;

(4) An independent fiduciary will monitor repayment of the Loan and will demand the collateral in the event of default; and

(5) The independent fiduciary has reviewed the proposed transaction and has determined that it is administratively feasible, in the interest of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 30 days of the date of publication in the **Federal Register.** Comments and hearing requests are due within 60 days of the date of publication. Such notice shall include a copy of the notice pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Rome Radiology Group, P.A. Money Purchase Pension Plan (the Plan), Located in Rome, Georgia

[Application No. D-3709]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) a loan (the Loan) of $220,500 by the Plan to Rome Financial Group (the Partnership), provided the terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; and (2) the guarantee of repayment of the Loan by the partners (the Partners) of the Partnership who are shareholders (the Shareholders) of Rome Radiology Group, P.A. (the Employer).

Summary of Facts and Representations

1. The Employer, which is engaged in the medical practice of radiology, maintains its principal place of business at 300 West Sixth Street, Rome, Georgia. the Shareholders are Messrs. Lucius S. Smith, Jack R. Edgens, Edward W. Brewster, Jr., John T. Woods, III, Jefferson D. Hanks, Jr. and William P. Harbin. Each Shareholder has a one-sixth interest in the outstanding capital stock of the Employer corporation. The Shareholders are also the Partners of the Partnership which was formed for the purpose of owning, developing, operating, leasing and otherwise dealing with real and personal property.

2. The Plan is a money purchase pension plan with six participants and total assets of $1,147,359 as of June 30, 1982. The trustee of the Plan (the Trustee) is National City Bank of Rome, Rome, Georgia. The Trustee is responsible for making investment decisions for the Plan after consultation with the plan's administrative committee which consists of Messrs. Smith, Edgens and Brewster.

3. In 1980, the Partnership acquired certain land (Parcel One) located at 1104 Martha Berry Boulevard, Rome, Georgia from an unrelated party. A building (the Building) was subsequently constructed on Parcel One for commercial rental to unrelated parties. Construction financing for the Building was obtained from the Bank in the amount of $145,000. The loan originally had a ninety day term but this was modified pursuant to a note dated August 24, 1981. The note calls for 23 monthly payments of $1,810 each, with the entire principal balance due and payable in the twenty-fourth month. The note bears interest at the rate of 12¾ percent per annum, is personally guaranteed by the Partners and is secured by Parcel One, the Building and certain improvements. As of June 14, 1982, the outstanding principal balance of the loan was $141,639.

4. On February 2, 1982, the Partnership acquired from unrelated parties an adjacent tract of land (Parcel Two) for the purpose of providing additional parking for occupants of the Building. Parcel Two is located at 504 and 506 MacDonald Street, Rome, Georgia. Parcel Two purchased for $38,500. The purchase price was financed with the proceeds of a ninety day loan from the Bank made on March 10, 1982. The loan has been renewed for an additional ninety days and it bears interest at the rate of 15½ percent per annum. The loan is guaranteed by the Partners.

5. The Partnership desires to consolidate the two Bank loans and acquire additional funds for operation and renovation expenses associated with Parcels One and Two. Therefore, the Partners are requesting and administrative exemption in order to borrow $220,500 from the Plan. The Loan will have a fifteen year term and it will bear interest at the rate of 18 percent per annum. The Loan will be payable in 180 monthly installments of principal and interest in the amount of $3,550 each. The Loan will be secured by a first in priority deed on Parcels One and Two and all improvements located thereon, including the Building. As additional security, the Loan will be secured by the Employer's accounts receivable (the Receivables). The Loan will be personally guaranteed, jointly and severally, by the Partners who had a combined net worth in excess of $1.9 million as of June 29, 1982.

6. Upon closing of the Loan, a promissory note will be executed by the Partnership to evidence the obligation along with the deed, security agreement and UCC financing statement. The security agreement will provide that an independent fiduciary designated to oversee the Loan will have the right to demand additional collateral in the event the value of the collateral falls below 150 percent of the outstanding balance of the Loan. Parcels One and Two will also be insured by the Partnership and the Plan will be named the beneficiary of the insurance policy.

7. On July 14, 1982 and August 3, 1982, Mr. Connell S. Norton (Mr. Norton), an independent appraiser from Rome, Georgia, valued Parcels One and Two. Mr. Norton placed the fair market value of Parcel One at $192,000 and Parcel Two at $39,500.

8. The Employer's Receivables represent collectibles from patients and claims from insurance companies, Medicare and other sources. On July 2, 1982, the principal balance outstanding of the Receivables was $451,554. Approximately 71 percent of the Receivables was between 0 to 120 days old and 29 percent over 120 days old. Historically, the Employer collected 86 percent of its Receivables in 1980 and 88 percent in 1981.

9. Mr. John M. Graham, III (Mr. Graham), a partner in the law firm of Smith, Shaw, Maddox, Davidson and Graham, located in Rome, Georgia has agreed to serve as the independent fiduciary for the Loan. Mr. Graham's law firm represents both the Partnership and the Employer. In addition, the firm has represented various of the principals involved in these organizations. After a review of the law firm's fees for 1981 and 1982 Mr. Graham represents that the total fees paid by the entities and their principals have totaled less than one-half of one percent of the firm's total fees.

Mr. Graham indicates he is personally familiar with the federal laws relating to qualified retirement plans inasmuch as he has participated in the drafting and planning of qualified pension and profit sharing plans and working in the area of pension, profit sharing and employee benefits. Mr. Graham also serves as the chairman elect of the Trust Committee of the First National Bank of Rome (First National) and is on the Board of Directors of this bank.

Mr. Graham has reviewed the entire file concerning the exemption application including a letter of October 25, 1982 from Mr. Gregory C. Wilkes (Mr. Wilkes), Senior Vice President and Trust officer of the Trustee bank. In that letter, Mr. Wilkes opines that the Loan is an appropriate investment for the Plan since it fits in well with the investment objectives of the Plan as well as the Trustee's practice of utilizing fixed income investments to achieve these objectives. Mr. Graham states that the representations contained in Mr. Wilkes' letter are true and that the investment strategy described is accurately portrayed and reflects sound business judgment.

Besides reviewing the terms of the Loan, Mr. Graham states that he is familiar with Parcels One and Two collateralizing the Loan since he has examined the title, inspected the site on which it is located, examined comparable properties and reviewed the appraisal prepared by Mr. Norton. In addition, Mr. Graham represents that he is familiar with the financial statuses of the Plan participants who are the guarantors of the Loan. Based on the above, Mr. Graham asserts that he is

satisfied entirely with the security for the transaction and he represents that the proposed Loan is one which is entirely appropriate and consistent with the interests of the beneficiaries and the long-term investment objectives established for the Plan. In addition, based on the initial proposal and the rate of interest to be paid on the Loan, he finds the investment to be extremely attractive in today's market and a potential enhancement to the overall rate of return to the Plan.

The Trustee, which is unrelated to First National, will monitor the Loan to ensure repayment and otherwise protect and enforce the interests of the Plan. The Trustee will serve as an ongoing Loan monitor only after the indebtedness of the Partnership to the Trustee is satisfied and the Loan is funded. The Trustee will be required to ensure that the value of the collateral is at all times 150 percent of the outstanding Loan balance and will require the Partnership to pledge additional security if the value of the collateral falls below this level.

10. In summary, it is represented that the proposed transaction will satisfy the requirements of section 408(a) of the Act because: (a) The Loan will be secured by a first in priority deed on Parcels One and Two as well as by a first security interest in the Receivables; (b) the collateral for the Loan will at all times have a value of at least 150 percent of the outstanding Loan balance; (c) the Partners will personally guarantee the Loan; (d) Mr. Graham as a fiduciary for the Plan has approved the Loan and determined that the Loan is appropriate for the Plan and in the best interests of its participants and beneficiaries; and (e) the Trustee will monitor the Loan to ensure its repayment.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Joseph M. Wiesenbaugh, Jr., D.D.S. & Associates, P.A. Pension Plan (the Plan), Located in Hagerstown, Maryland

[Application No. D-3748]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the past and future borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

Effective date: If the proposed exemption is granted, the exemption will be effective as of August 3, 1982.

Summary of facts and representations

1. The Plan is a money purchase pension plan with 11 participants and, as of October 1, 1982, assets totalling $305,455.54. The trustee of the Plan (the Trustee) is Hagerstown Trust Company. Dr. Joseph M. Wiesenbaugh (the Administrator) is the administrator of the Plan. John Hancock Mutual Life Insurance Company (the Insurer) is the issuer of the life insurance policies in question and also provides services to the Plan. The Insurer does not serve in the capacity of a fiduciary to the Plan, according to the Trustee.

2. On August 3 and 20, 1982, loans (the Existing Loans) in the aggregate amount of $72,051.34, representing the entire cash values, were made on policies whose face amounts aggregate $785,422.00, issued on the lives of eight participants and held by the Plan. No loans have been made on the policies issued on the lives of the remaining three participants, who are new employees, because these policies do not yet have cash values on which to borrow. Interest at 6% or 8% is payable annually on the Existing Loans. There is no repayment schedule for the principal amount of each loan. Each loan matures on the death of the participant or at the election of the Trustee to pay the loan. All loan proceeds are invested in a group deferred annuity contract providing a net return of 13¾% per year.

Upon the retirement of a participant for whom such an annuity was purchased with such loan proceeds, such participant has the following options with respect to the life insurance policy: (a) The participant may receive the policy subject to the loan; (b) the Trustee may surrender the policy and pay any net proceeds thereunder to the participant; (c) the Trustee may repay the loan from other assets credited to the participant's account under the Plan and deliver the policy, free of the loan encumbrance, to the participant; or (d) the net proceeds, if any, under the policy and the amount credited to the participant under a side fund held for the Plan by the Trustee may be converted to an annuity payable to the participant in accordance with the terms of the policy and the Plan.

Upon the death of a participant for whom such an annuity was purchased with such loan proceeds, there would be a partial surrender of the group annuity contract, the loan(s) from the life insurance policy (or policies) insuring such participant would be repaid, and the participant's beneficiary would receive the full face amount(s) of the life insurance policy (or policies) plus allocations from a side fund held by the Trustee as part of the Plan's death benefits. Any future loans will be made under the same terms and conditions as the Existing Loans. It is represented that the terms and conditions of these loans are the same as those of similar policy loans made by the Insurer to other policy holders.

3. The Trustee made the decision to borrow on these policies after consulting with the Administrator. The Trustee states that the subject loans are and will be administratively feasible as policy loans involve nominal paperwork and are simple transactions, and that the subject loans will benefit and protect Plan participants and beneficiaries by producing a return in excess of the interest payable on the loans, thereby providing increased benefits to participants in the Plan.

4. In summary, the Trustee represents that the subject loans meet the exemptive criteria provided by section 408(a) of the Act: (1) for the reasons stated in 3, above; (2) because the loan terms and conditions are the same as those of similar policy loans made by the Insurer to other policy holdrs; and (3) the decision to make the loans has been and will be made by the Turstee, who has determined that the transactions are appropriate for the Plan.

For further information contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Town and Country Properties, Inc. Profit Sharing plan (the Plan), Located in Arlington, Virginia

[Application No. D-3800]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restriction of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code, shall not apply to the past exercise on September 11, 1981 of the voting rights of certain common stock (the Stock) owned by the Plan by Emanuel A. Baker, Jr. (Baker), a fiduciary with respect to the Plan, through which exercise Baker was elected to the board of directors of the corporation which issued the Stock.

Effective date: the effective date of this exemption is September 11, 1981 for the past exercise of the voting rights of the Stock by Baker.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 107 participants and total assets, as of December 31, 1981 of $1,980,499. Town and Country Properties, Inc. (the Employer) is the sponsor of the Plan. The Employer is engaged in the real estate brokerage business. Baker is one of three trustees of the Plan and is also a director, chief executive officer and shareholder of the Employer.

2. The plan owned 11,150 shares of the Stock which was issued by Government Services Savings and Loan Association (Government Services), a Maryland chartered savings and loan institution. The Stock was purchased in 1978 and 1979. The Plan's cost basis in the Stock is $101,193 or $9.08 per share. For the years ending March 31, 1979 and March 31, 1980, the value per share of Stock of Government Services was $13.67 and $13.78, respectively. However, as a result of various factors, by June 30, 1981, the Stock of Government Services had declined in value to $5.75 per share and losses for Government Services totaled $3,800,000. In order to protect the Plan's investment, Baker helped organize a group of dissident stockholders (the Committee) of Government Services and engaged in a proxy battle with management over the control of Government Services. Before the proxies were exercised, on September 4, 1981, the Committee and Government Services entered into a settlement agreement which provided that the management of Government Services would include several of the Committee's nominees, including Baker, among its recommendation for election to the board of directors of Government Services.

3. The settlement agreement provided that Mr. Baker would receive no salary or other remuneration in his capacities on the board of directors of Government Services until such time as Government Services reported net income from its operations. At the annual stockholders meeting on September 11, 1981, Baker, as trustee of the Plan, voted the Plan's shares of the Stock in favor of the proposed list of directors, including himself, all of whom were elected. The Plan's 11,150 shares of the Stock amounted to 1.3% of the total outstanding shares.

4. At the first meeting of the board of directors of Government Services in September of 1981, Mr. Baker made a motion, which was passed unanimously, that fees for members of the board of directors should be waived until Government Services reported at least one quarter of profitability. At no time since Baker's electon did Baker receive remuneration of any kind for his services. Further, the applicant represents that largely due to the efforts of Baker, on October 28, 1982 Government Services was acquired by Chevy Chase Saving and Loan, Inc. of Chevy Chase, Maryland (Chevy Chase) in which acquisition Chevy Chase purchased the Stock for $10.00 per share for a total of $111,500. On October 28, 1982, as a result of the merger, Mr. Baker resigned his position as a member of the Board of Directors of Government Services.

5. The applicant states that the transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) The Plan had invested in the Stock; (2) the value of the Stock had declined in value; (3) Baker, as trustee of the Plan, voted the shares of the Stock to protect the Plan's investment in Government Services; (4) at no time since Baker's election did he receive remuneration for his services as a member of the board of directors of Government Services; (5) Baker resigned as a member of the board of directors of Government Services upon its acquisition by Chevy Chase; and (6) the Plan will now realize a profit on its investment in the Stock.

For further information contact: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

The Carpenters District Council of Kansas City and Vicinity Vacation Plan (the Vacation Plan), and the Carpenters District Council of Kansas City and Vicinity Health and Welfare Plan (the Welfare Plan); (collectively the Plans), Located in Kansas City, Missouri

[Application Nos. L-3857 and L-3858]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the transfer by the Vacation Plan to the Welfare Plan of approximately $39,870 in residual assets.

Summary of Facts and Representations

1. The Plans, which are not parties in interest with respect to each other, are multiemployer welfare plans established in accordance with section 302 of the Labor Management Relations Act of 1947, as amended, for persons employed in the construction industry. The Vacation Plan was established on August 9, 1973 pursuant to the terms and conditions of a collective bargaining agreement between the Carpenters' District Council of Kansas City and Vicinity, AFL-CIO (the Union) and the Builders' Association of Kansas City (the Builders' Association). The Vacation Plan constitutes an irrevocable trust providing vacation and related benefits to participants and beneficiaries as well as providing for the payment of all necessary expenses of operation and administration. Employer contributions under the Vacation Plan were terminated on April 10, 1978 and since that time the Vacation Plan has been in the process of winding up its affairs. The Welfare Plan is an irrevocable trust established by the Union and Builders' Association on April 1, 1966. The Welfare Plan provides hospitalization, medical care and disability, accident and insurance coverage to participants and beneficiaries. The Welfare Plan has continued to receive employer contributions under the current collective bargaining agreement.

2. Participants under the Plans are employees covered by collective bargaining agreements negotiated between the Union and the Builders' Association. The geographical jurisdictions embraced by the collective bargaining agreements upon which the Plans are based cover several counties within the States of Kansas and Missouri. For the year ending December 31, 1978, each Plan shared common participants who numbered 3,941 persons. However, since that time, there has been no overlap of specific participants between the Plans because of the transient nature of construction workers generally. The Plans presently have (and have had in the past) an equal number of union and employer-designated trustees (the Trustees), who in some instances are identical. As of October 15, 1982, there were four Trustees administering the Vacation Plan and six Trustees serving the Welfare Plan. On a cash accounting basis, the Welfare Plan had assets totaling $5,122,000 as of May 31, 1982.

3. As provided by the collective bargaining agreement for the Vacation Plan, the Trustees have been winding up Vacation Plan affairs since employer contributions were terminated. This process of termination will continue until such time as the transfer of monies has been accomplished to the Welfare Plan or said monies are exhausted. Under the terms of the Amended Agreement and Declaration of Trust (the Trust Agreement) creating the Vacation Plan, all funds accumulated by each participant for work performed within the geographic jurisdiction of the Vacation Plan during the calendar period are automatically paid out on an annual basis. Payments are made by check each year prior to July 20. Funds received after the annual cutoff date for accumulation of funds may be distributed at a time to be determined by the Trustees.

4. Because of the transient nature of the construction industry, the Vacation Plan has been plagued with the return of unclaimed and uncashed vacation benefit checks mailed to participants. To compensate for this situation, the Trustees are authorized by the Trust Agreement to cause funds unclaimed by a participant for one year to revert to the general account of the Vacation Plan and to be used for the payment of administrative expenses. Any checks not delivered to participants and returned to the bank or Trustees; as well as any checks not cashed within ninety days of the check, are deposited into the general account of the Vacation Plan. However, if for any reason a Vacation Plan participant has not received vacation benefits after one year (or the checks have been undelivered or uncashed after ninety days), the participant may obtain such benefits by writing the Trustees.

5. In attempting to locate a participant for the payment of vacation benefits while terminating the Vacation Plan, the Trustees have used the last known address of the participant as provided to the Union or Vacation Plan. After ninety days or the receipt of uncashed or unclaimed checks, a listing of individuals and their benefit amounts has been published in *The Kansas City Star*, a newspaper of general circulation in the Kansas City metropolitan area. Despite these efforts, the Trustees have deemed amounts remaining in the Vacation Plan to have reverted to the general account of that Plan. At March 31, 1982, the Vacation Plan had approximately $39,870 in uncommitted reserves representing unclaimed vacation benefits of 865 Vacation Plan participants.

6. The Trustees request an exemption to transfer the remaining corpus of the Vacation Plan, i.e., the $39,870 in uncommitted reserves, to the Welfare Plan within thirty days of the granting of the exemption. Included in the amount transferred will be interest income and other income received by the Vacation Plan thereafter less expenses. The assets transferred to the Welfare Plan will be used for the payment of benefits. The Vacation Plan will maintain records, provide the Welfare Plan with a list of participants not claiming benefits and notify participants of the transfer. If a participant files a claim with the Welfare Plan for vacation benefits at a later date, the Welfare Plan will indemnify and pay vacation benefits to the participant subsequent to the termination of the Vacation Plan.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The transfer will be a one-time transfer of assets between the Plans; (b) the uncommitted assets of the Vacation Plan will be made available to pay benefits to the participants; and (c) the rights of Vacation Plan participants will be protected by means of indemnification by the Welfare Plan against future claims for forfeited benefits and other liabilities arising from the transfer of assets.

Notification of interested persons: Notice of the proposed exemption will be given to all interested persons within 20 days of the publication of the notice of pendency in the **Federal Register**. Written comments and hearing requests are due in the Department within 50 days from the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Employee Profit Sharing Plan of the Rocky Mountain Distributing Company (the Plan), Located in Englewood, Colorado

[Application No. D-3903]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed sale of a parcel of real property and certain improvements (the Casper Property and the Casper Addition) by the Plan to The Rocky Mountain Distributing Company (the Employer), the sponsor of the Plan, provided the sales price is at least the fair market value of the Casper Property and the Casper Addition at the time of sale; (2) the proposed sale of a parcel of real property and improvements (the Grand Junction Property and Building), by the Plan to the Employer, provided the sales price is at least the fair market value of the Grand Junction Property and the Building at the time of sale; and (3) the assumption by the Employer of certain indebtedness of the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 29 participants. Mr. Elbert J. Barber (Barber) and his wife, Martha Barber, own 100 percent of the Employer. Barber is also a trustee of the Plan and president and a member of the board of directors of the Employer. As of September 30, 1974, 1975 and 1982 Plan assets totalled $50,000, $115,338 and $728,112, respectively.

2. In June of 1974, the board of directors of the Employer resolved to discuss with the trustees of the Plan: (1) the possibility of the purchase by the Plan of the Grand Junction Property, a vacant parcel of land located in Grand Junction, Colorado, the construction by the Plan of the Building on the Grand Junction Property, and the lease by the Plan to the Employer of the Grand Junction Property and the Building; and (2) the purchase of the Casper Property, consisting of Land and a building located in Casper, Wyoming and the lease of the Casper Property by the Plan to the Employer. The Grand Junction Property was purchased by the Plan on July 9, 1974 from a party unrelated to the Employer and the construction of the Building was subsequently commenced. The Plan paid $20,000 for the Grand Junction Property and $100,462 for the construction of the Building. To finance these costs the Plan paid $30,462 cash and entered into a loan for $90,000 with the First National Bank of Littleton, Colorado. The Building was completed in November of 1975. On November 26, 1975, the Plan leased the Grand Junction Property and the Building to the Employer for a ten year term on a "triple net" basis at a monthly rental of $1250.

3. The Casper Property was purchased by the Plan on August 2, 1974 from a party unrelated to the Employer for a total sum of $85,000 of which $30,000 was paid in cash and $55,000 was

borrowed by the Plan from the Littleton National Bank of Littleton, Colorado. The Casper Property consisted of land and a building. On August 4, 1974, the Plan leased the Casper Property to the Employer on a "triple net" basis for a ten year term with monthly rentals of $708. It is represented that the Casper Property was leased by the Plan to the employer with the understanding that the Casper Addition would be constructed on the Casper Property. The Casper Addition was built by the Plan in 1976. The Plan paid $36,343 in cash for the construction of the Casper Addition. The Casper Addition was of similar size to the existing building on the Casper Property. After construction of the Casper Addition, rental payments on the lease of the Casper Property were increased to reflect the value of the Casper Addition. It is represented that after the construction of the Building in November of 1975, 100% of the assets of the Plan were invested in the Grand Junction Property, the Building and the Casper Property.

4. On June 10, 1982, the Department denied the applicant's request for an exemption from the prohibitions of section 406 of the Act and 4975 of the Code for: (1) The past and proposed lease of the Grand Junction Property and a Building by the Plan to the Employer; (2) the past lease of the Casper Property by the Plan to the Employer from the time in 1976 when the Casper Addition was completed; and (3) the proposed lease of the Casper Property and Casper Addition by the Plan to the Employer.

5. The applicant withdrew its request for the past lease of the Casper Property by the Plan to the Employer from August 4, 1974 to the time in 1976 when the Casper Addition was completed. The applicant is presently requesting an exemption which will permit the sale of the Grand Junction Property, the Building, the Casper Property and the Casper Addition by the Plan to the Employer. The details of the sale would be as follows: (a) The sales price of the Grand Junction Property and Building would be $470,000. The price was the fair market value of the Grand Junction Property and Building as of October 12, 1982, as determined by Frank Nisley, Jr., M.A.I., an independent appraiser from Grand Junction, Colorado; (b) The Employer would pay the cash sum of $433,140.81 to the Plan for the Grand Junction Property and Building and assume the remaining indebtedness of the Plan on the Grand Junction Property and Building of $36,859.19; (c) The sales price of the Casper Property and Addition would be $300,000. This price was the fair market value, as of September 21, 1982, as determined by Elliot and Associates, independent appraisers from Casper Wyoming; (d) The Employer would pay the cash sum of $284,737.19 to the Plan for the Casper Property and Casper Addition and assume the remaining indebtedness of the Plan of $15,262.81 on the Casper Property and Casper Addition. No expenses of any kind will be charged the Plan as a result of the sale. The Employer represents that it will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of the past leasing of the Grand Junction Property, the Building, the Casper Property and Casper Addition by the Plan to the Employer within 90 days of the publication in the **Federal Register** of the grant of the exemption proposed herein.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act as follows: (1) The sales are one time transactions for cash and the assumption by the Employer of the remaining indebtedness on the Grand Junction Property, the Building, the Casper Property and the Casper Addition, will also be one time transactions; (2) the sales prices were determined by independent appraisers; (3) no fees of any kind will be charged the Plan; (4) the Plan will be able to diversify its assets; and (5) with respect to the past prohibited leases, the Employer will fully comply with the excise tax provisions of section 4975(a) of the Code.

For further information contact: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Dakota Clinic Money Purchase Plan (the Money Purchase Plan), and Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans), Located in Fargo, North Dakota

[Application Nos. D-3907 and D-3908]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loan of funds (the Loan) by each of the Plans to Medical Properties, Inc. (MPI), a party in interest with respect to the Plans, provided that the terms and conditions of the Loan are not less favorable to the Plans than those obtainable in a similar transaction with an unrelated third party.

Summary of Facts and Representations

1. The Plans are defined contribution plans each with approximately 150 participants. As of September 30, 1982, the Money Purchase Plan had net assets of $4,382,968, and the Profit Sharing Plan had net assets of $1,677,402. The trustee of each Plan is First Trust Company of North Dakota (the Bank). The Bank recommends investments for the Plans to a committee comprised of principals of Dakota Clinic, Ltd. (the Employer), and to the board fo directors of the Employer for their approval.

2. The Employer is the sponsor of the Plans, and is engaged in the practice of medicine. MPI is a corporation formed for the purpose of owning and leasing property and equipment to the Employer. One hundred percent of the stock of MPI is owned by 29 individuals who in the aggregate own greater than 50% of the stock of the Employer. As of September 30, 1982, MPI had a net worth of $1,468,000 and as of June 30, 1982, the Employer had a net worth, including unpaid receivables, of $3,220,000.

3. The applicant requests an exemption to allow each of the Plans to engage in the Loan. The amount of the Loan will be $1,100,000, of which the Money Purchase Plan will loan $800,000, and the Profit Sharing Plan $300,000. These amounts represent less than 20% of the net assets of each Plan. The Loan proceeds will be used by MPI to purchase a C.A.T. scanner, which will be leased to the Employer. The Loan will be amortized over a five year term with principal amounts to be paid quarterly. Interest will be payable quarterly on the unpaid principal balance, and will be equal to the greater of 4% above the rate borne by 2½ year certificate of deposits as quoted by the First National Bank and Trust Company of Fargo, North Dakota, or 10%. The interest rate of the Loan will be readjusted after 2½ years to the greater of 10% or 4% above the then prevailing 2½ certificate rate.

3. The Loan will be secured by a perfected first security interest in the C.A.T. scanner which has an original cost of $1,225,000. The Plans will be given a perfected first security interest in additional medical equipment owned by MPI. Mr. Harry R. Arneson, Jr., M.A.I., S.R.P.A., located in Fargo, North Dakota, appraised such equipment and determined, as of December 21, 1982,

that the equipment had a market value of $779,369. Therefore, the collateral securing the Loan will have an initial value of approximately $2,004,000. The applicant states that the vendors of the above equipment and the C.A.T. scanner have represented that no items of equipment will be subject to rapid decline in value in the upcoming years of usage due to technological or physical obsolescence.

4. The Employer at its own expense will insure all of the collateral against damage by fire or other loss throughout the term of the Loan, and the Plans will be named insureds to the extent of the unpaid Loan. At all times, the value of the collateral will have a value at least 150% of the unpaid balance of the Loan.

5. As additional security, MPI will assign to the Plans the lease of the C.A.T. scanner between MPI and the Employer upon the default of a Loan payment by MPI.

6. The Bank will serve as the fiduciary for the Plan with regard to the Loan. Neither MPI nor the Employer has any direct dealings with the Bank although Dr. E. P. Wenz, chairman of the board of the Employer, and a member of the board of MPI, is one of 13 members of the board of First Bank of North Dakota (First Bank). First Bank is affiliated with the Bank in that both institutions are owned by the First Bank System, a Minneapolis based holding company. The Employer has certain banking relationships with First Bank. The Employer's deposits with First Bank average less than two-tenths of one percent of the total deposits of First Bank. There are no outstanding loans between First Bank and the Employer or MPI at the present time.

7. The Bank has broad experience in administering pension and profit sharing plans and has general investment and management expertise. The Bank has reviewed the terms of the Loan, and has determined that the Loan is an appropriate investment for the Plans and will be in the best interests of the Plans and their participants and beneficiaries. The Bank will have final administrative authority control over the Loan, and will monitor and enforce the performance of the obligations of MPI under the terms of the Loan. The Bank will also make the interest adjustment to be made at the end of the 2½ year period, and will regularly determine whether or not there is a need for additional collateral in order to ensure that the total value of the collateral securing the Loan at all times exceeds 150 percent of the remaining balance of the Loan. The bank has determined that the proposed interest rate is an adequate and reasonable rate of interest to be charged on this transaction, and is satisfied that the collateral is adequate to ensure that the Plans will suffer no loss in the event of foreclosure. The Bank will also ensure that adequate insurance is maintained on the collateral, and the security agreements are properly executed and filed in order to perfect the Plans' security interests in the collateral.

8. In summary, the applicant represents that the proposed Loan will satisfy the criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security interest in insured collateral which will have a value not less than 150% of the outstanding Loan balance throughout the term of the Loan; (b) the Bank, an independent, qualified party, will serve as the fiduciary for the Plan with regard to the Loan, and has determined that the Loan is appropriate and in the best interests of the Plan and its participants and beneficiaries; and (c) the Bank will monitor the Loan and enforce the performance of MPI's obligations pursuant to the Loan.

For further information contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Dupps Company Profit Sharing Plan and Trust (the Plan), Located in Germantown, Ohio

[Application No. D-3946]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of $500,000 by the Plan to the Dupps Company (the Employer), provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 68 participants and total assets as of June 30, 1982 of $4,623,064. The Plan's trustees are Messrs. John A. Dupps, Jr., Frank N. Dupps and Mark Dupps. The Employer, who is in the business of producing industrial processing equipment, had net assets as of June 30, 1982 of $19,249,808.

2. The Plan proposes to lend the Employer $500,000 in connection with the acquisition, improvement and operation by a wholly-owned subsidiary of the Employer, Germantown Rail Siding Company, of a 5 mile rail siding. The rail siding runs from the Employer's main plant in Germantown, Ohio to a point in New Carlisle, Ohio which connects with major railroad lines. The loan will be for a period of 10 years with a fixed interest rate of 15% per annum. The loan will be repaid in 120 equal monthly installments of principal and interest of $8,066.75. The loan will be secured by a recorded first mortgage on the Employer's Atlas Die Casting Building (the Property) located at 362 North Kelly Avenue, Germantown, Ohio.

3. The Property has been appraised by Douglas E. Harnish (Mr. Harnish) of J. R. Remick, Inc. of Dayton, Ohio, as having a fair market value of $800,000 as of January 6, 1983. (The Property was initially appraised by Mr. Harnish on March 16, 1979 to have a fair market value of $1,250,000, see 5 below). Thus, the loan is secured by property which is appraised at 160% of the amount of the loan. The Employer represents that it will add any additional collateral that may be required during the life of the loan to assure that the value of the collateral is at all times equal to at least 150% of the outstanding balance of the loan. The Employer represents that the Property is adequately insured and that the insurance policies will name the Plan as loss payee.

4. The Third National Bank & Trust Company (the Bank) located in Dayton, Ohio, has represented that it would lend $500,000 to the Employer for 10 years at 15% per annum. The loan would be secured by the Property with the condition that the Property's market value is equal to at least 150% of the mortgage.

5. The trustees of the Plan have appointed the Bank to serve as independent fiduciary for the proposed loan. The Bank represents that it is unrelated to any other party to the transaction for which an exemption is requested. The Bank represents that it has reviewed the proposed transaction and has found that the loan is in the Plan's best interest. The Bank will be required to make the same representation immediately prior to consummation of the loan. The Bank will also monitor and enforce the terms of the loan, including the right to ask the Employer for additional collateral if the value of the collateral securing the loan

ever falls below 150% of the outstanding balance of the loan.

The Bank states that it has discussed the appraisal with Mr. Remick, of J. R. Remick, Inc., and believes that it is adequate for the loan. Mr. Remick informed the Bank that the Property has declined in market value because it is no longer being used in the die casting business, but is rather being used as a warehouse. Also, Mr. Remick stated that industrial real estate values have remained relatively stagnant over the last 3 to 5 years. Mr. Remick represents that the decline in fair market value of the Property is more readily attributable to the change in use of the Property rather than other factors.

On the basis of the foregoing representations made by Mr. Remick, the Bank has concluded that the loan is adequately secured and that the fair market value of the Property exceeds 150% of the proposed loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Employer will insure the collateral and add additional collateral so that the value of the collateral securing the loan is always 150% of the outstanding balance of the loan; and

(b) The loan will be approved by and administered by an independent fiduciary.

For further information contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Fox, Goldblatt & Singer, Inc., Employees Profit Sharing Plan (the Plan), Located in St. Louis, MO

[Application No. D-3976]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by each of the individually directed accounts of Milton R. Fox, Samuel A. Goldblatt and Thomas M. Singer in the Plan of an equal undivided one-third interest in a certain parcel of improved real property (the Property) from Fox, Goldblatt, and Singer Investments, a Partnership, (the Partnership), a party in interest with respect to the Plan.

Summary of Facts and Representations.

1. The Plan is a profit sharing plan that had approximately 12 participants and total assets of $1,088,000 as of September 30, 1981. The trustees of the Plan (the Trustees) are Messrs. Milton R. Fox (Mr. Fox), Samuel A. Goldblatt (Mr. Goldblatt) and Thomas M. Singer (Mr. Singer), the sole shareholders of Fox, Goldblatt and Singer, Inc. (the Employer), the sponsor of the Plan. Messrs. Fox, Goldblatt and Singer are the partners of the Partnership. Each participant in the Plan has the right to direct the investments of his own account in the Plan. The Employer, a Missouri professional corporation, is engaged in the practice of law.

2. The applicant is requesting an exemption which would allow each of the individually directed accounts of Messrs. Fox, Goldblatt and Singer to purchase from the Partnership an equal undivided one-third interest in the Property, which is located in Belleville, Illinois. Messrs. Fox, Goldblatt and Singer consider the purchase of the Property an excellent investment for their Accounts.

3. The Property, which is encumbered by a first mortgage (the Mortgage), contains a one-story steel, masonry and glass retail tire and service store which is currently being leased by the Partnership to Goodyear Tire & Rubber Company (Goodyear), an unrelated party, under a twenty-year lease (the Lease). The Lease was entered into on July 15, 1966. As of October 14, 1982, the outstanding balance of the Mortgage, which bears an interest rate of 6.5%, was approximately $45,000. Pursuant to the Lease, Goodyear pays to the Partnership a monthly rental of $1,668 and is responsible for real estate taxes, maintenance expenses and insurance. An appraisal performed on August 3, 1982 by Wesley C. Moss, Jr. (Mr. Moss), an appraiser with Moss Bros. Real Estate, Inc. (the Company), valued the Property at $250,000. In the opinion of Mr. Moss, the Property is located in a choice area on the main street of Belleville, Illinois and the trend of that area is slow but steady in growth. Moss and the Company are independent of all parties to the proposed transaction. The proposed purchase price of the Property is $250,000. No commissions will be paid by the Plan. The respective Account balances of Fox, Goldblatt and Singer in the Plan, as of September 30, 1981 were $321,205, $287,441 and $259,443.

4. The Plan's purchase of the Property on behalf of the Accounts will be financed as follows: Each Account will pay in cash one-third of the difference between the purchase price and the outstanding balance of the Mortgage on the date of grant and will assume one-third of the obligation to pay the outstanding balance of the Mortgage.

5. It is represented that: (1) The Trustees have considered the proposed transaction in light of the financial requirements and goals of the Plan and have concluded that the would be denied the benefits of a unique investment opportunity if the requested exemption is not granted; (2) the Trustees have determined that the proposed investment is of high quality, prudent and secure and in light of the financial requirements and goals of the Plan; and (3) it will also provide the opportunity for capital appreciation and a hedge against inflation.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act due to the following: (a) this transaction involves only the individually directed accounts of the Trustees and they desire that the transaction be consummated; (b) the Trustees state that the proposed purchase of the Property is an excellent investment for the Accounts; (c) the fair market value of the Property was determined by a qualified independent appraiser; and (d) no commissions will be paid by the Plan.

NOTICE TO INTERESTED PERSONS: Since Messrs. Fox, Goldblatt and Singer are only participants affected by the proposed transaction, it has been determined that there is no need to distribute notice to interested persons. Comments and hearing requests are due 30 days after the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Radiology of Tupelo, Professional Association Profit Sharing Plan (the Plan), Located in Tupelo, Mississippi

[Application No. D-3984]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code shall not apply to the proposed sale of a certain parcel of unimproved real property for $48,000 to the individual account of Dr. Douglas E. Clark, Jr. (Dr. Clark) in the Plan, provided that this price is not more than the fair market value of the property at the time of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 15 participants and total assets as of November 26, 1982 of $970,336.51. The Plan's trustees are Messrs. Douglas E. Clark, James T. Trapp, Marshall G. Edmondson, John M. Blakey and Dan L. Brasfield. Radiology of Tupelo, Professional Association (the Employer) is in the business of providing radiological services in Tupelo and is Northeastern Mississippi.

2. The Plan provides that any participant may direct the Plan's trustees as to the investment of the balance in such participant's account. Any such investment at the direction of a Plan participant is accounted for separately and any earnings or losses affect only the account of the participant directing the investment.

3. Dr. Clark's account in the Plan (the Account) is a segregated account and only his account will be affected by the proposed transaction. The balance of Dr. Clark's account as of November 26, 1982 was $104,751.43.

4. Dr. Clark proposes to sell to the Account 80 acres (the Property) of a 130 acre tract of timber production land which is located in Pontotoc County, Mississippi. Dr. Clark proposes to sell the subject 80 acre tract to the Account for $48,000 in cash. The Account will not pay any sales commissions or fees in connection with the sale.

5. The entire 130 acre parcel was appraised on November 24, 1982 by Mr. Chris Rogers (Mr. Rogers) of Tupelo Realty Co., Inc. of Tupelo Mississippi, an unrelated party, to have a fair market value of $78,000 based on a valuation of $600 per acre. Mr. Rogers in a letter of December 28, 1982 represented that the Property to be sold to the Account would likewise have a $600 per acre value.

6. Dr. Clark believes that it is in the Account's best interest to acquire the Property because he considers the investment to be prudent and an acquisition of a reasonably appreciating and potentially income producing asset. Dr. Clark also feels that the proposed purchase price is fair for the acreage involved.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) This transaction involves an individually directed account and cannot affect the accounts of other participants in the Plan;

(b) The purchase price to be paid by the Plan for Property was determined pursuant to an independent appraisal;

(c) No commissions or other costs will be paid by the Account; and

(d) Dr. Clark states that the acquisition of the Property is a good investment for the Account and desires that it be consummated.

Notice To Interested Persons: Since the assets in Dr. Clark's Account are the only Plan assets involved in the proposed transaction, it has been determined that there is no need to distribute notice to interested persons. Comments and hearing requests are due 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

J. C. Penney Co., Inc. (Penney), Located in New York, New York

[Application No. D-4057]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by J. C. Penney Life Insurance Company (Penney Life) from the life insurance contracts sold by the Prudential Insurance Company of America (Prudential) to provide benefits to various employee benefit plans (the Plans) maintained by Penney, provided the following conditions are met:

(a) Penney Life—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Penney that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Compliance from the Insurance Department of its domiciliary state, Vermont, which has neither been revoked nor suspended; and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Vermont) by the Vermont Commissioner of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plans pay no more than adequate consideration for the life insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of Penney Life, the gross premiums and annuity considerations received in that taxable year by Penney Life for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Penney Life is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by Penney Life. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by Penney Life. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by Penney Life.

(2) All premiums and annuity considerations written by Penney Life for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79-41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to

an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Penney is a large publicly held corporation organized under the laws of the State of Delaware. The dominant portion of its business consists of providing merchandise and services to consumers through retail stores, including catalog operations.

2. The Plans which are the subject of this proposed exemption are welfare benefit plans. They are: (1) A group term life insurance plan for Penney employees provided at Penney's expense; (2) contributory and non-contributory term life insurance plans for employees of Penney disabled before April 1, 1982; and (3) contributory and non-contributory term life insurance for certain retired management employees of Penney. There are approximately 136,000 participants covered under the Plans.

3. Penney Life is a stock life insurance company which was incorporated in 1900 under the laws of the State of Vermont. Penney Life is wholly owned by Penney and one of Penney's subsidiaries. Penney Life actively solicits life and accident and health insurance business in those jurisdictions where it is licensed. Penney Life is currently qualified to conduct an insurance business in 49 states, the District of Columbia, and the Commonwealth of Puerto Rico. At the end of 1981, it had capital paid up of $1,100,000 and surplus of $65,601,084. During 1981, Penney Life collected $67,884,097 in total gross premiums and annuity considerations.

4. The benefits under the Plans have been funded since 1925 by insurance contracts sold to Penney by Prudential. Prudential is a mutual life insurance company owned by its policyholders and is not related to Penney or Penney Life. Prudential proposes to enter into a reinsurance contract with Penney Life with respect to risks Prudential insures. Under the proposed reinsurance contract, Prudential will pay Penney Life 50 percent of the premiums and payments received subject to the agreement in exchange for which Penney Life will reinsure Prudential for 50 percent of the risk. the reinsurance contract in no way affects Prudential's liability for all of the benefits promised under its contracts with the Plans. The Plans are not parties to the reinsurance agreement.

5. The applicant represents that the subject reinsurance transactions will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) Penney Life is a party in interest as described in section 3(14)(G) of the Act with respect to the Plans because of its stock affiliation with the employer (Penney) maintaining the Plans.

(b) Penney Life is licensed to sell insurance in at least one of the United States.

(c) Penney Life was authorized to do business (as the Vermont Accident Insurance Company) in 1900. Such authorization is automatically renewed each year by the Vermont Department of Banking and Insurance and continues to be effective unless rescinded. Penney Life's certification has never been rescinded.

(d) Penney Life underwent a finanical examination by the Department of Banking and Insurance of the State of Vermont for the five years ending December 31, 1978. Starting in January, 1983, the Vermont Commissioner of Banking and Insurance is conducting a financial examination of Penney Life for the years 1979–1982.

(e) Penney Life has undergone in the past an annual examination by an independent certified public accountant in connection with the annual audit of Penney.

(f) The Plans pay no more than adequate consideration for the insurance contracts. Because Prudential is one of the largest group insurance underwriters in the country and enjoys substantial economies of scale in overall policy administration, the premium charge to the Plans is highly competitive. The proposed reinsurance transactions are not a factor in the premium computation and thus will not in any way affect the cost to the Plans.

(g) No commissions will be paid in connection with either the insurance contracts with Prudential or the reinsurance contract between Prudential and Penney Life.

(h) The gross premiums to be received in 1983 by Penney Life for its reinsurance under the proposed contract is not expected to exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in 1983 by Penney Life. It is projected that such premiums will only amount to approximately 2 percent of Penney Life's 1983 gross premiums and annuity considerations. The applicant represents that for the future Penney Life will derive not more than 50 percent of its gross premiums from transactions involving the subject reinsurance contract.

6. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The insurance could not be purchased directly from Penney Life more economically than it is purchased from Prudential; (2) participants and beneficiaries of the Plans are afforded insurance protection by Prudential, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (3) Penney Life is a sound insurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (4) each of the protections provided by PTE 79-41 to the Plans will be met under the subject reinsurance transactions.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

T.C. Consultant Pension Trust (the Plan), Located in West Orange, New Jersey

[Application No. D–4127]

Proprosed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective September 30, 1982, to the contribution to the Plan of 734 shares of American Telephone & Telegraph Company common stock (the Stock) by Theodore Cohn Consultant, Inc. (the Employer), the sponsor of the Plan,

provided that the Stock was valued at its fair market value as of the date is was contributed to the Plan.

Effective date: If granted, this exemption will be effective September 30, 1982.

Summary of Facts and Representations

1. The Plan is a qualified defined benefit plan with one participant, Mr. Theodore Cohn. Mr. Cohn is the sole employee and stockholder of the Employer. The Plan is administered by its two trustees, Mr. Cohn and his wife Dina B. Cohn. As of February 28, 1982, the Plan had total assets of $515,316.

2. The applicant is seeking an exemption to allow the transfer on September 30, 1982, of 734 shares of the Stock to the Plan by the Employer. The contribution of the Stock was partial satisfaction of the Employer's contribution to the Plan for the Plan year that ended February 28, 1982. The Stock is publicly traded on the New York Stock Exchange (NYSE) and was valued on the date of transfer at $56.50 per share. This value was determined from the average of the Stock's high price ($57) and low price ($56) as quoted on the NYSE on September 30, 1982. The total value of the Stock contributed to the Plan was $41,471. The trustees determined that it was appropriate to add the Stock to the Plan's investment portfolio. The balance of the contribution to the Plan for the year ending February 28, 1982, ($46,264) was contributed in cash.

3. The applicant represents that the Plan did not incur any commission expenses in association with the contribution of the Stock. The applicant states that the Employer's federal tax deduction for the contribution did not exceed the fair market value of the Stock on the date it was contributed to the Plan.

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because (a) Mr. Cohn is the only participant affected by the transaction, and he approved the transaction and desired that it be consummated; (b) the Stock is publicly traded on a national securities exchange and was contributed at its fair market value; (c) the Plan did not incur any commission expenses with regard to the contribution; and (d) the Employer's federal tax deduction for the contribution did not exceed the fair market value of the Stock on the date of contribution.

Notice to interested persons: Because there is only one participant in the Plan there is no need to distribute notification to interested persons. Comments and hearing requests are due within 30 days of the date of publication of this notice in the **Federal Register.**

For further information contract: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

MEBA Training Plan (the Plan), Located in Baltimore, Maryland

[Application No. L-4156]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed cash sale of a parcel of real property by the Plan to District No. 1-PCD, MEBA (the Union) for $400,000, provided that the terms and conditions of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.[1]

Summary of Facts and Representations

1. The Plan is an employee welfare benefit plan established and maintained pursuant to collective bargaining agreements between the Union and certain contributing employers. The Plan covers all active members of the Union who are employed by contributing employers. The trustees of the Plan are Messrs. Jesse M. Calhoon, William E. Coday, C. E. DeFries, Michael DiPrisco, James J. Hayes, Martin F. Hickey, Frank Kerestesy, Robert Murphy, William I. Ristine, A. P. Sasso, R. F. Schamann, Leon Shapiro and Allen C. Taylor. The Plan had total assets, as of December 31, 1982, of $19,667,660.14.

2. The Plan was established to carry out the following functions:

(a) The training of persons to enable them to pass the United States Coast Guard examinations and requirements for licensed officer positions;

(b) The training of licensed officers to assist them in the upgrading of their licenses; and

(c) The implementation of plans relating to safety in and improvement of the maritime industry.

3. On May 25, 1982, the Plan purchased for $400,000 in cash, a parcel of improved real property (the Property) located in the Easton District of Talbot County, Maryland from Ms. Alice G. Bayer, an unrelated party. The Plan purchased the Property to protect its investment in the adjacent property which it also owned. By purchasing the Property, the Plan could preclude subdivision and other development inconsistent with the training facilities maintained by the Plan on its adjacent property.[2]

4. As a consequence of the impact of the continuing recession on contributing employers, the Plan has experienced unexpected cash flow difficulties necessitating implementation of both cost reduction programs and limitation of certain benefits. The Property has never produced any income and has been subject to various holding costs, including property taxes.

5. To increase the Plan's liquidity, the Trustees are requesting an exemption to allow the Union to purchase the Property from the Plan for $400,000 in cash, its appraised value. No real estate sales commission will be charged to or paid by either the plan or the Union and any expenses of sale will be paid by the Union.

6. On January 18, 1983, Mr. Vernon J. Nily, Jr. of Nily Realty Inc., Easton, Maryland, an unrelated appraiser, appraised the Property to have a fair market value of $400,000 as of January 1, 1983.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because

(a) It will be a one time transaction for cash;

(b) It will permit the Plan to dispose of a non-income producing asset without suffering a loss;

(c) It will increase the liquidity of the Plan; and

(d) All expenses of sale will be paid by the Union.

For further information contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary

[1] Since the Plan is a welfare plan, there is jurisdiction only under Title I of the Act.

[2] In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition or holding of the Property violated any provision of Part 4 of Title I of the Act.

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of March, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-8494 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-29-M

Grant of Individual Exemptions; International Reserve Equipment Corp. et al.

AGENCY: Pension and Welfare Benefit Programs Office, Labor

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

International Reserve Equipment Corporation Employees Profit Sharing Plan (the Plan) Located in Clarendon Hills, Illinois

[Prohibited Transaction Exemption 83-52; Exemption Application No. D-3275]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1982, to the lease (including renewals thereof) by the Plan of space in an improved parcel of real property to International Reserve Equipment Corporation, a party in interest with respect to the Plan, provided that the terms and conditions of the lease are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 4, 1983 at 48 FR 5397.

EFFECTIVE DATE: This exemption is effective January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

First Equities Institutional Realty Investors-1, Ltd. (the Partnership) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 83-53; Exemption Application No. D-3430]

Exemption

Section I—Exemption for Certain Transactions Involving the Provision of Services by FEC [1]

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the provision of investment management services to the Partnership [2] by FEC and to the receipt of compensation for such services which is determined in accordance with an incentive compensation arrangement if the following conditions are met:

(a) The investment of plan assets in the Partnership is authorized by a fiduciary independent of FEC and the Partnership;

(b) No such authorization is made unless the authorizing fiduciary receives a copy of the Private Placement Memorandum (the Memorandum) and the Partnership Agreement which describe the respective rights of FEC and the limited partners to cash flow and capital appreciation as well as all other material rights and obligations of the partners, the services to be performed by FEC and the compensation to be received therefor;

(c) The Partnership furnishes the authorizing fiduciary a quarterly report which discloses that portion of the cash

[1] FEC is the general partner of the Partnership.

[2] References in the exemption to the Partnership shall also refer to any future partnership structured and operated in a manner identical to the Partnership.

flow and sales proceeds retained by FEC, the amount of fees paid to FEC for services rendered, the amount of reimbursements received by FEC and the total of any other fees paid to third parties by FEC for services rendered.

(d) The conditions set forth in section IV of this exemption are met.

Section II—Certain Acquisitions of Real Property

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to any sale of real property acquired by FEC during the offering period to the Partnership if the following conditions are met:

(a) The price paid by the Partnership for the property does not exceed the amount paid by FEC;

(b) The Memorandum is supplemented during the offering period with a description of the proposed investment;

(c) All such transfers are completed within 60 days after the close of the offering period; and

(d) The conditions set forth in section IV of this exemption are met.

Section III—Exemption for Certain Transactions Involving the Partnership

The restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions set forth in section IV of this exemption are met.

(a) *Transactions with Persons Who are Parties In Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Partnership and a person who is a party in interest with respect to a participating plan if—

(1) The person is a party in interest (including a fiduciary) solely by the reason of providing services to the participating plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercises nor has any discretionary authority, control, responsibility or influence with respect to the investment of the participating plan's assets in, or held by, the Partnership, and

(2) The person is not an affiliate of FEC.

(b) *Certain Leases and Goods.*

The leasing of real property owned by the Partnership to a party in interest with respect to a participating plan and the incidental furnishing of goods to such party in interest by the Partnership, if—

(1) In the case of goods, they are furnished by the Partnership in connection with real property owned by the Partnership,

(2) The party in interest is not FEC, and

(3) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Partnership with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5% of the fair market value of the assets of the Partnership on the most recent valuation date of the Partnership prior to the transaction.

(c) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Partnership to a party in interest with respect to a participating plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the Partnership, the terms of the transaction are not less favorable to the limited partners than the terms generally available in arm's-length transactions between unrelated parties.

(b) The Partnership maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Partnership, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a participating plan who has authority to acquire or dispose of the interests in the Partnership of the participating plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any participating plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any participating plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of the partnership, or commercial or financial information which is privileged or confidential.

Section V—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) A relationship "described in section 3(14)(F)" shall include a "relative" as that time is defined in section 3(15) of the Act (or a "Member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the acquisition is made or the transaction is entered into, or the holding commences. In addition, in the case of a transaction that is continuing the transaction shall be deemed to occur until it is terminated. If any transaction is entered

into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the partnership occurs on or after the effective date of this exemption, and the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Nothing in this paragraph (d) shall be construed as exempting a transaction entered into by the Partnership which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 3, 1982 at 47 FR 54580.

Written Comments and Hearing Requests

One comment was received by the Department from the applicant. In the comment the applicant recommends that for purposes of clarity a definitional section be added. The Department concurs with this request and has added such a section to the exemption (See section V).

The applicant has requested that the exemption should be expanded to cover future ventures by First Equities Corporation which are operated in substantially the same manner as the Partnership. The Department does not believe that the applicant has made a sufficient case for such relief. The Department believes that, because there may be a potential for abuse in situations involving the receipt of incentive compensation by plan fiduciaries, a blanket exemption is not warranted to provide relief for future transactions involving partnerships not fully described in the application which will be operated in "substantially" the same manner as the Partnership. In light of the comment, however, the Department has amended the proposed exemption to provide relief for any future partnership structured and operated in a manner identical to the Partnership described in the application.

The applicant has also made the following factual clarifications to the summary of facts and representations (the Summary) contained in the proposed exemption.

In paragraph 1, the applicant states that in view of the new definitional language to be contained in section V of the exemption, that the term affiliates of FEC be included within the scope of parties comprising the general partner of the Partnership. Also, that the organizers of the corporate general partner of the Partnership could also include affiliates of FEC. The applicant has also requested that in order to allow flexibility in the selection of personnel, that only a majority of the general partner's interest be held by officers, directors, employees or affiliates of FEC.

In paragraph 3 of the Summary, the applicant points out that the properties to be acquired by the Partnership will "not necessarily" be identified at the time the plans acquire their interest in the Partnership, however, the Partnership will be operated in accordance with written investment objectives and policies described in the Memorandum given to each plan fiduciary.

In paragraph 6 of the Summary, the acquisition fees and monthly partnership management fee are defined. The applicant states that for purposes of consistency when defining these terms, the fees are based on a percentage of aggregate initial capital contributions rather than as stated in the proposal.

In paragraph 9 of the Summary, the applicant points out that, with respect to the disposition or refinancing of Partnership real property, the net proceeds are to be returned 100% to the limited partners until their net capital contribution is recouped together with any unpaid distribution preference due and thereafter shall be distributed 80% to the limited partners and 20% to FEC.

In paragraph 14 of the Summary, the applicant wishes to clarify that FEC will at all times receive 1% of Partnership cash flow until such time as the partners receive their distribution preference. At that time, FEC will then be entitled to receive 20% of cash flow, as opposed to 80% by the limited partners. The applicant further points out that the Agreement provides that any transaction giving rise to a distribution of sale proceeds to FEC is subject to prior approval of holders of 60% of Partnership units and 60% of the limited partners on a per capita basis.

The Department has considered the above stated information and believes that no material changes need to be made to the exemption.

The applicant also requested that the language contained in paragraph 10 of the proposed exemption, whereby the Department states that it is not proposing an exemption for certain services provided by FEC that appear to be covered by the statutory exemption be amended. The applicant represents that the above statement should state that the Department is not proposing an exemption for certain services provided by FEC such as those services described in paragraphs 6 and 7 above * * *. The Department believes that determinations as to what comes under the statutory exemption for service providers is inherently factual and therefore does not believe that the additional language requested by the applicant should be added. The Department believes that such determinations should be made by the appropriate plan fiduciaries.

The applicant has also requested that the exemption language contained in the proposal be modified so that diversification of plan assets invested in the Partnership is considered. The exemption proposed does not relieve any plan fiduciaries from the diversification requirements set forth in section 404 of the Act. The responsibility for determining appropriate diversification is the responsibility of each plan fiduciary and the Department is not prepared to rule on this issue.

Finally, the applicant states that the condition contained in section II(c) of the proposed exemption, that the sale of real property acquired by FEC during the offering period to the Partnership must be completed within 60 days of purchase by FEC, would effectively preclude FEC from acquiring certain properties for the Partnership in the early months of the offering. The Department has considered this comment and has modified condition II(c) of the exemption to provide that sales of real property must be completed within 60 days after the close of the offering period.

The Department has considered the applicant's comments and has determined to grant the exemption with the changes listed above.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Price, Raffel and Associates Incorporated Located in Los Angeles, California

[Prohibited Transaction Exemption 83-54; Exemption Application No. D-3487]

Exemption

The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E)

and (F) of the Code, shall not apply to the provision of real estate finders services and the receipt of fees from third parties in conjunction with the provision of such services by Price, Raffel and Associates (PRA) to employee benefit plans (the Plan(s)) which may contract for plan administration services with PRA or its subsidiary Price, Raffel and Associates Administrators Incorporated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 22, 1982 at 47 FR 47108.

Written Comments and Hearing Requests

Two comments were received by the Department from employee benefit plans for which PRA provides plan administration services. One comment supported the granting of the proposed exemption, stating that to permit PRA to render finder services would be in the best interest of the Plans by providing an exposure to investment in real estate transactions through an entity in which the Plans have trust and confidence arising out of prior relationships. The other commentator opposed the granting of the exemption by suggesting that the proposed arrangement would sanction a potential conflict of interest when PRA presented real estate investment opportunities to the Plans because of its existing service provider relationship. The Department has sought clarification from the applicant regarding the actions by PRA in contacting client plans concerning possible investments in real estate financing. PRA has represented that its contacts with client plans have merely been to apprise them that PRA is engaged in the practice of providing real estate finders services. The Plans are under no obligation to participate or avail themselves of the services being offered. PRA is providing this service at no cost to the Plans and views participation as entirely a decision to be made by the respective Plans. The Department has also reviewed the entire record and determined that the disclosure conditions contained in the proposed exemption provide adequate notice of PRA's role in the transaction and that PRA's role as a finder for plan investments in real estate should not prejudice any existing relationships.

Additionally, the applicant has raised the possibility that more than one client plan might participate in a partnership venture or otherwise share the investor interest in a real estate transaction. PRA suggested the following sentence be added to the text of the final exemption. "PRA anticipates that in many instances the Plans may wish to enter into partnership or other joint arrangements whereby each Plan provides a portion of the funds to be loaned to the Borrower or participate with others in providing funds to the Borrower." Because the proposed language was not contained in the notice of proposed exemption, interested parties were not afforded an opportunity to comment thereon. Therefore, the Department has determined not to incorporate the language in the text of the exemption. Accordingly, the Department has decided to grant the exemption as proposed.

For further information contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

Retirement Plan of Girard Bank (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 83-55; Exemption Application No. D-3681]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 27, 1982, to (1) the proposed 99 year lease by the Plan of a certain parcel of land and improvements thereon (the Property) from Girard Bank (the Bank), the Plan sponsor; (2) the proposed sublease, for ten years, of the Property by the Plan to Girard Realty Corporation (GRC), a party in interest with respect to the Plan; (3) the proposed sublease, for ten years, of the Property by GRC to the Bank; and (4) the possible purchase of the property by the Plan from the Bank, provided that the terms and conditions of all the aforementioned transactions are no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 28, 1982 at 47 FR 57789.

Written comments and hearing requests: No requests for a hearing were received by the Department. However, the Department received two public comments. One commentator expressed her approval of the proposed exemption. Another commentator objected to the proposed exemption on the grounds that a certified historical building may not be easily marketable and that the building in its present form is of limited, specialized use, and also on the grounds that the trustee of the Plan may have a conflict of interest with regard to the proposed transactions.

The Bank and Strouse, Greenberg and Co. (Strouse), the independent fiduciary for the Plan, have addressed the comments. With respect to the concern that the Property, which includes a certified historical building, may not be easily marketable, Strouse, which made its own appraisal of the Property on December 7, 1982, states that the historical certification in this instance should have a positive, rather than a detrimental effect on the marketability of the Property. Strouse states that the building (the Building) on the Property is architecturally distinguished and historically significant and offers excellent exposure and corporate identity. Additionally, two independent appraisals submitted by the applicants indicate that the Building's highest and best use is as an office building with the street level floor being used as a banking or commercial establishment. Zoning in the area permits both commerical and residential uses.

Regarding the possible conflict of interest of the Bank, as the trustee of the Plan, the Department notes that Strouse has been appointed as an independent fiduciary for the Plan with respect to the proposed transactions. Strouse, which is independent of all parties to the proposed transactions, will approve and monitor the leases on behalf of the Plan, will be the sole party to decide, on behalf of the Plan, whether to exercise the Plan's options to purchase the Property or to terminate the leases, and additionally, Strouse will take any steps necessary to enforce the rights of the Plan with regard to the subject transactions.

Therefore, after consideration of the enitre record, including the comments, the Department has determined to grant this exemption as originally proposed.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

Richard K. Archer, M.D., P.A. Defined Benefit Plan and Trust (the Plan) Located in Amarillo, Texas

[Prohibited Transaction Exemption 83-56; Exemption Application No. D-3702]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed contribution to the

Plan of certain improved real property (the Property) by Richard K. Archer, M.D., P.A. (the Employer), the sponsor of the Plan; (2) the proposed lease of the Property to the Employer; (3) the personal guaranty of Richard K. Archer (the Trustee), the Trustee of the Plan, of the rent under the proposed lease; and (4) the guarantees of the Employer and the Trustee, that the Plan will receive the appraised fair market value of the Property in any sale of the Property by the Plan, provided that the terms and conditions of such transactions are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 4, 1983 at 48 FR 5399.

For Further Information Contact:

Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

Extension of Part IX of PTE 77-11, for Certain New Transactions Involving the Central States, Southeast and Southwest Areas Pension Fund Located in Chicago, Illinois

[Prohibited Transaction Exemption 83-57; Exemption Application No. D-3875]

Exemption

The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall continue not to apply to new transactions between the Fund and certain non-fiduciary parties in interest and disqualified persons. The exemption is effective October 3, 1982, and expires with respect to each independent asset manager when the manager ceases to have responsibility for Fund assets under the current asset management agreements that have been in effect since October 3, 1977.

For more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 7, 1983 at 48 FR 907.

For Further Information Contact:

David A. Rood of the Department, telephone (202) 523-8368. (This is not a toll-free number.)

Equitable Life Assurance Society of the United States (Equitable) Located in New York City, New York

[Prohibited Transaction Exemption 83-58; Exemption Application No. D-3895]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The past and proposed acquisition by Equitable of shares of the common stock of Equitable Life Mortgage and Realty Investors (Telmari) from certain employee benefit plans (the Plans), with respect to which Equitable is a party in interest, provided that the price received by the Plans is at least equal to the price received by other shareholders of the Telmari common stock; and (2) the assumption by Equitable of the obligations of Telmari notes resulting in an extension of credit between Equitable and certain of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 4, 1983 at 48 FR 5403.

Effective Date: This exemption is effective October 8, 1982.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

Rodey, Dickason, Sloan, Akin & Robb, P.A. Profit Sharing Plan and Trust (the Plan) Located in Albuquerque, New Mexico

[Prohibited Transaction Exemption 83-59; Exemption Application No. D-3951]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the refinancing of a loan made by the Plan to Rodey, Dickason, Sloan, Akin & Robb, P.A., the sponsor of the Plan, provided that the terms and conditions of the refinancing are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 28, 1983 at 48 FR 4072.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of March 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-8493 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3719]

Withdrawal of the Proposed Exemption Involving the Profit-Sharing Plan and Trust for Employees of the Havi Corporation and Its Subsidiaries Located in Hinsdale, Illinois

In the **Federal Register** dated December 28, 1982 (47 FR 57790), the

Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Havi Corporation and its Subsidiaries.

In a letter of February 23, 1983, the applicants' representative notified the Department that an exemption for the transaction described in the above cited notice was no longer sought. Accordingly, the representative requested that the application for exemption be withdrawn from consideration by the Department.

Signed at Washington, D.C., this 25th day of March 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-8492 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) Since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.
The title of the form.
The Agency form number, if applicable.
How often the form must be filled out.
Who will be required to or asked to report.
Whether small business or organizations are affected.
The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
An estimate of the number of responses.
An estimate of the total number of hours needs to fill out the form.
The number of forms in the request for approval.
An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earlierst possible date.

New

Employment Standards Administration
Wage Statement
WH-501 and WH-501a
Weekly
Individuals or households; farms; business or other insitutions
Small business or organization
SIC: 013, 016, 017, 018, 019
15,000.000 responses; 101,700 hours; 2 forms

Sections 201(d) and (e) and 301 (c) and (d) of the Migrant and Seasonal Agricultural Worker Protection Act requires each farm labor contractor, agricultural employer/association which employs any migrant or seasonal agricultural worker to make and keep for each worker during each pay period specific information, to provide a written copy to each worker and to the person to whom the worker was furnished. Such person and the person to whom the worker was furnished must preserve such payroll information for three years.

Revision

Employment Standards Administration
29 CFR Part 500; Migrant and Seasonal Agricultural Worker Protection
WH-1455
On occasion
Individuals or households; farms; business or other institutions
Small business or organization
SIC: 013, 016, 017, 018, 019
400 responses; 83 hours

The Migrant and Seasonal Agricultural Worker Protection Act becomes effective 4-14-83 and requires 1) insurance companies shall not cancel FLC policies without a 30-day written notice by crtified or registered mail to the Administrator 2) any person who intends to house migrant agricultural workers must submit a statement identifying housing to be used and duration of requested use to the Department.

Signed at Washington, D.C. this 25th day of March, 1983.

Paul E. Larson,

Department Clearance Officer.

[FR Doc. 83-8551 Filed 3-32-83; 8:45 am]

BILLING CODE 4510-27-M

[Secretary of Labor's Order 4-83]

Renaming the Office of the Assistant Secretary of Labor for Veterans' Employment

March 24, 1983.

1. *Purpose.* To change the name of the Office of the Assistant Secretary of Labor for Veterans' Employment.

2. *Background.* Responsibilities of the Assistant Secretary of Labor for Veterans' Employment were recently expanded to include administration of the veterans' reemployment rights programs. Because the added responsibilities are employment related, they are readily accommodated by the title of that Assistant Secretary. However, another important responsibility of the Assistant Secretary is that related to the training of veterans for meaningful employment, but training is not reflected in the title of the Assistant Secretary. That will be corrected by incorporating the words "and training" into the title of the Assistant Secretary as provided for in this Order.

3. *Veterans' Employment and Training Service (VETS)* a. It is hereby ordered that the Office of the Assistant Secretary of Labor for Veterans Employment be redesignated the Veterans' Employment and Training Service. The Service will be headed by an Assistant Secretary of Labor for Veterans' Employment and Training.

b. All employees of the previously named Office of the Assistant Secretary of Labor for Veterans' Employment are redesignated employees of the Veterans' Employment and Training Service.

c. All programs, activities, functions, and responsibilities delegated to the previously named Office of the Assistant Secretary of Labor for Veterans' Employment are redesignated programs, activities, functions, and responsibilities of the Veterans' Employment and Training Service.

4. *Authority and Directives Affected*

a. *Authority.* This Order is issued pursuant to the Act of March 4, 1913 (37 Stat 736), and Reorganization Plan No. 6 of 1950.

b. *Directives Affected.* Secretary's Order 5–81 is canceled. Secretary's Order 1–83 remains in effect except that "and Training" is added to the Assistant Secretary of Labor for Veterans' Employment title as appropriate.

5. *Effective Date.* This Order is effective immediately.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-8552 Filed 3-31-83; 8:45 am]

BILLING CODE 4510-23-M

PANAMA CANAL COMMISSION

Agency forms submitted to the Office of Management and Budget for Clearance.

AGENCY: Panama Canal Commission.

ACTION: Notice of information collection request; revision.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Panama Canal Commission (PCC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) an SF–83, "Request for OMB Review," for revision of certain PCC forms which are a part of the information collection request called Subchapter C (Shipping and Navigation) of Chapter I, Title 35, Code of Federal Regulations.

ADDRESS: Written comments may be sent to Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, Suite 312, Pennsylvania Building, 425 13th Street NW., Washington, D.C. 20004 or to Anita Ducca, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the information collection proposal or related information, contact Barbara Fuller, telephone 202–724–0104.

SUPPLEMENTARY INFORMATION: On December 24, 1981, OMB approved an information collection proposal submitted by the PCC in conjunction with a revision of its navigation regulations, and assigned it the control number 3207–0001. The forms required by those regulations, which make up the information collection request, include the "Incoming Passenger List," "Transit Passenger List," and "Request for Transit Booking or Cancellation" forms.

It is proposed that the existing forms known as "Incoming Passenger List," PCC Form No. 18, and "Transit Passenger List," PCC Form No. 20, be consolidated into one form and modified to meet this agency's post-treaty requirements. Less information is required because customs responsibility has been turned over to the Republic of Panama. No new information is being required. The consolidation of these two forms into one new form, to be called "Passenger List," PCC Form No. 20, will reduce the burden on the Government (e.g., cost of printing), and elimination of some items will reduce the burden on the public.

On October 5, 1981, pursuant to Executive Order 12291, OMB approved the Canal Commission's proposed rule announcing a test of a transit booking system for the Panama Canal. The proposed rule was published on December 8, 1981 (46 FR 60013). After consideration of comments received in response to the December 8 announcement, the Canal Commission published on January 21, 1982 (47 FR 2991), an interim rule initiating a test of the booking system. The final rule announcing permanent implementation of the transit booking system, effective April 4, 1983, was published on March 4, 1983 (48 FR 9253). During the test period of the Panama Canal Transit Booking System it became apparent that the use of a single form for both booking and cancellation was confusing. It is therefore proposed that the existing form "Request for Transit Booking or Cancellation," PCC Form No. 4623, be replaced by two separate forms, to be called "Request for Transit Booking," PCC Form No. 4623, and "Transit Booking Cancellation," PCC Form No. 4633. The use of two forms, which will be printed on different colors of paper, is being proposed in order to facilitate distinguishing between requests for booking and requests for cancellation of booking and to make it easier for vessel agents to make the requests. The new form "Request for Transit Booking," PCC Form No. 4623, will also reflect the lowering of the booking fee from $0.26 to $0.23 per Panama Canal gross ton. No new information has been added to the proposed forms.

Dated: March 11, 1983.

Fernando Manfredo, Jr.,

Deputy Administrator, Senior Official for Information Resources Management.

[FR Doc. 83-8428 Filed 3-31-83; 8:45 am]

BILLING CODE 3640-02-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22890; (70–6847)]

Alabama Power, Co., Proposed Financing of Pollution Control Facilities

March 24, 1983.

Notice is hereby given that Alabama Power Company ("Alabama") (600 North 18th St., Birmingham, Alabama, 35291) an electric utility subsidiary company of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Pursuant to Commission authorization (File No. 70–5568), Alabama entered into an Installment Sale Agreement dated as of December 1, 1974, and supplements thereto dated as of December 1, 1976, and May 1, 1980 ("Agreement") with the Industrial Development Board of the City of Mobile, Alabama ("Board") to finance certain pollution control facililities at Alabama's Barry and Chickasaw steam plants (such facilities at such plants being referred to hereafter as the "Project"). In accordance with such Agreement, the Board purchased the then existing portions of the Project, undertook to complete its construction, and to sell the completed Project to Alabama for a purchase price payable in semi-annual installments over a term of years. To secure its obligations under the Agreement, Alabama granted to the Board a security interest in the Project subordinate to the lien of the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as supplemented and amended. The Board issued its Series A pollution control revenue bonds, Series B pollution control revenue bonds, and Series C pollution control revenue bonds pursuant to a Trust Indenture dated as of December 1, 1974, and supplements thereto dated as of December 1, 1976, and May 1, 1980, respectively ("Indenture"), in the aggregate principal amount of $44,550,000, then estimated to

be sufficient to cover the Cost of Construction (as defined in the Agreement) of the Project. The Board assigned all its right, title, and interest in the Agreement, including such subordinate security interest, to the trustee under the Indenture ("Revenue Bond Trustee") as security for the pollution control revenue bonds.

The proceeds of the sale of the bonds were deposited by the Board with the Revenue Bond Trustee and have been applied to the payment of the Cost of Construction of the Project. However, Alabama has determined that the total Cost of Construction of the Project will exceed the proceeds of the bonds. Consequently, Alabama proposes to request that the Board issue up to $22,000,000 principal amount of Series D revenue bonds ("Third Additional Bonds"). Upon issuance of the Third Additional Bonds, Alabama's obligation under the Agreement to make semi-annual purchase price payments will, as provided in the Agreement, be increased to require additional payments sufficient (together with other moneys held by the Revenue Bond Trustee under the Indenture for that purpose) to pay the principal of, premium (if any), and interest on the Third Additional Bonds as they become due and payable. The Board and the Revenue Bond Trustee will enter into a supplement to the Indenture providing for the Third Additional Bonds. As with the prior bonds, the Third Additional Bonds will mature in not more than 30 years and may have serial maturities and/or a mandatory redemption sinking fund calculated to retire a portion of them prior to maturity. Alabama and the Board will execute and deliver to the Revenue Bond Trustee, as required by the Indenture, a supplement to the Agreement providing for the payment of all expenses and costs incurred or to be incurred by virtue of the issuance of the Third Additional Bonds.

It is contemplated that arrangements will be made by the Board with one or more investment bankers providing for the placement or underwriting of the Third Additional Bonds. In accordance with the laws of the State of Alabama, the interest rate to be borne by the Third Additional Bonds will be fixed by the Board and will be either a fixed rate or a rate which will fluctuate in accordance with a specified prime or base rate or rates. Bond counsel will issue an opinion that interest on the Third Additional Bonds will be exempt from federal income taxation. Alabama has been advised that the annual interest rates on obligations the interest on which is tax exempt recently have been and can be expected at the time of issue of the Third Additional Bonds to be approximately two and one-half to three and one-half percentage points lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income taxation.

The application and any amendments thereto are available for public inspection through the commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 20, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8450 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22885; (70-6853)]

Kingsport Power Co. and American Electric Power Co., Inc., Proposed Sale and Leaseback of Assets and Guaranty by Holding Company

March 22, 1983.

In the Matter of Kingsport Power Co., 422 Broad Street, Kingsport, Tennessee 37662 and American Electric Power Co., Inc., 180 East Broad Street, Columbus, Ohio 43215.

American Electric Power Company, Inc. ("American"), a registered holding company, and its electric utility subsidiary company, Kingsport Power Company ("Kingsport"), have filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder and other applicable provisions of the Act.

Kingsport owns certain land and a service building and improvements thereon (collectively the "Property") located in Kingsport, Tennessee, and proposes to sell the Property to Elport Associates Limited Partnership ("Owner"), a Connecticut limited partnership to be organized by Integrated Resources, Inc. The Owner will thereafter immediately lease the Property to Kayport Realty Corp. ("Lessor"), a subsidiary of Integrated Resources, Inc., under a "Master Lease", and, simultaneously therewith, the Lessor will sublease the Property back to Kingsport under a Sublease Agreement ("Lease"). Kingsport will be entitled to use the Property for a Primary Term of up to 25 years plus six 5-year optional consecutive Extended Terms. American proposes to execute and deliver to Lessor a guaranty pursuant to which it will guarantee performance of Kingsport's obligations under the Lease.

The building and improvements were constructed by Kingsport and placed in its service in 1981. The sale price to the Owner is estimated to be approximately $3,000,000 plus closing expenses included at the option of Kingsport. To finance the purchase of the Property, the Owner has obtained a 13% annual rate for a first mortgage loan covering approximately 85% of the sale price through a private placement of its notes. As additional security for this loan, an assignment of the Lease rentals will be made to the lender. Such loan will be for a term of 25 years, amortized on a 20.6 years schedule for the first 15 years, and retired completely over the remaining 10 years.

During the Primary Term, the Lease rentals would result in an effective interest cost to Kingsport of approximately 11.52% per annum. Kingsport will have the option to purchase the Property at the end of the 25-year Primary Term and at the end of the second, fourth, and sixth Extended Term at a price equal to the fair market value of the Property considered as encumbered by the Lease. The Lease will be a net lease under which Kingsport will be responsible for all maintenance and, as additional rent, all property and sales taxes (except for taxes baed on or measured by net income or net worth of the Lessor). After the 10th year of the Primary Term, Kingsport will have the right to terminate the lease for economic reasons by making a rejectable offer to purchase the Property for a price equal to the greater of (I) the fair market value of the Property considered as unencumbered by the Lease or (II) the price determined as set forth in a schedule of the Lease.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or requests

a hearing should submit their views in writing by April 18, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so request will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8445 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19622; (SR-PSE-83-02)]

Pacific Stock Exchange, Inc., Order Approving Proposed Rule Change

March 22, 1983.

In the Matter of Pacific Stock Exchange, Inc., 618 South Spring Street, Los Angeles, California 90014.

I. Introduction

The Pacific Stock Exchange, Inc., ("PSE") submitted on January 21, 1983, copies of a proposed rule change, pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to impose charges which are applicable to PSE specialists and option market makers in connection with the execution of trades through the Intermarket Trading System ("ITS"). Specifically, these charges would include a fixed charge of $250 per month on each PSE specialist, and a charge of $.005 per share on the net number of shares executed by each PSE specialist and option market maker, as principal, through ITS in market centers other than PSE.[1]

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by issuance of a Commission Release, [2] and by publication in the **Federal Register.**[3] Letters from two commentators were received with respect to the proposed rule change.[4]

II. Comment Letters

A comment letter was submitted by Pettit & Martin ("P&M"), legal counsel on behalf of K. J. Keeley & Company, Inc., a PSE specialist firm.[5] In its comment letter, P&M urged the Commission to disapprove the proposed charges, asserting that the charges, if implemented, would (1) create a disincentive to the development of the National Market System ("NMS"), and (2) not constitute an equitable allocation of reasonable charges among members of the PSE.

Specifically, P&M believed that the charges "would discourage PSE specialists and option market makers from using the ITS to initiate trades on other exhanges, encourage localization or fragmentation of trades, and thereby result in a less efficient execution of trades." In addition, P&M believed that approval of the charges would set a precedent for other exchanges to implement ITS-related charges, thereby exacerbating fragmentation by creating widespread disincentives to the use of ITS.

P&M also argued that the proposed PSE charges would not constitute a "fair and equitable allocation of reasonable . . . charges among * * * members" of the PSE, pursuant to Section 6(b)(4) of the Act. In this respect, while not contesting that PSE specialists and option market makers were the heaviest users of the PSE's ITS facilities, P&M noted that the charges would fall only on PSE specialists and option market makers, although all PSE members have access to ITS. As a result, P&M argued that the proposed charges would "plainly and unfairly" discriminate against PSE specialists and option market makers. Furthermore, P&M suggested that the proposed PSE charges would discriminate against PSE specialists and option market makers in the context of intermarket trading. In this regard, P&M felt that if the charges were passed along to customers, a PSE specialist would be placed at a competitive disadvantage to non-PSE specialists, because the latter, not being subject to the charges, could execute customers' orders more cheaply through ITS. P&M then argued that if a PSE specialist or option market maker absorbed these charges in order to remain competitive, it might have its profits seriously impaired, thereby reducing its ability to "compete effectively, which would be harmful to the capital market system."

Finally, P&M believed that the proposed charges would not be related to the cost of operating ITS because the predominant part of the charges would be variable in nature (applied on a per share basis) whereas ITS operating costs appear to be primarily fixed. Accordingly, P&M asserted that "it would not be equitable to charge for use of the ITS on a basis which has little relation to the costs of its operation."

In its comment letter, the PSE stated that its proposed specialist charges were consistent with the objectives of an NMS.[6] In this regard, the PSE felt that the formula developed to compute the applicable charges for transactions executed on ITS would encourage PSE specialists to disseminate competitive quotations within ITS so as to attract order flow from other market centers to the PSE, thus assisting the further development of the NMS. In addition, the PSE noted that the proposed charges would fall only on principal transactions, and, states that therefore, P&M's argument that the charges would be passed on to customers appeared to presume mistakenly that the charges also would be applied to agency trades.

The PSE also indicated that the proposed charges were developed after considerable input was received from PSE specialists and option market makers which are acknowledged to be the heaviest users of the system. In this regard, the PSE stated that an Exchange committee composed of Exchange members representing a cross section of members associated with trading activity on the equity floor (the two option floor governors were also invited to attend committee discussions) had

---

[1] For a further description of the proposed rule change, *see* Securities Exchange Act Release No. 19485 (February 3, 1983), 48 FR 6224.

[2] Securities Exchange Act Release No. 19485 (February 3, 1983).

[3] 48 FR 6224 (February 10, 1983).

[4] Letter from Michael F. Perlis, Pettit & Martin, to George A. Fitzsimmons, Secretary, SEC, dated February 28, 1983; Letter from Jerry M. Gluck, Vice President and General Counsel, PSE, to George A. Fitzsimmons, Secretary, SEC, dated March 10, 1983. The PSE also submitted supplemental comments on March 11, 1983.

[5] The commentator also indicated that the comment letter had been reviewed and was supported by the following PSE specialists and option market makers: Shiels Hoelscher & Company, W and D Securities, Daryl Willoughby, Ken Moore, Alan Schmidt, Leroy Klozemann and John George. In addition, by letter dated March 17, 1983, the commentator indicated that 32 option market makers supported its position. *See* Letter from Michael F. Perlis, Pettit & Martin, to George A. Fitzsimmons, Secretary, SEC, dated March 17, 1983.

[6] The PSE also noted that the ITS Plan permits participants to impose charges directly related to the operation of the system so long as the charges are not excessively high to discourage use of ITS. *See* Section 11(b) of the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Act.

examined the charges and believed that the charges were both necessary and equitable. Moreover, the committee indicated that specialists generally would not consider the charges as an important factor in deciding whether or not to trade through ITS. The PSE also indicated that it will review the fee structure periodically to ensure that the charges continue to be set at an appropriate level.[7]

III. Discussion

This PSE's proposed rule change raises the issue of what, if any, fees are appropriate for a self-regulatory organization to impose on its members in connection with the operation of an NMS facility.[8] In particular, the Commission would be concerned if any such fee acts as a disincentive to the use of an NMS facility such as ITS or otherwise interferes with best and efficient execution of customers' orders. The Commission has carefully examined the proposed PSE charges in light of the statutory standards and the comments received, and has determined that the rule change would not act as a disincentive to the use of ITS, and is otherwise consistent with the requirements of the Act.

The Commission is sensitive to the concerns raised in P&M's comment letter that the proposed charges would affect adversely the developing NMS. After carefully evaluating those concerns, however, the Commission believes that they will not, to any appreciable degree, arise as the result of the PSE's proposed ITS user charges. The proposed charges appear to be carefully designed not only to avoid disincentives to the use of ITS, but also to encourage more competitive market making on the part of PSE specialists. First, the per share charges apply only to the net principal order flow exported through the ITS to other market centers. As a result, if a PSE specialist normally maintains a balanced use of ITS (i.e., receives an equal number of orders through ITS as it sends), the proposed per share charges would not have any impact on the specialist and would therefore clearly not create any disincentives to the use of ITS on the floor of the PSE.[9] Thus, it would appear that the per share charges actually would act as an incentive for PSE specialists to maintain competitive quotations in order to attract order flow, thereby fostering enhanced competitive opportunities for brokers to execute investor's orders in the best market.[10] In addition, the Commission notes that the proposed rule change would not act as a disincentive to use of ITS to route agency orders, because use of the system in this manner would not result in the assessment of charges.[11]

Moreover, even to the extent that a specialist or option market maker uses ITS primarily to export orders, as principal, or to lay off or hedge proprietary positions,[12] the Commission believes that the per share charges are not of such a magnitude to cause those users to forego using ITS in situations where they would have otherwise utilized the facility.[13] In addition, as a result of the existence of ITS trade-through rules,[14] it would appear that PSE specialists would continue to route orders to the ITS market center quoting the best price unless they were willing to trade at a price equal to or better than that quotation. Accordingly, the Commission, in the absence of any empirical data to the contrary, does not believe that the PSE's proposed ITS user charges would act as a significant disincentive to the use of ITS. The Commission, of course, expects the PSE to monitor and, if necessary, report whether the practical application of the charges has affected adversely the use of ITS.

With respect to the level and application of the charges, the Commission finds that the charges represent a "fair and equitable allocation of reasonable * * * charges among . . . members" of the PSE, pursuant to Section 6(b)(4) of the Act. In this regard, the Commission would note that PSE specialists and option market makers derive significant benefits from ITS by utilizing that system, to a large extent, to effect principal acquisitions and layoffs in connection with their market making activities, whereas other users of ITS use the system primarily to route agency orders.[15] Therefore, in light of the overriding statutory interest in not imposing disincentives on best execution of public agency orders, the Commission believes that charges and fees which focus on the predominate users of the system for proprietary orders are consistent with the Act.[16]

---

[7] The PSE indicated that the direct and indirect costs associated with the ITS system exceeded the anticipated revenues from the proposed rule change. *See* note 17, *infra*.

[8] Although the Commission has approved two ITS-related charges in connection with the Boston Stock Exchange ("BSE"), as a result of the unique financial situation of the BSE, those charges are distinguishable from the PSE's proposed rule change. In Securities Exchange Act Release No. 16257 (October 9, 1979), 44 FR 59690, the Commission approved a BSE Clearing Corporation ("BSECC") proposed rule change which imposed a $.02 per share charge on BSECC members that cleared and settled transactions which resulted from commitments to trade sent from the BSE to another market center throught ITS. In approving the rule change, the Commission observed that the charge was "not a direct ITS fee, but rather a clearance and settlement charge which results from unique problems" at the BSECC. In Securities Exchange Act Release No. 18414 (January 12, 1982), 47 FR 3246, the Commission approved a BSE rule change which imposed a usage charge of $.005 per share on all trades resulting from BSE market participants exporting their orders to other market centers via ITS, effective for the period January 4, 1982 through December 31, 1982. The Commission noted that, although this was an ITS usage charge, the charge was appropriate because of its temporary nature and in light of the unique financial situation of the BSE. Moreover, the Commission indicated that the approval of the rule change did not "represent a Commission position regarding the broader question of the propriety of exchange-imposed ITS usage fees, in general." On January 31, 1983, the BSE filed a rule change with the Commission, effective upon filing pursuant to Section 19(b)(3)(A) of the Act, extending the BSE's fee until December 30, 1983.

[9] With respect to trading by all PSE members, the Commission notes that the outgoing commitment volume from the PSE is approximately equal to the share volume it receives through ITS. *See* Securities and Exchange Commission, *A Report on the Operation of the Intermarket Trading System: 1978–1981* (June 1982).

[10] *See* Section 11A(a)(1)(C)(iv) under the Act.

[11] The rule change also exempts principal transactions by specialists and option market markers in response to pre-opening application messages sent through ITS, thereby continuing to provide incentives for specialists and option market makers to accommodate public buying and selling interest at the opening.

[12] In this regard, the Commission would note that one of the key objectives of an NMS is to encourage competition between and among market makers and markets. *See* Section 11A(a)(1)(C)(ii) of the Act. Accordingly, to the extent that the charges act as an incentive for specialists to provide more competitive quotations, the Commission does not believe that it is inconsistent with NMS objectives for the PSE to so structure its charges. Although the Commission does not believe that the level or structure of the proposed charges would impose any burden on competition, the Commission finds that, to the extent, if at all, the charges would impose a burden on competition, such a burden is necessary or appropriate in furtherance of the purposes of the Act. *See* Section 6(b)(8) of the Act.

[13] The Commission also notes that because the standard minimum trading unit is an 8th point or $0.125 per share, the proposed $0.005 per share ITS user's charge would not appear to act as a significant disincentive to specialists or option market makers attempting to access superior quotations through ITS or to lay off or hedge proprietary positions in other market centers.

[14] A "trade-through" occurs when an execution takes place in one market center at a time when another market center is offering a better price. To discourage trade-throughs, as well as to provide specific remedies should they occur, the ITS participants have adopted trade-through rules. *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520 (exchange trade-through rules); Securities Exchange Act Release No. 19249 (November 17, 1982), 47 FR 53552 (NASD trade-through rules).

[15] The Commission notes that non-specialist and non-option market maker members of the PSE commonly are members of other exchanges. Thus, with respect to their proprietary business, these firms generally have the ability to route their orders directly to the best market without using the ITS. Accordingly, the benefits that ITS provides for floor participants' proprietary lay-offs are not generally applicable to upstairs participants.

[16] In this connection, the Commission notes that, of the various alternatives presented by the PSE to

Finally the Commission believes that the imposition of the variable per share charges on a facility whose costs are comprised mainly of fixed costs is appropriate because the PSE has indicated that these charges have been formulated to collect no more than the PSE's share of ITS operating costs.[17]

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and 11A, and the rules and regulations thereunder.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8440 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

raise revenues, the majority of members of an Exchange committee composed of both specialists and option market makers concurred with the PSE's determination to propose these charges.

[17] The PSE has indicated that the proposed charges will recoup approximately $500,000 of the $986,000 in costs the Exchange estimates it will incur, directly or indirectly, in the operation of ITS in 1983. Accordingly, the charges are designed to cover some, but not all, of the costs the Exchange estimates it incurs with respect to ITS. The PSE also has indicated that it will review the fee structure periodically to ensure that the charges continue to be set at an appropriate level. Indeed, the Commission would expect that, in the event the charges collected covered a substantially higher portion of the costs, the PSE would reexamine the appropriateness of the charges.

[18] The Commission would caution that the approval of the instant charges should not be seen as a change in its fundamental concern over the effects of any fee or charge on an NMS facility. In this regard, to the extent that other self-regulatory organizations propose charges on NMS facilities, the Commission will continue to review those charges carefully, especially in terms of their impact on public agency orders.

[19] 17 CFR 240.200.30-3(a)(12).

[Release No. 13107 (812-5423)]

Pruco Life Insurance Company of New Jersey, et al.; Application

March 22, 1983.

In the matter of Pruco Life Insurance Company of New Jersey, Pruco Life of New Jersey Variable Insurance Account, Pruco Securities Corporation, Pruco Life Series Fund, Inc., 213 Washington Street, Newark, New Jersey 07102.

Notice is hereby given that Pruco Life Insurance Company of New Jersey ("Pruco Life"), Pruco Life of New Jersey Variable Insurance Account (the "Account"), Pruco Securities Corporation ("Prusec"), and Pruco Life Series Fund, Inc. (the "Series Fund") (collectively, "Applicants") filed an application on January 10, 1983, and an amendment thereto on March 11, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemption from the provisions of Section 12(d)(1) of the Act to the extent necessary to permit transactions described in the application, and for an order pursuant to Section 11 of the Act approving the terms of certain offers of exchange. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein which are summarized below, and are referred to the Act for a statement of the relevant provisions.

The Account is a separate investment account of Pruco Life established for the purpose of funding certain variable life insurance contracts (the "Contracts") issued by Pruco Life. Applicants state that the Account is a "separate account" as defined by Section 2(a)(37) of the Act and Rule 0-1(e) under the Act, meets the requirements of Rule 6e-2(a) under the Act, and is registered under the Act as a unit investment trust. Prusec will act as the principal underwriter for the Contracts and for the shares of the capital stock of the Series Fund.

The Series Fund is registered under the Act as an open end, diversified management investment company. Applicants state that all securities issued by the Series Fund will be sold at their net asset value, without any sales charge, only to the Account and to a separate account of Pruco Life Insurance Company.

The assets of the Account will be derived from premium payments made pursuant to the Contracts. At present, the Account has three sub-accounts: the Money Market Sub-account, the Bond Sub-account, and the Common Stock Sub-account, each of which invests its assets exclusively in a corresponding portfolio of the Series Fund. Interests in each of the three portfolios of the Series Fund are represented by a separate class of capital stock. Contractowners may designate the sub-accounts of the Account to or among which their net premiums will be allocated, and may transfer all or a portion of the assets relating to their Contracts from one sub-account to another, without any charge, up to four times in each Contract year if no premiums are in default. Applicants state that the interests of contractowners in the sub-accounts of the Account are not held in the form of shares or units so that the concept of net asset value is inapplicable in this context but that the transfers should be deemed to be made on the basis of relative net asset value, for purposes of Section 11, because the value of the interests of contractowners after a transfer will be equal to the value of their interests prior to the transfer.

Relief Requested

Section 12(d)(1) of the Act, as here relevant, generally restricts the ability of a registered investment company to acquire the securities of any other investment company, and of a registered open-end investment company to sell its securities to any other investment company. However, Section 12(d)(1)(E) removes such restrictions if, *inter alia*, the acquired securities are the only securities held by a registered unit investment trust that issues two or more classes of securities, each of which provides for accumulation of shares of a different investment company. Applicants assert that the Account's acquisition of the securities of the various portfolios of the Series Fund is within this exception, but because each sub-account holds a different class of stock issued by the Series Fund (rather than securities issued by different investment companies), Applicants wish to remove any doubt about the matter and request an exemption from Section 12(d)(1), to the extent necessary, to permit the Account to acquire the shares of the Series Fund.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants also request an order pursuant to Section 11 of the Act, to the extent necessary, approving the terms of the offer of exchange described above. Section 11(a) generally makes it unlawful for any registered open-end investment company to make an offer to the holders of its securities to exchange their securities on any basis other than relative net asset values unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of the exchange, the provisions of Section 11(a) apply to any type of exchange offer involving the

securities of a registered unit investment trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8442 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13111 (811-632)]

Southwestern Investors, Inc.; Filing of Application

In the matter of Southwestern Investors, Inc., 1807 Ross Avenue, P.O. Box 2994, Dallas, TX 75221.

Notice is hereby given that Southwestern Investors, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified, management investment company, filed an application on January 24, 1983, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, on July 26, 1982, Applicant was merged into Plitrend Fund, Inc. ("Plitrend"). Applicant further states that, on March 22, 1982, its board of directors approved the Plan and Agreement of Merger ("Plan"), pursuant to which the merger would be completed. On June 1, 1982, a Notice of Special Meeting of Stockholders, Prospectus/Proxy Statement, and Proxy Card were mailed to holders of record of common stock of Applicant as of May 26, 1982. According to the application, at a special meeting of Applicant's stockholders held on July 23, 1982, a majority of the outstanding voting securities of Applicant's stockholders approved and adopted the Plan.

Applicant represents that, on July 26, 1982, Applicant and Pligrowth Fund, Inc., merged into Plitrend, and that on the same day the Articles of Merger and Plan of Merger were filed with the Department of State of the Commonwealth of Pennsylvania, and a Certificate of Merger was filed with the Secretary of State of the State of Delaware. The application states that upon the consummation of the merger, each share of capital stock of Pligrowth Fund, Inc. ("Pligrowth Stock") and common stock of Southwestern Investors ("Southwestern Investors Stock") was automatically converted into shares of capital stock of Plitrend Fund, Inc. ("Plitrend Capital Stock") on the basis of 1.10085087 shares of Plitrend Capital Stock for each share of Pligrowth Stock and .75279155 shares of Plitrend Capital Stock for each share of Southwestern Investors Stock. According to the application, the conversion of shares was based upon the rates which the net asset values per share of Pligrowth Stock and Southwestern Investors Stock bore to the net asset value per share of Plitrend Capital Stock. Such net asset values were determined as of the close of business on the New York Stock Exchange on July 23, 1982. Applicant maintains that the stock ownership of holders of Plitrend Capital Stock prior to the Merger was unaffected by the Merger.

The application states that Applicant no longer exists under Delaware law. Finally, Applicant states that it is not engaged, and does not propose to engage, in any business activities other than those necessary to the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8443 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13106 (812-5375)]

Sun Life Assurance Company of Canada (U.S.); Filing of Application

March 22, 1983.

In the matter of Sun Life Assurance Company of Canada (U.S.), Money Market Variable Account, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181.

Notice is hereby given that Sun Life Assurance Company of Canada (U.S.) ("Sun Life"), a stock life insurance corporation incorporated under the laws of Delaware, and Money Market Variable Account ("MMVA") (jointly, the "Applicants"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on November 1, 1982, and an amendment thereto on February 14, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit MMVA to use the amortized cost method of valuation to calculate the net asset value of the variable accumulation units of MMVA. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of those provisions thereof from which an exemption is being sought.

Applicants state that Sun Life issues life insurance policies and individual and group annuities. Applicants state

further that Sun Life is a wholly-owned subsidiary of Sun Life Assurance Company of Canada. Applicants represent that, as of June 30, 1982, Sun Life had total assets in excess of $200,000,000 and a capital stock and surplus in excess of $50,000,000.

Applicants state that MMVA was established by Sun Life on July 22, 1982, as the facility for issuing certain variable annuity contracts ("Contracts"). Applicants state that the investment objective of MMVA is to seek maximum current income to the extent consistent with stability of principal and the maintenance of liquidity by investing exclusively in short-term United States dollar-denominated money market instruments ("Instruments"). Applicants state that such Instruments will not have a remaining maturity of greater than one year and that MMVA will not maintain a dollar-weighted average portfolio maturity in excess of 120 days. The Instruments in which MMVA may invest include: (1) obligations of, or guaranteed by, the United States government, its agencies or instrumentalities; (2) bank certificates of deposit or bankers' acceptances issued by any domestic or Canadian chartered bank, including foreign branches of a domestic bank, which has total assets in excess of $1 billion; (3) commercial paper which at the date of investment is rated A–1 by Standard & Poor's Corporation or P–1 by Moody's Investors Service, Inc.; (4) repurchase agreements of obligations which are suitable for investment under the categories set forth in (1) above.

According to the application, in Investment Company Act Release No. 9786 (May 31, 1977), the Commission issued an interpretation of Rule 2a–4 expressing its view that, among other things, (1) Rule 2a–4 requires that portfolio investments of money market funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a money market fund to value its portfolio instruments on an amortized cost basis.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or the rules thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the amortized cost method of valuation is the method of calculating an investment company's current net asset value whereby portfolio securities are valued by reference to the company's acquisition cost as adjusted for amortization of premium or accumulation of discount rather than by reference to their value based on current market factors. Applicants represent that the Board of Managers of MMVA and the Board of Directors of Sun Life believe that it is in the best interests of owners with variable accumulation units in MMVA to adopt the amortized cost method of valuation for MMVA. Applicants represent further that this method will permit relatively steady daily dividends to such owners and, at the same time, such owners would have the convenience of being able to value their holdings simply by knowing the number of variable accumulation units of MMVA credited to their accumulation accounts.

Applicants state that values accumulating under Contracts in the form of variable accumulation units may change from one day to the next. As a result, Applicants are not able to stabilize the per unit net asset value of MMVA at $1.00 per unit. Applicants state that MMVA has adopted a bifurcated system of accounting which allows MMVA to monitor potential deviations attributable to the use of the amortized cost method. Applicants state that, internally, the system will allow MMVA to treat its assets as a separate portfolio with a fictional constant one dollar net asset value paying daily dividends. At the second prong of the accounting system, the mortality and expense risk charges will be imposed.

Applicants represent that the maturity of an Instrument shall be determined in accordance with the provisions of proposed Rule 2a–7 (the "Rule"), set forth in Investment Company Act Release No. 12206 (February 1, 1982), except that if the Rule should ultimately be adopted, the maturity of an Instrument shall be determined in accordance with the provisions of the Rule as adopted. Applicants represent further that when MMVA enters into a reverse repurchase or firm commitment agreement it will maintain in a segregated account (not with a broker), beginning on the date MMVA enters into such an agreement, liquid assets equal in value to the amount due on the settlement date under the agreement in accordance with Investment Company Act Release No. 10666 (April 18, 1979).

Applicants consent to the following conditions to an order granting the relief requested:

1. In supervising MMVA's operations and delegating special responsibilities involving portfolio management to MMVA's investment adviser, the Board of Managers of MMVA undertakes—as a particular responsibility within the overall duty of care owed to owners with variable accumulation units in MMVA—to establish procedures reasonably designed, taking into account current market conditions and MMVA's investment objective, to stabilize MMVA's net asset value per unit as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

2. Included within the procedures to be adopted by the Board of Managers of MMVA shall be the following:

(a) Review by the Board of Managers as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from MMVA's $1.00 amortized cost price per unit and the maintenance of records of such review. To fulfill this condition, MMVA intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of managers in the exercise of its discretion to be appropriate indicators of value, which may include, inter alia, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of securities published by reputable sources.

(b) In the event that such deviation from MMVA's $1.00 amortized cost price per unit should exceed ½ of 1%, a requirement that its Board of Managers will promptly consider what action, if any, should be initiated.

(c) Where the Board of Managers determines that the extent of any deviation from MMVA's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing owners, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten MMVA's average portfolio maturity; suspending dividends' or utilizing a net asset value per unit as determined by using available market quotations.

3. MMVA will maintain a dollar-weighted average porfolio maturity appropriate to its objective of maintaining a stable net asset value per unit; provided, however, that MMVA will not (a) purchase any instrument

with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, MMVA agrees that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, it will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. MMVA will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above and MMVA will record, maintain and preserve for a period of not less tha six years (the first two years in an easily accessible place) a written record of its Board of Managers' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the meetings of that Board of Managers. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. MMVA will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its Board of Managers determines present minimal credit risks, and which are of high quality as determined by any major rating service or in the case of an instrument that is not rated, of comparable quality as determined by its Board of Managers.

6. If any action pursuant to condition 2(c) is taken, MMVA will include in its next quarterly report, as an attachment to Form N–1Q, a statement describing the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 18, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8449 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22891 (70-6505)]

West Penn Power Co.; Supplemental Notice of Proposed Pollution Control Financing

March 25, 1983.

In the matter of West Penn Power Co., 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.

West Penn Power Company ("West Penn"), an electric utility subsidiary of Allegheny Power System, Inc., a registered holding company, has filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

By order dated December 8, 1980 (HCAR No. 21830), West Penn was authorized to enter into the first phase of a plan to finance the installation of pollution control equipment and facilities ("Facilities") at West Penn's Mitchell Power Station in Washington County, Pennsylvania. These Facilities are now substantially complete. That initial phase involved the issuance of $60,000,000 principal amount of three-year pollution control revenue bonds ("Series A Bonds") by the Washington County Industrial Development Authority ("Authority").

By order dated May 11, 1981 (HCAR No. 22045), West Penn was authorized to enter into a second phase of financing of the Facilities. The second phase contemplated a refunding of the three-year bonds ("Series A Bonds") prior to maturity through the issuance of long-term bonds by the Authority and the issuance of notes by West Penn having maturities not to exceed forty years. The Series A Bonds bear interest at the rate of 9% per annum, mature on December 1, 1983, and are subject to optional redemption on or after December 1, 1982 at 100% of the principal amount thereof plus accrued interest to the redemption date. Jurisdiction was reserved in the May 11, 1981 order over the terms and conditions of the long-term bonds to be issued by the Authority insofar as such terms and conditions affect the payments to be made by West Penn under the proposed long-term promissory notes and over the fees, commissions and expenses to be incurred in connection with the long-term financing.

By Commission order dated February 9, 1983 (HCAR No. 22849), West Penn was authorized to deliver its long-term promissory note to the Authority corresponding to $30,000,000 aggregate principal amount of long-term bonds ("Series B Bonds") maturing January 15, 2003, and bearing interest at 9.75% per annum issued by the Authority. The February 9, 1983 order also authorized an increase from $60,000,000 to $65,000,000 aggregate principal amount of long-term pollution control financing. That order reserved jurisdiction over the fees, commissions, and expenses to be incurred in connection with the Series B Bonds and over the terms and conditions of the additional series of bonds to be issued by the Authority, insofar as such terms and conditions affect the payments to be made by West Penn under the proposed long-term promissory notes and with respect to fees, commissions, and expenses to be incurred in connection with the additional series.

As of January 31, 1983, West Penn has spent approximately $65,000,000 in connection with the Facilities. The total cost of the Facilities is now expected to approximate $80,000,000. To the extent that funds derived through the sale of pollution control bonds as proposed herein, or from any additional pollution control bonds which may be sold in the future, subject to appropriate regulatory approvals, are insufficient to pay the total cost of the Facilities, West Penn will be required to pay for the completion of the Facilities at its own expense.

West Penn now seeks authority to issue an additional $15 million of bonds making an aggregate of $80,000,000. The additional funds will be used, in part, to reimburse West Penn for (1) Facilities costs which exceeded the original estimate, (2) interest on the Series A Bonds during the period of construction, and (3) the costs incurred in issuing the Series A Bonds and the Series B Bonds. The balance of the additional funds will be used to pay the cost of certain enhancements to be made to the Facilities and to pay costs associated with the issue and sale of additional series of bonds.

It is expected that one or more series of bonds in addition to the Series B Bonds will be issued prior to the maturity of the Series A Bonds by the

Authority for the purpose of redeeming or paying at maturity the balance of such Series A Bonds and financing the cost of the Facilities in excess of the $60,000,000 initially financed by the issuance of the Series A Bonds and partially refinanced by the Series B Bonds. The bonds will be issued under a trust indenture with a corporate trustee, approved by West Penn, and shall be sold in one or more series, at such times, in such principal amounts, at such interest rates, and for such prices as shall be approved by West Penn. The timing of any such financing will depend on a subjective determination by West Penn of market conditions which are expected to prevail through the maturity of the Series A Bonds.

West Penn will deliver with the issuance of each series of bonds its nonnegotiable Pollution Control Notes ("Notes") corresponding to such series of bonds in respect of principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Payments of the Notes will be make to the Trustee under a supplemental indenture which will provide that substantially all the proceeds of the sale of the bonds by the Authority must be applied to the cost of the Facilities, including the cost of refunding the Series A Bonds. Payments on the Notes will be applied by the Trustee to pay the maturing principal and redemption prices of and interest and other costs on the bonds as the same become due. West Penn also proposes to pay any trustees' fees or other expenses incurred by the Authority. The Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to the Mortgage and Security Agreement delivered by West Penn to the Trustee creating a mortgage and security interest in the Facilities and certain other property (subject to the lien securing West Penn's First Mortgage Bonds). The Notes will not constitute unsecured debt within the meaning of the provisions of West Penn's charter.

It is intended to the extent feasible to accomplish by the proposed transactions a permanent long-term financing of the Facilities. Market conditions prevailing at the time of the offering may warrant the issuance of the bonds with floating interest rates during all or a portion of the stated life of the bonds based on a specified index as well as provisions permitting the bondholders to require the redemption or repurchase of the bonds at stated intervals. West Penn will file an appropriate amendment setting forth such provisions if it is determined to include such special terms.

It is expected that the Authority will engage Goldman, Sachs & Co. and any co-managers that may be desirable to provide financial advice and, together with such other underwriters as may be designated, underwrite the sale of the bonds. Fees, commissions, and expenses of the underwriters and legal counsel will be included in the total cost of the Facilities. West Penn has been informed that the Authority has legal authority to issue tax exempt revenue bonds. West Penn has been advised that the annual interest rate on tax exempt bonds has been approximately 1% to 3% lower than the interest rate on taxable obligations of comparable quality, depending upon the type to be sold by the Authority.

The amended application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 18, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8444 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19628; File No. SR-AMEX-83-5]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Increase of Position and Exercise Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1983, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "the Exchange") proposes to amend Exchange Rules 904 and 905 regarding position and exercise limits, as set forth below. Italics indicates material proposed to be added. Brackets [] indicate material proposed to be deleted.

Rule 904. Position Limits

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, an opening transaction (whether on the Exchange or on another Participating Exchange) in an option contract of any class of options dealt in on the Exchange if the member or member organization has reason to believe that as a result of such transaction the member or member organization or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in option contracts (whether long or short) of the put class and the call class on the same side of the market covering any underlying security in excess of:

(i) [2,000] *2,500 or 4,000* contracts covering an underlying stock, *which limit is determined in accordance with Commentary .07*

(ii) through (v)—no change.

. . . Commentary

.01 through .06—no change

.07 The position limit shall be 4,000 contracts for options:

(i) on an underlying stock which had trading volume of at least 20,000,000 shares during the most recent six-month trading period; or

(ii) on an underlying stock which had trading volume of at least 15,000,000 shares during the most recent six-month trading period and has at least 60,000,000 shares currently outstanding.

The position limit shall be 2,500 contracts for all other options.

The Exchange will review the volume and outstanding share information of all

underlying stocks every six months to determined which limit shall apply. The 4,000 limit will be effective on the date set by the Exchange, while any change from a 4,000 to a 2,500 limit will take effect after the last expiration then trading, unless the requirement for a 4,000 limit is met at the time of an intervening six-month review.

Rule 905. Exercise Limits

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in excess of:

(i) [2,000] *the number of* option contracts *set forth as the position limit in Rule 904* in a class of options for which the underlying security is a stock; or

(ii) through (vi)—no change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to increase position and exercise limits for stock options in order to add to market depth and liquidity.

Position and exercise limit rules were originally adopted by option exchanges in order to minimize the manipulative potential which could result from the accumulation of large options positions. In 1978, the Special Study of the Options Market ("Study") recognized a number of significant problems which resulted from the position limit rule restrictions, including the inability of large portfolio managers to utilize options as a vehicle to properly balance a portfolio's risk and potential reward. The Study recommended that existing Exchange rules, which limited the size of options positions held by market participants, be reviewed and that their relaxation or elimination be considered. As a result of re-examination of position limits, as suggested in that Study, the Exchange proposed rule changes which were adopted in October 1980 to raise position and exercise limits from 1,000 to 2,000 contracts. In view of the increased use of the options markets and the experience gained during the two years since the position limits were increased in 1980, the Exchange believes that it is appropriate at this time to again increase position and exercise limits.

In its 1980 release approving position and exercise limit increases, the Commission made the following statements (Release No. 34–17237) that the Exchange believes also apply to the current proposal to increase limits:

> * * * There is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications * * *

It should be noted that position limits cannot be justified as a protection against financial exposure. While unhedged larger positions do entail larger financial risks, position limits are cumbersome and ineffective mechanisms for limiting those risks. Rather, those rules which have been designed specifically to limit risk exposure should be used for this purpose, namely, suitability, margin and net capital rules.

The change from 2,000 to 2,500 option contracts is minimal, especially in view of the Exchange's experience to date with the 2,000-contract limit. The change from 2,000 to 4,000 option contracts involves standards that are a protection against possible manipulation. These standards insure that only option contracts having an underlying stock that has either very high trading volume or high trading volume and a high number of shares outstanding will receive the higher limit. The standards mean that the options and stocks involved are significantly less susceptible to mainpulation. To be eligible for the 4,000-contract limit, either the most recent six-month trading volume of the underlying stock must have totalled at least 20,000,000 shares; or the most recent six-month trading volume of the underlying stock must have totalled at least 15,000,000 shares and the underlying stock must have at least 60,000,000 shares currently outstanding.

Every six months, the Exchange will review the status of underlying stocks to determine which limit should apply. Two new lists shall be published and distributed to all members, member firms and Registered Options Principals. The 4,000 limit will be effective on the date set by the Exchange, which date will allow time for appropriate notice to be given. Any change from a 4,000 to a 2,500 limit will take effect after the last expiration then trading, unless the requirement for a 4,000 limit is met at the time of the intervening six-month review.

The basis for this proposed rule change in section 6(b)(5), in that the change would increase market depth and liquidity, which is in the public interest, while continuing to protect investors from manipulative activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments of the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A). By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication

Dated: March 23, 1983.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8448 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19626; File No. SR-NYSE-83-10]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Standards and Procedures Used by the Exchange for the Allocation of Securities to Specialists

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1983, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change codifies the standards and procedures currently in use by the Exchange for the allocation of securities to specialists. The proposed rule change, Rule 103B, will apply when a new security is to be listed on the Exchange, when a security is to be reallocated as a result of proceedings under Rules 103.11, 103A, 475 or 476, or whenever a specialist unit voluntarily surrenders a security and it is to be allocated to another specialists unit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for the allocation of Exchange-listed securities to specialist units by the Allocation Committee of the Exchange prior to the admission of such securities to dealings on the Exchange, in instances where a specialist's registration in a listed security is withdrawn as a result of proceedings under Exchange Rule 103.11, Rule 103A, Rule 475 or Rule 476, or when a specialist unit voluntarily surrenders a security and it is to be allocated to another specialist unit. The proposed rule change sets forth the Exchange's current system for the allocation of securities to specialists which is an efficient mechanism to fairly allocate listed securities to specialist units. The purpose of the allocation system is twofold: (1) to ensure that securities are allocated in an equitable and fair manner and that all specialists units have a fair opportunity for allocations based on clearly defined criteria and procedures, and (2) to provide an incentive for improved market-making performance by specialists units.

When the Board approved the recommendations of the Committee to Study the Stock Allocation System in 1976, it created an entirely new body (the Allocation Committee) to allocate securities to specialist units under Board-granted authority. Features of the allocation system implemented in 1976 specifically addressed criticisms of the former system, and include:

- The development and publication of specific allocation criteria for use in allocation decisions, with the primary emphasis on specialists performance;
- The structuring of a nine-person Allocation Committee so that Committee members are randomly selected by the Exchange staff from a 36-person Allocation Panel. Committee members serve only six-month terms, and every two months three members are rotated, thereby fostering objectivity and continuity in the decision-making process;
- Representation on the Allocation Committee of allied members and both specialist and Floor broker members; and
- Announcement of the reasons for each allocation decision to Exchange members and, in the case of a new listing, the listing company to emphasize the Allocation Committee's primary consideration of specialist performance. This procedure, as well as the possibility for a stock reallocation under Rule 103A, provide an incentive for highly rated specialist units to maintain their performance and for others to improve.

Because each specialist unit wishes to expand its business by increasing the number of its specialty stocks, allocation standards and procedures have succeeded in improving the level of specialist performance overall, resulting in higher quality markets. This benefits the investing public, member organizations and listed companies.

In general, the rule change provides that when a security is to be allocated by the Exchange's Allocation Committee, all specialist units will be invited to apply for the security, that the allocation decision will be made according to the Allocation Committee's published allocation criteria which emphasizes specialist performance as measured chiefly by the Specialist Performance Evaluation Questionnaire (which is the subject of the Exchange filing SR-NYSE-83-7) by procedures that the Committee has determined to be be appropriate and fair, and that the reasons for each of the Committee's allocation decisions will be made known to the Exchange membership and, in the case of a new listing, the listing company.

Statutory Basis for the Proposed Rule Change

By providing a fair procedure by which securities are allocated to specialist units which apply for them, and by selecting from among applicants on an objective basis which rewards superior performance, the proposed rule change furthers the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"), which requires that the rules of the Exchange be "designed * * * to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and * * * not [be] designed to permit unfair discrimination between customers, issuers, brokers or dealers * * * ."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, by establishing a procedure by which all specialist units' applications for an Exchange listed security will be considered and by assuring that the selection will be based on merit, the proposed rule change encourages fair competition among specialist units to the benefit of the investing public and in a manner consistent with the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 2 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8447 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13112; (812-5501)]

Lincoln National Pension Insurance Co. and Lincoln National Pension Variable Annuity Account C; Application for an Order

March 28, 1983.

Notice is hereby given that Lincoln National Pension Insurance Company ("LNP") and Lincoln National Pension Variable Annuity Account C (the "Separate Account"), 1300 South Clinton Street, Fort Wayne, Indiana 46801, a separate account of LNP registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively, "Applicants"), filed an application on March 22, 1983 for an order amending two prior orders of the Commission pursuant to Section 11 of the Act approving the terms of certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provision.

The Separate Account offers the variable portions of LNP annuity contracts. LNP is the principal underwriter of the contracts. Purchase payments less applicable charges are allocated to one or more sub-accounts of the Separate Account, each of which invests solely in shares of a specified registered open-end company (collectively, the "Eligible Funds") or, under the fixed portion of the contracts, to the general account of LNP (the "General Account"). The Eligible Funds are the Lincoln National Corproate Bond Fund, Inc., Lincoln National Growth Fund, Inc., Lincoln National Money Market Fund, Inc., and Lincoln National Special Opportunities Fund, Inc. Shares of the Eligible Funds are sold to the Separate Account at net asset value. Prior to annuitization, a contractowner may transfer all or a portion of his investment in one sub-account (or the General Account) to another sub-account (or the General Account), subject to certain limitations. No transfers are permitted subsequent to annuitization. For transfers between sub-accounts or for transfers from the General Account to a sub-account, the amount transferred will be used to purchase accumulation units in the sub-account at the then current net asset value of those accumulation units.

Applicants received an order of the Commission on December 16, 1981 (Investment Company Act Release No. 12113), pursuant to Section 6(c) of the Act, exempting certain transactions from various provisions of the Act and, pursuant to Section 11 of the Act, approving the terms of certain offers of exchange. Applicants received a second order of the Commission, amending the first order, on September 21, 1982 (Investment Company Act Release No. 12680), pursuant to Section 6(c) of the Act exempting certain transactions from various provisions of the Act. Applicants now seek an order of the Commission amending these prior orders to allow Applicants to make offers of exchange not only among the four sub-accounts covered by the prior orders, but also among each of those four sub-accounts and a new fifth sub-account which will invest solely in the shares of a new investment company, the Lincoln National Managed Fund, Inc.

Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act to permit contractowners under the contracts to transfer all or part of their investment in one sub-account of the Separate Account (or in the General Account) to another sub-account (or the

General Account) prior to the annuity commencement date, subject to certain limitations on the frequency and amount of transfers, where permitted under applicable law and by the retirement plan under which a given contract is issued.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8549 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19629; File No. SR-MSE-83-3]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Relating to Changes in MSE's Automatic Execution System (MAX)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1983, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.[1]

[1] The Commission has approved on an accelerated basis the effectiveness of the proposed rule change through May 1, 1983. This release serves as notice of the proposed rule change's effectiveness through May 1, 1983, as well as its proposed permanent effectiveness; comments are invited on both. The timing for Commission action on the permanent effectiveness of the proposed rule change is described in Item III below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE's Automatic Executive System (MAX) enables orders in eligible issues to be routed directly to the respective Specialists and such orders are executed automatically within the parameters of MSE Article XX, Rule 34, MSE's Guaranteed Execution System (BEST System) (See SR-MSE-82-5). In addition MAX can currently be utilized as a delivery vehicle to Specialists for orders above the BEST requirement (i.e. 400 shares or more) depending upon various arrangements worked out directly between the Specialist and the order sending firm. Such orders are not subject to the BEST requirement and are handled manually by the Specialist.

Certain enhancements are being added to the MAX system as summarized below. These changes as a service to Specialists primarily automate certain functions which previously had to be done manually by the Specialist.

(1) *Size*—This change will allow the specialist to designate an order size per issue that he will accept for automatic execution with a minimum of 400 shares (the threshold). The order sending firm will also designate a threshold.

If the order sending firm submits an order size greater than the specialist's threshold, the order *will not* be eligible for automatic execution and will be designated as an open order. A specialist, however, may manually execute any portion of such order and the difference will remain as an open market order unless cancelled by the order sending firm.

Example:

—Specialist issue threshold is 699 shares.

—Order sending firm threshold is 999 shares.

—Order is sent for 500 shares—the order will be executed automatically.

—If the order is for 800 shares, the order size exceeds the specialist's threshold and *will not* be executed automatically, but would be positioned as an open order.

—If the Specialist manually fills 699 shares, the 101 shares will remain as an open order. Previously, the system would have cancelled the 101 shares.

(2) *Limit Orders*—Limit orders will be automatically executed when the market price (in the primary market) trades through the limit price.

Example:

—Limit order to buy 100 shares at 95.

—Market price is 95¼.

—If the market price falls to 94⅞ or below, the limit order will then be executed automatically.

The Specialist may, however, execute the limit order manually at any time.

(3) *"Stop" an Order from Automatically Executing*—A Specialist may put a "stop" on an order for the purpose of guaranteeing the order to be filled at the price at the time the stop was indicated or at a better price during the trading session. The "stop" order *will never* be automatically executed but is positioned in the open order file. The sending firm will receive a report of a fill at the stop order or better price.

(4) *Cancel/Changes*—If an order is sent through MAX and an error is discovered before execution, which can be corrected by changing certain terms of the order, upon the order sending firm initiating the correction, the system will correct the error. The order will retain its position in the book versus cancelling the order and entering a new order.

(5) *Cancels*—MAX will now automatically cancel an order in the file upon a request by the order sending firm.

(6) *Pre-Opening Orders*—Pre-opening orders will automatically be matched (offset) by the system without requiring the Specialist to be on either side of a trade. The Specialist will only have to take a position when there is an imbalance of shares when buy/sell orders are matched. The pre-opening orders will fill at the primary market opening prices.

Example:

—1000 shares buy order by brokers A and B at 500 shares each.

—1200 shares sell order by brokers X (500 shares), Y (500 shares), and Z (200 shares).

Change:

—X sells 500 shares to A.

—Y sells 500 shares to B.

—Z sells 200 shares to Specialist.

Previously:

—X sells 500 shares to Specialist.

—Y sells 500 shares to Specialist.

—Z sells 200 shares to Specialist.

—Specialist sells 500 shares to A.

—Specialist sells 500 shares to B.

(7) *"Hold" Period*—The Specialist may put one order on "hold" at a time. The previous period was 5 minutes. The change will reduce the hold period to 2 minutes. The purpose of "hold" is to keep the order from executing for the designated period and generally used before giving up an order or changing the volume or price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed MAX enhancements provide a more efficient means by which MSE Floor Members may execute orders, thus providing better service to Specialists, order sending firms, and their customers. Such enhancements, however, do not alter or change any specialist obligations or requirements under MSE Rules but, for the most part, merely automate what a specialist previously had to do manually. These MAX enhancements enable orders ineligible issues to be executed automatically within the parameters of applicable MSE trading rules and certain thresholds established by the specialist.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the automated order routing and execution enhancements of MAX facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received from members or participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has found good cause for approving the proposed rule change on a temporary basis, through May 1, 1983, prior to the thirtieth day after the date of publication of filing thereof in that such temporary approval avoids any delay in effectuating changes to MAX that are ready for immediate implementation and are as well apparently beneficial, while at the same time allowing for public comment upon and complete Commission consideration approval of these changes on a permanent basis.

As noted above, the Commission at the same time is publishing notice of and inviting comment upon the proposal to approve the proposed rule change on a permanent basis.[2] Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-8548 Filed 3-31-83; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* note 1, *supra.*

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-0457]

Ferranti High Technology, Inc.; Application for License to Operate as a Small Business Investment Company

An Application for a License to Operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Ferranti High Technology, Inc. (Ferranti High), 505 Park Avenue, New York, New York 10022, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1982).

The officers, directors and stockholders of the Applicant are as follows:

Sanford R. Simon, 7002 Boulevard East 31E, Guttenberg, New Jersey 07092; President, Director.

Keith Langworthy, 16 Hereford Drive, Princeton Junction, N.J. 08550; Vice President, Secretary.

Alan Duncan, 57 Shaftsbury Way, Strawberry Hill, Twickenham, Middx, England; Director.

David G. Pacy, 15 Saddle Road, Stony Brook, New York 11790; Director.

Ferranti Holdings, Inc., 1500 Green Hills Road, Scotts Valley, California 95066; 80%.

Bishopscourt Investments Limited, 8 Bishopsgate, London EC2N4AE; 20%.

Ferranti Holdings, Inc. is a wholly-owned subsidiary of Ferranti Holdings Limited, which is a corporation organized under the laws of England. Bishopscourt Investments Limited is a wholly-owned subsidiary of Baring Brothers & Co., Limited, which is a large merchant bank organized under the laws of England.

The Applicant, Ferranti High, a Delaware corporation, will begin operations with $3,000,000 paid-in capital and paid-in surplus. Ferranti High will conduct its activities in the State of New York but will consider investments in businesses in all areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit

written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 25, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-8529 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5447]

Freshstart Venture Capital Corp.; Issuance of a Small Business Investment Company License

On July 13, 1982, a notice was published in the **Federal Register** (47 FR 30346) stating that an application has been filed by Freshstart Venture Capital Corp., 1841 Broadway, New York, New York 10023, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)) for a license as a small business investment Company.

Interested parties were given until close of business August 7, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5447 on February 24, 1983 to Freshstart Venture Capital Corp., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 18, 1983.

Edwin T. Holloway,

Associate Administration for Finance and Investment.

[FR Doc. 83-8528 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

Grocers Capital Company, Inc.; Application for Approval of Conflict of Interest Transaction between Associates

Notice is hereby given that Grocers Capital Company, Inc. (Grocers), 2601 S. Eastern Avenue, Los Angeles, Californai 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1982)) for approval of a conflict of interest transaction.

Grocers proposes to loan $300,000 to Superior Warehouse Grocers, 7316 Compton Avenue, Los Angeles, California 90001. The proceeds of the loan will be used to purchase equipment or inventory from Grocers Equipment Company (G.E.C.) and/or Certified Grocers of California, Ltd. (Certified), Associates of the Licensee.

All of Grocer's stock is owned by subsidiaries of Certified, a retailer owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations.

As a result, Grocers' financing to Superior Warehouse Grocers fall within the purview of §§ 107.3 and 107.1004(b)(5) of the SBA Regulations. Grocers' loan to Superior Warehouse Grocers requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 10 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 25, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-8532 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

Grocers Capital Company, Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Grocers Capital Company, Inc. (Grocers), 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1983)) for approval of a conflict of interest transaction.

Grocers proposes to loan $140,000 to Oak Creek Market, Inc., 1328 Main Street, Ramona, California 92065. The proceeds of the loan will be used to purchase equipment or inventory from Grocers Equipment Company (G.E.C.) and/or Certified Grocers of California, Ltd. (Certified), Associates of the Licensee.

All of Grocer's stock is owned by subsidiaries of Certified, a retailer owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations.

All of Grocer's stock is owned by subsidiaries of Certified, a retailer owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 10 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Ramona, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 25, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-8533 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

H.B.R. Capital Corp.; Filing of Application for Transfer of Control of Licensed Small Business Investment Company (SBIC)

[License No. 02/02-5385]

Notice is hereby given that an Application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the SBA regulations governing small business investment companies for the transfer of control of H.B.R. Capital Corporation (13 CFR 107.701(1982)), 1775 Broadway, New York, New York 10019, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), License No. 02/02-5385.

H.B.R. Capital Corporation was licensed on October 9, 1980. Its present

combined paid-in capital and surplus is $500,000. The proposed transfer of control is subject to, and contingent upon, the approval of SBA.

The applicants are purchasing all of the issued and outstanding stock of H.B.R. Capital Corporation and will relocate the principal office of the Licensee to: 41 East 42nd Street, New York, New York 10017.

The proposed new officers, directors and stockholders of the applicant are as follows:

President and Director: Manny Zisser, 430 Shore Road, Long Beach, NY 11561.

Secretary, Director and Treasurer: Jean Zisser, 430 Shore Road, Long Beach, NY 11561.

Director: A.J. Greenberg, 155 W. 68th Street, New York, NY 10023.

Symbax Pension Plan: 41 East 42nd Street, New York, NY 10017.

The Applicant proposes to increase the private capital of the Licensee by $500,000 upon approval from SBA to bring the total private capital to $1,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner and management, and the probability of successful operations of H.B.R. Capital Corporation under their management and control, including adequate profitability and financial soundness, in accordance with the Act, and Regulations.

Notice is hereby given that any person may, (not later than (15) days from the date of publication submit to SBA, in writing, comments of the transfer of control. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 18, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-8527 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

Region II—Advisory Council; Public Meeting

The Small Business Administration, Region II Newark Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 10:00 a.m. on Thursday, April 14, 1983, at the Peter Rodino Federal Building, 970 Broad Street, Room 1635 Newark, New Jersey to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Andrew P. Lynch, District Director, U.S. Small Business Administration, 970 Broad Street, Newark, New Jersey 07102, 201-645-3580.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

March 25, 1983.

[FR Doc. 83-8531 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 10:00 a.m. to 2:30 p.m., on Thursday, April 28, 1983, in the Conference Room, Omaha District Office, U.S. Small Business Administration, 19th and Farnam, Omaha, Nebraska, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 19th and Farnam, Omaha, Nebraska 68102—(402) 221-3620.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

March 25, 1983.

[FR Doc. 83-8530 Filed 3-31-83; 8:45 am]

BILLING CODE 8025-01-M

SYNTHETIC FUELS CORPORATION

Interim Environmental Monitoring Plan Guidelines

AGENCY: U.S. Synthetic Fuels Corporation

ACTION: Publication of interim Environmental Monitoring Guidelines.

SUMMARY: This notice publishes, and invites written public comment on, Environmental Monitoring Plan Guidelines which have been adopted in interim final form by the Board of Directors of the U.S. Synthetic Fuels Corporation to carry out the requirements of Section 131(e) of the Energy Security Act, Pub. L. 96-294, relating to environmental monitoring plans. Written comments will be accepted through May 23, 1983, and should be directed to the Corporation's Director of Environment at the address indicated below. Copies of the Environmental Monitoring Plan Guidelines and all comments thereon will be available in the Corporation's Public Reading Room at the address indicated below. After receipt of comments, the Environmental Monitoring Plan Guidelines will be presented to the Corporation's Board of Directors, with such changes as may be recommended by the Chairman, for adoption in final form.

FOR FURTHER INFORMATION CONTACT: Steven M. Gottlieb, Director of Environment, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6316.

For copies of the guidelines and public comments: Catherine McMillan, Director of Public Disclosure, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460.

United States Synthetic Fuels Corporation, Interim Environmental Monitoring Plan Guidelines

Table of Contents

I. Purpose
II. Statutory Basis
III. General Approach to Implementing Section 131(e)
IV. Procedures for Developing Outlines and Plans
  A. General Considerations
  B. Development of Outlines
  C. Development of Plans
  D. Determination of Acceptability
V. Substantive Areas of Outlines and Plans
  A. Overview
  B. Supplemental Monitoring
  C. Substantive Monitoring Areas
  1. General
  2. Source Monitoring
  3. Ambient Monitoring
  4. Health and Safety Monitoring
  5. Other Monitoring
  D. Quality Assurance/Quality Control
  E. Data Management: Reporting Requirements
VI. Confidentiality of Data
VII. Monitoring Review Committees
  A. Membership; Meetings
  B. Functions
  1. Data Review
  2. Modification of Monitoring Requirements
VIII. Amending the Guidelines

I. Purpose

Section 131(e) of the Energy Security Act specifies that project sponsors receiving financial assistance from the United States Synthetic Fuels Corporation (the "Corporation") shall develop, in consultation with the Environmental Protection Agency ("EPA"), the Department of Energy ("DOE") and appropriate state agencies an environmental monitoring plan

acceptable to the Corporation's Board of Directors. In implementing this statutory mandate, the Corporation is utilizing a two-stage approach under which the sponsors (1) develop an *Outline* of their monitoring plans, which will be incorporated into financial assistance contracts, and (2) develop a monitoring *plan* (based on the outline) after financial assistance contracts are executed.

The purpose of these Guidelines is to set forth the procedural steps to be taken and the broad substantive areas to be addressed in developing outlines and plans. The Guidelines provide the general basis on which the Corporation will determine the "acceptability" of outlines and plans. However, the Guidelines do not specify the substantive details required for an acceptable outline or plan since the actual development of an outline and plan is the responsibility of sponsors, in consultation with the appropriate agencies.

II. Statutory Basis

Section 131(e) of the Energy Security Act ("ESA") requires that:

> Any contract for financial assistance shall require the development of a plan, acceptable to the Board of Directors, for the monitoring of environmental and health-related emissions from the construction and operation of the synthetic fuels project. Such plan shall be developed by the recipient of financial assistance after consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and appropriate state agencies.

The Conference Committee's Joint Explanatory Statement relating to this provision states, in pertinent part:

> The monitoring of emissions—gaseous, liquid or solid—and the examination of waste problems, worker health issues and other research efforts associated with any synthetic fuels project * * * will help to characterize and identify areas of concern and develop an information base for the mitigation of problems associated with the replication of synthetic fuels projects. The Corporation is not expected to involve itself in the development or execution of such plans except for the necessary approval. The conferees intend that development of the plans and actual data collection be reserved to the applicants for financial assistance after consultation with appropriate federal and state agencies. (Joint Explanatory Statement of the Committee of Conference; pp 208–209 of Compilation of the Energy Security Act of 1980.)

III. General Approach To Implementing Section 131(e)

The Corporation views the characterization and identification of areas of concern and the development of an information base for the mitigation of problems associated with the replication of synthetic fuels projects to be the fundamental purposes of environmental monitoring pursuant to monitoring plans under Section 131(e). Toward this end, the Corproation requires that sponsors perform a broad range of monitoring activities, during the entire life-cycle of their project.[1] (Socioeconomic and water consumption monitoring will not be considered to be part of monitoring under Section 131(e); however, it is anticipated that some socioeconomic and water consumption monitoring will be required by separate terms of the financial assistance contract.) Monitoring pursuant to section 131(e) shall include that which is required by federal, state, and local permits, approvals,[2] and other regulatory obligations ("compliance monitoring") and, as appropriate, additional requirements ("supplemental monitoring"), such as the monitoring of unregulated substances which may be present at concentrations of significant environmental or health concern.[3]

The Corporation requires that the environmental monitoring plan be developed in two stages. In the first stage, sponsors are required to develop an outline of the environmental monitoring plan ("outline"), in consultation with the federal and state agencies referred to in section 131(e) (the "consulting agencies"). This outline, which will contain a general description of the sponsors' monitoring tasks, will be incorporated into the financial assistance contracts. Under the second stage, sponsors are required, by a date fixed in the contract, to develop an environmental monitoring plan ("plan") which provides a detailed description, based upon the general terms of the outline, of the specific monitoring tasks to be undertaken. Both the outline and plan shall address the methods by which data will be acquired, managed, and analyzed. The plan should be viewed by sponsors and consulting agencies as a dynamic document which can be modified as conditions warrant.

In determining the "acceptability" of the outline and plan under Section 131(e), the Corporation will decide whether the sponsors have addressed both the broad monitoring areas referred to in the Guidelines and the specific recommendations of the consulting agencies. The Corporation will consider the costs of monitoring relative to the potential usefulness of this information. Where the sponsors do not include in their outlines or plans monitoring which is indicated in these Guidelines or recommended by the consulting agencies, a specific explanation shall be provided which will be evaluated by the Corporation as part of the process of making acceptability determinations.

IV. Procedures for Developing Outlines and Plans

A. General Considerations

To promote the timely development of sound monitoring outlines and plans, with meaningful input from the consulting agencies, the procedural approach set forth below should be used in developing and reviewing monitoring outlines and plans. In implementing these procedures, several general points are relevant:

- Section 131(e) formally designates EPA, DOE and appropriate state agencies [4] as consulting agencies for purposes of developing monitoring plans. While the Corporation has the ultimate statutory responsibility for making acceptability determinations, the Corporation regards the consulting agencies' opinions and comments as fundamental to the development of the outline and plan.[5]

- Early meetings between sponsors and consulting agencies and informal communications between them throughout the process of developing an outline and plan are inherent to the Section 131(e) consultation process. (The Corporation will notify sponsors which consulting agency officials to contact.) Sponsors should bear in mind that they have the responsibility for developing their outline and plan and they should

[1] "Project" applies to those facilities to be covered by the financial assistance agreement, as well as any dedicated mining operation at the project site which is controlled by the sponsors. "Sponsors" applies to the sponsor or sponsors of a project before the Corporation.

[2] Monitoring required by "approvals" shall include monitoring specified in any federal or state environmental impact statement (EIS) or agency record of decision relating thereto. This in no way implies that the award of financial assistance by the Corporation is a major federal action under Section 102(2)(C) of the National Environmental Policy Act (NEPA). Section 175(b) of the ESA specifically provides that all actions of the Corporation, except for construction and operation of Corporation construction projects, are exempt from the EIS requirements of NEPA.

[3] The Corporation has previously notified sponsors that they must consider the monitoring of unregulated substances. (See, e.g., the Corporation's Second Solicitation Section, Section IV.C.a.1, and Third Solicitation, Section, Section III.B.6.b.2).

[4] The Governor in whose state a project is located designates an "appropriate state agency official" to work with the sponsors to develop the outline and plan.

[5] EPA has prepared a monitoring reference manual for synthetic fuels processes (presently in draft form) which the agency will make available to sponsors to indicate EPA's areas of interest. This manuals contains no requirements; rather, it is a general reference tool which may be used by drafters and reviewers of monitoring plans.

not unduly burden the consulting agencies in this effort.

• A number of sponsors have already begun to develop their monitoring outlines in consultation with the appropriate agencies. In these cases, the Corporation will not require repetition of the procedural steps set forth herein to the extent they have already been effectively performed.

• To maximize coordination among the parties to the process—sponsors, federal and state consulting agencies, and the Corporation—courtesy copies of all formal communications (draft and revised outlines and plans and all correspondence, including consulting agency comments and sponsors' responses) from any party should be provided simultaneously to all other parties.

B. Development of Outlines

The following is the sequence which shall be followed in developing monitoring outlines in consultation with the appropriate agencies:

• For projects submitted under the Corporation's first three general solicitations, sponsors shall initiate preparation of their monitoring outline no later than immediately after passing the Corporation's strength review. For those sponsors submitting proposals under the Corporation's "Competitive Solicitation for Oil Shale Projects" (or comparable solicitations developed in the future), sponsors' technical proposals shall include a schedule for preparing an acceptable monitoring plan outline; the schedule should provide that if the technical proposal is found acceptable by the Corporation, sponsors will immediately initiate preparation of their outline.

• The sponsors' draft outline shall be submitted to the consulting agencies for their review and comment. The sponsors should confer with the Corporation regarding the timing of submission of the draft outline (as well as the revised outline) so that an acceptable outline can be prepared on a schedule consistent with the anticipated financial assistance agreement signing date.

• Consulting agencies should provide written comments to the sponsors on the draft outline expeditiously. It is expected that absent special circumstances, comments will be provided within five weeks of receiving the draft.

• Upon receiving comments from the consulting agencies, the sponsors shall prepare a revised outline which responds to the comments, either by modifying the outline or by explaining (in a cover letter) the specific reasons for not accepting any specific monitoring task suggested by the consulting agencies and for excluding any general monitoring area covered in the Guidelines.

• The revised outline shall be submitted to the consulting agencies for final review.

• Absent special circumstances, the consulting agencies should submit to the Corporation their comments on the revised outline within four weeks of receiving it.

• The Corporation will evaluate the revised outline and the consulting agency comments and determine the outline's acceptability.

C. Development of Plans

Each financial assistance contract will establish a date by which sponsors shall submit their draft and revised plans. It is anticipated that the revised plan will be required approximately four to six months after contract signing, depending on the complexity of the plan and other project-specific circumstances.[6] Following the revised plan's submittal, it must be found acceptable by the Corporation within a time fixed in the contract (approximately two months from the submission deadline).

The sequence for developing a plan, including the time periods for consulting agency comments, is analogous to that for an outline set forth above. In brief, the sponsors develop a draft plan; it will be reviewed and commented on by the consulting agencies; a revised plan will be developed; final comments will be provided by the consulting agencies; and the revised plan and comments thereon will be evaluated by the Corporation and a determination of acceptability is made. Absent unusual circumstances, the plan must be consistent with the terms of the outline. (With respect to modifying the plan during the period in which it is being implemented, see Section VII.B.2.)

D. Determination of Acceptability

The Corporation will determine the acceptability of all monitoring outlines and plans based on whether the sponsors' specific treatment of the broad substantive areas set forth in these Guidelines meets the Corporation's environmental monitoring goals of characterizing and identifying areas of concern and developing an information base for the mitigation of problems associated with the replication of synthetic fuels projects. In making acceptability determinations, the Corporation will evaluate the consulting agencies' comments and monitoring recommendations and the sponsors' responses to the agencies' comments and recommendations.

If the Corporation determines that a monitoring outline is acceptable, it will then be incorporated into the financial assistance contract. As a general rule, if a sponsor's outline is not found to be acceptable, the Corporation will not enter into an agreement for financial assistance until the outline is made acceptable. With respect to monitoring plans, failure to submit an acceptable plan as required by the statute, and failure to properly implement plans determined to be acceptable by the Corporation, will be addressed under the default and remedy provisions of the financial assistance agreement.

V. Substantive Areas of Outlines and Plans

A. Overview

A monitoring *outline* should be a general description of the environmental monitoring tasks which the sponsors will perform, including a summary of compliance monitoring obligations and a brief description of supplemental monitoring tasks. (Where a permit has not yet been obtained, sponsors should include in the outline and plan anticipated requirements based on the terms of comparable permits.) The outline should state what substances will be monitored (both regulated and unregulated), where the monitoring will take place (such as ambient or workplace), how the monitoring would be performed (such as high volume sampler or personal dosimeter), and the duration. The monitoring *plan* shall include all of the specific terms and conditions of permits and other approvals and the specific monitoring tasks relating to supplemental monitoring. The plan should be a detailed description of the monitoring tasks set forth in the outline, including sampling protocols, monitoring site locations, monitoring frequency, monitoring equipment, analytical methods, etc.[7] The plan shall also state what substances will be monitored; if a more detailed list is available at this stage than when the outline was prepared, such additional detail shall be provided.

When sponors have not identified the specific unregulated substances which

[6] Where monitoring activities, e.g., baseline or construction monitoring, should be initiated prior to completion of the plan, the outline should indicate when this monitoring should begin.

[7] Sponsors may provide in their outlines details on any or all aspects of environmental monitoring that are at a level of specificity not required in an outline but appropriate for a plan. This is solely at the sponsors' discretion and will not affect the Corporation's acceptability determination regarding the outline.

may be of significant environmental or health concern, the sponsors shall provide in the outline and plan qualitative assessments of the classes of substances (e.g., phenols, polynuclear aromatic hydrocarbons, organic sulfur compounds), likely to be present and the method(s) by which the specific substances will be identified.

In both the outline and plan, sponsors shall provide (as appendices or by separate submission) sufficient background information on their project to enable the consulting agencies to meaningfully evaluate the outline and the plan. This information should include an overall process description, a process block flow diagram, design performance of environmental control systems, plot plans and layouts and a detailed site description; it shall also include studies, reports, data, etc., which are used to support statements and decisions by sponsors in the outline and plan.

Neither an outline nor a plan need be in any particular format. Sponsors can tailor the format of their outline and plan according to their own specific project reporting systems, but consideration should be given to the comments of the consulting agencies regarding format.

B. Supplemental Monitoring

"Supplemental monitoring," as used herein, refers to any monitoring that is not required by the terms and conditions of permits and approvals or other regulatory obligations, i.e., compliance monitoring. Supplemental monitoring should be performed by sponsors when it can produce environmental and health data which are relevant to project replication, i.e., data which are relevant to comparable facilites which may be built in the future. The need for, and duration of, supplemental monitoring will be determined on a project-by-project basis, with consideration being given to meeting the following broad goals:

- Characterizing and identifying unregulated substances, such as those trace metals and polynuclear aramatic hydrocarbons (PAHs) which are suspected of causing carcinogenesis, mutagenesis, teratogenesis, reproductive effects, other systemic disorders and environmental effects. [8] In developing their outline and plan, sponsors are encouraged to consider a two-phased approach to identify and characterize unregulated substances. The purpose of the first phase is to monitor until sufficient data have been collected to statistically establish an emissions baseline. The purpose of the second phase is to limit the scope of monitoring in a manner which will provide data on those substances which are of significant environmental or health concern, while reducing monitoring costs.
- Identifying and characterizing regulated substances or performing baseline monitoring when not required pursuant to permits. [9]
- Assessing the health risks associated with occupational exposure by conducting comprehensive medical surveillance programs of workers and establishing worker registries.

In addition, sponsors should consider the following points in developing the supplemental monitoring tasks in their outline and plan:

- The Corporation does not expect supplemental monitoring to include monitoring which is relevant essentially to a specific project as a specific site (e.g., monitoring project impact on the local wildlife population) unless such monitoring has broader applicability to project replication. However, such site-specific monitoring if required by permit would be included as compliance monitoring in the monitoring outline and plan.
- The Corporation does not expect sponsors to perform off-site supplemental monitoring with regard to solid and hazardous wastes shipped to facilities owned by others because the receiver is subject to its own monitoring obligations.
- The Corporation does not expect sponsors to perform supplemental monitoring with regard to wastewater after its discharge to publicly owned treatment facilities (POTWs) because these facilities are subject to the monitoring requirements of their own National Pollutant Discharge Elimination System (NPDES) permits.

C. Substantive Monitoring Areas

1. *General.* Sponsors shall monitor during all stages of a project's life-cycle—pre-construction (baseline), construction, operation and post-operation (shutdown of facility and reclamation of site).[10] In monitoring during each of these stages, three generic areas of environmental monitoring—source, ambient, and health and safety monitoring—shall be performed as appropriate to that stage. Other monitoring, such as ecological monitoring, as well as toxicological testing may also be required on a case-by-case basis. In general, monitoring must be conducted during start-up, shutdown, and upset conditions, as well as during steady-state operation of the project.

2. *Source Monitoring.* Source monitoring refers to the monitoring of air emissions (including fugitive emissions), water effluents and solid wastes as they are released from a project's vent, stacks, pipes, etc., as well as to the efficiency of environmental control systems.[11]

- For air emission source monitoring, sponsors shall monitor for regulated substances, including those under applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAPs), etc., as well for unregulated substances (including those adsorbed on particulates) which may be present at concentrations of significant environmental or health concern.
- For water effluent source monitoring, including underground releases and releases into POTWs, sponsors shall monitor for regulated substances including those in NPDES permits or specified by EPA "consent decrees", etc., as well as for unregulated substances which may be present at concentrations of significant environmental or health concern.
- For solid waste monitoring, sponsors shall monitor these wastes pursuant to the requirements of the Resource Conservation and Recovery Act as well as monitor for unregulated substances which may be present at concentrations of significant environmental or health concern. (See Section V.B regarding monitoring of solid and hazardous wastes once they are shipped off-site).

[8] The Corporation views unregulated substances as including those substances not presently regulated under any law and those which may be regulated under one law but not another. For example, a substance may be regulated under the Occupational Safety and Health Act but not regulated under the Clean Water Act; monitoring for such a substance in the water would be a "supplemental monitoring requirement, but in the workplace would be a "compliance monitoring" requirement.

[9] When modeling of emissions indicates that concentrations may fall below those levels for triggering permit-mandated monitoring (notably for prevention of significant deterioratio (PSD) review), monitoring to determine the actual level of emissions (vis-a-vis calculated levels) of regulated substances should be performed where necessary to develop a data base relevant to project replication. It is expected that such monitoring would be of short duration.

[10] While compliance monitoring occurs throughout a project's life-cycle, supplemental monitoring is principally applicable during the operation stage.

[11] It is expected that sponsors will monitor the efficiency of environmental control systems for all source monitoring activities; however, sponsors are not expected to provide proprietary operation condition information pursuant to the plan.

3. *Ambient Monitoring.* Ambient monitoring refers to monitoring the unconfined environment—the air, water, and land—in the vicinity of a project. Sponsors shall monitor in the unconfined environment the level of substances found in the facility's emissions and discharges.

- For ambient air monitoring, sponsors shall monitor, as applicable by permit, those regulated pollutants identified in EPA's PSD Regulations and NESHAPs, etc., as well as for unregulated substances which may be present at concentrations of significant environmental or health concern. Monitoring of possible public nuisances, such as odor, should also be considered.
- Where the project will be discharging into surface waters, sponsors shall monitor for regulated water quality parameters (chemical and biological orygen demand, total suspended solids, etc.), as well as for unregulated substances which may be present at concentrations of significant environmental or health concern.
- Where substances have the potential to impact groundwater, groundwater monitoring shall be conducted to identify contamination from leachates, discharges, or underground injection and shall include monitoring for regulated substances listed under the Safe Drinking Water Act, etc., as well as for unregulated substances which may be present at concentrations of environmental or health concern.
- Where substances have the potential to contaminate the soil, soils shall be monitored for regulated and unregulated substances.

4. *Health and Safety Monitoring.* Health and safety monitoring [12] refers both to monitoring workers' exposure to potentially hazardous in-plant emissions and/or conditions associated with the project and to the development of worker registries. The sponsor shall characterize and identify work-related exposures to specific substances or conditions in the facility during routine work, maintenance, repair and sampling activities throughout construction, operation and decommissioning of the facility.

All sponsors shall develop and maintain worker registries, to encompass collecting and storing information on medical and work histories, physical examinations, and industrial hygiene exposure records. Registries should provide information to be used to determine if impacts identified in groups of workers are related to various substances or conditions with which workers had been in contact at synthetic fuels facilities. What the registries cover will be determined on a case-by-case basis depending on the health concerns associated with the facility. Sponsors shall develop, in consultation with the consulting agencies, formats and protocols for the registries which are acceptable to the Corporation, which shall include the method by which the confidentiality of workers' identity will be protected.

5. *Other Monitoring.* It may be appropriate for sponsors to perform ecological or other monitoring as well as toxicological testing (including biomonitoring) in some situations. Ecological monitoring should be performed where substances from the facility have the potential for impacting terrestrial and aquatic species; however, for the purposes of Section 131(e), such monitoring should be included only if the collection of such data would be needed to characterize and identify areas of concern and develop an information base for the mitigation of problems associated with the replication of synthetic fuels plants.

Although not generally considered as a part of monitoring (since it determines dose-response relationships and relative toxicities of substances rather than measuring concentrations), toxicological testing should be performed where there is potential for significant human exposure to unregulated substances of concern with unknown or uncertain toxicities.[13]

D. Quality Assurance/Quality Control

The outline and plan shall indicate what quality assurance/quality control (QA/QC) measures will be taken to assure that environmental monitoring data produced will be sound. The outline should briefly indicate the sponsors proposed QA/QC program while the plan should establish specific requirements of a comprehensive QA/QC program.[14]

E. Data Management; Reporting Requirements

Sponsors shall develop a data management program that addresses the acquisition, storage, retrieval and analysis of the monitoring data for the life of the project.[15] The framework for the data management program should be indicated in the outline and the details of the program should be fully described in the plan.

Sponsors shall submit to the Corporation monthly, quarterly and annual reports containing summaries of pertinent data related to requirements in the outline and plan. Central to the development of an information base for replication of synithetic fuels projects and to the development of the environmental components of Corporation reports required by the Energy Security Act are the summary and analyses of environmental monitoring data and the highlighting of significant monitoring events, which will be the focus of these reports.

Sponsors shall develop, in consultation with the consulting agencies, the format and contents of the reports, which should be indicated in the plan. Consistent with the protection of confidential information, copies of the reports will be made available by the Corporation to consulting agencies directly and will be available for public review in the Corporation's Public Reading Room.

The following are the minimum elements required to be included in each report:

- Monthly Reports

Monthly reports shall contain significant monitoring information from the preceding month including:

—The identification and amounts of unregulated substances found to be present at concentrations of significant environmental and health concern.

—An indication if there were any significant or material changes to the terms of environmental permits.

—An indication if there were exceedances of permit conditions, including a statement by the sponsors as to whether there were notices of violation from regulatory agencies.

—Copies of all compliance reports sent by sponsors to the regulatory agencies.

- Quarterly Reports.

Quarterly reports shall:

—Contain summaries and analyses (including statistical analyses) of the environmental and health monitoring

[12] Health and safety monitoring as used herein includes industrial hygiene monitoring and medical surveillance monitoring.

[13] Sponsors should be aware that EPA could specify toxicologic testing as part of its Premanufacture Notification requirement under the Toxic Substances Control Act (TSCA), and are urged to contact EPA early regarding the applicability of TSCA to their project's products.

[14] Federal guidelines on QA/QC are available from EPA and the National Institute for Occupational Safety and Health. See "Development and Validation of Methods for Sampling and Analysis of Workplace Toxic Substances," Research Report DHHS [NIOSH] Publication No. 80-133, September, 1980; "Interim Guidelines and Specifications for Preparing QA Project Plans," "EPA Report No. QAMS-005/80," December 29, 1980.

[15] The sponsor shall permanently retain all monitoring records or make them available to the Corporation for archiving.

data for the three immediately preceding months, include a characterization of the unregulated substances of environmental and health concern.

—Assess the project's permit compliance status.

—Identify and characterize the presence of significant levels of unregulated substances and correlate it to the operating conditions of the facility and environmental control performance.

—Discuss the performance of environmental control systems.

—Identify potential problem areas encountered throughout the quarter, e.g., problems with monitoring techniques/procedures, sampling, quality control, etc. and propose preliminary solutions.

—Recommend modification or deletion of monitoring tasks not yielding useful data, including the basis for the sponsors' recommendation.

• Annual Reports.

Annual reports shall:

—Summarize and analyze the monitoring data previously collected and the monthly, quarterly, and annual reports previously submitted. The summary and analysis shall include characterizations of unregulated substances which have been found in concentrations of significant environmental and health concern, and the identification of trends and patterns in the data, including data available in worker registries.

—Based upon monitoring data and the reports which have been submitted, indicate if there are any actual or potential environmental or health impacts.

—Recommend modification, deletion or addition of monitoring tasks, including the basis for the sponsors' recommendation.

—Indicate whether any of the problem areas identified in the monthly or quarterly reports have been resolved and, if not, what additional measures should be taken. Copies of all annual compliance reports or analyses submitted to regulatory agencies should also be included in the annual report.

VI. Confidential Information

The contents of all monitoring outlines and plans (including drafts and revisions) submitted by sponsors will be publicly available as will all formal written comments of the consulting agencies on the outlines and plans.[16]

It is expected that all monitoring data, data summaries, data analyses, reports, etc., provided to the Corporation by the sponsors will not be proprietary or otherwise confidential business information. Any information which is properly designated by the sponsors as confidential (in accordance with the Corporation's Guidelines on Disclosure and Confidentiality) will not be provided to federal or state agencies except as authorized by law and unless its confidentiality is protected.

Public information requests will be handled in accordance with the Corporation's Guidelines on Disclosure and Confidentiality.

VII. Monitoring Review Committee

A. Membership; Meetings

Each financial assistance contract will establish a Monitoring Review Committee (the "Committee") consisting of representatives of the sponsors, the consulting agencies, and the Corporation. The Corporation representative will act as chairperson for the Committee. The Corporation will convene meetings of each Committee at least once per year.

B. Functions

1. *Data Review.* Each Monitoring Review Committee will assess the sponsors' environmental monitoring data, including the monthly, quarterly and annual reports. The main purpose of data review is to determine if there are any significant findings among the data, e.g., data points of excessively high readings or if there are significant trends or patterns in pollutant releases from the project which could result in significant health or environmental impacts in the future.

2. *Modification of Monitoring Requirements.* Based on the Committee's ongoing review of the monitoring data and the monthly, quarterly, and annual reports, members of the Committee can recommend to the Corporation representative that the sponsors discontinue, modify or add monitoring tasks, substitute new analytical techniques or instrumentation as they are developed, or change the format of the above reports. The Corporation, after consultation with the sponsors, will authorize such changes if appropriate. (Modification of sponsors' monitoring plans by the Corporation shall have no effect on the sponsors' responsibility to monitor under federal, state, and local requirements.) Absent unusual circumstances, the Corporation will not require additional monitoring beyond that supplemental monitoring specified in the plan unless the costs of the additional requirements have been, or are being, offset by the elimination of comparable costs.

Monitoring plans should have flexibility so that when sufficient data have been obtained to establish a definitive baseline or when the monitoring data indicate that certain monitoring tasks are found to be relatively unimportant, they can be reduced or eliminated, and, conversely, when monitoring data suggest that certain tasks take on increasing importance monitoring can be expanded. Thus, if an unregulated substance in the work environment is consistently absent from monitoring data, monitoring for it should be reduced in scope or terminated; conversely, where new data in the scientific literature indicating that a particular substance may be of increased health or environmental concern, monitoring shall be expanded under the limitation set forth above.[17]

VIII. Amendments to Guidelines

Amendments to these Guidelines may be authorized in writing by the Corporation. All sponsors with projects before the Corporation at the time any amendment is made will be notified immediately of such amendment. Copies of these Guidelines, as amended, will be available in the Corporation's Public Reading Room.

Dated: March 29, 1983.

Jimmie R. Bowden,

Executive Vice President, U.S. Synthetic Fuels Corporation.

[FR Doc. 83-8505 Filed 3-31-83; 8:45 am]

BILLING CODE 0000-00-M

[16] Copies of all initial and revised monitoring outlines and plans as well as written consulting agency comments thereon will be available for review in the Corporation's Public Reading Room. Consulting agencies may also wish to make these documents available to the public as they deem appropriate.

[17] Where production, process or pollution control or feedstock changes occur that may reasonably be expected to contribute to affecting the emission of unregulated substances of environmental and health concern, monitoring tasks should be renewed or extended accordingly.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 463]

Regional Realignment, Reorganization of Headquarters

March 30, 1983.

Pursuant to Treasury Department Orders 101-5 and 221, the regional and headquarters management structures of the Bureau of Alcohol, Tobacco and Firearms are reorganized as follows:

1. Regional Realignment

(a) The Central Region for ATF's regulatory and administrative functions is abolished and its geographical area of responsibility merged with the Midwest Region. The positions of Regional Regulatory Administrator and Regional Administrative Officer for the Central Region are abolished. The Regional Regulatory Administrator and the Regional Administrative Officer for the Midwest Region will assume responsibility for ATF's regulatory and administrative activities in Indiana, Kentucky, Ohio, Michigan, and West Virginia.

(b) The Mid-Atlantic Region for ATF's regulatory and administrative functions is abolished and its geographical area of responsibility merged with the North-Atlantic Region. The positions of Regional Regulatory Administrator and Regional Administrative Officer for the Mid-Atlantic Region are abolished. The Regional Regulatory Administrator and Regional Administrative Officer for the North-Atlantic Region will assume responsibility for ATF's regulatory and Administrative activities in Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and the District of Columbia.

2. Headquarters Reorganization

(a) The functions and personnel of the National Firearms Act Branch and the Imports Branch are transferred from the Office of the Assistant Director (Technical and Scientific Services) to the Office of the Assistant Director (Regulatory Enforcement).

(b) The functions and personnel of the Firearms Technology Branch and the Explosives Technology Branch are transferred from the Office of the Assistant Director (Technical and Scientific Services) to the Office of the Assistant Director (Criminal Enforcement).

3. Effective Date

The regional realignment and headquarters reorganization specified above shall be effective April 3, 1983.

Signed: March 17, 1983.

Stephen E. Higgins,

Acting Director.

Approved: March 25, 1983.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 83-8602 Filed 3-31-83; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Privacy Act of 1974; System of Records

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Accordingly, the Verterans Administration published a notice of its inventory of personal records on September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans Administration is adding a new system of records entitled "Community Placement Program-VA," (65 VA 122). This system is authorized under Title 38, U.S.C. 210(c), 610 and 4101.

The purpose of this new system of records is to provide for maintenance of management information regarding basic facility and VA beneficiary data required by local Social Work and management officials to operate the Community Placement Program. In addition, the system will provide workload statistics for reports to the Chief Medical Director and to the Administrator.

In accordance with 5 U.S.C. 552a(b)(3), the Veterans Administration has adopted and published routine uses for its systems or records. A routine use allows the agency to disclose Privacy Act records/information without the written consent of the individual to whom the record pertains. Within the VA, routine uses are principally used to permit disclosure of information from a Privacy Act system of records to a third party to enable the VA to carry out its programs in the most expeditious manner possible. Generally, a routine use identified in a VA system of records will either specifically identify information, or in the alternative, the general subject matter (i.e., a major group of information such as "identifying information" and "medical information") which is being disclosed. In those instances where a routine use identifies disclosure of a general subject matter, the general subject matter will be specifically described in the "Categories of records in the system" section of the system of records. Routine uses may be used in conjunction with one another. Each VA system of records contains the routine uses which are applicable for that system.

For purposes of these VA systems of records, the subsequent definitional terms or concepts are used as follows:

a. *Veteran*—A person who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable and whose name and address and other information is maintained by the VA by virtue of the administration of veterans benefits under title 38, United States Code. For purposes of these system notices (unless specifically stated otherwise in the "Categories of individuals covered by this system" section of a system of records) the term "veteran" will also include the dependents of a veteran and any other individual who has been granted veteran status by virtue of a specific statutory authority. The name, address and other information regarding a veteran is protected by 38 U.S.C. 3301 and 4132 in addition to the Privacy Act. Accordingly, any disclosure of information concerning a veteran made from these Privacy Act systems of records under a routine use or other Privacy Act authority shall be consistent with the provisions of 38 U.S.C. 3301 and 4132.

b. *Claimant*—Any individual making a claim for a benefit under title 38, United States Code, e.g., veteran, nonveteran life insurance beneficiaries.

c. *Record*—Any item, collection or grouping of information about an individual that is maintained by the agency. It is noted that the term "record" may be used with regard to as little as one descriptive item about an individual.

d. *Information v. Data*—"Information" is individually identifiable (e.g., record includes an individual's name or address or other identifying information) whereas "data" is not individually identifiable.

e. *Subsidiary records*—Subsidiary records contain information which is part of a more comprehensive, published VA system of records. Subsidiary records may be physically located separate and apart from the rest of the system of records. Any subsidiary records are maintained for the same general purposes as a published system of records and, therefore, are considered to be part of that published system of records. (OMB Circular A-108).

f. *Disclosures Made "At the Request of the Veteran"*—In a few routine use notices, for purposes of section 3301 of title 38, United States Code, the VA has identified situations when the disclosure of a veteran's name and address by the VA to a third party is being made "at the request of the veteran." In these instances, an express or implied consent to disclose a veteran's name or address may be inferred by the VA in obtaining any other benefits (e.g., employment, State or local agency benefits programs) to which the veteran might be entitled

and referral of the name and address of the veteran by the VA to a third party will reasonably be required for the VA to act on the request of the veteran for assistance. A "Report of New System" and an advance copy of the new system notice were sent on December 29, 1981 to the Speaker of the House, the President of the Senate, and the Office of Management and Budget (OMB), as required by the provision of 5 U.S.C. 552a(o) and the Privacy Act and guidelines issued by the Office of Management and Budget (40 FR 45877), October 3, 1975.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed systems of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before May 2, 1983 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 16, 1983.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statements included herein are effective May 2, 1983.

Approved: March 22, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

System of Records

SYSTEM NAME:

Community Placement Program-VA, 65 VA 122.

SYSTEM LOCATION:

Records are maintained at each VA health care facility; the VA Data Processing Center (DPC), 1615 East Woodward Street, Austin, Texas 78772; and at VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Addresses for the VA health care system are listed in VA Appendix I at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who operate a Community Placement facility approved for placement of VA beneficiaries; VA beneficiaries in Community Placement facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include personal identification information with data on the Community Placement facility, name of operator, address, phone number, name of veterans receiving care in these homes, a statement as to whether the veterans' medical conditions have been rated as service-connected or nonservice-connected, the veterans' social security numbers and the names, addresses and phone numbers of the veterans' next-of-kin; overall data regarding diagnoses of veterans in the facility, date the facility was last approved for participation, statement regarding whether or not the home is required to be licensed by the state and/or local government, copies of correspondence exchange between the VA and the persons interested in applying for participation in the Community Placement Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C. 210(c), 610 and 4101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member of staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding the hiring, retention or transfer of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans, will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on the hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency; provided that, if the information requested pertains to a veteran, the name and/or address of the veteran will not be disclosed unless the name and/or address is provided first by the requesting State or local agency.

4. Any information in this system may be disclosed to a Federal, State or local governmental agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background at the request of the veteran in order for the VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

5. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign governmental agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

6. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

7. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided or a purpose authorized by law.

8. Any information in this system including the name and address of a veteran may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C. (such disclosures

include computerized lists of names and addresses.)

9. Any information in this system may be disclosed to a Federal agency, except for the name and address of a veteran, in order for the VA to obtain information relevant to the issuance of a benefit under Title 38 U.S.C. The name and address of a veteran may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

10. Any information in this system may be disclosed to a Federal grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for the VA to respond to and comply with the issuance of a Federal subpoena.

11. Any information in this system may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for the VA to respond to and comply with the issuance of a State or municipal subpoena; provided, that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes which are stored at the Austin DPC, and paper documents (printouts) are maintained at VA Central Office and the health care facilities.

RETRIEVABILITY:

Information can be retrieved by the use of veteran's name, social security number and by facility operator's name and location.

SAFEGUARDS:

Access to the basic file in the Austin DPC is restricted to authorized VA employees and vendors. Access to the computer room where the basic file is maintained within the DPC is further restricted to authorized VA employees and vendor personnel on a "need to know" basis and is protected from unauthorized access by an alarm system, the Federal Protective Service and VA security personnel. Access to paper documents at Central Office and VA health care facilities is restricted to authorized VA employees.

RETENTION AND DISPOSAL:

Working magnetic tapes at the DPC are disposed of as soon as the purpose for which they were established has been served. Paper documents are to be retained and disposed of in accordance with authorization approved by the Archivist of the United States.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his/her or other personal identifier, or wants to determine the contents of such record should submit a written request or apply in person to the Chief, Social Work Service (122) at the appropriate VA health care facility. Addresses for these offices may be found in VA Appendix I at the end of this document. Inquiries should include the individual's full name and identification number (social security number).

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the nearest appropriate health care facility.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above).

RECORD SOURCE CATEGORIES:

Information contained in the records is obtained from individuals requesting participation in the Community Placement Program; the patient, family members or accredited representative, and friends, employers or other third parties when otherwise unobtainable from the patient or his family; various automated clinical and managerial systems providing support at selected VA health care facilities; and the patient Consolidated Medical Records sections of the VA Medical Records System.

[FR Doc. 83-8502 Filed 3-31-83; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Energy Regulatory Commission	1
Federal Maritime Commission	2
Federal Reserve System	3, 4
Nuclear Regulatory Commission	5
Tennessee Valley Authority	6

1

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 12885, March 28, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., March 30, 1983.

CHANGE IN THE MEETING: The following item has been added to the regular agenda.

Item No., Docket No., and Company

CP–9: CP64–121–000, Farmland Industries, Inc.; CI65–700–000, CRA, Inc.

Kenneth F. Plumb,

Secretary.

[S–453–83 Filed 3–30–83; 10:33 am]

BILLING CODE 6717–02–M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., April 6, 1983.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Petition of Sea-land Service, Inc., In Re: American Marine Lines, Co., Inc.—Tariff FMC–F No. 1.

Portions closed to the public:

1. Agreement No. 5200–40: Petition for Reconsideration by the Pacific Coast European Conference of Order of Conditional Approval.

2. Docket No. 81–28: Transportacion Maritima Mexicana, S.A. v. Board of Commissioners of the Port of New Orleans—Petition of Complainant for Reconsideration of Report and Order of Commission.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–452–83 Filed 3–29–83; 4:34 pm]

BILLING CODE 6730–01–M

3

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, April 6, 1983.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals for simplifying the Consumer Leasing Act.

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedon of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: March 30, 1983.

James McAfee,

Associate Secretary of the Board.

[S–454–83 Filed 3–30–83; 10:58 am]

BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: Approximately 11 a.m., Wednesday, April 6, 1983, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20661.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: March 30, 1983.

James McAfee,

Associate Secretary of the Board.

[S–455–83 Filed 3–30–83; 10:59 am]

BILLING CODE 6210–01

5

NUCLEAR REGULATORY COMMISSION

DATE: Week of April 4, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED:

Monday, April 4:

10:00 a.m.:
Briefing on Decay Heat Removal Studies on CE Plants (Public Meeting)

2:00 p.m.:
Briefing by Executive Branch (Closed—Exemption 1)

Tuesday, April 5:

2:00 p.m.:
Briefing by Federal Aviation Administration (Public Meeting)

Wednesday, April 6:

10:00 a.m.:
Briefing on Staff Review of GPU v. B&W (Public Meeting)

Thursday, April 7:

9:30 a.m.:
Hearing on NFS-Erwin (Public Meeting)

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.

Walter Magee,

Office of the Secretary.

[S–457–83 Filed 3–30–83; 3:42 pm]

BILLING CODE 7590–01–M

6

TENNESSEE VALLEY AUTHORITY [Meeting No. 1308]

TIME AND DATE: 9 a.m. (e.s.t.), Wednesday, April 6, 1983.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEM:

Old Business

1. Delegation of authority relating to uranium rights agreements required to improve quality of title and permit development and mining of TVA's uranium properties.

New Business

A—Project Authorizations

A1. Project Authorization No. 3804—Design, procurement, and installation of temporary barge-unloading facilities at Gallatin Steam Plant.

B—Purchase Awards

[1]B1. Negotiation 62-925572—Replacement turbine wheels for Browns Ferry Nuclear Plant unit 2.

B2. Negotiation 35-199804—Indefinite quantity term agreement for the services of technical personnel to perform repairs to fossil turbines and generators at Cumberland and Widows Creek Fossil Plants.

B3. Amendment to Contract 79P66-143178 with General Electric Company, for reload fuel for Browns Ferry Nuclear Plant.

B4. Amendment to indefinite quantity term Contract 80P68-171173 with Chem-Nuclear Services, Inc. for radioactive waste disposal services for all of TVA nuclear plants.

B5. Proposal 59-931810—Labor, tools, equipment, and material for torus recoating application at Browns Ferry Nuclear Plant.

C—Power Items

C1. Letter agreement with Union Electric Company, Illinois Power Company, and Central Illinois Public Service Company, providing for reduction in the amount of seasonal diversity capacity exchange from 260 MW to 0 MW.

C2. Delegation of authority to execute purchase, lease, and conveyance instruments involving TVA substation and transmission properties.

C3. Cooperative efforts with Tennessee Valley Public Power Association for organization of a Tennessee captive insurance company.

Personnel Items

[1]D1. New wage schedule for hourly and annual trades and labor employees and other recommendations resulting from negotiations between TVA and Tennessee Valley Trades and Labor Council, 48th Annual Wage Conference.

D2. Amendment to memorandum of understanding between TVA and the Office of Workers' Compensation Programs covering improvement of the administration of the Federal Employees' Compensation Act through cooperative interagency action.

D3. Amendments to the rules and regulations of the TVA Retirement System relating to an increase in members' and retirees' flexibility in transferring their accumulated contributions among the Fixed Benefit Fund and the Variable Annuity Fund; and the selection of the Commerce Union Bank of Nashville, Tennessee, as an additional trustee for a portion of the System's Fixed Benefit Fund.

D4. Personal services contract with Questech, Inc., Knoxville, Tennessee, for advice and assistance in connection with TVA's nuclear safety program, requested by the Nuclear Safety Review Staff.

D5. Personal services contract with Bartlett Nuclear Inc., Plymouth, Massachusetts, to provide services of qualified health physics technicians during refueling outages at TVA nuclear plants, requested by the Office of Power.

E—Real Property Transactions.

E1. Abandonment of certain easement rights to Allen Merideth affecting approximately 0.9 acre of Kentucky Reservoir land located in Humphreys County, Tennessee—Tract Nos. GIR-5971F and GIR-7830M.

E2. Abandonment of flowage easement rights to the City of Loudon, Tennessee, affecting approximately 11.9 acres of Watts Bar Reservoir land located in Loudon County, Tennessee—Tract No. WBR-1636F.

E3. Sale of permanent easement to the Georgia Department of Transportation for the construction, operation, and maintenance of a highway, affecting approximately 5.9 acres of Oglethorpe Primary Substation land located in Catoosa and Walker Counties, Georgia—Tract No. XOPSS-8H.

E4. Grant of permanent easement to Washington County, Virginia, affecting approximately 0.2 acre of South Holston Reservoir land for construction, operation, and maintenance of a volunteer fire department and community meeting building—Tract No. XTSH-34FD.

E5. Grant of permanent easement to Cherokee County, North Carolina, for the construction, operation, and maintenance of a sewerline affecting approximately 1.8 acres of Hiwassee Reservoir land—Tract No. XTFBR-29S.

E6. Grant of easement rights to Peabody Coal Company affecting the Paradise Steam Plant Reservation.

E7. Filing of condemnation cases.

F—Unclassified

F1. TVA policy code relating to economic and community development.

F2. TVA policy code relating to floodplain management and protection of wetlands.

F3. TVA policy code relating to safety of nuclear facilities and activities.

F4. Administrative cost recovery regulations.

F5. Interagency order for reimbursable services between TVA and the United States Department of the Army—Phase I of engineering study on feasibility of rehabilitating phosphate development works.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: March 30, 1983.

[S-456-83 Filed 3-30-83; 3:41 pm]

BILLING CODE 8120-01-M

[1]Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

[redacted]ay
[redacted]il 1, 1983

Part II

Environmental Protection Agency

Environmental Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 125, 144, 145, 146, 233, 260, 261, 262, 263, 264, 265, 270, and 271

[FRL 2293-5]

Environmental Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This rule reorganizes the presentation of permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) and the Dredge or Fill (§ 404) programs under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. This rule makes *no substantive changes* to any of the affected sections. The Agency is simply physically deconsolidating its Consolidated Permit Regulations in response to the President's Task Force on Regulatory Relief which asked that the Environmental Protection Agency review the Consolidated Permit Regulations. Our intent is to make the regulations easier to understand and to use.

- Part 122 of the Consolidated Permit Regulations is split into portions applicable specifically to RCRA (new Part 270), UIC (new Part 144), 404 (new Part 233), and NPDES (mostly remaining in Part 122).
- Part 123 of the Consolidated Permit Regulations is split into portions applicable specifically to RCRA (new Part 271), UIC (new Part 145), 404 (new Part 233), and NPDES (remaining in Part 123).
- Part 124 of the Consolidated Permit Regulations remains applicable to all permit programs (RCRA, State 404 programs, UIC, NPDES, PSD) and is modified only as necessary to revise the cross-references to former Parts 122 and 123.

DATES: Effective date: April 1, 1983, except for those portions of §§ 122.2, 122.21, and 122.29 that are suspended.

*Comment d[redacted]sist EPA in correcting typ[redacted]al errors, incorrect cross-references and similar technical errors, submit comments of a technical and nonsubstantive nature on the final regulations on or before May 31, 1983.

ADDRESS: Address comments of a technical and nonsubstantive nature to: John Chamberlin, PM-220, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The following individuals at the U.S. Environmental Protection Agency, Washington, D.C. 20460:

- On RCRA issues—Deborah Wolpe, Office of Solid Waste (WH-563); (202) 382-4754;
- On UIC issues—Thomas E. Belk; Office of Drinking Water (WH-550); (202) 426-3934;
- On NPDES issues—George Young, Permits Division (EN-336); (202) 426-4793;
- On 404 issues—Michael Privitera, Office of Federal Activities (A-104); (202)382-5053;
- On issues relating to coordination among all the revisions to the Consolidated Permit Regulations for the President's Task Force on Regulatory Relief—John Chamberlin, Office of Policy Analysis (PM-220); (202)382-2762.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, EPA promulgated the Consolidated Permit Regulations (CPR) governing five separate permit programs (40 CFR Parts 122-124, 45 FR 33290-33588). The five permit programs covered by the CPR are: the Hazardous Waste Management (HWM) program under Subtitle C of the Resource Conservation and Recovery Act (RCRA); the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act; the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act; the state "dredge or fill" program under Section 404 of the Clean Water Act; and the Prevention of Significant Deterioration (PSD) program under regulations implementing Section 165 of the Clean Air Act.

Part 122 established definitions and basic permit requirements for EPA-administered RCRA, UIC, and NPDES programs. It also provided certain requirements applicable to state programs, including state 404 programs, but only to the extent Part 123 explicitly referred to Part 122 requirements. Part 122 spelled out in detail who must apply for a permit; contents of the applications; what conditions must be incorporated into permits; when permits may be revised, reissued, or terminated; and other requirements.

Part 123 established the requirements for state programs operated in lieu of EPA, after a program has received the approval of the Administrator. In addition to the RCRA hazardous waste, UIC, and NPDES programs, Part 123 governed state Section 404 programs for discharges of dredged or fill material into certain waters of the United States. After receiving the approval of the Administrator, a state may issue Section 404 permits, in lieu of the United States Army Corps of Engineers, basically in so called "Phase II and III" waters (sometimes referred to as traditionally non-navigable waters). In addition, Part 123 contained the procedures for EPA approval, revision, and withdrawal of a state program.

Part 124 established the common procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD, and NPDES programs. It included procedures for public participation, for consolidated review and issuance of two or more permits to the same facility or activity, and for appealing permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. However, Part 123 requires states to comply with some of the Part 124 provisions, such as the basic public participation requirements of permit issuance.

Technical regulations containing requirements and criteria which apply to decisionmaking under the RCRA, UIC, NPDES, 404, and PSD programs were developed separately and do not appear in Parts 122-124. These other regulations set the substantive standards for the contents of permits issued pursuant to Parts 122-124 and provide some of the technical bases for determining the adequacy of state programs and individual permit decisions.

In the CPR, the Agency intended to encourage consolidated permitting in three ways:

(1) It adopted procedures to allow coordinated processing of multiple permits for a single facility. A single short application form was developed to provide basic information needed by all permit programs. Procedures were established to allow joint public notice, hearings, and issuance for multiple permits.

(2) It established uniform procedures and permit requirements across EPA permit programs to provide more consistency and predictability to the regulated community. We hope that an

applicant who had obtained one EPA permit would find it easier to obtain other EPA permits by following similar procedures and meeting similar requirements.

(3) The regulations adopted a consolidated format. They interspersed requirements for one permit program among requirements for other permit programs. The regulations were organized both by topic (e.g. who applies for a permit, or standard permit conditions) and by permit program. For the most part, an effort was made to describe fully the requirements on a topic to the extent that the requirements were common across permit programs, and then subsequently to describe program-specific variations on the topic.

Subsequent to promulgation of the CPR, industry, states, and other interested parties have extensively criticized them. Petitioners representing major industrial trade associations, several of their member companies, the Natural Resources Defense Council, several states, and others filed petitions for judicial review of the regulations. Ultimately all petitions were consolidated in the U.S. Court of Appeals for the District of Columbia (*NRDC* v. *EPA*, No. 80–1607 and consolidated cases, filed June 2, 1980). Amendments resulting from this litigation are discussed in Section II of this preamble.

In addition, many individuals, including some of EPA's own regional officials charged with implementing the CRP, complained that the regulations were excessively complex and difficult to understand and to implement.

Consequently, the President's Task Force on Regulatory Relief designated the CPR as one of seven EPA regulations for Agency Review. Since late 1981 the Agency has ben re-assessing these regulations with the following objectives in mind:

- Reduce the burden the regulations impose in terms of monitoring, recordkeeping, testing, reporting, and general paperwork.
- Increase the flexibility with which EPA can transfer permitting responsibilities to the states.
- Provide the Agency and states with more efficient ways of managing permitting workloads.
- Settle the litigation outstanding against the regulations.
- Make the regulations easier to use and less complex.

In general, the Agency has not found the benefits of permit consolidation, in any of the three senses listed above, to be as extensive as expected. Consolidated processing of multiple permits has been very rare. The fact that the various permit programs regulate inherently different activities and thus must impose generally different sorts of requirements has limited commonalities across permit programs. Finally, the consolidated format of the regulations has made them unnecessarily difficult to use.

For example, the consolidated format for Part 122 tended to make an applicant interested in meeting the requirements for a single permit do two undesirable things:

- Read unrelated material pertaining to other permits not of interest to him; and
- Flip back and forth between two subparts of the regulations.

Althougth Subpart A contained mostly material common to all permit programs, it also contained material applicable to individual programs. That material proved to be distracting. In addition, the frequent necessity to proceed back and forth between Subpart A and Subpart B, C, or D caused confusion. Part 123 (state program requirements) of the CPR was organized similarly—it too tended to make an individual or state interested in a single permit program read irrelevant material and flip back and forth between subparts.

Today's deconsolidation is intended to correct the problems created by the consolidated format. It will also make it easier to implement other, more substantive changes under consideration to meet our objective of providing regulatory relief.

II. Relationship of This Promulgation to Other Changes in the CPR

Today's promulgation of "deconsolidated" regulations is only one of several steps we have taken or will take, to meet our regulatory relief objectives. The Agency has already completed two rule-makings to meet these objectives:

(1) Amendments dealing with issues addressed in the settlement agreement on the UIC-related issues of the CPR were promulgated in the **Federal Register** on August 27 1981 (46 FR 43156) and on February 3, 1982 (47 FR 4992).

(2) Technical amendments dealing with some of the issues addressed in the settlement agreement on the RCRA-related issues of the CPR were promulgated on April 8, 1982 (47 FR 15304).

These changes are reflected in today's deconsolidated regulations.

In addition, the Agency has proposed other regulatory changes:

(1) Amendments dealing with nearly all of the issues addressed in the settlement agreement on the NPDES-related issues of the CPR were proposed on November 18, 1982 (47 FR 52072).

(2) An amendment dealing with one of the issues addressed in the settlement agreement on the RCRA-related issues in the CPR was proposed on July 23, 1982 (47 FR 32038).

(3) Amendments dealing with issues addressed in the settlement agreement that were common to more than one permit program (the "common issues settlement") and 3 issues specific to the NPDES program were proposed on June 14, 1982 (47 FR 25546).

The Agency plans to propose more changes to the deconsolidated CPR over the next few months:

(1) Additional changes addressing the remaining issues dealt with in the settlement agreement on the RCRA-related issues in the CPR.

(2) Substantive changes to reform the NPDES program beyond those changes resulting from litigation, including final action on several provisions of the NPDES regulations which are currently suspended.

(3) Substantive changes to encourage assumption of the 404 permit program by states.

(4) EPA may also propose a set of changes to streamline the permitting procedures common to all programs found in Part 124.

These proposed changes will be reflected in the appropriate program regulations when rulemaking is complete.

The Agency believes that these changes will respond to nearly all of the criticisms that have been directed against the CPR. The regulations that result should be substantially less onerous for all concerned—permitters, permittees, states, citizens, and EPA—and will only very minimally, if at all, reduce the environmental protection that the regulations are intended to achieve.

III. Description of Today's Amendments

In today's amendments, we are simply revising the consolidated format of the regulations. We are deconsolidating Part 122 (permit requirements) and Part 123 (state program requirements) of the CPR. We aer leaving Part 124 (common permitting procedures) in its current consolidated format. Each part of the new regulations (122, 123, 144, 145, 233, 270, 271) will pertain solely to one permit program. The reader interested in only one permit program will not have to read irrelevant material pertaining to another program. Furthermore, EPA has attempted to order the subparts within each part in a logical sequence so that reading can be done sequentially.

Today's amendments simply reiterate the existing content of the regulations in a new format, with two narrow exceptions. First, several provisions have been deleted because they duplicate other provisions in the regulations or explain the consolidated format of the regulations and thus are no longer necessary. Deleted provisions are identified in the tables in the Appendix. Second, a few technical amendments have been made. They are described below.

In addition to the organizational changes resulting from deconsolidating, the Agency has made minor wording changes to UIC permitting requirements in selected sections of Part 144 (old Part 122). These changes essentially involve amending language to clarify the scope and enforceability of the procedural requirements which were previously outlined in 40 CFR Part 122, but they in no way extend the scope of the regulations. For example, in several sections the language has been changed from an indirect description of what standard a program must require an owner/operator meet, to language that simply states that an owner/operator "is required" to meet the standard. These minor wording changes, in addition to making the existing requirements more specific, will also enable EPA, where appropriate, to incorporate these regulations by reference directly into each federally implemented program the Agency promulgates, since the requirements will be couched in language that makes them directly enforceable against owner/operators.

The language changes do not alter the fact, however, that the requirements of Parts 144 and 145 are simply minimum requirements for all UIC programs. The old regulations in § 122.1(b)(1)(i) and § 122.31(a) have always made clear that the regulations were to serve as minimum requirements for EPA administered programs as well as approved state programs. These regulations do not impose requirements directly on owner/operators. The requirements set forth in these regulations will become binding on owner/operators only when they are included in a specific state program. Each state program will be approved (in the case of a state administered program) or promulgated (in the case of an EPA administered program) pursuant to appropriate procedural requirements.

The Agency has also made a minor technical change in the § 404 permitting requirements at § 233.18, Confidentiality of Information. In the existing regulations, the denial of request for confidentiality of the application form and the permit appears only in the NPDES section; it should have also appeared in the 404-specific section in accordance with Section 404(o) of the Clean Water Act. This technical change in today's regulations corrects that omission.

The Agency has also incorporated into today's regulations previously issued suspensions of several provisions of the NPDES permitting requirements. The text of these suspensions, and the date of their original issuance, are indicated at the end of those sections of the regulations where the suspended portions are located.

The first two suspensions affect definitions found in § 122.2. On July 21, 1980, the last sentence of the definition of "waters of the United States," which affects the exclusion of certain waste treatment systems from the definition of waters of the U.S., was suspended. On October 15, 1980, the definition of "new discharger" was suspended only as it applies to offshore mobile drilling rigs operating in areas other than those classified as environmentally sensitive.

Several suspensions have been made which limit the mandatory testing requirements of the NPDES application form 2C for primary industry categories. These suspensions are explained in detail in the notes following § 122.21, as well as the revised Table I of Appendix A to Part 122. In addition, portions of the footnotes to the table in §122.21(d)(2), which explain the requirements for submission of applications and accompanying effluent data, have been suspended. This suspension is explained in note 5 following §122.21.

Also, paragraphs (b)(1) and (b)(2) of § 122.29 have been suspended. These sections explain the difference between a new source and a modification of an existing source.

Final Agency action on each of these suspensions will be taken in subsequent Agency rulemakings. For example, on June 14, 1982, at FR 25526, *et seq*, EPA proposed amendments to the "new discharger" definition as it affects mobile drilling rigs. The suspension of the definition made on October 15, 1980 will be withdrawn once final regulations on this proposal are published.

Finally, the Agency has also made several minor corrections to RCRA Parts 270 and 271.

Reorganization and renumbering of old Parts 122 and 123 necessitates revising the cross-references to former Parts 122 and 123 found elsewhere in the Code of Federal Regulations. Cross-references have thus been revised in 40 CFR Parts 124, 125, 146, 260, 261, 262, 263, 264, and 265.

As an appendix to this preamble, EPA has prepared a table illustrating how the Agency has reorganized the CPR. Note that since the Agency is only reorganizing the CPR, we are making no changes to any of the permit application forms that were published with the regulations. These forms remain in effect and we are not reprinting them here. Also note that since the Agency is not now modifying Part 124 of the regulations, the procedures of that Part allowing consolidated processing of applications for multiple permits remain in effect. As indicated previously, EPA is considering separate rulemaking to revise Part 124.

IV. Effective Date and Final Promulgation

This promulgation does not change the substance of the regulations at all; it merely changes their location in the Code of Federal Regulations. Accordingly, we are proceeding directly to promulgation without previously having proposed the reguation. EPA further believes that this is not the type of regulation that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Making the changed format effective immediately will benefit those who use the regulation. Consequently, EPA believes it has good cause to make these rules effective immediately.

V. Executive Order 12291

This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. 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. The regulation merely changes the location of the permit and state authorization requirements in the Code of Federal Regulations.

EPA submitted this rule to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available through: John Chamberlin, PM–220, U.S. Environmental Protection Agency, Washington, D.C.

VI. Regulatory Flexibility Act

Today's promulgation does not change any substantive requirements of the permitting regulations.

Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 123

Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

40 CFR Part 146

Hazardous materials, Reporting and recordkecping requirements, Waste treatment and disposal, Water supply.

40 CFR Part 233

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply, Indians—lands, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Hazardous materials, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 263

Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping 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, Water supply.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatments and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 271

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: March 16, 1983.

John W. Hernandez,

Acting Administrator.

Authority: Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974.

Appendix

This appendix describes the reorganization of former Parts 122 and 123. Four tables follow—one for each program: NPDES, RCRA, UIC, 404. Each table lists all provisions of former Parts 122 and 123 applicable to the particular program and the new location at which the provisions are now presented.

NPDES Program

Below is a list of the NPDES-related sections in former Parts 122 and 123 and their corresponding sections in new Parts 122 and 123.

Name and old	New
What are the consolidated permit regulations?	
§ 122.1	
(a)	122.1(a).
(b)	122.1(c).
(c)	122.1(d).
(d)	122.1(g).
(e)	122.1(e).
(f)	122.1(f).
Purpose and scope of Part 122	
§ 122.2	
(a)	Removed.
(b)	Removed.
Definitions	
§ 122.3	122.2.
Application for a permit	
§ 122.4	
(a)	122.21(a).
(b)	122.21(b).
(c)	122.21(e).
(d)	122.21(f).
(e)	122.21(o).
Continuation of expiring permits	
§ 122.5	122.6.
Signatories to permit applications and reports	
§ 122.6	122.22.
Conditions applicable to all permits	
§ 122.7	122.41. (All sections are same paragraphs.)
Establishing permit conditions	
§ 122.8	122.43.
Duration of permits	
§ 122.9	
(a)	122.46(a).
(b)	Removed.
(c)	Removed.
(d)	122.46(b).
(e)	122.46(c).
Schedules of compliance	
§ 122.10	122.47
Requirements for recording and reporting of monitoring results	
§ 122.11	122.48.
Considerations under Federal law	
§ 122.12	122.47.
Effect of a permit	
§ 122.13	122.5
Transfer of permits	
§ 122.14	122.61
Modification or revocation and reissuance of permits	
§ 122.15	122.62.
(a)(5)(i)	122.62(a)(5).
(a)(5) (ii)–(xi)	122.62(a) (6)–(15).
(a)(6)	Removed.
Termination of permits	
§ 122.16	122.64.
Minor modifications of permits	
§ 122.17	122.63.
(g)	(e).
Noncompliance and program reporting by the Director	
§ 122.18	123.45.
(b)	Removed.
(c)	123.45(b).
(d)	Removed.
(e)	123.45(c).
Confidentiality of information	
§ 122.19	122.7.
Purpose and scope of Subpart D	
§ 122.51	
(a)	Removed.
(b)	122.1(g).
(c)(1)	122.1(b).
(c)(2)	122.3.
Prohibitions	
§ 122.52	122.4.
Application for a permit	
§ 122.53	
(a)	122.21(a).
(b)	122.21(c).
(c)	122.21(d).
(d)	122.21(g).
(e)	122.21(h).
(f)	122.21(i).
(g)	122.21(j).
(h)	122.21(k).
(i)	122.21(l).
(j)	122.21(m).
(k)	122.21(n).

Name and old	New
Concentrated animal feeding operations	
§ 122.54	122.23.
Concentrated aquatic animal production facilities	
§ 122.55	122.24.
Aquaculture projects	
§ 122.56	122.25.
Separate storm sewers	
§ 122.57	122.26.
Silvicultural activities	
§ 122.58	122.27.
General permits	
§ 122.59	122.28.
Additional conditions applicable to all NPDES permits	
§ 122.60	122.41.
(a)	122.41(a).
(b)	122.41(c).
(c)	122.41(j)(4), (5).
(d)	122.41(k).
(e)	122.41(l)(3).
(f)	122.41(l)(6).
(g)	122.41(m).
(h)	122.41(n).
Additional conditions applicable to specified categories of NPDES permits	
§ 122.61	122.42.
Establishing NPDES permit conditions	
§ 122.62	122.44.
Calculating NPDES permit conditions	
§ 122.63	122.45.
Duration of certain NPDES permits	
§ 122.64	
(a)	122.46(d).
(b)	122.46(e).
(c)	122.46(f).
Disposal of pollutants into wells, into publicly owned treatment works or by land application	
§ 122.65	122.50.
New sources and new dischargers	
§ 122.66	122.29.
Purpose and scope	
§ 123.1	
(a)	123.1(a), (c).
(b)	Removed.
(c)	Removed.
(d)	Removed.
(e)	123.1(e).
(f)	123.1(c).
(g)	123.1(d).
(h)	123.1(f).
(i)	Removed.
(j)	123.1(h).
(k)	123.1(i).
Definitions	
§ 123.2	123.2.
Elements of a program submission	
§ 123.3	123.21.
Program description	
§ 123.4	123.22.
Attorney General's statement	
§ 123.5	123.23.
Memorandum of agreement with regional administrator	
§ 123.6	
(e)	123.24(d).
(g)	123.24(e).
Requirements for permitting	
§ 123.7	123.25.
(a)(1)	(a)(4).
(2)	(5).
(3)	(12).
(4)	(14).
(5)	(17).
(6)	(18).
(7)	(19).
(8)	(2).
(9)	(21).
(10)	(22).
(11)	(23).
(12)	§ 123.45.
(13)	123.25(a)(3).
(14)	(24).
(15)	(25).
(16)	(26).
(17)	(27).
(18)	(28).
(19)	(29).
(20)	(30).
(21)	(31).
(b)	Removed.
(c)	Removed.
(d)(1)	(a)(1).
(2)	(4).
(3)	(6).
(4)	(7).
(5)	(8).
(6)	(9).
(7)	(10).
(8)	(11).
(9)	(12).
(10)	(13).
(11)	(15).
(12)	(16).
(13)	(17).
(14)	(20).
(15)	(32).
(16)	(33).
(17)	(34).
(18)	(36).
(19)	(37).
(e)	(b).
Requirements for compliance evaluation programs	
§ 123.8	123.26.
Requirements for enforcement authority	
§ 123.9	123.27.
(a)(3)(iii)(A)	(a)(3)(i).
(a)(3)(iii)(B)	(a)(3)(ii).
(a)(3)(iii)(C)	(a)(3)(iii).
Sharing of information	
§ 123.10	123.41.
Coordination with other programs	
§ 123.11	123.3.
Approval process	
§ 123.12	123.61.
Procedures for revision of State programs	
§ 123.13	
(g)	123.62(e).
Criteria for withdrawal of State programs	
§ 123.14	123.63.
Procedures for withdrawal of State programs	
§ 123.15	123.64.
Purpose and scope	
§ 123.71	
(a)	123.1(a).
(b)	123.1(b).
(c)	123.1(g).
(d)	123.1(d).
Control of disposal of pollutants into wells	
§ 123.72	123.28.
Receipt and use of Federal information	
§ 123.73	123.42.
Transmission of information to EPA	
§ 123.74	123.43.
EPA review of and objections to State permits	
§ 123.75	123.44.
Prohibitions	
§ 123.76	123.29.
Approval process	
§ 123.77	123.61.

UIC Program

Below is a list of the UIC related sections in Parts 122 and 123 and their corresponding sections in Parts 144 and 145: Part 122=144.

Name and old	New
What are the consolidated regulations	
§ 122.1	§ 144.1.
Purpose and scope of part 122	
§ 122.2	§ 144.1.
Definitions	
§ 122.3	§ 144.3.
Application for a permit	
§ 122.4	§ 144.31.
§ 122.4(a)	Removed.
§ 122.4(b)	§ 144.31(b).
§ 122.4(c)	§ 144.31(d).
§ 122.4(d)	§ 144.31(e).
§ 122.4(e)	§ 144.31(f).
Continuation of expiring permits	
§ 122.5	§ 144.37.
Signatories to permit applications and reports	
§ 122.6	§ 144.32.
Conditions applicable to all permits	
§ 122.7	§ 144.51(a)–(1).
Establishing permit conditions	
§ 122.8	
§ 122.8(a)	§ 144.52(a).
§ 122.8(b)(1)–(3)	§ 144.52(b)(1)–(3).
§ 122.8(c)	§ 144.52(c).
Duration of permits	
§ 122.9	§ 144.36.
§ 122.9(c)	§ 144.36(a).
§ 122.9(d)	§ 144.36(b).
§ 122.9(e)	§ 144.36(c).
Schedule of compliance	
§ 122.10	§ 144.53.
§ 122.10(a)(1)(ii)	§ 144.53(a)(1)(i).
§ 122.10(a)(3)	§ 144.53(a)(2).
§ 122.10(a)(4)	§ 144.53(a)(3).
Requirements for recording and reporting of monitoring results	
§ 122.11	§ 144.54.
Considerations under Federal law	
§ 122.12	§ 144.4.
Effects of a permit	
§ 122.13	§ 144.35.
Transfer of permits	
§ 122.14	§ 144.38.
Modification of revocation and reissuance of permits	
§ 122.15	§ 144.39.
Termination of permits	
§ 122.16	§ 144.40.
Minor modification of permits	
§ 122.17	§ 144.41.
§ 122.17(f)(1)	§ 144.41(e).
§ 122.17(f)(2))	§ 144.41(f).
§ 122.17(f)(3))	§ 144.41(g).
Noncompliance and program reporting by the director	
§ 122.18	§ 144.8.
§ 122.18(c)	§ 144.8(b).
§ 122.18(c)(4)	§ 144.8(b)(2).
§ 122.18(e)	§ 144.8(c).
Confidentiality of information	
§ 122.19	§ 144.5.
Purpose and scope of subpart C (rewritten)	
§ 122.31	§ 144.1.
Classification of wells	
§ 122.32	§ 144.6.
Prohibition of unauthorized injection	
§ 122.33	§ 144.11.
Prohibition of movement of fluid into underground sources of drinking water	
§ 122.34	§ 144.12.
Identification of underground sources of drinking water and exempted aquifers	
§ 122.35	§ 144.7.
Elimination of certain class IV wells	
§ 122.36	§ 144.13.
Authorization of underground injection by rule	
§ 122.37	

Name and old	New
§ 122.37(a)(1)	§ 144.21.
§ 122.37(a)(2)	§ 144.22.
§ 122.37(a)(3)	§ 144.23.
§ 122.37(a)(4)	§ 144.24.
§ 122.37(b)	§ 144.25.
§ 122.37(c)	§ 144.26.
§ 122.37(d)	§ 144.15.
Application for a permit; authorization by permit	
§ 122.38	
§ 122.38(a)	§ 144.31(a).
§ 122.38(b)	§ 144.31(c).
§ 122.38(c)	§ 144.31(g).
Area permits	
§ 122.39	§ 144.33.
Emergency permits	
§ 122.40	§ 144.34.
Additional conditions applicable to all UIC permits	
§ 122.41	
§ 122.41(a)	§ 144.51(a).
§ 122.41(b)	§ 144.51(j)(2)(ii).
§ 122.41(c)	§ 144.51(m).
§ 122.41(d)	§ 144.51(1)(6).
§ 122.41(e)	§ 144.51(n).
Establishing UIC permit conditions	
§ 122.42	
§ 122.42(a)	§ 144.52(a)(1).
§ 122.42(b)	§ 144.52(a)(2).
§ 122.42(c)	§ 144.52(a)(3).
§ 122.42(d)	§ 144.52(a)(4).
§ 122.42(e)	§ 144.52(a)(5).
§ 122.42(f)	§ 144.52(a)(6).
§ 122.42(g)	§ 144.52(a)(7).
§ 122.42(h)	§ 144.52(a)(8).
§ 122.42(i)	§ 144.52(b)(1).
Waiver of requirements by director	
§ 122.43	§ 144.16.
Corrective action	
§ 122.44	§ 144.55.
Requirements for wells injecting hazardous waste	
§ 122.45	§ 144.14.
Promulgation of class II programs for Indian lands	
§ 122.46	§ 144.2.
Purpose and scope	
§ 123.1	
§ 123.1(a)	§ 145.1(a).
§ 123.1(b)	Deleted.
§ 123.1(c)	§ 145.1(b).
§ 123.1(d)	§ 145.1(c).
§ 123.1(e)	§ 145.1(d).
§ 123.1(f)	§ 145.31(d).
§ 123.1(g)	§ 145.21(e).
§ 123.1(h)	§ 145.1(f).
§ 123.1(i)	Deleted.
§ 123.1(j)	§ 145.21(f).
§ 123.1(k)	§ 145.1(g).
Definitions	
§ 123.2	§ 145.2.
Elements of a program submission	
§ 123.3	§ 145.21.
Program description	
§ 123.4	§ 145.22.
§ 123.4(g)	§ 145.22(f).
Attorney General's statement	
§ 123.5	§ 145.23.
Memorandum of agreement with the regional administrator	
§ 123.6	§ 145.24.
Requirements for permitting	
§ 123.7	§ 145.11.
§ 123.7(a)(1)–(21)	§ 145.11(a)(1)–(21).
§ 123.7(c)(1)–(12)	§ 145.11(a)(22)–(33).
Requirements for compliance evaluation programs	
§ 123.8	§ 145.12.
Requirements for enforcement authority	
§ 123.9	§ 145.13.
§ 123.9(a)(3)(i)(A)	§ 145.13(a)(3)(i).
§ 123.9(a)(3)(i)(B)	§ 145.13(a)(3)(ii).
Sharing of information	
§ 123.10	§ 145.14.
Coordination with other programs	
§ 123.11	Removed.
Approval process	
§ 123.12	§ 145.31.
Procedure for revision of State programs	
§ 123.13	§ 145.32.
§ 123.13(f)	§ 145.32(e).
Criteria for withdrawal of State programs	
§ 123.14	§ 145.33.
Procedures for withdrawal of State programs	
§ 123.15	§ 145.34.
§ 123.15(a)	§ 145.34(a).
Purpose and scope of subpart C	
§ 123.51	§ 145.1.
§ 123.51(a)	Deleted.
§ 123.51(b)	§ 145.21(a).
§ 123.51(c)	§ 145.21(c).
§ 123.51(d)	§ 145.21(d).
§ 123.51(e)	§ 145.21(e).
Requirement to obtain a permit	
§ 123.52	§ 145.11(a)(27).
Progress reports	
§ 123.53	§ 145.21(b).
Approval process	
§ 123.54	§ 145.31.
§ 123.54(a)–(c)	§ 145.31(a)–(c).
§ 123.54(d)	§ 145.31(e).
Procedures for withdrawal of State UIC programs	
§ 123.55	§ 145.34.
§ 123.55(a)	§ 145.34(b)(1).
§ 123.55(b)	§ 145.34(b)(2).
§ 123.55(c)	§ 145.34(b)(3).

404 Program

Below is a list of the 404 related sections in Parts 122 and 123 and their corresponding sections in Part 233.

Old name	New
What are the consolidated permit regulations? (Purpose and scope of Part 233).	
122.1	233.1.
122.1(a)	233.1(a).
122.1(b)(1) (i)–(iii)	233.1(b) (1)–(4).
122.1(b) (2)–(4)	Removed.
122.1(c) (1)–(2)	233.1(c) (1)–(2).
122.1(d)	Removed.
122.1(e)	233.1(d).
122.1(f)	233.1(e).
Purpose and scope	
122.2	233.2.
122.2(a)	233.2.
122.2(b)	Removed.
Definitions	
122.3	233.3.
Application for a permit	
122.4	233.4.
122.4(a)	233.4(b).
122.4(b)	233.4(c).
122.4(c)	233.4(d).
122.4(d)	233.4(e).
122.4(e)	233.4(f).
Continuation of expiring permits	
122.5	233.5.
122.5 (a)–(c)	Removed.
122.5(d)	233.5.
Signatories to permit application and reports	
122.6	233.6.
122.6 (a)–(d)	233.6 (a)–(d).
Conditions applicable to all permits	
122.7	233.7.
122.7 (a)–(l)	233.7 (a)–(l).
Establishing permit conditions	
122.8	233.8.
122.8 (a)–(b)	233.8 (a)–(b).
122.8(c)	233.8(d).
Duration of permits	
122.9	233.9.
122.9(a)	233.9(a).
122.9 (b)–(c)	Removed.
122.9 (d)–(e)	233.9 (b)–(c).
Schedules of compliance	
122.10	233.10.
122.10(a)	233.10(a).
122.10(a)(1)	233.10(a)(1).
122.10(a)(1) (i) and (ii)	Removed.
122.10(a)(2)	Removed.
122.10(a)(3)	233.10(a)(2).
122.10(a)(4)	233.10(a)(3).
122.10(b)	Removed.
Requirements for recording and reporting of monitoring results	
122.11	233.11.
122.11 (a)–(c)	233.11 (a)–(c).
Consideration under Federal law	
122.12	Removed.
Effect of a permit	
122.13	233.12.
122.13 (a)–(b)	233.12 (a)–(b).
122.13(c)	Removed.
Transfer of permits	
122.14	233.13.
122.14(a)	233.13.
122.14(b)	Removed.
Modification or revocation and reissuance of permits	
122.15	233.14.
122.15(a)(1)–(2)	233.14(a)(1)–(2).
122.15(a)(3)(i)–(ii)	233.14(a)(3)(i)–(ii).
122.15(a)(3)(iii)	Removed.
122.15(a)(4)	233.14(a)(4).
122.15(a)(5)	Removed.
122.15(a)(6)	233.14(a)(5).
122.15(b)	233.14(b).
122.15(c)	Removed.
Termination of permits	
122.16	233.15.
122.16(a)(1)	233.15(a).
122.16(a)(2)	233.15(b).
122.16(a)(3)	233.15(c).
122.16(a)(4)	233.15(d).
122.16(b)	Removed.
Minor modification of permits	
122.17	233.16.
122.17(a)–(d)	233.16(a)–(d).
122.17(e)–(g)	Removed.
122.17(h)	233.16(e).

Old name	New
Noncompliance and program reporting by the director	
122.18	233.17.
122.18(a)	Removed.
122.18(b)	233.17(a).
122.18(c)	Removed.
122.18(d)	233.17(b).
122.18(e)	233.17(c).
Confidentiality of information	
122.19	233.18.
122.19(a)	Removed.
122.19(b)(1)	233.18(a)(1).
122.19(b)(2)–(3)	Removed.
122.19(b)(4)	233.18(a)(3).
122.19(c)–(d)	Removed.
Purpose and scope	
123.1	233.20.
123.1(a)	233.20(a).
123.1(b)	Removed.
123.1(c)	233.20(b).
123.1(d)	233.20(c).
123.1(e)	233.20(d).
123.1(f)	233.20(e).
123.1(g)	233.20(f).
123.1(h)	233.20(g).
123.1(i)	233.20(h).
123.1(j)	233.20(i).
123.1(k)	233.20(j).
Definitions	
123.2	Removed.
Elements of a program submission	
123.3	233.21.
123.3(a)–(d)	233.21(a)–(d).
Program description	
123.4	233.22.
123.4(a)–(e)	233.22(a)–(e).
123.4(f)–(g)	Removed.
123.4(h)(1)–(8)	233.22(f)–(m).
Attorney General's statement	
123.5	233.23.
123.5(a)–(b)	233.23(a)–(b).
123.5(c)	Removed.
123.5(d)	233.23(c).
Memorandum of agreement with the Regional Administrator	
123.6	233.24.
123.6(a)	233.24(a).
123.6(b)(1)	Removed.
123.6(b)(2)–(3)	233.24(b)(1)–(2).
123.6(b)(4)	233.24(b)(3.)
123.6(b)(5)	Removed.
123.6(b)(6)	233.24(b)(4.)
123.6(c)	233.24(c).
123.6(d)	Removed.
123.6(e)	Removed.
123.6(f)	233.24(d).
123.6(g)	233.24(e).
Requirements for permitting	
123.7	233.26.
123.7(a)	233.26(a).
123.7(b)–(d)	Removed.
123.7(e)	233.26(b).
Requirements for enforcement evaluation programs	
123.8	233.27.
123.8(a)–(d)	233.27(a)–(d).
123.8(e)	Removed.
Requirements for enforcement authority	
123.9	233.28.
123.9(a)(3)	233.28(a)(4).
123.9(a)(3)(i)–(ii)	Removed.
123.9(a)(3)(iii)	233.28(a)(4)(i).
Sharing of information	
123.10	233.29.
Coordination with other programs	
123.11	233.90.
Approval process	
123.12	233.31.
Procedures for revision of State programs	
123.13	233.32.
123.13(a)–(d)	233.32(a)–(d.)
123.13(e)–(g)	Removed.
123.13(h)	233.32(e).
Criteria for withdrawal of State programs	
123.14	233.33.
Procedures for withdrawal of State programs	
123.15	233.34.
Purpose and scope	
123.91	
123.91(a)	Removed.
123.91(b)	Removed.
123.91(c)	233.20(i).
123.91(d)	233.37(d).
Activities not requiring permits	
123.92	233.35.
Prohibitions	
123.93	233.36.
Applications for a permit	
123.94	233.4.
123.94(a)	233.4(a).
123.94(b)	233.4(b).
123.94(c)	233.4(e).
General permits	
123.95	233.37.
Emergency permits	
123.96	233.38.
Permit conditions	
123.97	233.7.
123.97(a)–(d)	233.7(m)–(p).
Establishing permit conditions	
123.98	233.8.
123.98(a)–(g)	233.8(c)(1)–(7).
Memorandum of agreement with the Secretary	
123.99	233.25.
Transmission of information to EPA and other Federal agencies	
123.100	233.39.
EPA review of and objections to State permits	
123.101	233.40.
Coordination requirements	
123.102	233.41.
Enforcement authority	
123.103	233.28(a)(3)
Approval process	
123.104	233.31.

Index of Changes to Parts 122 and 123

Below is a list of the RCRA related sections in Parts 122 and 123, and their corresponding sections in Parts 270 and 271:

Part 122 = Part 270

Name and old	New
What are the consolidated permit regulations?	
§ 122.1	270.1.
(a)(1)	(a)(1).
(a)(ii)–(e)	Removed.
Purpose and scope of Part 122	
§ 122.2	270.1.
(b)	Removed.
Definitions	
§ 122.3	270.2.
Application for a permit	
§ 122.4	270.10.
(a)–(c)	(a)–(c).
(d)	(d).
(d)(1)–(d)(4)	270.13(a)–(d).
(d)(5)	270.13(f).
(d)(6)–(d)(8)	270.13(k)–(m).
(e)	270.10(i).
Continuation of expiring permits	
§ 122.5	270.51.
Signatories to permit applications and reports	
§ 122.6	270.11.
Conditions applicable to all permits	
§ 122.7	270.30.
(1)(7)–(1)(8)	(1)(10)–(1)(11).
Establishing permit conditions	
§ 122.8	270.32.
(a)–(b)	(a).
(b)(2)–(3)	(c)–(d).
(c)	(e).
Duration of permits	
§ 122.9	270.50.
(b)	(a).
(d)	(b).
(e)	(c).
Schedules of compliance	
§ 122.10	270.33.
(a)(3)–(4)	(a)(2)–(3).
Requirements for recording and reporting of monitoring results	
§ 122.11	270.31.
Consideration under Federal law	
§ 122.12	270.3.
Effect of a permit	
§ 122.13	270.4.
Transfer of permits	
§ 122.14	270.40.
Modification or revocation and reissuance of permits	
§ 122.15	270.41.
(a)(7)	(a)(5).
Termination of permits	
§ 122.16	270.43.
Minor modifications of permits	
§ 122.17	270.42.
(e)(1)–(8)	(e)–(n).
Noncompliance and program reporting by the Director	
§ 122.18	270.5.
(c)	(b).
(c)(3)	(b)(2).
(e)	(c).
Confidentiality of information	
§ 122.19	270.12.
(b)(1)	(b).
References	
§ 122.20	270.6.
Purpose and scope of Subpart B	
§ 122.21	270.1.
(a)	Removed.
(b)(1)–(b)(7)	(a)(3).
(b)(8)	(a)(2).
(c)–(d)	(b)–(c).
(d)(2)(v)	Removed.
(d)(2)(vi)–(viii)	(c)(2)(v)–(vii).
Application for a permit	
§ 122.22	270.10.
(a)–(d)	(e)–(h).
Interim status	
§ 122.23	270.70–270.73.
Qualifying for interim status	
(a)	270.70.
Coverage	
(b)	270.71(a).

Name and old	New
Changes during interim status	
(c)	270.72.
Interim status standards	
(d)	270.71(b).
Grounds for termination	
(e)	270.73.
Contents of Part A of the RCRA permit application	
§ 122.24	270.13.
(a)	(b).
(b)	(e).
(c)–(g)	(g)–(j).
Contents of Part B of the RCRA permit application	
§ 122.25	270.14–270.29.
(a)	270.14.
(a)	(b).
(b)(1)	270.15.
(i)–(vi)	(a)–(d).
(b)(2)	270.16.
(i)–(vi)	(a)–(f).
(b)(3)	270.17.
(i)–(ix)	(a)–(i).
(b)(4)	270.18.
(i)–(ix)	(a)–(i).
(b)(5)	270.19.
(i)–(iv)	(a)–(d).
(b)(6)	270.20.
(i)–(viii)	(a)–(h).
(b)(7)	270.21.
(i)–(ix)	(a)–(i).
(c)	270.14(c).
Permits by rule	
§ 122.26	270.60.
Short term permits	
§ 122.27	270.61–270.63.
Emergency permits	
(a)	270.61.
Hazardous waste incinerator permits	
(b)	270.62.
Permits for land treatment demonstrations	
(c)	270.63.
Additional conditions applicable to all RCRA permits	
§ 122.28	270.30.
(b)	(j)(2).
(c)	(1)(2).
(d)	(1)(5).
(e)(1)–(3)	(1)(7)–(9).
Establishing RCRA permit conditions	
§ 122.29	270.32(a)–(b).
Interim permits for UIC wells	
§ 122.30	270.64.

Part 123–Part 271

Name and old	New
Subpart A—General Program Requirements	
Retitled: Requirements for final authorization.	
Purpose and scope	
§ 123.1	§ 271.1.
(a)(2)–(4)	Removed.
(b)	Removed.
(c)–(k)	(b)–(j).
Note	Removed.
Definitions	
§ 123.2	§ 271.2.
Elements of a program submission	
§ 123.3	§ 271.5.
Program description	
§ 123.4	§ 271.6.
(f)	Removed.
(f)(1)–(3)	(f)–(h).
(f)(4)	Removed.
(g) and (h)	Removed.
Attorney General's statement	
§ 123.5	§ 271.7.
(c) and (d)	Removed.
Memorandum of agreement	
§ 123.6	§ 271.8.
(b)(1)	(b)(6).
(b)(2)	(b)(7).
(b)(3)	(b)(2).
(b)(4)	(b)(3).
(b)(5)	(b)(8).
(b)(6)	(b)(11).
(d)	Removed.
(d)(1)	(b)(4).
(d)(2)	(b)(5).
(d)(3)	(b)(9).
(d)(4)	(b)(1).
(d)(5)	(b)(10).
(e)–(g)	Removed.
Requirements for permitting	
§ 123.7	§ 271.14.
(a)	Removed.
(a)(1)	(d).
(a)(2)	(e).
(a)(3)	(i).
(a)(4)	(k).
(a)(5)	(p).
(a)(6)	(l).
(a)(7)	(j).
(a)(8)	(b).
(a)(9)	(m).
(a)(10)	(n).
(a)(11)	(o).
(a)(12)	(c).
(a)(13)	(f).
(a)(14)–(21)	(t)–(aa).
(b)	Removed.
(b)(1)	(a).
(b)(2)	(d).
(b)(3)	(g).
(b)(4)	(h).
(b)(5)	(q).
(b)(6)	(r).
(b)(7)	(i).
(b)(8)	(k).
(b)(9)	(s).
Requirements for compliance evaluation program	
§ 123.8	§ 271.15.
(e)	Removed.
Requirements for enforcement authority	
§ 123.9	§ 271.16.
(a)(3)(i)	Removed.
(a)(3)(i)(A) and (B)	(a)(3)(i) and (ii).
(a)(3)(ii)	Removed.
(a)(3)(iii)	Removed.
Sharing of information	
§ 123.10	§ 271.17.
Coordination with other programs	
§ 123.11	§ 271.18.
Approval process	
§ 123.12	Removed.
Procedures for revision of State programs	
§ 123.13	§ 271.21.
(f)–(h)	Removed.
Criteria for withdrawal of State programs	
§ 123.14	§ 271.22.
Retitled: Procedures for withdrawing approval of State programs.	
Procedures for withdrawal of State programs	
§ 123.15	§ 271.23.
Retitled: Procedures for withdrawing approval of State programs.	
Subpart B—Additional Requirements for State Hazardous Waste Programs	
Sections 123.31–123.39 are now included in Subpart A, as follows:	
Retitled: Availability of final authorization	
§ 123.31	§ 271.3.
(a)	Removed.
(b)–(e)	(a)–(d).
Consistency	
§ 123.32	§ 271.4.
Requirements for identification and listing of hazardous wastes	
§ 123.33	§ 271.9.
Requirements for generators of hazardous wastes	
§ 123.34	§ 271.10.
Requirements for transporters of hazardous wastes	
§ 123.35	§ 271.11.
Requirements for hazardous waste management facilities	
§ 123.36	§ 271.12.
Requirements with respect to permits and permit applications	
§ 123.37	§ 271.13.
EPA review of State permits	
§ 123.38	§ 271.19.
Approval process	
§ 123.39	§ 271.20.
Subpart F—Requirements for interim authorization of State hazardous waste programs	
Retitled: Subpart B—Requirements for interim authorization	
Purpose and scope	
§ 123.121	§ 271.121.
Schedule	
§ 123.122	§ 271.122.
Elements of a program submission	
§ 123.123	§ 271.123.
Program description	
§ 123.124	§ 271.124.
Attorney General's statement	
§ 123.125	§ 271.125.
Memorandum of agreement	
§ 123.126	§ 271.126.
Authorization plan	
§ 123.127	§ 271.127.
Program requirements for interim authorization for phase I	
§ 123.128	§ 271.128.
Additional program requirements for interim authorization for phase II	
§ 123.129	§ 271.129.
Interstate movement of hazardous waste	
§ 123.130	§ 271.130.
Progress reports	
§ 123.131	§ 271.131.
Sharing of information	
§ 123.132	§ 271.132.
Coordination with other programs	
§ 123.133	§ 271.133.
EPA review of State permits	
§ 123.134	§ 271.134.
Approval process	
§ 123.135	§ 271.135.
Withdrawal of State programs	
§ 123.136	§ 271.136.
Reversion of State programs	
§ 123.137	§ 271.137.

Part 122 is revised to read as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Definitions and General Program Requirements

Sec.

122.1 Purpose and Scope.
122.2 Definitions.
122.3 Exclusions.

Sec.

122.4 Prohibitions (applicable to State NPDES Programs, see § 123.25).
122.5 Effect of a permit.
122.6 Continuation of expiring permits.
122.7 Confidentiality of information.

Subpart B—Permit Application and Special NPDES Program Requirements

122.21 Application for a permit (applicable to State programs, see § 123.25).
122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).
122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).
122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).
122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).
122.26 Separate storm sewers (applicable to State NPDES programs, see § 123.25).
122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).
122.28 General permits (applicable to State NPDES programs, see § 123.25).
122.29 New sources and new discharges.

Subpart C—Permit Conditions

122.41 Conditions applicable to all permits (applicable to State programs, see §123.25).
122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).
122.43 Establishing permit conditions (applicable to State programs, see § 123.25).
122.44 Establishing limitations, standards and other permit conditions (applicable to State NPDES programs, see § 123.25).
122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).
122.46 Duration of permits (applicable to State programs, see § 123.25).
122.47 Schedules of compliance.
122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).
122.49 Considerations under Federal law.
122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State programs, see § 123.25).

Subpart D—Transfer, modification, revocation and reissuance, and termination of permits

122.61 Transfer of permits (applicable to State programs, see § 123.25).
122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).
122.63 Minor modifications of permits.
122.64. Termination of permits (applicable to State programs, see § 123.25).

Authority: The Clean Water Act, 33 U.S.C. § 1251 *et seq.*

Appendix A—NPDES Primary Industry Categories.
Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation (§ 122.23).
Appendix C—Criteria for Determining a Concentrated Aquatic Animal Production Facility (122.24).
Appendix D—NPDES Permit Application Testing Requirements (122.21).

Subpart A—Definitions and General Program Requirements

§ 122.1 Purpose and scope.

(a) *Coverage.* (1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under sections 318, 402, and 405(a) of the *Clean Water Act* (CWA) (Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483, and Pub. L. 97–117; 33 U.S.C. 1251 *et seq.*).

(2) These regulations cover basic EPA permitting requirements (Part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (Part 123), and procedures for EPA processing of permit applications and appeals (Part 124). Part 124 is also applicable to other EPA permitting programs, as detailed in that Part.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined in § 122.2.

(2) The following are point sources requiring NPDES permits for discharges:

(i) Concentrated animal feeding operations as defined in § 122.23;

(ii) Concentrated aquatic animal production facilities as defined in § 122.24;

(iii) Discharges into aquaculture projects as set forth in § 122.25;

(iv) Discharges from separate storm sewers as set forth in § 122.26; and

(v) Silvicultural point sources as defined in § 122.27.

(c) *State Programs.* Certain requirements set forth in Parts 122 and 124 are made applicable to approved State programs by reference in Part 123. These references are set forth in § 123.25. If a section or paragraph of Parts 122 or 124 is applicable to States, through reference in § 123.25, that fact is signaled by the following words at the end of the section or paragraph heading: *(applicable to State programs, see § 123.25).* If these words are absent, the section (or paragraph) applies only to EPA administered permits.

(d) *Relation to other requirements.* (1) *Permit application forms.* Applicants for EPA issued permits must submit their applications on EPA's permit application forms when available. Most of the information requested on these application forms is required by these regulations. The basic information required in the general form (Form 1) and the additional information required for NPDES applications (Forms 2a–d) are listed in § 122.21. Applicants for State issued permits must use State forms which must require at a minimum the information listed in these sections.

(2) *Technical regulations.* The NPDES permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136 and 40 CFR subchapter N (Parts 400–460).

(e) *Public participation.* This rule establishes the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under Parts 122, 123, and 124.

(f) *State authorities.* Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

(g) *Authority.* (1) Section 301(a) of CWA provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(2) Section 402(a)(1) of CWA provides in part that "The Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, * * * upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act."

(3) Section 318(a) of CWA provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or

State supervision pursuant to section 402 of this Act."

(4) Section 405 of CWA provides, in part, that "Where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act."

(5) Sections 402(b), 318 (b) and (c), and 405(c) of CWA authorize EPA approval of State permit programs for discharges from point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(6) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(7) Section 501(a) of CWA provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(8) Section 101(e) of CWA provides that "Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

§ 122.2 Definitions.

The following definitions apply to Parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMPs means "best management practices."

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Direct discharge means the "discharge of a pollutant."

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent

additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

DMR means "Discharge Monitoring Report."

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Facility or activity means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

General permit means an NPDES "permit" issued under § 122.28 authorizing a category of discharges under the CWA within a geographical area.

. *Hazardous substance* means any substance designated under 40 CFR Part 116 pursuant to section 311 of CWA.

Indirect discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

Major facility means any NPDES "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved managment agency under section 208 of CWA.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a new or additional "discharge of pollutants" at a "site" at which on October 18, 1972 it had never discharged pollutants; and

(b) Which has never received a finally effective NPDES "permit" for discharges at that site; and

(c) Which is not a "new source."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States." It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a location for which it does not have an existing permit. [See Note 2 of this section.]

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this Part and Parts 123 and 124. "Permit" includes an NPDES "general permit" (§ 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

[Note.—Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

POTW means "publicly owned treatment works."

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976),

modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Proposed permit means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

Publicly owned treatment works ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Recommencing discharger means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Secondary industry category means any industry category which is not a "primary industry category."

Secretary means the Secretary of the Army, acting through the Chief of Engineers.

Sewage from vessels means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

Sewage sludge means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) of CWA.

Variance means any mechanism or provision under sections 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the United States or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

[Note 1.—At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in § 122.2, in the definition of "Waters of the United States." This revision continues that suspension.]

[Note 2.—At 45 FR 68391, Oct. 15, 1980, effective Oct. 15, 1980, the Environmental Protection Agency suspended until further notice the NPDES "new discharger" definition as it applies to offshore mobile drilling rigs operating in offshore areas adjacent to the Gulf Coast, Atlantic Coast, California and Alaska, except for the Flower Garden area in the Gulf of Mexico and other areas identified as environmentally sensitive by the Bureau of Land Management. This revision continues that suspension.]

§ 122.3 Exclusions.

The following discharges do not require NPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR Part 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.44(m).

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived;

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.44;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section (403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause of contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by section 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the puublic comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the descharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

§ 122.5 Effect of a permit.

(a) *Applicable to State programs, see § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with section 301, 302, 306, 307, 318, 403, and 405 of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(b) *Applicable to State programs, See § 123.25.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 122.6. Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under § 122.21 which is a complete (under § 122.21(e)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effectively and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or oprator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* (1) An EPA-issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 122.7 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *Applicable to State programs, see § 123.25.* Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits, and effluent data.

(c) *Applicable to State programs, see § 123.25.* Information required by NPDES application forms provided by the Director under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Subpart B—Permit Application and Special NPDES Program Requirements

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) *Time to apply.* Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section.

(d) *Duty to reapply.* (1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) All other permittees with currently effective permits shall submit a new application in accordance with the table below:

Permit expires	Application requirement	Deadline for submission
On or before Nov. 30, 1980	(1) If applicant has submitted new application before Apr. 30, 1980, new application [1] is not required.	Not applicable.
	(2) If applicant has not submitted new application before Apr. 30, 1980, applicant must submit new application. [1]	Date on which permit expires. [2]
Dec. 1, 1980–May 31, 1981	New application [1]	90 days before permit expires. [2] [3]
On or after June 1, 1981	New application [1]	180 days before [2] permit expires.

[1] The new application requirements are set forth in paragraphs (f), (g), and (h) this section. Applicants for EPA-issued permits must use Forms 1 and either 2b or 2c of EPA's consolidated permit application forms to apply under those sections.
[2] Applicants may request additional time for the submission of information required by paragraphs (d)(7), (9) and (10) of this section. The request must be in writing and must state the reasons this information could not be submitted on time. Based upon this request, the Director may extend the time to submit all or some of the information up to six months beyond the deadline for submission or June 30, 1981, whichever is earlier.
[3] The Director may grant permission to submit an application later than this date, but no later than the expiration date of the permit.

[See Note 5.]

(e) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA administered NPDES programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(f) *Information requirements.* All applicants for NPDES permits shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g)–(k)) of this section.

(1) The activities conducted by the applicant which require it to obtain an NPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge or fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its

hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(8) A brief description of the nature of the business.

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using application forms provided by the Director:

(1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Line Drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations,or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower".) For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) *Intermittent flows.* If any of the discharges described in paragraph (g)(3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).

(5) *Maximum production.* If an effluent guideline promulgated under section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by § 122.45(b)(2).

(6) *Improvements.* If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used.

An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemial Oxygen Demand (BOD_5)
Chemical Oxygen Demand
Total Organic Carbon
Total Suspended Solids
Ammonia (as N)
Temperature (both winter and summer)
pH

(B) At the applicant's request, the Director may waive the reporting requirements for one or more of the pollutants listed in paragraph (g)(7)(i)(A) of this section.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D of this Part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (d)(8) of this section. Table II of Appendix D of this Part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromotography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2, 3, and 4 of this section.]

(B) The pollutants listed in Table III of Appendix D of this Part (the toxic metals, cyanide, and total phenols).

(iii) Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

(A) All pollutants listed in Table II or Table III of Appendix D of this Part (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (g)(7)(ii) of this section except that an applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for the pollutants listed in Table II of Appendix D of this Part (the organic toxic pollutants).

(B) All pollutants in Table IV of Appendix D of this Part (certain conventional and nonconventional pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of this Part (certain hazardous substances and asbestos) is discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is

expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraphs (g)(7)(ii)(A) or (g)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D of this Part (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant does or expects that it will during the next 5 years use or manufacture as an intermediate or final product or byproduct.

(10) *Potential discharges.* A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in paragraph (g)(7) of this section over the next 5 years.

(11) *Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(12) *Contract analyses.* If a contract laboratory or consulting firm performed any of the analyses required by paragraph (g)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(13) *Additional information.* In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue an NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(h) *Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.* New and existing concentrated animal feeding operations (defined in § 122.23) and concentrated aquatic animal production facilities (defined in § 122.24) shall provide the following information to the Director, using the application form provided by the Director:

(1) For concentrated animal feeding operations:

(i) The type and number of animals in open confinement and housed under roof.

(ii) The number of acres used for confinement feeding.

(iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(i) The maximum daily and average monthly flow from each outfall.

(ii) The number of ponds, raceways, and similar structures.

(iii) The name of the receiving water and the source of intake water.

(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(v) The calendar month of maximum feeding and the total mass of food fed during that month.

(i) *Application requirements for new and existing POTWs.* [Reserved.]

(j) *Application requirements for new sources and new dischargers.* [Reserved.]

(k) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source(as defined in § 122.2) and which is located in a State without an approved NPDES program must comply with the provisions of this paragaraph.

(2)(i) Before beginning any on-site construction as defined in § 122.29, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (k)(2)(i) of this section.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of the new source determination under paragraph (k)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR 6.600 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

(l) *Variance requests by non-POTWs.* A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) *Fundamentally different factors.* A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.10. The request shall explain how the requirements of § 124.13 and 40 CFR Part 125, Subpart D have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a

section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

(iii) Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with paragraph (1)(2)(ii) of this section and need not be preceded by an initial request under paragraph (1)(2)(i) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under paragraph (m)(2) of this section, whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

(5) *Water quality related effluent limitations.* A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(6) *Thermal discharges.* A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established under CWA Section 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 124.10. A copy of the request as required under 40 CFR Part 125, Subpart H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under 40 CFR Part 125. (See § 124.65 for special procedures for section 316(a) thermal variances.)

(m) *Variance requests by POTWs.* A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) *Discharges into marine waters.* A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of the statutory deadlines in CWA section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before June 26, 1978.

(3) *Water quality based effluent limitation.* A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(n) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (l) and (m) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under paragraph (l)(2)(ii) or (l)(2)(iii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

(o) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

[Note 1.—At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V–C of the NPDES application Form 2c as they apply to coal mines. This revision continues that suspension.]

[Note 2.—At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V–C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry. This revision continues that suspension.]

[Note 3.—At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V–C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart F), and Paperboard from Waste Paper (Subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/

neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart O), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues that suspension.]

[Note 4.—At 46 FR 36703, July 15, 1981, the Environmental Protection Agency suspended until further notice portions of § 122.21(d)(2), as set forth below:

1. Footnote (2) to the table in § 122.21(d)(2).

2. In footnote (3) to the table in 40 CFR § 122.21(d)(2), the portion which restricts the Director's authority to extend the application deadline no later than the permit expiration date as that restriction applies to the submission of data required by § 122.21(d) (7), (9), and (10). Thus, during the suspension, footnote (3) effectively reads as follows:

3. The Director may grant permission to submit an application later than this date but (except for information required by paragraph (d) (7), (9), and (10) of this section) no later than the expiration date of the permit.

This revision continues that suspension.]

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official.

(b) *Reports.* All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Appendix B of this Part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in Appendix B of this Part shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Defintion.* "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of this Part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(i) The location and quality of the receiving waters of the United States;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

§ 122.26 Separate storm sewers (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Separate storm sewers, as defined in this section are point sources subject to the NPDES permit program. Separate storm sewers may be permitted either individually or under a general permit (See § 122.28). An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all convenyances which are a part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.

(b) *Definition.* (1) "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

(i) Located in an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(ii) Not located in an urbanized area but designated under paragraph (c) of this section.

(2) Except as provided in paragraph (b)(3) of this section, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Director under paragraph (c) of this section is not considered a point source and is not subject to the provisions of this section.

(3) Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers are point sources that must obtain NPDES permits but are not separate storm sewers.

(4) Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA; see 40 CFR 35.925–21.

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

(1) A Water Quality Management plan under section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Director determines that a storm sewer is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

§ 122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Silvicultural point sources, as defined in this section, as point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and Part 233).

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (See 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart I, including the effluent limitations guidelines).

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) *Coverage.* The Director may issue a general permit in accordance with the following:

(1) *Area.* The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

(2) *Sources.* The general permit shall be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Separate storm sewers; or

(ii) A category of minor point sources other than separate storm sewers if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitations or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) *Administration.* (1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States and § 124.58 for EPA.

(2) *Requiring an individual permit.* (i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharge(s) is a significant contributor of pollution as determined by the factors set forth at § 122.26(c)(2);

(B) The discharger is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(E) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(F) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under § 122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the **Federal Register** or the publication by a State in accordance with applicable State law. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

§ 122.29 New sources and new dischargers.

(a) *Definitions.*

(1) "New source" and "new discharger" are defined in § 122.2. [See Note 2.]

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(3) "Existing source" means any source which is not a new source or a new discharger.

(4) "Site" is defined in § 122.2;

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria for new source determination.* (1) The following construction activities result in a new source:

(i) Construction of a source on a site at which no other source is located; or

(ii) Construction on a site at which another source is located of a building, structure, facility, or installation from which there is or may be a discharge of pollutants if:

(A) the process or production equipment that causes the discharge of pollutants from the existing source is totally replaced by this construction, or

(B) the construction results in a change in the nature or quantity of pollutants discharged.

(2) Construction on a site at which an existing source is located results in a modification subject to § 122.15 rather than a new source if the construction does not create a new building, structure, facility, or installation from which there is or may be a discharge of pollutants but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined as § 122.3 has commenced if the owner or operator has: (i) Begun, or caused to begin as part a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, of facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used on its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph. [See Note 1 of this section.]

(c) *Requirement for an Environmental Impact Statement.* (1) The issuance of an NPDES permit to new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the

environmental review provisions of NEPA as set out in 40 CFR Part 6, Subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 122.21(k) (special provisions for applications from new sources) and 40 CFR Part 6, Subpart F;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue, condition, or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS or finding of no significant impact.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before final Agency action in issuing a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impact. The provisions of any agreement entered into under this paragraph shall be incorporated as coditions of the NPDES permit when it is issued.

(ii) No on-site construction of a new source for which an EIS is not required shall commence until 30 days after issuance of a finding of no significant impact, unless the construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impacts.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragrah (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions.

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

[**Note 1.**—§ 122.29, paragraphs (b)(1) and (2) were suspended until further notice at 45 FR 59318, Sept. 9, 1980.]

[**Note 2.**—At 45 FR 68391, Oct. 15, 1980, effective Oct. 15, 1980, the Environmental Protection Agency suspended until further notice the NPDES "new discharger" definition as it applies to offshore mobile drilling rigs operating in offshore areas adjacent to the Gulf Coast, Atlantic Coast, California and Alaska, except for the Flower Garden area in the Gulf of Mexico and other areas identified as environmentally sensitive by the Bureau of Land Management.]

Subpart C—Permit Conditions

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the

Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act is subject to a civil penalty not to exceed $100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Duty to halt or reduce activity.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems *only* when necesssary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(k) *Signatory requirement.* (1) All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.22)

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(ii) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becames aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are sumbitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(m) *Bypass.* (1) *Definitions.* (i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) *Notice.* (i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) *Prohibition of bypass.* (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) *Upset.* (1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

The following conditions, in addition to those set forth in § 122.41, apply to all NPDES permits within the categories specified below:

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 μg/l);

(ii) Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21 (g)(7) or (g)(10); or

(iv) The level established by the Director in accordance with § 122.44(f).

(2) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.21(g)(9).

(b) *Publicly owned treatment works.* All POTWs must provide adequate notice to the Director of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to sections 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (i) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits (§§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), and for EPA permits only 122.47(b) (alternates schedule of compliance) and 122.49 (considerations under Federal law).

(b)(1) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for NPDES permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additonal proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 122.62.

(2) New or reissued permits, and to the extent allowed under § 122.62 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 122.44 and 122.45.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a) *Technology-based effluent limitations and standards* based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with § 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(b) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(c) *Reopener clause:* for any discharger within a primary industry category (see Appendix A), requirements under section 307(a)(2) of CWA as follows:

(1) On or before June 30, 1981: (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or proves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the **Federal Register** that the limitations are "approved" for the purpose of this regulation.)

(2) *After June 30, 1981,* any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph (c)(1) of this section.

(3) The Director shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of CWA;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions of a State certification under section 401 of CWA which meet the requirements of § 124.53 when EPA is the permit issuing authority; however, if a State certification is stayed by a court of competent jurisdiction or appropriate

State board or agency, EPA shall include conditions in the permit which may be necessary to meet EPA's obligation under section 301(b)(1)(C) of CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125, Subpart D;

(9) Incorporate any other requirements, conditions, or limitations into a new source permit under the National Environmental Policy Act 42 U.S.C. 4321 *et seq.* and section 511 of CWA, when EPA is the permit issuing authority (see § 122.29).

(e) *Toxic pollutants:* limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(e)(2).

(1) Limitations must control all toxic pollutants which:

(i) The Director determines (based on information reported in a permit application under § 122.21(g)(7) or (10) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c); or

(ii) The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) *Notification level:* a "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii), or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c)

(g) *Twenty-four hour reporting:* Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(l)(6)(ii)(C)(24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) *Durations* for permits, as set forth in § 122.46.

(i) *Monitoring requirements:* In addition to § 122.48, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specificed in the permit) for each pollutant limited in the permit,

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate; including pollutants in internal waste streams under § 122.45(i), pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); and pollutants subject to notification requirements under § 122.42(a).

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(j) *Pretreatment program for POTWs:* requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and 40 CFR Part 403.

(2) Submit a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403.

(k) *Best management practices* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62).

(2) When effluent limitations were imposed under section 402(a)(1) of CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(i) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

(ii) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent limitation guideline;

(iii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA);

(iv) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62; or

(v) There is increased production at the facility which results in significant

reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(m) *Privately owned treatment works:* For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this Part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) *Grants:* Any conditions imposed in grants made by the Administrator to POWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) *Sewage sludge:* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(p) *Coast Guard:* when a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) *Navigation:* any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.58.

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

(a) *Outfalls and discharge points.* All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(j)(2) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) *Production-based limitations.* (1) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(2) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:

(1) An applicable effluent standard or limitation has been promulgated under CWA and specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA.

(d) *Continuous discharges.* For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

(e) *Non-continuous discharges.* Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/1 zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(f) *Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) *Pollutants in intake water.* Except as provided in paragraph (h) of this section, effluent limitations imposed in permits may not be adjusted for pollutants in the intake water.

(h) *Net limitations.*

(1) Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring:

(A) The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and

(B) The permittee to notify the Director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under § 122.62.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards may not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor may effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(i) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(j) *Disposal of pollutants into wells, into POTWs or by land application.* Permit limitations and standards shall be calculated as provided in § 122.50.

§ 122.46 Duration of permits (applicable to State programs, see § 123.25).

(a) NPDES permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 122.5, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) On or before June 30, 1981, any permit issued to a discharger in a primary industry category (see Appendix A of this Part):

(1) Shall meet one of the following conditions:

(i) Expire on June 30, 1981;

(ii) Incorporate effluent standards and limitations applicable to the discharger which have been promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of CWA; or

(iii) Incorporate the "reopener clause" required by § 122.44(c)(1), and effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA.

(2) Shall not be written to expire after June 30, 1981 unless the discharger has submitted to the Director the information required by § 122.21(g)(7)(ii).

(e) After June 30, 1981, a permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

(f) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (e) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

§ 122.47 Schedules of compliance.

(a) *General (applicable to State programs, see § 123.25).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(2) The first NPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger may not contain a schedule of compliance under this section. See also § 122.29(d)(4).

(3) *Interim dates.* Except as provided in paragraph (b)(1)(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

[Note.—Examples of interim requirements include: (a) submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.]

(4) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(1)(ii) is applicable.

(b) *Alternative schedules of compliance.* An NPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for NPDES sources) rather than continuing to operate and meet permit requriements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease

conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

§ 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in § 122.44. Reporting shall be no less frequent than specified in the above regulations.

§ 122.49 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) The *Wild and Scenic Rivers Act*, 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The *National Historic Preservation Act of 1966*, 16 U.S.C. 470 *et seq.* Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act*, 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The *Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) The *Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*, requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders.* [Reserved.]

(g) The *National Environmental Policy Act*, 33 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and the inclusion of EIS-related permit conditions, as provided in § 122.29(c).

§ 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

(a) When part of a discharger's process wastewater is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as:

$$P = E \times \frac{N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

(b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements

established under §§ 122.41, 122.42, 122.43, and 122.44.

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

§ 122.61 Transfer of permits (applicable to State programs, see § 123.25).

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.62(b)(2)), or a minor modification made (under § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under ths subparagraph may also be a minor modification under § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 122.41), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

[Note.—Certain reconstruction activities may cause the new source provisions of § 122.29 to be applicable.]

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or EPA approved or promulgated water quality standard; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after **Federal Register** notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(5) *Variances.* When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in § 122.21, and the Director processes the request under the applicable provisions of §§ 124.61 124.62, and 124.64.

(6) *307(a) toxics.* When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations) or 40 CFR 403.10(e) (pretreatment program).

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(h).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(h)(1)(ii)(B).

(9) *Pretreatment.* As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).

(10) *Failure to notify.* Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(11) *Non-Limited pollutants.* When the level of discharge of any pollutant which

is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(12) *Use or manufacture of toxics.* When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.21(g)(9).

(13) *Notification levels.* To establish a "notification level" as provided in § 122.44(f).

(14) *Compliance schedules.* To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 122.64, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 122.41(1)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

§ 122.63 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 122.62. Minor modifications may only:

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

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

(e)(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.29.

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

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(4) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(b) The Director shall follow the applicable procedures in Part 124 or State procedures in terminating any NPDES permit under this section.

Appendix A—NPDES Primary Industry Categories

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.44 and 122.46.

Industry Category

Adhesives and Sealants
Aluminum Forming
Auto and Other Laundries
Battery Manufacturing
Coal Mining
Coil Coating
Copper Forming
Electrical and Electronic Components
Electroplating
Explosives Manufacturing
Foundries
Gum and Wood Chemicals
Inorganic Chemicals Manufacturing
Iron and Steel Manufacturing
Leather Tanning and Finishing
Mechanical Products Manufacturing
Nonferrous Metals Manufacturing
Ore Mining
Organic Chemicals Manufacturing
Paint and Ink Formulation
Pesticides
Petroleum Refining
Pharmaceutical Preparations
Photographic Equipment and Supplies
Plastics Processing
Plastic and Synthetic Materials Manufacturing
Porcelain Enameling
Printing and Publishing
Pulp and Paper Mills
Rubber Processing
Soap and Detergent Manufacturing
Steam Electric Power Plants
Textile Mills
Timber Products Processing

Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation (§ 122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

(1) 1,000 slaughter and feeder cattle,

(2) 700 mature dairy cattle (whether milked or dry cows),

(3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 500 horses,

(5) 10,000 sheep or lambs,

(6) 55,000 turkeys,

(7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(9) 5,000 ducks, or

(10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

(1) 300 slaughter or feeder cattle,

(2) 200 mature dairy cattle (whether milked or dry cows),

(3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 150 horses,

(5) 3,000 sheep or lambs,

(6) 16,500 turkeys,

(7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 9,000 laying hens or broilers (if the

facility has a liquid manure handling system),

(9) 1,500 ducks, or

(10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The term "manmade" means constructed by man and used for the purpose of transporting wastes.

Appendix C–Criteria for Determining a Concentrated Aquatic Animal Production Facility (§ 122.24).

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

Appendix D—NPDES Permit Application Testing Requirements (§ 122.21).

TABLE I.—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRIAL CATEGORY FOR EXISTING DISCHARGERS

Industrial category	GC/MS Fraction [1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and Sealants	*	*	*	
Aluminum Forming	*	*	*	
Auto and Other Laundries	*	*	*	*
Battery Manufacturing	*		*	
Coal Mining	*	*	*	*
Coil Coating	*	*	*	
Copper Forming	*	*	*	
Electric and Electronic Components	*	*	*	*
Electroplating	*	*	*	
Explosives Manufacturing		*	*	
Foundries	*	*	*	
Gum and Wood Chemicals	*	*	*	*
Inorganic Chemicals Manufacturing	*	*	*	
Iron and Steel Manufacturing	*	*	*	
Leather Tanning and Finishing	*	*	*	*
Mechanical Products Manufacturing	*	*	*	
Nonferrous Metals Manufacturing	*	*	*	*
Ore Mining	*	*	*	*
Organic Chemicals Manufacturing	*	*	*	*
Paint and Ink Formulation	*	*	*	*
Pesticides	*	*	*	*
Petroleum Refining	*	*	*	*
Pharmaceutical Preparations	*	*	*	
Photographic Equipment and Supplies	*	*	*	*
Plastic and Synthetic Materials Manufacturing	*	*	*	*
Plastic Processing	*			
Porcelain Enameling	*		*	*
Printing and Publishing	*	*	*	*
Pulp and Paper Mills	*	*	*	*
Rubber Processing	*	*	*	
Soap and Detergent Manufacturing	*	*	*	
Steam Electric Power Plants	*	*	*	
Textile Mills	*	*	*	*
Timber Products Processing	*	*	*	*

[1] The toxic pollutants in each fraction are listed in Table II.
*Testing required.

Table II.—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

1V acrolein
2V acrylonitrile
3V benzene
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene
17V 1,2-dichloropropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
31V vinyl chloride

Acid Compounds

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2,4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

Base/Neutral

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroisopropyl)ether
13B bis (2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthalene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenzo(a,h)anthracene
20B 1,2-dichlorobenzene
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3'-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B napthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene

46B 1,2,4-trichlorobenzene

Pesticides

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

Table III.—Other Toxic Pollutants: Metals, Cyanide, and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

Table IV.—Conventional and Nonconventional Pollutants Required To Be Tested by Existing Dischargers if Expected to be Present

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

Table V.—Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethanolamine
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
TDE (Tetrachlorodiphenylethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

[Note.—The Environmental Protection Agency has suspended the requirements of §122.21(g)(7)(ii)(A) and Table I of Appendix D as they apply to certain industrial categories. The suspensions are as follows:

At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) as it applies to coal mines.

At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V–C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V–C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base/netural fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart F), and Paperboard from Waste Paper (Subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart

H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart O), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues these suspensions.]

For the duration of the suspensions, therefore, Table I effectively reads:

TABLE I.—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRY CATEGORY

Industry category	GC/MS fraction [1]			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	
Aluminum forming	(*)	(*)	(*)	
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)		(*)	
Coal mining				
Coil coating	(*)	(*)	(*)	
Copper forming	(*)	(*)	(*)	
Electric and electronic compounds	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	
Explosives manufacturing		(*)	(*)	
Foundries	(*)	(*)	(*)	
Gum and wood (all subparts except D and F)	(*)	(*)		
Subpart D—tall oil rosin	(*)	(*)	(*)	
Subpart F—rosin-based derivatives	(*)	(*)	(*)	
Inorganic chemicals manufacturing	(*)	(*)	(*)	
Iron and steel manufacturing	(*)	(*)	(*)	
Leather tanning and finishing	(*)	(*)	(*)	
Mechanical products manufacturing	(*)	(*)	(*)	
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining (applies to the base and precious metals/subpart B)		(*)		
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)			
Pharmaceutical preparations	(*)	(*)	(*)	
Photographic equipment and supplies	(*)	(*)	(*)	
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)			
Porcelain enameling				
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paperboard mills—see footnote [2]				
Rubber processing	(*)	(*)	(*)	
Soap and detergent manufacturing	(*)	(*)	(*)	
Steam electric power plants	(*)	(*)		
Textile mills (subpart C—Greige Mills are exempt from this table)	(*)	(*)	(*)	
Timber products processing	(*)	(*)	(*)	(*)

*Testing required
[1] The pollutants in each fraction are listed in item V-C.
[2] Pulp and Paperboard Mills.

Subpart #	GS/MS fractions			
	VOA	Acid	Base/neutral	Pesticides
A	—	(*)	—	(*)
B	—	(*)	—	—
C	—	(*)	—	—
D	—	(*)	—	—
E	(*)	(*)	—	(*)
F	(*)	(*)	—	—
G	(*)	(*)	—	—
H	(*)	(*)	—	—
I	(*)	(*)	—	—
J	(*)	(*)	(*)	—
K	(*)	(*)	—	—
L	(*)	(*)	—	—
M	(*)	(*)	—	—
N	(*)	(*)	—	—
O	(*)	(*)	—	—
P	(*)	(*)	—	—
Q	(*)	(*)	—	(*)
R	—	(*)	—	—
S	(*)	(*)	—	(*)
T	(*)	(*)	—	(*)
U	(*)	(*)	(*)	—

*Must test.
— Do not test unless "reason to believe" it is discharged.
Subparts are defined in 40 CFR Part 430.

Part 123 is revised to read as follows:

PART 123—STATE PROGRAM REQUIREMENTS

Subpart A—General

Sec.
123.1 Purpose and scope.
123.2 Definitions.
123.3 Coordination with other programs.

Subpart B—State Program Submissions

123.21 Elements of a program submission.
123.22 Program description.
123.23 Attorney General's Statement.
123.24 Memorandum of Agreement with the Regional Administrator.
123.25 Requirements for permitting.
123.26 Requirements for compliance evaluation programs.
123.27 Requirements for enforcement authority.
123.28 Control of disposal of pollutants into wells.
123.29 Prohibition.

Subpart C—Transfer of Information and Permit Review

123.41 Sharing of information.
123.42 Receipt and use of Federal information.
123.43 Transmission of information to EPA.
123.44 EPA review of and objections to State permits.
123.45 Noncompliance and program reporting by the Director.

Subpart D—Program Approval, Revision and Withdrawal

123.61 Approval process.
123.62 Procedures for revision of State programs.
123.63 Criteria for withdrawal of State programs.
123.64 Procedures for withdrawal of State programs.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under Sections 318, 402, and 405 (National Pollutant Discharge Elimination System—NPDES) of CWA.

(b) These regulations are promulgated under the authority of sections 304(i) and 101(e) of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this Part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(d) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(e) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the CWA and any comments received.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(g) No partial NPDES programs will be approved by EPA. The State program must prohibit (except as provided in § 122.3) all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of

sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction, except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(h) A State's lack of authority to regulate activities on Indian lands does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if the State does not seek this authority.

[Note.—States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(i) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

[Note.—For example, if a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits.]

§ 123.2 Definitions.

The definitions in Part 122 apply to all subparts of this Part.

§ 123.3 Coordination with other programs.

Issuance of State permits under this Part may be coordinated with issuance of RCRA, UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

Subpart B—State Program Submissions

§ 123.21 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain at least three copies of the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 123.22, describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's statement as required by § 123.23;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.24;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under CWA) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

§ 123.22 Program description.

Any State that seeks to administer a program under this Part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures;

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information, except that State NPDES programs are required to use standard Discharge Monitoring Reports (DMR). The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[Note.—States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(e) A complete description of the State's compliance tracking and enforcement programs.

§ 123.23 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 123.22 and to meet the requirements of this Part. This statement shall include citations to the specific statutes,

administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

[Note.—EPA will supply States with an Attorney General's statement format on request.]

(b) If a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

(c) The Attorney General's statement shall certify that the State has adequate legal authority to issue and enforce general permits if the State seeks to implement the general permit program under § 122.28.

§ 123.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

[Note.—For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 123.43.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs. (See § 124.4.)

[Note.—To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged (but not required) to consider steps to coordinate or consolidate their own permit programs and activities.]

(6) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note.—Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

(d) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under sections 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following discharges:

(1) Discharges into the territorial sea;

(2) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(3) Discharges proposed to be regulated by general permits (see § 122.28);

(4) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallson per day;

(5) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(6) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in Appendix A to Part 122;

(7) Discharges from other sources with a daily average discharge exceeding 0.5 (one-half) million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived regardless of flow.

(e) Whenever a waiver is granted under paragraph (d) of this section, the Memorandum of Agreement shall contain:

(1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and

(2) A statement that the State shall supply EPA with copies of final permits.

§ 123.25 Requirements for permitting.

(a) All State programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) § 122.4—(Prohibitons);
(2) § 122.5(a) and (b)—(Effect of permit);
(3) § 122.7(b)–(d)—(Confidential information);
(4) § 122.21(a)–(b), (e)–(j), and (l)–(o)—(Application for a permit);
(5) § 122.22—(Signatories);
(6) § 122.23—(Concentrated animal feeding operations);
(7) § 122.24—(Concentrated aquatic animal production facilities);
(8) § 122.25—(Aquaculture projects);
(9) § 122.26—(Separate storm sewers);
(10) § 122.27—(Silviculture);
(11) § 122.28—(General permits), *provided that* States which do not seek to implement the general permit program under § 122.28 need not do so.
(12) § 122.41—(Applicable permit conditions);
(13) § 122.42—(Conditions applicable to specified categories of permits);
(14) § 122.43—(Establishing permit conditions);
(15) § 122.44—(Establishing NPDES permit conditions);
(16) § 122.45—(Calculating permit conditions);
(17) § 122.46—(Duration);
(18) § 122.47(a)—(Schedules of compliance);
(19) § 122.48—(Monitoring requirements);
(20) § 122.50—(Disposal into wells);
(21) § 122.61—(Permit transfer);
(22) § 122.62—(Permit modification);
(23) § 122.64—(Permit termination);
(24) § 124.3(a)—(Application for a permit);
(25) § 124.5 (a), (c), (d), and (f)—(Modification of permits);
(26) § 124.6 (a), (c), (d), and (e)—(Draft permit);
(27) § 124.8—(Fact sheets);
(28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
(29) § 124.11—(Public comments and requests for hearings);
(30) § 124.12(a)—(Public hearings); and
(31) § 124.17 (a) and (c)—(Response to comments);
(32) § 124.56—(Fact sheets);
(33) § 124.57(a)—(Public notice);
(34) § 124.59—(Comments from government agencies);
(35) § 124.62—(Decision on variances);
(36) Subparts A, B,C, D, H, I, J, K and L of Part 125; and
(37) 40 CFR Parts 129, 133, and Subchapter N.

[Note.—States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

State programs may, if they have adequate legal authority, implement any of the provisions of Parts 122 and 124. See, for example, § 122.5(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.41 or by requiring more prompt notice of an upset.]

(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(c) State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1) For the purposes of this paragraph:

(i) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(ii) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(iii) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(iv) "Income" includes retirement benefits, consultant fees, and stock dividends.

(2) For the purposes of paragraph (c) of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

§ 123.26 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the Public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and

other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

(e) State NPDES compliance evaluation programs shall have procedures and ability for:

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees to the State agency;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation;

(3) When warranted, conducting a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) Maintaining a management information system which supports the compliance evaluation activities of this Part; and

(5) Inspecting the facilities of all major dischargers at least annually.

§ 123.27 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

[Note.—Paragraph (a)(1) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any NPDES permit condition; any NPDES filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or, any regulation or orders issued by the State Director. These penalties shall be assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

[Note.—States which provide the criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(iii)(B) of this section.]

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any NPDES form, in any notice or report required by an NPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

[Note.—In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in the litigation. If this civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (*e.g.*, floods, fires).

[Note.—In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended.

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 123.28 Control of disposal of pollutants into wells.

State law must provide authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions. A program approved under section 1422 of SDWA satisfies the requirements of this section.

[Note.—States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which * * * control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.29 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

Subpart C—Transfer of Information and Permit Review

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA shall send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. When existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.43 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. Proposed permits shall be prepared by State agencies unless agreement to the contrary has been reached under § 123.44(j). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of permit applications for which permit review has been waived whenever requested by EPA;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) The State shall transmit a copy of each draft general permit or proposed general permit, except those for separate storm sewers, to the EPA Director, Office of Water Enforcement and Permits at the same time the draft general permit or proposed general permit is transmitted to the Regional Administrator under paragraph (a)(2) of this section.

(c) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.42(b) and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permit, except those comments regarding permits for which permit review has been waived under § 123.24(d) and for which EPA has not otherwise requested receipt, if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments objecting to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice.

(d) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program

complies with the requirements of CWA or of this Part.

§ 123.44 EPA Review of and objections to State permits.

(a)(1) The Memorandum of Agreement shall provide a period of time (up to 90 days from receipt of proposed permits) to which the Regional Administrator may make general comments upon, objections to, or recommendations with respect to proposed permits. EPA reserves the right to take 90 days to supply specific grounds for objection, notwithstanding any shorter period specified in the Memorandum of Agreement, when a general objection is filed within the review period specified in the Memorandum of Agreement. The Regional Administrator shall send a copy of any comment, objection or recommendation to the permit applicant.

(2) In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by the Memorandum of Agreement for general comments, objections or recommendations. The EPA Director, Office of Water Enforcement and Permits may comment upon, object to, or make recommendations with respect to proposed general permits, except those for separate storm sewers, on EPA's behalf.

(b)(1) Within the period of time provided under the Memorandum of Agreement for making general comments upon, objections to or recommendations with respect to proposed permits, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of a proposed permit to which he or she has objected under (b)(1) of this section, or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator, or in the case of general permits other than for separate storm sewers, the Regional Administrator or the EPA Director, Office of Water Enforcement and Permits, shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator.)

[Note.—Paragraphs (a) and (b) of this section, in effect, modify any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, when an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with paragraph (b)(1) of this section within the time specified in the agreement. This general objection must be followed by a specific objection within the 90-day period. This modification to MOA's allows EPA to provide detailed information concerning acceptable permit conditions, as required by section 402(d) of CWA. To avoid possible confusion, MOA's should be changed to reflect this arrangement.]

(c) The Regional Administrator's objection to the issuance of a proposed permit must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[Note.—For example, the Regional Administrator may object to a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines.]

(2) In the case of a proposed permit for which notification to the Administrator is required under section 402(b)(5) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by CWA or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this subparagraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, as the case may be;

(7) Issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA.

(d) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.43;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to interested persons an opportunity to comment on the basis for the objection;

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of §§ 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State or the interstate agency which proposed the permit or if

warranted by significant public interest based on requests received.

(f) A public hearing held under paragraph (e) of this section shall be conducted by the Regional Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly and expeditious manner.

(g) Following the public hearing, the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(h)(1) If no public hearing is held under paragraph (e) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(2) If a public hearing is held under paragraph (e) of this section, the Regional Administrator does not withdraw the objection, and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (g) of this section, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(3) Exclusive authority to issue the permit passes to EPA when the times set out in this paragraph expire.

(i) In the case of proposed general permits for discharges other than from separate storm sewers insert "or the EPA Director, Office of Water Enforcement and Permits" after "Regional Administrator" whenever it appears in paragraphs (c)–(h) of this section.

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24, to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

§ 123.45 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list on NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees;

(ii) For facilities or activities with permits under more than one program, provide an additional listing combining information on noncompliance for each such facility;

(iii) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iv) For each entry on a list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind under a single program, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements:* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance:* When a schedule of compliance in the permit has been modified under §§ 122.62 or 122.64 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports:* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress reports or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports:* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements:* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than paragraph (a)(2) (i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit, or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern of noncompliance is based on violations of monthly averages and excludes parameters for which there is continuous monitoring. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a discharge of a toxic or hazardous substance by an NPDES facility.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not

otherwise reported under paragraph (a) of this section.

(b) *Annual reports for NPDES.*

(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(c) *Schedule.*

(1) *For all quarterly reports.* On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in acordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS

[Date for completion of reports]

January, February, and March	[1] May 31
April, May, and June	[1] August 31
July, August, and September	[1] November 30
October, November, and December	[1] February 28

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

Subpart D—Program Approval, Revision, and Withdrawal

§ 123.61 Approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State. The notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate when an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.21 the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the **Federal Register**. The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 123.62 Procedure for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program modification is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) All new programs must comply with these regulations immediately upon approval. Any approved State section 402 permit program which requires revision to conform to this Part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision of State programs in which case the revision shall take place within two years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR 403.10. In addition, approved States

shall submit, within 6 months, copies of their permit forms for EPA review and approval. Approved States shall also assure that permit applicants, other than POTWs, either (1) whose permits expire after November 30, 1980, or (2) whose permits expire before November 30, 1980 and who have not reapplied for a permit prior to April 30, 1980, submit, as part of their application, the information required under § 122.21 (d) and (h), as appropriate.

§ 123.63 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Issuance of permits which do not conform to the requirements of this Part; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) Where the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24.

§ 123.64 Procedures for withdrawal of State programs.

(a) A state with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part as set forth in § 123.63. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of "Act," "Administrative Law Judge," "Hearing Clerk," and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the proceeding.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.* (i) The following provisions of 40 CFR Part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

(A) § 22.02—(use of number/gender);

(B) § 22.04(c)—(authorities of Presiding Officer);

(C) § 22.06—(filing/service of rulings and orders);

(D) § 22.09—(examination of filed documents);

(E) § 22.19(a), (b) and (c)—(prehearing conference);

(F) § 22.22—(evidence);

(G) § 22.23—(objections/offers of proof);

(H) § 22.25—(filing the transcript); and

(I) § 22.26—(findings/conclusions).

(ii) The following provisions are also applicable:

(A) Computation and extension of time.

(*1*) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

(*2*) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (*i*) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (*ii*) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(3) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

(B) Ex parte discussion of proceeding.

At no time after the issuance of the order commencing proceedings shall the Administrator, Regional Administrator,

Judicial Officer, Regional Judicial Officer, Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

(C) Intervention.

(*1*) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (b)(3)(ii)(C)(*3*) of this section, within ten (10) days after service of the motion for leave to intervene.

(*2*) However, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is first published.

(*3*) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (*i*) his presence in the proceeding would not unduly prolong or otherwise prejudice that adjudication of the rights of the original parties; (*ii*) the movant will be adversely affected by a final order; and (*iii*) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(*4*) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D) Motions.

(*1*) *General.* All motions, except those made orally on the record during a hearing, shall (*i*) be in writing; (*ii*) state the grounds therefor with particularity; (*iii*) set forth the relief or order sought; and (*iv*) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by (b)(4) of this section.

(*2*) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(*3*) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involves matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service, and;

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommeded decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the appropriate Act and regulations his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the

program in conformity with the appropriate Act and regulations he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that such appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take such appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes such appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(viii) Withdrawal of authorization under this section and the appropriate Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions by the State prior to withdrawal.

Part 144 is added to read as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—General Provisions

Sec.
144.1 Purpose and scope of Part 144.
144.2 Promulgation of Class II Programs for Indian lands.
144.3 Definitions.
144.4 Considerations under Federal law.
144.5 Confidentiality of information.
144.6 Classification of wells.
144.7 Identification of underground sources of drinking water and exempted aquifers.
144.8 Noncompliance and program reporting by the Director.

Subpart B—General Program Requirements

144.11 Prohibition of unauthorized injection.
144.12 Prohibition of movement of fluid into underground sources of drinking water.
144.13 Elimination of certain class IV wells.
144.14 Requirements for wells injecting hazardous waste.
144.15 Assessment of Class V wells.
144.16 Waiver of requirement by Director.

Subpart C—Authorization of Underground Injection by Rule

Sec.
144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.
144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.
144.23 Class IV wells.
144.24 Class V wells.
144.25 Requiring a permit.
144.26 Inventory requirements.

Subpart D—Authorization by Permit

144.31 Authorization for a permit; authorization by permit.
144.32 Signatories to permit application and reports.
144.33 Area permits.
144.34 Emergency permits.
144.35 Effect of a permit.
144.36 Duration of permits.
144.37 Continuation of expiring permits.
144.38 Transfer of permits.
144.39 Modification or revocation and reissuance of permits.
144.40 Termination of permits.
144.41 Minor modifications of permits.

Subpart E—Permit Conditions

144.51 Conditions applicable to all permits.
144.52 Establishing permit conditions.
144.53 Schedule of Compliance.
144.54 Requirements for recording and reporting of monitoring results.
144.55 Corrective action.

Authority: Pub. L. 93-523, as amended by Pub. L. 95-190, Pub. L. 96-63 and Pub. L. 96-502, 42 USC 300f *et seq.*

Subpart A—General Provisions

§ 144.1 Purpose and scope of Part 144.

(a) *Contents of Part 144.* The regulations in this Part set forth requirements for the Underground Injection Control (UIC) Program promulgated under Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 95-523, as amended by Pub. L. 95-190, 42 U.S.C. 300f et seq.) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.). They apply to EPA, and to approved States to the extent set forth in Part 145.

(b) *Authority.*

(1) Section 1421 of SDWA requires the Administrator to promulgate regulations establishing minimum requirements for effective UIC programs.

(2) Section 1422 of SDWA requires the Administrator to list in the **Federal Register** "each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources" and to establish by regulation a program for EPA administration of UIC programs in the absence of an approved State program in a listed State.

(3) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements.

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system may present an imminent and substantial endangerment to the health of persons.

(5) Section 1445 of SDWA authorizes the promulgation of regulations for such recordkeeping, reporting, and monitoring requirements "as the Administrator may reasonably require * * * to assist him in establishing regulations under this title," and a "right of entry and inspection to determine compliance with this title, including for this purpose, inspection, at reasonable time, or records, files, papers, processes, controls, and facilities * * *."

(6) Section 1450 of SDWA authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under SDWA.

(c) *Overview of the UIC program.* An UIC program is necessary in any State listed by EPA under section 1422 of the SDWA. Because all States have been listed, the SDWA requires all States to submit an UIC program within 270 days after July 24, 1980, the effective date of 40 CFR Part 146, which was the final element of the UIC minimum requirements to be originally promulgated, unless the Administrator grants an extension, which can be for a period not to exceed an additional 270 days. If a State fails to submit an approvable program, EPA will establish a program for that State. Once a program is established, SDWA provides that all underground injections in listed States are unlawful and subject to penalties unless authorized by a permit or a rule. This Part sets forth the requirements governing all UIC programs, authorizations by permit or rule and prohibits certain types of injection. The technical regulations governing these authorizations appear in 40 CFR Part 146.

(d) *Structure of the UIC Program.*

(1) *Part 144.* This part sets forth the permitting and other program requirements that must be met by UIC Programs, whether run by a State or by EPA. It is divided into the following subparts:

(i) Subpart A describes general elements of the program, including definitions and classifications.

(ii) Subpart B sets forth the general program requirements, including the performance standards applicable to all injection activities, basic elements that

all UIC programs must contain, and provisions for waiving permit of rule requirements under certain circumstances.

(iii) Subpart C sets forth requirements for wells authorized by rule.

(iv) Subpart D sets forth permitting procedures.

(v) Subpart E sets forth specific conditions, or types of conditions, that must at a minimum be included in all permits.

(2) *Part 145.* While Part 144 sets forth minimum requirements for all UIC Programs, these requirements are specifically indentified as elements of a State application for primacy to administer an UIC Program in Part 145. Part 145 also sets forth the necessary elements of a State submission and the procedural requirements for approval of State programs.

(3) *Part 124.* The public participation requirements that must be met by UIC Programs, whether administered by the State or by EPA, are set forth in Part 124. EPA must comply with all Part 124 requirements; State administered programs must comply with Part 124 as required by Part 145. These requirements carry out the purposes of the public participation requirement of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to the UIC Program.

(4) *Part 146.* This part set forth the technical criteria and standards that must be met in permits and authorizations by rule as required by Part 144.

(e) *Scope of the Permit or Rule Requirement.*

The UIC Permit Program regulates underground injections by five classes of wells (see definition of "well injection," § 144.3). The five classes of wells are set forth in § 144.6. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into Underground Sources of Drinking Water (USDWs—see § 144.3 for definition), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may adversely affect the health of persons (§ 144.12). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 144.13). Class V wells will be inventoried and assessed and regulatory action will be established at a later date.

In the meantime, if remedial action appears necessary, an individual permit may be required (§ 144.25) or the Director must require remedial action or closure by order (§ 144.12(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water. This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in § 146.04. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 144.7. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

(1) *Specific inclusions.* The following wells are included among those types by injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

(i) Any injection well located on a drilling platform inside the State's territorial waters.

(ii) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(iii) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(iv) Any septic tank, cesspool, or other well used by a multiple dwelling, community, or Regional system for the injection of wastes.

(2) Specific exclusions. The following are not covered by these regulations:

(i) Injection wells located on a drilling platform or other site that is beyond the State's territorial waters.

(ii) Individual or single family residential waste disposal systems such as domestic cesspools or septic systems.

(iii) Non-residential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.

(iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

(v) Any dug hole which is not used for emplacement of fluids underground.

(3) The prohibition applicable to Class IV wells under § 144.13 does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

§ 144.2 Promulgation of Class II Programs for Indian Lands.

Notwithstanding the requirements of this Part or Parts 124 and 146 of this chapter, the Administrator may promulgate an alternate UIC Program for Class II wells on any Indian reservation or Indian lands. In promulgating such a program the Administrator shall consider the following factors:

(a) The interest and preferences of the tribal government having responsibility for the given reservation or Indian lands;

(b) The consistency between the alternate program and any program in effect in an adjoining jurisdiction; and

(c) Such other factors as are necessary and appropriate to carry out the Safe Drinking Water Act.

§ 144.3 Definitions.

Terms not defined in this section have the meaning given by the appropriate Act. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

Appropriate Act and regulations means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.

Approved State Program means a State UIC program administered by the State that has been approved by EPA according to SDWA § 1422.

Aquifer means a geological "formation," group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of Review means the area surrounding an injection well described

according to the criteria set forth in § 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either ¼ of a mile or a number calculated according to the criteria set forth in § 146.06.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Director means the Regional Administrator, the Administrator of EPA, or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director.

In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. In such cases, the term "Director" means the Regional Administrator and not the State Director.

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5 are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5 is not a "draft permit."

Drilling mud means a heavy suspension used in drilling an "injection well," introduced down the drill pipe and through the drill bit.

Emergency permit means a UIC "permit" issued in accordance with § 144.34.

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Exempted aquifer means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in § 144.7.

Existing injection well means an "injection well" other than a "new injection well."

Facility or activity means any UIC "injection well," or an other facility or activity that is subject to regulation under the UIC program.

Fluid means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud."

Generator means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous Waste Management facility ("HWM facility") means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

HWM facility means "Hazardous Waste Management facility"

Injection well means a "well" into which "fluids" are being injected.

Injection zone means a geological "formation" group of formations, or part of a formation receiving fluids through a "well."

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the "appropriate Act and regulations."

Major facility means any UIC "facility or activity" classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

Manifest means the shipping document originated and signed by the "generator" which contains the information required by Subpart B of 40 CFR Part 262.

New injection wells means an "injection well" which began injection after a UIC program for the State applicable to the well is approved or prescribed.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the UIC program.

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this Part, Parts 145, 146 and 124. "Permit" includes an area permit (§ 144.33) and an emergency permit (§ 144.34). Permit does not include UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Plugging means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Project means a group of wells in a single operation.

Radioactive Waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, Pub. L. 96–510, 42 U.S.C. 6901 et seq.).

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the "appropriate Act and regulations."

SDWA means the Safe Drinking Water Act (Pub. L. 93–523, as amended by Pub. L. 96–502; 42 U.S.C. 300f et seq.).

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth Northern Mariana Islands.

State Director means the chief administrative officer of any State or interstate agency operating an approved program, or delegated representative of the State Director. If responsibility is divided among two or more State or

interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

Stratum (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program."

Underground injection means a "well injection."

Underground source of drinking water (USDW) means an aquifer or its portion:

(a)(1) Which supplies any public water system; or

(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

USDW means "underground source of drinking water."

Well means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection means the subsurface emplacement of "fluids" through a bored, drilled, or driven "well;" or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

§ 144.4 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) The *Wild and Scenic Rivers Act*, 16 U.S.C. 1273 et seq. Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966*, 16 U.S.C. 470 et seq. Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act*, 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the States nonconcurrence).

(e) The *Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*, requires the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve these resources.

(f) *Executive orders* [Reserved.]

§ 144.5 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Information which deals with the existence, absence, or level of contaminants in drinking water.

§ 144.6 Classification of wells.

Injection wells are classified as follows:

(a) *Class I*

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) *Class II.* Wells which inject fluids:

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integal part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) *Class III.* Wells which inject for extraction of minerals including:

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included n Class V.

(3) Solution mining of salts or potash.

(d) *Class IV*

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste

above a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under paragraphs (a)(1) or (d) (1) and (2) of this section (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) *Class V.* Injection wells not included in Classes I, II, III, or IV.

§ 144.7 Identification of underground sources of drinking water and exempted aquifers.

(a) The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground source of drinking water" in § 144.3. Even if an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in § 144.3.

(b)(1) the Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of a UIC program.

(3) Subsequent to program approval or promulgation, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identifed (i) under § 146.04(b) shall be treated as a program revision under § 145.32; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by § 144.31(g).

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

§ 144.8 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide an alphabetized list of permittees. When two or more permittees have the same name, the lowest permit number shall be entered first.

(ii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittees.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements.* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance.* When a schedule of compliance in the permit has been modified under §§ 144.39 or 144.41 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports.* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports.* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements.* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2) (i) or (ii) of this section), and has not

returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporing periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) Annual reports. (1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor UIC permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) *For State-administered UIC Programs only.* In addition to the annual noncompliance report, the State Director shall:

(i) Submit each year a program report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(A) A detailed description of the State's implementation of its program;

(B) Suggested changes, if any to the program description (see § 145.23(f)) which are necessary to reflect more accurately the State's progress in issuing permits;

(C) An updated inventory of active underground injection operations in the State.

(ii) In addition to complying with the requirements of paragraph (b)(2)(i) of this section, the Director shall provide the Administrator, on February 28th and August 31st of each of the first two years of program operation, the information required in 40 CFR 146.15, 146.25, and 146.35.

(c) *Schedule.* (1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with permit requirements by major facilities in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule.

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR FACILITIES

[Date for completion of reports]	
January, February, and March	[1]May 31
April, May, and June	[1]Aug. 31
July, August, and September	[1]Nov. 30
October, November, and December.	[1]Feb. 28

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

Subpart B—General Program Requirements

§ 144.11 Prohibition of unauthorized injection.

Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

§ 144.12 Prohibition of movement of fluid into underground sources of drinking water.

(a) No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II, and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 144.39, or the permit may be terminated under § 144.40 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see §§ 144.21–.24.

(c) For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under 40 CFR Part 142, he or she shall:

(1) Require the injector to obtain an individual permit;

(2) Order the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or

(3) Take enforcement action.

(d) Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, he or she may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (c) of this section.

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons.

§ 144.13 Elimination of certain Class IV wells.

(a) In addition to the requirement of § 144.14, the following are prohibited:

(1) The construction of any Class IV well for the injection of hazardous waste directly into an underground source of drinking water;

(2) The injection of hazardous waste directly into an underground source of drinking water through a Class IV well that was not in operation prior to July 18, 1980.

(3) Any increase in the amount of hazardous waste or change in the type of hazardous waste injected into a well injecting hazardous waste directly into a USDW.

(4) The operation of any Class IV well injecting hazardous waste directly into a USDW after 6 months following the approval or promulgation of a UIC program for the State.

(b) The prohibition applicable to Class IV wells does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

§ 144.14 Requirements for wells injecting hazardous waste.

(a) *Applicability.* The regulations in this section apply to all generators of

hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. [See also § 144.13.]

(b) *Authorization.* The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in § 144.31 within 6 months after the approval or promulgation of the State UIC program.

(c) *Requirements.* In addition to complying with the applicable requirements of this Part and 40 CFR Part 146, the owner or operator of each facility meeting the requirements of paragraph (b) of this section, shall comply with the following:

(1) *Notification.* The owner or operator shall comply with the notification requirements of Section 3010 of Pub. L. 94–580.

(2) *Identification number.* The owner or operator shall comply with the requirements of 40 CFR 264.11.

(3) *Manifest system.* The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 40 CFR 264.71.

(4) *Manifest discrepancies.* The owner or operator shall comply with 40 CFR § 264.72.

(5) *Operating record.* The owner or operator shall comply with 40 CFR 264.73(a), (b)(1), and (b)(2).

(6) *Annual report.* The owner or operator shall comply with 40 CFR § 264.75.

(7) *Unmanifested waste report.* The owner or operator shall comply with 40 CFR § 264.75.

(8) *Personnel training.* The owner or operator shall comply with the applicable personnel training requirements of 40 CFR § 264.16.

(9) *Certification of closure.* When abandonment is completed, the owner or operator must submit to the Director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in § 144.52(a)(6).

(d) *Additional requirements for Class IV wells.* [Reserved].

§ 144.15 Assessment of Class V wells.

Assessment of Class V Wells. The Director shall, within three years of the approval of the program in a State submit a report and recommendations to EPA in compliance with § 146.52(b).

§ 144.16 Waiver of requirement by Director.

(a) *When injection does not occur into, through or above an underground source of drinking water,* the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than requird in 40 CFR Part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(b) When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under § 146.06(a) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in 40 CFR Part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(c) When reducing requirements under paragraph (a) or (b) of this section, the Director shall prepare a fact sheet under § 124.8 explaining the reasons for the action.

Subpart C—Authorization of Underground Injection by Rule

§ 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

Injection into existing Class I, II (except existing enhanced recovery and hydrocarbon storage), and III wells is authorized.

(a) *Duration.* The authorization under this section expires:

(1) Upon the effective date of the permit or permit denial, if a permit application has been filed in a timely manner as specified in § 144.31(c)(1);

(2) If a permit application has not been filed in a timely manner as specified in § 144.31(c)(1); or

(3) Five years after approval or promulgation of the UIC program unless a complete permit application is pending.

(b) *Class II and III wells in existing fields or projects.* Notwithstanding the prohibition in § 144.11, this section authorizes Class II and Class III wells or projects in existing fields or projects to continue normal operations until permitted, including construction, operation, and plugging and abandonment of wells as part of the operation, provided the owner or operator maintains compliance with all applicable requirements.

(c) *Requirements.* Owners or operators of wells authorized under this section shall comply with the following requirements no later than one year after authorization, except that where the referenced requirements apply to permittees, the terms "permit" and "permittee" shall be read to include rules and those authorized by rule:

(1) Section 144.51(a)—(exemption from rule where authorized by temporary permits);

(2) Section 144.51(j)(2)—(retention of records);

(3) 144.51(1)(6)—(reporting within 24 hours);

(4) Section 144.51(n)—(notice of abandonment);

(5) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment that meets the requirements of § 146.10 and is acceptable to the Director (for purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment);

(6) The minimum operating, monitoring, and reporting requirements (except mechanical integrity) required to be specified by § 146.13 (Class I), § 146.23 (Class II) and § 146.33 (Class III);

(7) Section 144.52(a)(7)—(financial responsibility); and

(8) Section 144.14(c)—(requirements for wells injecting hazardous waste) applicable to Class I wells injecting hazardous waste only).

§ 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

Injection into existing Class II enhanced recovery and hydrocarbon storage wells is authorized for the life of the well or project.

(a) Owners or operators of wells authorized under this section shall comply with the following requirements, except that where the referenced requirements apply to permittees the terms "permit" and "permittee" shall be read to include rule and those authorized by rule:

(1) Section 144.51(a)—(exemption from rule where authorized by temporary permit);

(2) Section 144.51(j)(2)—(retention or records);

(3) Section 144.51(l)(6)—(reporting within 24 hours);

(4) Section 144.52(n)—(notice of abandonment);

(5) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment that meets the requirements of § 146.10 and

is acceptable to the Director (for purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment);

(6) Section 144.52(a)(7)—(financial responsibility);

(7) Section 146.08—(mechanical integrity);

(8) Section 146.22—(casing and cementing requirements where appropriate); and

(9) The minimum operating, monitoring and reporting requirements required to be specified by § 146.23.

(b) Owners or operators of wells authorized under this section shall comply with the construction requirements no later than three years, and other requirements no later than one year after authorization.

§ 144.23 Class IV wells.

(a) Injection into existing Class IV wells as defined in § 144.6(d)(1) is authorized for up to six months after approval or promulgation of the UIC Program. Such wells are subject to the requirements of § 144.13 and § 144.14(c).

(b) Injection into existing Class IV wells as defined in § 144.6(d) (2) and (3) are authorized until six months after approval or promulgation of an UIC Program incorporating criteria and standards under Part 146, Subpart E applicable to Class IV injection wells. Such wells are subject to the requirements of § 144.14(c).

§ 144.24 Class V wells.

Injection into Class V wells is authorized until further requirements under future regulations become applicable.

§ 144.25 Requiring a permit.

(a) The Director may require any Class I, II, III, or V injection well authorized by a rule to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:

(1) The injection well is not in compliance with any requirement of the rule;

Note.—Any underground injection which violates any authorization by rule is subject to appropriate enforcement action.

(2) The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule;

(3) The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

(b) For EPA administered programs, the Director may require the owner or operator authorized by a rule to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that upon the effective date of the UIC permit the rule no longer applies to the activities regulated under the UIC Program.

(c) Any owner or operator authorized by a rule may request to be excluded from the coverage of the rules by applying for an individual or area UIC permit. The owner or operator shall submit an application under § 144.31 with reasons supporting the request, to the Director. The Director may grant any such requests.

§ 144.26 Inventory requirements.

Owners or operators of all injection wells authorized by rule shall submit inventory information to the Director. Any authorization under this subpart automatically terminates for any owner or operator who fails to comply within the time specified in paragraph (c) of this section.

(a) *Contents.* As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:

(1) Facility name and location;

(2) Name and address of legal contact;

(3) Ownership of facility;

(4) Nature and type of injection wells; and

(5) Operating status of injection wells.

Note.—This information is requested on national form "Inventory of Injection Wells." OMB No. 158–R0170.

(b) *Notice.* Upon approval of the UIC Program in a State, the Director shall notify owners or operators of injection wells of their duty to submit inventory information. The method of notification selected by the Director must assure that the owners or operators will be made aware of the inventory requirement.

(c) *Deadlines.* Owners or operators of injection wells must submit inventory information no later than one year after the authorization by rule. The Director need not require inventory information from any facility with interim status under RCRA.

Subpart D—Authorization by Permit

§ 144.31 Application for a permit; authorization by permit

(a) *Permit application.* Except for owners or operators authorized by rule, all underground injections wells are prohibited unless authorized by permit. Persons currently authorized by rule must still apply for a permit under this section unless authorization was for the life of the well or project. Rules authorizing well injections for which permit applications have been submitted shall lapse for a particular well injection or project upon the effective date of the permit or permit denial for that well injection or project. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 144.34.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the UIC program as follows:

(1) For existing wells, as expeditiously as practicable but no later than 4 years from the approval or promulgation of the UIC program, or as required under § 144.14(b) for wells injecting hazardous waste.

(2) For new injection wells, except new wells in projects authorized under § 144.21(b) or covered by an existing area permit under § 144.33(c), a reasonable time before construction is expected to begin.

(d) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA-administered programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(e) *Information requirements.* All applicants for permits shall provide the following information to the Director, using the application form provided by the Director.

(1) The activities conducted by the applicant which require it to obtain permits under RCRA, UIC, the National Pollution Discharge Elimination system (NPDES) program under the Clean Water Act, or the Prevention of

Significant Deterioration (PSD) program under the Clean Air Act.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge and fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary.

(8) A brief description of the nature of the business.

(f) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under § 144.31 for a period of at least 3 years from the date the application is signed.

(g) Contents of UIC application. [Reserved.]

§ 144.32 Signatories to permit applications and reports.

(a) *Applications.* All permit applications, except those submitted for Class II wells (see paragraph (b) of this section), shall be signed as follows:

(1) For a corporation: by a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive or ranking elected official.

(b) *Reports.* All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under § 144.31 shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

> I certify under the penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

§ 144.33 Area permits.

(a) The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

(2) Within the same well field, facility site, reservoir, project, or similar unit in the same State;

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires;

(2) The additional well satisfies the criteria in paragraph (a) of this section and meets the requirements specified in the permit under paragraph (b) of this section; and

(3) The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

(d) If the Director determines that any well constructed pursuant to paragraph (c) of this section does not satisfy any of the requirements of paragraphs (c)(1) and (c)(2) of this section the Director may modify the permit under § 144.39, terminate under § 144.40, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under § 144.39.

§ 144.34 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124, the Director may temporarily permit a specific underground injection which has not otherwise been authorized by rule or permit if:

(1) An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

(2) A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and

(i) Timely application for a permit could not practicably have been made; and

(ii) The injection will not result in the movement of fluids into underground sources of drinking water; or

(3) A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.

(b) *Requirements for issuance.*

(1) Any temporary permit under paragraph (a)(1) of this section shall be for no longer term than required to prevent the hazard.

(2) Any temporary permit under paragraph (a)(2) of this section shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.

(3) Any temporary permit under paragraph (a)(3) of this section shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.

(4) Notice of any temporary permit under this paragraph shall be published in accordance with § 124.11 within 10 days of the issuance of the permit.

(5) The temporary permit under this section may be either oral or written. If oral, it must be followed within 5 calendar days by a written temporary emergency permit.

(6) The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water.

§ 144.35 Effect of a permit.

(a) Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§144.39 and 144.40.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 144.36 Duration of permits.

(a) Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II or III well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in §§144.39, 144.40, and 144.41.

(b) Except as provided in § 144.37, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 144.37 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if:

(1) The permittee has submitted a timely application which is a complete application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* An EPA issued permit does not continue in force beyond its time expiration date under Federal law if at that time a State is the permitting authority. A State authorized to administer the UIC program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 144.38 Transfer of permits.

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 144.39(b)(2)), or a minor modification made (under § 144.41(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any UIC permit for a well not injecting hazardous waste may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of § 144.52(a)(7) will be met by the new permittee; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under § 144.41. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 144.39 Modification or revocation and reisssuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 144.51 of this chapter), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire

permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2) of this chapter. If cause does not exist under this section or § 144.41 of this chapter, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in §144.41 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 must be followed.

(a) *Causes for modification.* The following are causes for modification. For Class II or III wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For UIC area permits (§ 144.33), this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class II or III wells may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated Part 146 regulation; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after **Federal Register** notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also § 144.41(c) (minor modifications).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 144.40, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 144.41(d)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 144.38(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) *Facility siting.* Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

§ 144.40 Termination of permits.

(a) The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

(b) The Director shall follow the applicable procedures in Part 124 in terminating any permit under this section.

§ 144.41 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 144.39. Minor modifications may only:

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

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

(e) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

(f) Change construction requirements approved by the Director pursuant to § 144.52(a)(1) (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this Part and Part 146.

(g) Amend a plugging and abandonment plan which has been updated under § 144.52(a)(6).

Subpart E—Permit Conditions

§ 144.51 Conditions applicable to all permits.

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit

termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under § 144.34.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any location.

(j) *Monitoring and records.*

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including the following:

(i) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6). The Director may require the owner or operator to deliver the records to the Director at the conclusions of the retention period.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Administrator shall be signed and certified. (See § 144.32.)

(l) *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act. (See § 144.38; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

(i) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(ii) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) *Requirements prior to commencing injection.* Except for all new wells authorized by an area permit under § 144.33(c), a new injection well may not commence injection until construction is complete, and

(1) The permittee has submitted notice of completion of construction to the Director; and

(2)(i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(ii) The permittee has not received notice form the Director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in paragraph (m)(1) of this section, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in his notice a reasonable time period in which he shall inspect the well.

(n) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

§ 144.52 Establishing permit conditions.

(a) In addition to conditions required in § 144.51, the Director shall establish conditions, as required on a case-by-case basis under § 144.36, (duration of permits), § 144.53(a) (schedules of compliance), § 144.54 (monitoring), and for EPA permits only § 144.53(b) (alternate schedules of compliance) and § 144.4 (considerations under Federal law). In addition, each permit shall include conditions meeting the following requirements, when applicable.

(1) *Construction requirements* as set forth in Part 146. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no constuction may commence until a permit has been issued containing construction requirements (see §144.11). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Administrator as minor modifications (§ 144.41). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.

(2) *Corrective action* as set forth in § 144.55 and § 146.7

(3) *Operation requirements* as set forth in 40 CFR Part 146; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the Part 146 operating requirements.

(4) *Requirements for wells managing hazardous waste,* as set forth in § 144.14.

(5) *Monitoring and reporting requirements* as set forth in 40 CFR Part 146. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

(6) *Plugging and abandonment.* Any Class I, II or III permit shall include, and any Class V permit may include, conditions to ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another. Applicants for a UIC permit shall submit a plan for plugging and abandonment. Where the plan meets the requirements of this paragraph, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the application. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(7) *Financial responsibility.* The permittee is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director.

(8) *Mechanical integrity.* A permit for any Class I, II or III well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under § 146.08 that the well has mechanical integrity.

(9) *Additional conditions.* The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

(b)(1) In addition to conditions required in all permits the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the SDWA and Parts 144, 145, 146 and 124.

(2) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for UIC permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 144.39.

(3) New or reissued permits, and to the extent allowed under § 144.39 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in § 144.52.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 144.53 Schedule of compliance.

(a) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the SDWA and Parts 144, 145, 146, and 124.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in

no case later than 3 years after the effective date of the permit.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that if paragraph (a)(1) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

(b) *Alternative schedules of compliance.* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

§ 144.54 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Part 146. Reporting shall be no less frequent than specified in the above regulations.

§ 144.55 Corrective action.

(a) *Coverage.* Applicants for Class I, II, (other than existing), or III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective action"). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in § 146.07), the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under paragraph (b) of this section, or deny the application. The Director may disregard the provisions of § 146.06 (Area of Review) and § 146.07 (Corrective Action) when reviewing an application to permit an existing Class II well.

(b) *Requirements—*

(1) *Existing injection wells.* Any permit issued for an existing injection well (other than Class II) requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (a) of this section to be completed as soon as possible.

(2) *New injection wells.* No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

(3) *Injection pressure limitation.* The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

(4) *Class III Wells Only.* When setting corrective action requirements the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in § 146.33(b) shall be designed to verify the validity of such determinations.

Part 145 is added to read as follows:

PART 145—STATE UIC PROGRAM REQUIREMENTS

Subpart A—General Program Requirements

Sec.
145.1 Purpose and scope.
145.2 Definitions.

Subpart B—Requirements for State Programs

145.11 Requirements for permitting.
145.12 Requirements for compliance evaluation programs.
145.13 Requirements for enforcement authority.
145.14 Sharing of information.

Subpart C—State Program Submissions

Sec.
145.21 General requirements for program approvals.
145.22 Elements of a program submission.
145.23 Program description.
145.24 Attorney General's statement.
145.25 Memorandum of Agreement with the Regional Administrator.

Subpart D—Program Approval, Revision and Withdrawal

145.31 Approval process.
145.32 Procedures for revision of State programs.
145.33 Criteria for withdrawal of State programs.
145.34 Procedures for withdrawal of State programs.

Authority: Pub. L. 93-523, as amended by Pub. L. 95-190, Pub. L. 96-63 and Pub. L. 96-502, 42 U.S.C. 300f *et seq.*

Subpart A—General Program Requirements

§ 145.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under Section 1422 (underground injection control—UIC) of SDWA, and includes the elements which must be part of submissions to EPA for program approval and the substantive provisions which must be present in State programs for them to be approved.

(b) State submissions for program approval must be made in accordance with the procedures set out in Subpart C. This includes developing and submitting to EPA a program description (§ 145.23), an Attorney General's Statement (§ 145.24), and a Memorandum of Agreement with the Regional Administrator (§ 145.25).

(c) The substantive provisions which must be included in State programs to obtain approval include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found in Subpart B. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of Parts 144 and 124 are made applicable to States by the references contained in § 145.11.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this Part, the Safe Drinking Water Act and any comments received.

(e) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(g) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. Where an approved State program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

§ 145.2 Definitions.

The definitions of Part 144 apply to all subparts of this Part.

Subpart B—Requirements for State Programs

§ 145.11 Requirements for permitting.

(a) All State programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) § 144.5(b)—(Confidential information);

(2) § 144.6—(Classification of injection wells);

(3) § 144.7—(Identification of underground sources of drinking water and exempted aquifers);

(4) § 144.8—(Noncompliance reporting);

(5) § 144.11—(Prohibition of unauthorized injection);

(6) § 144.12—(Prohibition of movement of fluids into underground sources of drinking water);

(7) § 144.13—(Elimination of Class IV wells);

(8) § 144.14—(Requirements for wells managing hazardous waste);

(9) § 144.21–§ 144.26—(Authorization by rule);

(10) § 144.31—(Application for a permit);

(11) § 144.32—(Signatories);

(12) § 144.33—(Area Permits);

(13) § 144.34—(Emergency permits);

(14) § 144.35—(Effect of permit);

(15) § 144.36—(Duration);

(16) § 144.38—(Permit transfer);

(17) § 144.39—(Permit modification);

(18) § 144.40—(Permit termination);

(19) § 144.51—(Applicable permit conditions);

(20) § 144.52—(Establishing permit conditions);

(21) § 144.53(a)—(Schedule of compliance);

(22) § 144.54—(Monitoring requirements);

(23) § 144.55—(Corrective Action);

(24) § 124.3(a)—(Application for a permit);

(25) § 124.5 (a), (c), (d), and (f)—(Modification of permits);

(26) § 124.6 (a), (c), (d), and (e)—(Draft Permit);

(27) § 124.8—(Fact sheets);

(28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);

(29) § 124.11—(Public comments and requests for hearings);

(30) § 124.12(a)—(Public hearings); and

(31) § 124.17 (a) and (c)—(Response to comments).

(b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a) (1)–(31) of this section. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

(2) State programs may, if they have adequate legal authority, implement any of the provisions of Parts 144 and 124. See, for example § 144.37(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

§ 145.12 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application

or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner [e.g., using proper "chain of custody" procedures] that will produce evidence admissible in an enforcement proceeding or in court.

§ 145.13 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

[Note.—This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of $5,000 per day against any person who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be imposable against any person who willfully violates any program requirement.

[Note.—In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. If civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation," as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires).

[Note.—In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 145.12(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 145.14 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

Subpart C—State Program Submissions

§ 145.21 General requirements for program approvals.

(a) States shall submit to the Administrator a proposed State UIC program complying with § 145.22 of this Part within 270 days of the date of promulgation of the UIC regulations on June 24, 1980. The administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(b) States shall submit to the Administrator 6 months after the date of promulgation of the UIC regulations a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 145.21(a), the State shall submit a second report six months after the first report is due. The Administrator may prescribe the manner and form of the report.

(c) EPA will establish a UIC program in any State which does not comply with paragraph (a) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the the requirements of this Part.

[Note.—States which are authorized to administer the NPDES permit program under Section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

(d) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and class IV wells.

(e) When a State UIC program is fully approved by EPA to regulate all classes of injections, the State assumes primary enforcement authority under Section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority to enforce violations of State underground injection control programs, except that, when a State has a fully approved program, EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with Section 1423 of SDWA.

(f) A State can assume primary enforcement responsibility for the UIC program, notwithstanding § 145.21(3), when the State program is unable to regulate activities on Indian lands within the State. EPA will administer the program on Indian lands if the State does not seek this authority.

§ 145.22 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 145.23, describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's statement as required by § 145.24;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 145.25;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(6) The showing required by § 145.31(b) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the Safe Drinking Water Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

§ 145.23 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including

the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[Note.—States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A State UIC program description shall also include:

(1) A schedule for issuing permits within five years after program approval to all injection wells within the State which are required to have permits under this Part and Part 144;

(2) The priorities (according to criteria set forth in 40 CFR 146.09) for issuing permits, including the number of permits in each class of injection well which will be issued each year during the first five years of program operation;

(3) A description of how the Director will implement the mechanical integrity testing requirements of 40 CFR 146.08, including the frequency of testing that will be required and the number of tests that will be reviewed by the Director each year;

(4) A description of the procedure whereby the Director will notify owners and operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit;

(5) A description of any rule under which the Director proposes to authorize injections, including the text of the rule;

(6) For any existing enhanced recovery and hydrocarbon storage wells which the Director proposes to authorize by rule, a description of the procedure for reviewing the wells for compliance with applicable monitoring, reporting, construction, and financial responsibility requirements of §§ 144.51 and 144.52, and 40 CFR Part 146;

(7) A description of and schedule for the State's program to establish and maintain a current inventory of injection wells which must be permitted under State law;

(8) Where the Director had designated underground sources of drinking water in accordance with § 144.7(a), a description and identification of all such designated sources in the State;

(9) A description of aquifers, or parts thereof, which the Director has identified under § 144.7(b) as exempted aquifers, and a summary of supporting data;

(10) A description of and schedule for the State's program to ban Class IV wells prohibited under § 144.13; and

(11) A description of and schedule for the State's program to establish an inventory of Class V wells and to assess the need for a program to regulate Class V wells.

§ 145.24 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 145.23 and to meet the requirements of this Part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

[Note.—EPA will supply States with an Attorney General's statement format on request.]

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 145.25 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal

government, a procedure may be established to transfer responsibility for these permits.

[Note.—For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program and grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note.—Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

Subpart D—Program Approval, Revision and Withdrawal

§ 145.31 Approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons may comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and § 145.22 of this Part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section; copies of all written comments received by the State; a transcript, recording or summary of any public hearing which was held by the State; and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and responds to these comments. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the **Federal Register** and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(d) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

(e) Within 90 days of the receipt of a complete submission (as provided in § 145.22) or material amendment thereto, the Administrator shall by rule either fully approve, disapprove, or approve in part the State's UIC program taking into account any comments submitted. The Administrator shall give notice of this rule in the **Federal Register** and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

§ 145.32 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The state shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to

interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held is there if significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the Safe Drinking Water Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approval by the Administrator under paragraph (b) of this section. Organizational charts required under § 145.23(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The State shall submit the information required under paragraph (b)(1) of this section within 270 days of any amendment to this Part or 40 CFR Parts 144, 146, or 124 which revises or adds any requirement respecting an approved UIC program.

§ 145.33 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets their requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this Part; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) When the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 145.24.

§ 145.34 Procedures for withdrawal of State programs.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) Approval of a State UIC program may be withdrawn and a Federal program established in its place when the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this Part.

(1) *Notice to State of Public Hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this Part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(2) *Public Hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. Notice of such public hearing shall be published in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested persons shall be given opportunity to make written or oral presentation on the State's program at the public hearing.

(3) *Notice to State of Findings.* When the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

Part 233 is added as follows:

PART 233—404 STATE PROGRAM TRANSFER REGULATIONS

Subpart A—General

Sec.

233.1 Purpose and scope of Part 233.

Subpart B—Definitions and General Program Requirements

233.2 Purpose and scope of Subpart B.
233.3 Definitions.

Sec.

233.4 Application for a permit.
233.5 Continuation of expiring permits.
233.6 Signatories to permit applications and reports.
233.7 Conditions applicable to all permits.
233.8 Establishing permit conditions.
233.9 Duration of permits.
233.10 Schedules of compliance.
233.11 Requirements for recording and reporting of monitoring results.
233.12 Effect of a permit.
233.13 Transfer of permits.
233.14 Modification or revocation and reissuance of permits.
233.15 Termination of permits.
233.16 Minor modifications of permits.
233.17 Noncompliance and program reporting by the Director.
233.18 Confidentiality of information.

Subpart C—State Program Requirements

233.20 Purpose and scope.
233.21 Elements of a program submission.
233.22 Program description.
233.23 Attorney General's statement.
233.24 Memorandum of Agreement with the Regional Administrator.
233.25 Memorandum of Agreement with the Secretary.
233.26 Requirements for permitting.
233.27 Requirements for compliance evaluation programs.
233.28 Requirements for enforcement authority.
233.29 Sharing of information.
233.30 Coordination with other programs.
233.31 Approval process.
233.32 Procedures for revision of State programs.
233.33 Criteria for withdrawal of State programs.
233.34 Procedures for withdrawal of State programs.
233.35 Activities not requiring permits.
233.36 Prohibitions.
233.37 General permits.
233.38 Emergency permits.
233.39 Transmission of information to EPA and other Federal agencies.
233.40 EPA review of and objections to State permits.
233.41 Coordination requirements.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

§ 233.1 Purpose and scope of Part 233.

(a) *Coverage.* Part 233 includes provisions for the *Dredge or Fill* (404) Program under section 404 of the *Clean Water Act.* This Part includes the requirements which must be met for a State to administer its own program in lieu of the U.S. Army Corps of Engineers in "State regulated waters," and provisions for EPA oversight of State issued 404 permits.

(b) *Structure.* These permit regulations are organized as follows:

(1) *Subpart A.* This Subpart contains general information relating to these regulations.

(2) *Subpart B.* This Subpart contains definitions for the 404 program, and some basic permitting requirements applicable to state programs.

(3) *Subpart C.* This Subpart establishes minimum program requirements for an approvable state program and for administering the permit program subsequent to approval, including EPA oversight.

(4) *Part 124.* Part 233 incorporates by reference certain procedures for issuance of State 404 permits which are established in Part 124 of this chapter.

(c) *Relation to other requirements.* (1) Applicants for State issued permits must use State-prescribed forms which must require at a minimum the information listed in these sections. All minimum information requirements for State 404 permit applications appear in § 233.4.

(2) *Technical regulations.* The 404 permit program covered in these regulations has separate additional regulations, located at 40 CFR Part 230, that contain technical requirements. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued.

(d) *Public participation.* This rule establishes the requirements for public participation in State permit issuance and enforcement proceedings, and in the approval of State 404 programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under this Part.

(e) *State authorities.* Nothing in Part 233 precludes more stringent State regulation of any activity covered by these regulations, whether or nor under an approved State program.

(f) *Federal 404 Program.* Permit program requirements for the Federal 404 program administered by the Corps of Engineers appear in 33 CFR Parts 320–330, rather than in this Part.

Subpart B—Definitions and General Program Requirements

§ 233.2 Purpose and scope of Subpart B.

Subpart B contains definitions for State 404 programs (§ 233.3) and basic permit requirements for state programs (§§ 233.4 through 233.18).

§ 233.3 Definitions.

The following definitions apply to Part 233. Terms not defined in this section have the meaning given by the CWA. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Subpart C.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States," including methods, measures, practices, or design and performance standards, which facilitate compliance with section 404(b)(1) environmental guidelines (40 CFR Part 230), effluent limitations or prohibitions under section 307(a), and applicable water quality standards.

BMPs means "best management practices."

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

Director means the chief administrative officer of any state or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

Discharge of dredged material means any addition from any "point source" of "dredged material" into "waters of the United States." The term includes the addition of dredged material into waters of the United States and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into waters of the United States resulting from the subsequent onshore processing of dredged material are not included within this term and are subject to the NPDES program even though the extraction and deposit of such material may also require a permit from the Corps of Engineers or the State section 404 program.

Discharge of fill material means the addition from any "point source" of "fill material" into "waters of the United States." The term includes the following activities in waters of the United States:

placement of fill that is necessary for the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fill for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

Disposal site means that portion of the "waters of the United States" enclosed within fixed boundaries consisting of a bottom surface area and any overlaying volume of water. In the case of "wetlands" on which water is not present, the disposal site consists of the wetland surface area. Fixed boundaries may consist of fixed geographic point(s) and associated dimensions, or of a discharge point and specific associated dimensions.

Draft permit means a document prepared under § 124.6 of this Chapter indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5 of this chapter, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Dredged material means material that is excavated or dredged from "waters of the United States."

Effluents means "dredged material" or "fill material," including return flow from confined sites.

Emergency permit means a State 404 "permit" issued in accordance with § 233.38.

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Facility or activity means any State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the 404 program.

Fill material means any "pollutant" which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

General permit means 404 "permit" issued under § 233.37 authorizing a category of discharges under the CWA within a geographical area.

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA.

Major facility means any 404 "facility or activity" classified as such by the Regional Administrator in conjunction with the State Director.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the 404 program.

Permit means an authorization, license, or equivalent control document issued by an "approved State" to implement the requirements of this Part and Part 124. "Permit" includes 404 "general permit" (§ 233.37), and 404 "emergency permit" (§ 233.38).

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive material (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that injection or disposal will not result in the degradation of ground or surface water resource.

[Note.—Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear produced isotopes. See *Train* v. *Colorado Public Interest Research Group Inc.* 426 U.S. 1 (1976)]

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and its regulations.

Secretary means the Secretary of the Army, acting through the Chief of Engineers.

Section 404 program or *State 404 program* or *404* means an "approved State program" to regulate the "discharge of dredged material" and the "discharge of fill material" under section 404 of the Clean Water Act in "State regulated waters."

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA.

State regulated waters means those "waters of the United States" in which the Corps of Engineers suspends the issuance of section 404 permits upon approval of a State's section 404 permit program by the Administrator under section 404(h). These waters shall be identified in the program description as required by § 233.22(h)(1). The Secretary shall retain jurisdiction over the following waters (see CWA section 404(g)(1)):

(a) Waters which are subject to the ebb and flow of the tide;

(b) Waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark; and

(c) "Wetlands" adjacent to waters in paragraphs (a) and (b) of this definition.

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) of CWA.

Waters of the United States or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§ 233.4 Application for a permit.

(a) *Publicity and preapplication consultation.* The State director shall maintain a program to inform, to the extent possible, potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters. The State Director is encouraged to include preapplication consultation as part of this program to assist applicants in understanding the requirements of the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230) and in fulfilling permit application requirements.

(b) *Application for permit.* Except when an activity is authorized by a general permit under § 233.37 or is exempt from the requirement to obtain a permit under § 233.35, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit an application to the State Director. State application forms are subject to EPA review and approval. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 233.38.

(c) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(d) *Completeness.* The Director shall not issue a 404 permit before receiving a complete application for a permit except for 404 general permits or emergency permits. An application for a permit under a program is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(e) *Content of Application.* A complete application shall include the following information:

(1) A complete description of the proposed activity including:

(i) Name, address, and phone number of the applicant; and the names, addresses, and phone numbers of owners of properties adjacent to the site; and if appropriate, the location and dimensions of adjacent structures;

(ii) A description of the source of the dredged or fill material and method of dredging used, if any; a description of the type, composition and quantity of the material; the proposed method of transportation and disposal of the material, including the type of equipment to be used; and the extent (in acres) of the area of waters of the United States to be filled or used for disposal;

(iii) The purpose and intended use of the proposed activity (including whether it is water-dependent); a description of the use of any structures to be erected on the fill; and a schedule for the proposed activity;

(iv) A list of the approvals required by other Federal, interstate, State and local agencies for the activity, including all approvals or denials received; and

(v) A vicinity map identifying the proposed disposal site and the local jurisdiction closest to the disposal site.

(2) Information about the disposal site needed to evaluate compliance with 40 CFR Part 230, including the following:

(i) A description of known alternatives to the proposed discharge, including alternative disposal sites, construction methods, methods of discharge, and reasons for rejecting the alternatives;

(ii) A description of special aquatic sites, public use areas, wildlife refuges, and public water supply intakes in the affected or adjacent areas that may require special protection or preservation;

(iii) Plants, fish, shellfish and wildlife in the disposal site which may be dependent on water quality and quantity;

(iv) Uses of the disposal site which might affect human health and welfare; and

(v) A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the discharge. Guidelines for minimizing the adverse effects of discharges of dredged or fill material are found in 40 CFR Part 230.

[Note.—The State shall provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this paragraph. The level of detail shall be reasonably commensurate with the type and size of discharge, proximity to critical areas, likelihood of presence of long-lived toxic chemical substances, and degree of environmental degradation.]

(3) One original set of drawings and maps, or one set of drawings and maps of reproducible quality, including:

(i) A map showing the following in plan view:

(A) Location of the activity site including latitude, longitude, and river mile, if known;

(B) Name of waterway;

(C) All applicable political (*e.g.*, county, borough, town, city, etc.) boundary lines;

(D) Names of all major roads in the vicinity of the site including the road providing the closest practicable access to the sites;

(E) North arrow,

(F) Arrows showing flow and circulation patterns;

(G) Existing shorelines or ordinary high watermark;

(H) Location of known wetlands;

(I) Water depths and bottom configuration around the project;

(J) Delineation of disposal site;

(K) Size-relationship between the proposed disposal site and affected waters (*e.g.*, a ¼ acre fill in a 15-acre wetland);

(L) Location of previously used dredged material disposal sites with remaining capacity in the vicinity of the projects. The map must indicate retention levees, weirs, and any other devices for retaining dredged or fill material; and

(M) Location of structures, if any, in waters of the United States immediately adjacent to the proposed activity,

including permit numbers, if known. Identify purposes of all structures.

(ii) A cross-sectional view of the proposed project showing the following:

(A) Water elevations;

(B) Water depths at waterward face of proposed work, or if dredging is proposed, showing dredging grade;

(C) Cross-section of fill;

(D) Elevation of spoil areas;

(E) Location of wetlands; and

(F) Delineation of disposal site.

(iii) Notes on all maps or drawings submitted, including:

(A) A list of names of adjacent property owners whose property also adjoins the water and who are not shown in the plan view;

(B) A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water; river mile, if applicable; name of county, State and nearest incorporated municipality; name of applicant; number of the sheet and the total number of sheets in set; and date the drawing was prepared.

(C) Graphic or numerical scale.

(f) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under § 233.28 for a period of at least 3 years from the date the application is signed.

§ 233.5 Continuation of expiring permits.

A Corps of Engineers issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the 404 program may continue either Corps of Engineers or State issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 233.6 Signatories to permit applications and reports.

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official.

(b) *Reports.* All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

§ 233.7 Conditions applicable to all permits.

The following conditions apply to all 404 permits. All such conditions shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Duty to halt or reduce activity.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems *only* when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit conditions.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Director shall be signed and certified. (See § 233.4.)

(l) *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See § 233.13; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (1), (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) The permittee need not comply with the conditions of this permit to the extent and for the duration that such noncompliance is authorized in an emergency permit. (See § 233.38.)

(n) Activities are not conducted under the authority of this permit if they are not specifically identified and authorized in this permit.

(o) The permittee shall maintain the authorized work areas in good condition and in accordance with the requirements contained in this permit.

(p) If any applicable water quality standards are revised or modified, or if a toxic effluent standard or prohibition under CWA section 307(a) is established for a pollutant present in the permittee's discharge and is more stringent than any limitation in the permit, the permit shall be promptly modified to conform to the standard, limitation or prohibition.

§ 233.8 Establishing permit conditions.

(a) In addition to conditions required in all permits (§ 233.7), the Director shall establish conditions in permits, as required on a case-by-case basis, under § 233.9 (duration of permits), 233.10(a) (schedules of compliance), and 233.11 (monitoring).

(b)(1) In addition the Director shall establish conditions in permits, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the CWA and appropriate regulations.

(2) An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit, or prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 233.14.

(3) New or reissued permits, and to the extent allowed under § 233.14 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in § 233.8.

(c) Each permit shall include conditions meeting the following requirements, when applicable:

(1) *Identification.* A specific identification and description of the authorized activity, including:

(i) The name and address of the permittee and the permit application identification number;

(ii) The use or purpose of the discharge;

(iii) The type and quantity of the materials to be discharged;

(iv) Any structures proposed to be erected on fill material; and

(v) The location and boundaries of the discharge site(s), including a detailed sketch and the name and description of affected State regulated waters.

(2) *Environmental guidelines.* Provisions ensuring that the discharge will be conducted in compliance with the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230), including conditions to ensure that the discharge will be conducted in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of the waters of the United States, such as requirements for restoration or mitigation.

(3) *Water quality standards.* Any requirements necessary to comply with water quality standards established under applicable Federal or State law. If an applicable water quality standard is promulgated after the permit is issued, it

shall be modified as provided in § 233.7(p).

(4) *Toxic effluent guidelines or prohibitions.* Requirements necessary to comply with any applicable toxic effluent standard or prohibition under section 307(a) of CWA or applicable State or local law. If an applicable toxic effluent standard or prohibition is promulgated after the permit is issued, it shall be modified as provided in § 233.7(p).

(5) *Best Management Practices.* Applicable BMPs approved by a Statewide CWA section 208(b)(4) agency as provided in the agreement described in § 233.41(a)(1).

(6) *General permits.* Any conditions necessary for general permits as required under § 233.37.

(7) *Commencement of work.* A specific date on which the permit shall automatically expire, unless previously revoked and reissued or modified or continued, if the authorized work has not been commenced.

(d) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 233.9 Duration of permits.

(a) Section 404 permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 233.5, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 233.10 Schedules of compliance.

(a) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and appropriate regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(1)(ii) of this section is applicable.

§ 233.11 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity.

§ 233.12 Effect of a permit.

(a) Compliance with a permit during its term constitutes compliance, for purpose of enforcement, with sections 301, 307, and 403 of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 233.14 and 233.15.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

§233.13 Transfer of permits.

Transfer by modification. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 233.14(b)(2) or a minor modification made (under § 233.16(d)) to identify the new permittee and incorporate such other requirements as may be necessary under the Act.

§ 233.14 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 233.7), receives a request for modification or revocation and reissuance under § 124.5 of this chapter, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reisued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 233.16, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 233.16 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared (if required under § 233.39(b)(1)), and procedures of an approved State program followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits. The following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For 404 general permits (§ 233.37) this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: (i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on an EPA approved or promulgated water quality standard; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated standards if the remand and stay concern that portion of the standards on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) The Director shall modify a permit to reflect toxic effluent standards or prohibitions or water quality standards, under the "reopener" condition of § 233.7(d).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 233.15, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 233.7(l)(3)) of a proposed transfer of the permit.

§ 233.15 Termination of permits.

The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(d) Permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure).

§ 233.16 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124 of this Chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 233.14(a). Minor modifications may only:

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e) Extend the term of a State section 404 permit, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date.

§ 233.17 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below and shall submit them to the Regional Administrator.

(a) *Quarterly reports for State 404 programs.* The Director shall submit noncompliance reports for section 404 discharges specified under § 233.24(f)(1)(i)(A)–(E) containing the following information:

(1) Name, location, and permit number of each noncomplying permittee;

(2) A brief description and date of each instance of noncompliance, which should include the following:

(i) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction or any noncompliance with permit conditions; and

(ii) A description of investigations conducted and of any enforcement actions taken or contemplated.

(b) *Annual report for State 404 programs.* The State Director shall submit to the Regional Administrator an annual report assessing the cumulative impacts of the State's permit program on the integrity of State regulated waters. This report shall include:

(1) The number and nature of individual permits issued by the State during the year. This should include the locations and types of water bodies where permitted activities are sited (for example, wetlands, rivers, lakes, and other categories which the Director and Regional Administrator may establish);

(2) The number of acres of each of the categories of waters in paragraph (b)(1) of this section which were filled or which received any discharge of dredge material during the year (either by authorized or unauthorized activities);

(3) The number and nature of permit applications denied; and permits modified, revoked and reissued, or terminated during the year;

(4) The number and nature of permits issued under emergency conditions, as provided in § 233.38;

(5) The approximate number of persons in the State discharging dredged or fill material under general permits and an estimate of the cumulative impacts of these activities.

(c) *Schedule.* (1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with State 404 permit requirements by major dischargers or other dischargers with the following schedule.

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS

[Date for completion of reports]

January, February, and March	May 31.[1]
April, May, and June	August 31.[1]
July, August, and September	November 30.[1]
October, November, and December	February 28.[1]

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

§ 233.18 Confidentiality of information.

Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee;

(b) Permit applications and permits; and

(c) Effluent data.

Subpart C—State Program Requirements

§ 233.20 Purpose and scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under Section 404 of the CWA, and the requirements State programs must meet to be approved by the Administrator under Section 404.

(b) State submissions for program approval must be made in accordance with the procedures set out in this Subpart. This includes developing and submitting to EPA a program description (§ 233.22), an Attorney General's statement (§ 233.23), a Memorandum of Agreement with the Regional Administrator (§ 233.24), and with the Secretary (§ 233.25).

(c) The substantive provisions which must be included in State programs for them to be approved, including requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information, are found in this Part and in § 233.26.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program, taking into consideration the requirements of this Part, the CWA and any comments received.

(e) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

(f) Upon approval of a State program, the Secretary shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(g) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(h) States are encouraged to consolidate their permitting activities. These regulations do not require consolidation.

(i) Partial State programs are not allowed under 404. Except as provided in § 233.35, the State program must regulate all discharges of dredged or fill material into State regulated waters. State section 404 programs are limited under section 404(g)(1) of CWA to coverage of such State regulated waters. See the definition of "State regulated waters" in § 233.3. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. The Secretary will administer the program on Indian lands if the State does not seek this authority.

[Note.—States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(j) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. Where an approved State program has greater scope of coverage than required by federal law the additional coverage is not part of the Federally approved program.

[Note.—State assumption of the Section 404 program is limited to certain waters, as provided in paragraph (j) of this section. The federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill materials into those waters over which the Secretary retains section 404 jurisdiction.]

§ 233.21 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 233.22, describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's statement as required by § 233.23;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 233.24, and a Memorandum of Agreement with the Secretary as required by § 233.25;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the CWA) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

§ 233.22 Program description.

Any State that seeks to administer a 404 program shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. State section 404 application forms must include the information required by § 233.4 and State section 404 permit forms must include the information conditions required by § 233.7.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of State regulated waters.

[Note.—States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps of Engineers retains authority under section 404(g) of CWA.]

(g) A categorization, by type and quantity, of discharges within the State, and an estimate of the number of discharges within each category for which the discharger must file for a permit.

(h) An estimate of the number and percent of activities within each category for which the State has already issued a State permit regulating the discharge.

(i) In accordance with § 233.35(a)(6), a description of the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of CWA for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.

(j) A description of how the State section 404 agency(ies) will interact with other State and local agencies.

(k) A description of how the State will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(l) Where more than one agency within a State has responsibility for administering the State program:

(1) A memorandum of understanding among all the responsible State agencies which establishes:

(i) Procedures for obtaining and exchanging information necessary for each agency to determine and assess the cumulative impacts of all activities authorized under the State program:

(ii) Common reporting requirements; and

(iii) Any other appropriate procedures not inconsistent with section 401 of the CWA or these regulations;

(2) A description of procedures for coordinating compliance monitoring and enforcement, distributing among the responsible agencies information received from applicants and permittees, and issuing reports required by section 404 of CWA or these regulations.

(m) Where several State 404 permits are required for a single project, a description of procedures for:

(1) Ensuring that all the necessary State 404 permits are issued before any of the permits go into effect; and

(2) Concurrent processing and, where appropriate, joint processing of all of the necessary State 404 permits.

§ 233.23 Attorney General's statement.

(a) Any State that seeks to administer a 404 program shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 233.22 and to meet the requirements of this Part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

(b) When a State seeks authority on Indian lands, the statement shall contain an appropriate analysis of the State's autocracy.

(c)(1) The State Attorney General's statement shall contain an analysis of State law regarding the prohibition on taking private property without just compensation, including any applicable judicial interpretations, and an assessment of the effect such law will have on the successful implementation of the State's regulation of the discharge of dredged or fill material.

(2) Where more than one agency has responsibility for administering the State program, the Attorney General's Statement shall include certification that each agency has full authority to administer the program within its category of jurisdiction and that the State as a whole has full authority to administer a complete State section 404 program.

§ 233.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a 404 program shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 233.39.

(2) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the Stat and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(3) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note.—Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to

specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

(d)(1) The Memorandum of Agreement with the Regional Administrator shall also specify:

(i) The categories (including any class, type, or size within such categories) of discharges for which EPA will waive review of State-issued permit applications, draft permits, and proposed general permits. While the Regional Administrator and the State, after consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits, no waiver may be granted for the following activities:

(A) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(B) Major discharges;

(C) Discharges into critical areas established under State or Federal law including fish and wildlife sanctuaries or refuges, National and historical monuments, wilderness areas and preserves, National and State parks, components of the National Wild and Scenic Rivers system, the designated critical habitat of threatened or endangered species, and sites identified or proposed under the National Historic Preservation Act;

(D) General permits;

(E) Discharges known or suspected to contain toxic pollutants in toxic amounts under section 307(a)(1) of CWA or hazardous substances in reportable quantities under section 311 of CWA.

(ii) A definition of major discharges.

(2) Where more than one agency within a State has responsibility for administering the program, all of the responsible agencies shall be parties to the Memorandum of Agreement.

(e) Whenever a waiver is granted under paragraph (d)(1) of this section, the Memorandum of Agreement shall contain:

(1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and

(2) A statement that the State shall supply EPA, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service (unless receipt is waived in writing) with copies of final permits.

§ 233.25 Memorandum of Agreement with the Secretary.

Before a State program is approved under this Part, the State shall enter into a Memorandum of Agreement with the Secretary. Where more than one agency within a State has responsibility for administering the State program, all of the responsible agencies shall be parties to the Memorandum of Agreement. The Memorandum of Agreement shall include:

(a) A description of State regulated waters, as identified by the Secretary.

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the River and Harbor Act of 1899, provided such procedures satisfy the requirements of this Part.

(c) An identification of those general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program and a plan for transferring responsibility for these permits to the State, including procedures for the prompt transmission from the Secretary to the State Director of relevant information not already in the possession of the State Director including support files for permit issuance, compliance reports and records of enforcement actions. In many instances States will lack the authority to directly administer permits by the Federal government. However, procedures authorized under State law may be established to transfer responsibility for these permits.

(d) Procedures whereby the Secretary will, upon program approval, transfer to the State pending section 404 permit applications and other relevant information, not already in the possession of the State Director.

(e) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Secretary which the Secretary has identified as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

(f) A provision that the State shall not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(g) Those classes or categories, if any, of proposed State permits for which the Secretary waives the right to review.

(h) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[Note.—For example, where a State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue section 404 permits (by virtue of section 404(g)(1) of CWA), the State is strongly encouraged to establish in this MOA procedures for joint processing of Federal and State permits, including joint public notices and public hearings.]

§ 233.26 Requirements for permitting.

(a) All State 404 programs must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) § 233.4—(Application for a permit).
(2) § 233.6—(Signatories);
(3) § 233.7—(Applicable permit conditions);
(4) § 233.8—(Establishing permit conditions);
(5) § 233.9—(Duration);
(6) § 233.10—(Schedules of compliance);
(7) § 233.11—(Monitoring requirements);
(8) § 233.12—(Effect of permit);
(9) § 233.13—(Permit transfer);
(10) § 233.14—(Permit modification);
(11) § 233.15—(Permit termination);
(12) § 233.17—(Noncompliance reporting);
(13) § 233.18—(Confidential information);
(14) § 124.3(a)—(Application for a permit);
(15) § 124.5(a), (c), (d), and (f)—(Modification of permits) except as provided in § 233.39(b)(2);
(16) § 124.6(a), (c), (d), and (e)—(Draft permit) except as provided in § 233.39(b)(2);
(17) § 124.8—(Fact sheets) except as provided in § 233.39(b)(2);
(18) § 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
(19) § 124.11—(Public comments and requests for hearings);
(20) § 124.12(a)—(Public hearings); and
(21) § 124.17(a) and (c)—(Response to comments).

[Note.—States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more

stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing. State programs may, if they have adequate legal authority, implement any of the provisions of EPA's other permit regulations.]

(b)(1) State 404 permit programs shall have an approved continuing planning process under 40 CFR 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(2) State 404 programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 3 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(i) For the purposes of this subparagraph:

(A) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(ii) For the purposes of this subparagraph, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

§ 233.27 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry must conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 233.28 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

[Note.—This subparagraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To immediately and effectively halt or remove any unauthorized discharges of dredged or fill material, including the authority to issue a cease and desist order, interim protection order, or restoration order to any person responsible for, or involved in, an unauthorized discharge.

(4) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) (A) Civil penalties shall be recoverable for the violation of any section 404 permit condition; any section 404 filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or, any regulation or orders issued by the State Director. Such penalties shall be assessable in at least the amount of $5,000 per day for each violation.

(B) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any section 404 permit condition; or any section 404 filing requirement. Such fines shall be assessable in at least the amount of $10,000 per day for each violation.

[Note.—States which provide the criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(i)(B) of this section.]

(C) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any section 404 form, in any notice or report required by a section 404 permit, or who knowingly renders inaccurate any monitoring device or method required to

be maintained by the Director. Such fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

[Note.—In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions, he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(4) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degrees of knowledge or intent required under State law for establishing violations under paragraph (a)(4) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the CWA;

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (a)(4) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. If such civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole, or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (*e.g.*, floods, fires).

[Note.—In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2), (3), or (4) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 233.27(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 233.29 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit the claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program subject to the conditions in 40 CFR Part 2.

§ 233.30 Coordination with other programs.

(a) Issuance of State 404 permits may be coordinated with issuance of RCRA, UIC, and NPDES permits whether they are controlled by the State or EPA. See § 124.4.

(b) The State Director of any approved 404 program which may affect the planning for and development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA (40 CFR Part 255) as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 233.31 Approval process.

(a) Within 10 days of receipt of a complete State section 404 program submission under § 233.21 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, and in enough of the largest newspapers in the State to attract Statewide attention, and shall mail notice to persons known to be interested in such matters, including all persons on appropriate State, EPA, Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days

after notice of the hearing is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 90 days of receipt of a complete program submission under § 233.21, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service shall submit any comments on the State program.

(d) Within 120 days of the receipt of a complete program submission under § 233.21, the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments. The Administrator shall respond individually to comments received from the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(e) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish public notice in the **Federal Register**. The Secretary shall suspend the issuance of section 404 permits by the Corps of Engineers within the State, except for those waters specified in section 404(g)(1) of CWA and not identified in the program description under 233.22(h)(1) as State regulated waters.

(f) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 233.32 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove revisions based on the requirements of this Part and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial program revision shall be published in the **Federal Register**. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they proposed to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 233.22(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe the circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The Regional Administrator shall consult with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service regarding any substantial program revision, and shall consider their recommendations prior to approval of any such revision.

§ 233.33 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Issuance of permits do not conform to the requirements of this Part; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) When the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 233.24.

§ 233.34 Procedures for withdrawal of State programs.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to the Secretary by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator and the Secretary 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of the Secretary (such as permits, permit files, reports, permit applications) which are necessary for the Secretary to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator and the Secretary shall

evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of transfer in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part as set forth in § 233.33. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of "Act," "Administrative Law Judge," "Hearing," "Hearing Clerk," and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the processing.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.*

(i) The following provisions of 40 CFR Part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

(A) § 22.02—(use of number/gender);

(B) § 22.04(c)—(authorities of Presiding Officer);

(C) § 22.06—(filing/service of rulings and orders);

(D) § 22.09—(examination of filed documents);

(E) § 22.19 (a), (b) and (c)—(prehearing conference);

(F) § 22.22—(evidence);

(G) § 22.23—(objections/offers of proof);

(H) § 22.25—(filing the transcript); and

(I) § 22.26—(findings/conclusions).

(ii) The following provisions are also applicable:

(A) Computation and extension of time.

(*1*) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(*2*) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (*i*) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (*ii*) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(*3*) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

(B) Ex parte discussion of proceeding.

At no time after the issuance of the order commencing proceedings shall the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any other person who is likely to advise these officials in the decisions on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

(C) Intervention.

(*1*) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (b)(3)(ii)(C)(*3*) of this section, within ten (10) days after service of the motion for leave to intervene.

(*2*) However, motions to intervene must be filed within 15 days from the date the notice of the administrator's order is first published.

(*3*) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (*i*) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (*ii*) the movant will be adversely affected by a final order; and (*iii*) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(*4*) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D). Motions.

(*1*) *General.* All motions, except those made orally on the record during a hearing, shall (*i*) be in writing; (*ii*) state the grounds therefor with particularity; (*iii*) set forth the relief or order sought; and (*iv*) be accompanied by any

affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by (b)(4) of this section.

(2) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(3) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service; and

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making an oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the CWA and this Part, his decision shall constitute "final agency action" within the meaning of 5 U.S.C. § 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the CWA and regulations, he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meanings of 5 U.S.C. 704.

(c) Withdrawal of authorization under this section and the CWA does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions taken by the State prior to withdrawal.

§ 233.35 Activities not requiring permits.

(a) Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under this subpart:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an

established farming, silviculture, or ranching operation.

(iii)(A) *Cultivating* means physical methods of soil treatment employed within established farming, ranching and silviculture lands upon planted farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) *Harvesting* means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(*1*) *Minor Drainage* means:

(*i*) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. [Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.];

(*ii*) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species:

[Note.—The provisions of paragraphs (a)(1)(ii)(c)(1) (ii) and (iii) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (*e.g.*, the rotation of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.]

(*iv*) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of formation of such blockages in order to be eligible for exemption.

(*2*) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silvicultural operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (*e.g.*, wetlands species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) *Plowing* means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing, and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of spoil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of dredged or fill material.

(E) *Seeding* means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. A simple connection of an irrigation return or supply ditch to waters of the U.S. and related bank stabilization measures are included within this exemption. Where a trap, weir, groin, wall, jetty or other structure within waters of the U.S., which will result in significant discernable alterations to flow or circulation, is constructed as part of the connection, such construction requires a 404 permit.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term "construction site" refers to any site involving the erection of building, roads, and other discrete structures and the installation of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of CWA which meets the requirements of sections 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the State's approved program description pursuant to the requirements of § 233.22(h)(4), and shall also include the following baseline provisions:

(*i*) Permanent roads (for farming or forestry activities), temporary access

roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected floods flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges fo dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) all temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a)(1)–(6) of this section contains any toxic pollutant listed under section 307 of CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit under the State program.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a)(1)–(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation *may* be impaired by such alteration.

[Note.—For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill materials into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.]

(d) Federal projects which qualify under the criteria contained in section 404(r) of CWA (Federal projects authorized by Congress where an EIS has been submitted to Congress prior to authorization or an appropriation) are exempt from State section 404 permit requirements, but may be subject to other State or Federal requirements.

§ 233.36 Prohibitions.

No permit shall be issued by the State Director in the following circumstances:

(a) When the conditions of the permit do not comply with the requirements of CWA, or regulations and guidelines implementing CWA, including the section 404(b)(1) environmental guidelines (40 CFR Part 230).

(b) When the Regional Administrator has objected to issuance of the permit under section 404(j) of CWA and the objection has not been resolved.

(c) When, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(d) When the proposed discharge would be into a defined area for which specification as a disposal site has been prohibited, restricted, denied, or withdrawn by the Administrator under section 404(c) of CWA, and the discharge would fail to comply with the Administrator's actions under that authority.

§ 233.37 General permits.

(a) *Coverage.* The State Director may issue a general permit for similar activities as specified in paragraph (b)(1) of this section within a defined geographic area as specified in paragraph (b)(2) of this section, if he or she determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

(b) *Conditions.* In addition to § 233.7, and the applicable requirements of § 233.8, each general permit shall contain conditions as follows:

(1) *Activities:* A specific description of the type(s) of activities which are authorized, including limitations for any single operation, to ensure that the requirements of paragraph (a) of this section are satisfied. At a minimum, these limitations shall include:

(i) The maximum quantity of material that may be discharged;

(ii) The type(s) of material that may be discharged;

(iii) The depth of fill permitted;

(iv) The maximum extent to which an area may be modified; and

(v) The size and type of structure that may be constructed.

(2) *Area:* A precise description of the geographic area to which the general permit applies, including, when appropriate, limitations on the types(s) of water(s) or wetlands where operations may be conducted, to ensure that the requirements of paragraph (a) of this section are satisfied.

(3) *Notice:* The permit shall contain a requirement that no activity is authorized under the general permit unless the Director receives notice at least 30 days in advance of the date when the proposed activity is to commence. The Director may require any information in the notice necessary to determine whether the conditions of the general permit will be satisfied. If within 15 days of the date of submission of the notice the owner or operator has not been informed by the State Director of his or her intent to require an individual permit application, the owner or operator may commence operations under the general permit.

(c) *Requiring an individual permit.* (1) Upon receiving notice under paragraph (b)(3) of this section, the State Director may require, at his discretion, that the owner or operator apply for an individual permit. Cases where an individual permit may be required include:

(i) The activity has more than a minimal adverse environmental effect;

(ii) The cumulative effects on the environment of the authorized activities are more than minimal; or

(iii) The discharger is not in compliance with the conditions of the general permit.

(2) When the State Director notifies the owner or operator within 15 days of receipt of notice under paragraph (b)(3) of this section that an individual permit application is required for that activity, the activity shall not be authorized by the general permit.

(3) The Director may require any person authorized under a general permit to apply for an individual permit.

(d) Under section 404(h)(5) of CWA, States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. If the State chooses not to administer and enforce these permits, the Secretary retains jurisdiction until they expire. If the Secretary has retained jurisdiction and if a permit appeal or modification request is not finally resolved when the Federally issued permit expires, the Secretary, upon agreement with the State, may continue to retain jurisdiction until the matter is resolved.

§ 233.38 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124 of this Chapter, the State Director may temporarily permit a specific dredge or fill activity if:

(1) An unacceptable hazard to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this Part and Part 124.

(b) *Requirements for issuance.* (1) The emergency permit shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of §§233.7 and 233.8.

(2) Any emergency permit shall be limited in duration to the time required to complete the authorized emergency action, not to exceed 90 days.

(3) The emergency permit must have a condition requiring restoration of the disposal site (for example, removal of fill, steps to prevent erosion). If more than 90 days from issuance is necessary to complete restoration, the permit may be extended for this purpose only.

(4) The emergency permit may be oral or written. If oral, it must be followed within five days by a written emergency permit.

(5) Notice of the emergency permit shall be published and public comments received in accordance with applicable requirements of §§ 124.10 and 124.11 as soon as possible but no later than 10 days after the issuance date.

(6) The emergency permit may be terminated at any time without process if the State Director determines that termination is appropriate to protect human health or the environment.

§ 233.39 Transmission of information to EPA and other Federal agencies.

(a) The Memorandum of Agreement under § 233.24 shall provide for the following:

(1) Prompt transmission to the Regional Administrator (by certified mail) and to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of any complete permit application received by the State Director, except those for which permit review has been waived under § 233.24(d)(1)(i). The State shall supply EPA, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service with copies of permit applications for which permit review has been waived whenever requested by such agencies. Where State law requires preparation of an environmental impact statement (EIS) or similar document, and such EIS or other document is available, the EIS or other document shall accompany the permit application when transmitted to the Regional Administrator.

(2) Prompt transmission to the Regional Administrator (by certified mail) and to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each draft permit prepared, and any conditions, requirements, or documents which are related to the draft permit or which affect the authorization of the draft permit. A draft permit shall be prepared by the State and transmitted to EPA:

(i) At the time of transmission of the complete permit application, for discharges listed in § 233.24(d)(1)(i)(A)-(E);

(ii) Upon request of EPA in accordance with § 233.40(e)(3), for discharges not listed in § 233.24(d)(1)(i)(A)-(E), unless EPA has waived review under § 233.24(d)(1)(i).

(3) Prompt transmission to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of each draft general permit. A draft general permit shall be prepared by the State whenever the State intends to issue a general permit.

(4) Transmission to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of every issued permit following issuance, along with any and all conditions and requirements.

(b)(1) State section 404 programs shall comply with the draft permit requirements of §§ 124.6 (a), (c), (d), and (e) and 124.8 for those discharges which require a draft permit under paragraph (a)(2) of this section and for those discharges to be regulated by general permits. For discharges which require a draft permit under paragraph (a)(2) of this section, public review and EPA review, under § 233.40, shall be based on the permit application and the draft permit. For discharges to be regulated by general permits, public review and EPA review shall be based on the draft general permit.

(2) For all other discharges, public review and EPA review, if not waived under § 233.24(d)(1)(i), shall be based on the permit application. For these discharges, States need not comply with §§ 124.6 (a), (c), (d), and (e) or 124.8.

§ 233.40 EPA review of and objections to State permits.

(a) The Memorandum of Agreement shall provide that the Regional Administrator may comment upon, object to, or make recommendations with respect to permit applications, draft permits (if prepared under § 233.39), or draft general permits within 90 days of receipt. If the Regional Administrator intends to comment upon, object to, or make recommendations with respect to a permit application, draft permit, or draft general permit, he or she shall notify the State Director of his or her intent within 30 days of receipt. The Regional Administrator may notify the State within 30 days of receipt that there is no comment but reserve the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing. The Regional Administrator shall send a copy of any comment, objection, or recommendation to the permit applicant.

(b) Within 90 days following receipt of a permit application, draft permit or draft general permit for which the Regional Administrator has provided notification under paragraph (a) of this section, the Regional Administrator may object to permit issuance. In order to object, the Regional Administrator shall set forth in writing and transmit to the State Director:

(1) A statement of the reason(s) for the objection (including the section of CWA or regulations that support the objection); and

(2) The actions that must be taken by the State Director in order to eliminate the objection (including the conditions which the permit would include if it were issued by the Regional Administrator).

(c) When the State Director has received an objection to a permit application, draft permit, or draft general permit under this section and has taken the steps required by the Regional Administrator to eliminate the objection, a revised permit shall be prepared and transmitted to the Regional Administrator for review. If no further objection is received from the Regional Administrator within 15 days of the receipt of the revised permit, the Director may issue the permit.

(d) Any objection under this section must be based upon one or more of the following grounds:

(1) The permit application, draft permit, or draft general permit fails to apply, or to ensure compliance with, any applicable requirements of this Part;

(2) In the case of any permit application for which notification to the Administrator is required under section 404(h)(1)(E) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate (see § 233.41(c));

(3) The procedures followed in connection with processing the permit failed in a material respect to comply with procedures required by CWA, by this Part, by other regulations and guidelines thereunder, or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the draft permit or draft general permit, misinterprets CWA or any guidelines or regulations thereunder, or misapplies them to the facts;

(5) Any provisions of the permit application, draft permit, or draft general permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permitee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including water quality standards, required by CWA, by 40 CFR Part 230, or by the draft permit or draft general permit;

(6) The information contained in the permit application is insufficient to judge compliance with 40 CFR Part 230; or

(7) Issuance of a permit would in any other respect to outside the requirements of section 404 of CWA, or regulations implementing section 404 of CWA.

(e) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (d) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to §§ 233.39 and 233.40.

(2) Shall, if the information provided is inadequate to determine whether the permit application, draft permit, or draft general permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record, or other information, including a supplemented application, that the Regional Administrator determines are necessary for review. This request shall be made within 30 days of receipt of the State submittal under § 233.39. It shall constitute an interim objection to the issuance of the permit, and the period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall be suspended from the date of the request and shall resume when the Regional Administrator has received such record or portions requested.

(3) May, in the case of discharges for which a draft permit is not automatically required under § 233.39(a)(1), request within 30 days of receipt of the permit application, that the State Director prepare a draft permit under § 233.39(a)(2)(ii). The draft permit shall be submitted to EPA and other Federal agencies, as required under § 233.39(a)(2). When a draft permit is prepared under this subparagraph, Federal and public review shall recommence under § 233.39(b)(1). The Regional Administrator's period for review shall begin upon receipt of the draft permit.

[Note.—It is anticipated that draft permits will be requested only in exceptional and/or complex cases.]

(4) May, at his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to interested persons an opportunity to comment on the basis for the objection.

(f) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of §§ 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State issuing the permit, or if warranted by significant public interest based on requests received.

(g) A public hearing held under paragraph (f) of this section shall be conducted by the Regional Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly expeditious manner.

(h) Following the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objections, or withdraw the objection, and shall notify the State of this decision.

(i)(1) If no public hearing is held under paragraph (f) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection or notify EPA of its intent to deny the permit within 90 days of receipt of the objection, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA.

(2) If a public hearing is held under paragraph (f) of this section, the Regional Administrator does not withdraw the objection and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection or notify EPA of its intent to deny the permit within 30 days of the date of the Regional Adminstrator's notification under paragraph (h) of this secton, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA.

§ 233.41 Coordination requirements.

(a) *General coordination.* (1) If the State has a Statewide CWA section 208(b)(4) regulatory program, the State Director shall develop an agreement with the agency designated to administer such program. The agreement shall include:

(i) A definition of the activities to be regulated by each program;

(ii) Arrangements providing the agencies an opportunity to comment on

prospective permits, BMPs, and other relevant actions; and

(iii) Arrangements incorporating BMPs developed by the section 208(b)(4) program into section 404 permits, where appropriate.

(2) Where a CWA section 208(b)(4) program has been approved under section 208(b)(4)(C), no permit shall be required for activities for which the Administrator has approved BMP's under such approved program except as provided in §§ 233.35 (b) and (c). Until such section 208(b)(4) program has been approved by the Administrator, a person proposing to discharge must obtain an individual permit or comply with a general permit.

(3) The State Director shall consult with any State agency(ies) with jurisdiction over fish and wildlife resources.

(b) *Coordination with other Federal and Federal-State review processes.* State section 404 programs shall assure coordination of State section 404 permits with Federal and Federal-State water related planning and review processes.

(1) The State Director shall assure that the impact of proposed discharges will be consistent with the Wild and Scenic Rivers Act when the proposed discharge could affect portions of rivers designated wild, recreational, scenic, or under consideration for such designation.

(2) Agencies with jurisdiction over Federal and Federal-State water related planning and review processes, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, shall notify the Regional Administrator that they wish to comment on a permit application, draft permit, or draft general permit within 20 days of receipt by the Regional Administrator of the permit application, draft permit, or draft general permit. Such agencies should submit their evaluation and comments to the Regional Administrator within 50 days of receipt by the Regional Administrator of the permit application, draft permit, or draft general permit. The Regional Administrator may allow any such agency up to an additional 30 days to submit comments, upon request of such agency.

(3) All comments from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service on permit applications, draft permits, and draft general permits shall be considered by the Regional Administrator. If the Regional Administrator does not adopt a recommendation of any such agency, he shall consult with that agency. The final decision to object or to require permit conditions shall be made by the Regional Administrator.

(c) *Coordination with other States.* If the proposed discharge may affect the quality of the waters of any State(s) other than the State in which the discharge occurs the State Director shall provide an opportunity for such State(s) to submit written comments within the public comment period on the effect of the proposed discharge on such State(s) waters and to suggest additional permit conditions. If these recommendations are not accepted by the State Director, he shall notify the affected State and the Regional Administrator in writing of his failure to accept these recommendations, together with his reasons for so doing.

[**Note.**—States are encouraged to receive and use information developed by the U.S. Fish and Wildlife Service as part of the National Wetlands Inventory as it becomes available.]

Part 270 is added as follows:

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Subpart A—General Information

Sec.
270.1 Purpose and scope of these regulations.
270.2 Definitions.
270.3 Considerations under Federal law.
270.4 Effect of a permit.
270.5 Noncompliance and program reporting by Director.
270.6 References.
270.7–270.9 [Reserved].

Subpart B—Permit Application

270.10 General application requirements.
270.11 Signatories to permit applications and reports.
270.12 Confidentiality of information.
270.13 Contents of Part A of the permit application.
270.14 Contents of Part B: General requirements.
270.15 Specific Part B information requirements for containers.
270.16 Specific Part B information requirements for tanks.
270.17 Specific Part B information requirements for surface impoundments.
270.18 Specific Part B information requirements for waste piles.
270.19 Specific Part B information requirements for incinerators.
270.20 Specific Part B information requirements for landfills.
270.21 Specific Part B information requirements for land treatment facilities.
270.22–270.29 [Reserved].

Subpart C—Permit Conditions

270.30 Conditions applicable to all permits.
270.31 Requirements for recording and reporting of monitoring results.
270.32 Establishing permit conditions.
270.33 Schedules of compliance.
270.34–270.39 [Reserved].

Subpart D—Changes to Permits

270.40 Transfers of permits.
270.41 Major modification or revocation and reissuance of permits.
270.42 Minor modifications of permits.
270.43 Termination of permits.
270.44–270–49 [Reserved].

Subpart E—Expiration and Continuation of Permits

270.50 Duration of permits.
270.51 Continuation of expiring permits.
270.52–270.59 [Reserved].

Subpart F—Special Forms of Permits

270.60 Permits by rule.
270.61 Emergency permits.
270.62 Hazardous waste incinerator permits.
270.63 Permits for land treatment demonstrations using field test or laboratory analysis.
270.64 Interim permits for UIC wells.
270.65–270.69 [Reserved].

Subpart G—Interim Status

270.70 Qualifying for interim status.
270.71 Operation during interim status.
270.72 Changes during interim status.
270.73 Termination of interim status.
270.74–270.79 [Reserved].

Authority: Pub. L. 94–580, as amended by Pub. L. 94–609, 42 U.S.C. 6901 et seq.

Subpart A—General Information

§270.1 Purpose and scope of these regulations.

(a) *Coverage.* (1) These permit regulations establish provisions for the Hazardous Waste Permit Program under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), (Pub. L. 94–580, as amended by Pub. L. 95–609 and by Pub. L. 96–482; 42 U.S.C. 6901 et seq.).

(2) The regulations in this Part cover basic EPA permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of a regulatory scheme implementing RCRA set forth in different Parts of the Code of Federal Regulations. The following chart indicates where the regulations implementing RCRA appear in the Code of Federal Regulations.

Section of RCRA	Coverage	Final regulation
Subtitle C	Overview and definitions	40 CFR Part 260
3001	Indentification and listing of hazardous waste.	40 CFR Part 261
3002	Generators of hazardous waste.	40 CFR Part 262
3003	Transporters of hazardous waste.	40 CFR Part 263

Section of RCRA	Coverage	Final regulation
3004	Standards for HWM facilities.	40 CFR Parts 264, 265, 266, and 267
3005	Permit requirements for HWM facilities.	40 CFR Parts 270 and 124
3006	Guidelines for State programs.	40 CFR Part 271
3010	Preliminary notification of HWM activity.	(public notice) 46 *FR* 12746 Feb. 26, 1980

(3) *Technical regulations.* The RCRA permit program has separate additional Regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located in 40 CFR Parts 264, 266, and 267.

(b) *Overview of the RCRA Permit Program.* Not later than 90 days after the promulgation or revision of regulations in 40 CFR Part 261 (identifying and listing hazardous wastes) generators and transporters of hazardous waste, and owners or operators of hazardous waste treatment, storage, or disposal facilities may be required to file a notification of that activity under section 3010. Six months after the initial promulgation of the Part 261 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited. A RCRA permit application consists of two parts, Part A (see § 270.13) and Part B (see § 270.14 and applicable sections in 270.15–270.29). For "existing HWM facilities," the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Director sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under section 3010 and Part A qualifies owners and operators of existing HWM facilities (who are required to have a permit) for interim status under section 3005(e) of RCRA. Facility owners and operators with interim status are treated as having been issued a permit until EPA or a State with interim authorization for Phase II or final authorization under Part 271 makes a final determination on the permit application. Facility owners and operators with interim status must comply with interim status standards set forth at 40 CFR Part 265 or with the analagous provisions of a State program which has received interim or final authorization under Part 271. Facility owners and operators with interim status are not relieved from complying with other State requirements. For existing HWM facilities, the Director shall set a date, giving at least six months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B must be submitted in narrative form and contain the information set forth in the applicable sections of §§ 270.14–270.29. Owners or operators of new HWM facilities must submit Part A and Part B of the permit application at least 180 days before physical construction is expected to commence.

(c) *Scope of the RCRA Permit Requirement.* RCRA requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as identified or listed in 40 CFR Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. 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 January 26, 1983, during any post-closure care period required under § 264.117 and during any compliance period specified under § 264.96, including any extension of the compliance period under § 264.96(c).

(1) *Specific inclusions.* Owners and operators of certain facilities require RCRA permits as well as permits under other programs for certain aspects of the facility operation. RCRA permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. (See § 270.64). However, the owner and operator with a UIC permit in a State with an approved or promulgated UIC program, will be deemed to have a RCRA permit for the injection well itself if they comply with the requirements of § 270.60(b) (permit-by-rule for injection wells).

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a RCRA permit for that waste if they comply with the requirements of § 270.60(c) (permit-by-rule for POTWs).

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a RCRA permit for ocean disposal from the barge or vessel itself it they comply with the requirements of § 270.60(a) (permit-by-rule for ocean disposal barges and vessels).

(2) *Specific exclusions.* The following persons are among those who are not required to obtain a RCRA permit:

(i) Generators who accumulate hazardous waste on site for less than 90 days as provided in 40 CFR 262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in 40 CFR 262.51.

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this Part by 40 CFR 261.4 or 261.5 (small generator exemption).

(iv) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10.

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR § 260.10.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

(vii) Persons adding absorbent material to waste in a container (as defined in § 260.10 of this chapter) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§ 264.17(b), 264.171, and 264.172 of this chapter are complied with.

(3) *Further exclusions.* (i) A person is not required to obtain an RCRA permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part for those activities.

(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.

§ 270.2 Definitions.

The following definitions apply to Parts 270, 271 and 124. Terms not defined in this section have the meaning given by RCRA.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. Application also includes the information required by the Director under §§ 270.14–270.29 (contents of Part B of the RCRA application).

Approved program or approved State means a State which has been approved or authorized by EPA under Part 271.

Aquifer means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Closure means the act of securing a Hazardous Waste Management facility pursuant to the requirements of 40 CFR Part 264.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 92–217 and Pub. L. 95–576; 33 U.S.C. 1251 *et seq.*

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, Director means the Regional Administrator. When there is an approved State program, Director normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. In such cases, the term Director means the Regional Administrator and not the State Director.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

Disposal facility means a facility or part of a facility at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure.

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5 is not a "draft permit." A proposed permit is not a draft permit.

Elementary neutralization unit means a device which:

(a) Is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or are listed in Subpart D of Part 261 of this chapter only for this reason; and

(b) Meets the definition of tank, container, transport vehicle, or vessel in § 260.10 of this chapter.

Emergency permit means a RCRA permit issued in accordance with § 270.61.

Environmental Protection Agency (EPA) means the United States Environmental Protection Agency.

EPA means the United States Environmental Protection Agency.

Existing hazardous waste management (HWM) facility or existing facility means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(b)(1) A continuous on-site, physical construction program has begun; or

(2) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time.

Facility or activity means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA program.

Federal, State and local approvals or permits necessary to begin physical construction means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

Final authorization means approval by EPA of a State program which has met the requirements of section 3006(b) of RCRA and the applicable requirements of Part 271, Subpart A.

Generator means any person, by site location, whose act, or process produces "hazardous waste" identified or listed in 40 CFR Part 261.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous Waste Management facility (HWM facility) means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

HWM facility means Hazardous Waste Management facility.

Injection well means a well into which fluids are being injected.

In operation means a facility which is treating, storing, or disposing of hazardous waste.

Interim authorization means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(c) of RCRA and applicable requirements of Part 271, Subpart B.

Major facility means any facility or activity classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

Manifest means the shipping document originated and signed by the generator which contains the information required by Subpart B of 40 CFR Part 262.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an approved program.

NPDES means National Pollutant Discharge Elimination System.

New HWM facility means a Hazardous Waste Management facility which began operation or for which construction commenced after November 19, 1980.

Off-site means any site which is not on-site.

On-site means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the

properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

Owner or operator means the owner or operator of any facility or activity subject to regulation under RCRA.

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this Part and Parts 271 and 124. Permit includes permit by rule (§ 270.60), and emergency permit (§ 270.61). Permit does not include RCRA interim status (Subpart G of this part), or any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

Permit-by-rule means a provision of these regulations stating that a facility or activity is deemed to have a RCRA permit if it meets the requirements of the provision.

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Phase I means that phase of the Federal hazardous waste management program commencing on the effective date of the last of the following to be initially promulgated: 40 CFR Parts 260, 261, 262, 263, 265, 270 and 271. Promulgation of Phase I refers to promulgation of the regulations necessary for Phase I to begin.

Phase II means that phase of Federal hazardous waste management program commencing on the effective date of the first Subpart of 40 CFR Part 264, Subparts F through R to be initially promulgated. Promulgation of Phase II refers to promulgation of the regulations necessary for Phase II to begin.

Physical construction means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

POTW means publicly owned treatment works.

Publicly owned treatment works (POTW) means any device or system unsed in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609 and Pub. L. 96–482, 42 U.S.C. 6901 *et seq.*)

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act and regulations.

SDWA means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900; 42 U.S.C. 3001 *et seq.*).

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Spill means the accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of any State agency operating an approved program, or the delegated representative of the State Director. If responsibility is divided among two or more State agencies, State Director means the chief administrative officer of the State agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

Storage means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

Transfer facility means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

Transporter means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

Treatment means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

UIC means the Underground Injection Control Program under Part C of the Safe Drinking Water Act, including an approved program.

Underground injection means a well injection.

Underground source of drinking water (USDW) means an aquifer or its portion:

(a)(1) Which supplies any public water system; or

(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

USDW means underground source of drinking water.

Wastewater treatment unit means a device which:

(a) Is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act; and

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in § 261.3 of this chapter, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter; and

(c) Meets the definition of tank in § 260.10 of this chapter.

§ 270.3 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) *The Wild and Scenic Rivers Act.* 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966.* 16 U.S.C. 470 *et seq.* Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) *The Endangered Species Act.* 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act.* 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) *The Fish and Wildlife Coordination Act.* 16 U.S.C. 661 *et seq.* requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders.* [Reserved]

§ 270.4 Effect of a permit.

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 270.5 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters. For purposes of this section only, RCRA permittees shall include RCRA interim status facilities, when appropriate.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Information on noncompliance for each facility;

(ii) Alphabetize by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first;

(iii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s).

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements.* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance.* When a schedule of compliance in the permit has been modified under § 270.41 or 270.42 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports.* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports.* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements.* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2)(i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a fire or explosion.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(3) In addition to the annual noncompliance report, the Director shall prepare a "program report" which contains information (in a manner and form prescribed by the Administrator) on generators and transporters and the

permit status of regulated facilities. The Director shall also include, on a biennial basis, summary information on the quantities and types of hazardous wastes generated, transported, treated, stored, and disposed during the preceding odd numbered year. This summary information shall be reported according to EPA characteristics and lists of hazardous wastes at 40 CFR Part 261.

(b) *Annual reports.*

(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor RCRA permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) In addition to the annual noncompliance report, the Director shall prepare a "program report" which contains information (in a manner and form prescribed by the Administrator) on generators and transporters; the permit status of regulated facilities; and summary information on the quantities and types of hazardous wastes generated, transported, stored, treated, and disposed during the preceding year. This summary information shall be reported according to EPA characteristics and lists of hazardous wastes at 40 CFR Part 261.

(c) *Schedule.*

(1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with RCRA permit requirements by major facilities in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule.

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS

[Date for completion of reports]

January, February, and March	[1]May 31
April, May, and June	[1]August 31
July, August, and September	[1]November 30
October, November, and December	[1]February 28

[1] Reports must be made available to the public for inspection and copying on this date.

§ 270.6 References.

(a) When used in Part 270 of this Chapter, the following publications are incorporated by reference:

"Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (1980), EPA publication number SW–846, available from the U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, Ohio 45268.

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the **Federal Register**, 1100 L Street, N.W., Washington, D.C. 20408. These incorporations by reference were approved by the Director of the **Federal Register**. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

§§ 270.7–270.9 [Reserved]

Subpart B—Permit application

§ 270.10 General application requirements.

(a) *Permit application.* Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section. Persons currently authorized with interim status shall apply for permits when required by the Director. Persons covered by RCRA permits by rule (§ 270.60), need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 270.61.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility. For EPA-Administered programs, an application which is reviewed under § 124.3 is complete when the Director receives information listed in a notice of deficiency.

(d) *Information requirements.* All applicants for RCRA permits shall provide information set forth in § 270.13 and applicable sections in §§ 270.14–270.29 to the Director, using the application form provided by the Director.

(e) *Existing HWM facilities.* (1) Owners and operators of existing hazardous waste management facilities must submit Part A of their permit application to the Regional Administrator no later than (i) six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR Parts 265 or 266, or (ii) thirty days after the date they first become subject to the standards set forth in 40 CFR Parts 265 or 266, whichever first occurs.

[Note.—For facilities which must comply with Part 265 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations (45 *FR* 33006 *et seq.*), the deadline for submitting an application is November 19, 1980. Where other existing facilities must begin in complying with Parts 265 or 266 at a later date because of revisions to Parts 260, 261, 265, or 266, the Administrator will specify in the preamble to those revisions when those facilities must submit a permit application.]

(2) The Administrator may by publication in the **Federal Register** extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and (ii) such confusion is attributed to ambiguities in EPA's Parts 260, 261, 265, or 266 regulations.

(3) The Administration may by compliance order issued under Section 3008 of RCRA extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of their permit application.

(4) At any time after promulgation of Phase II the owner and operator of an existing HWM facility may be required to submit Part B of their permit application. The State Director may require submission of Part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim authorization for Phase II or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application at any time.

(5) Failure to furnish a requested part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under Part 124.

(f) *New HWM facilities.* (1) Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective RCRA permit.

(2) An application for a permit for a new HWM facility (including both Part A and Part B) may be filed any time after promulgation of those standards in Part 264, Subpart I *et seq.* applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new HWM facility is proposed to be located has not received Phase II interim authorization for permitting such facility or final authorization; otherwise it shall be filed with the State Director. Except as provided in paragraph (f)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

(3) After November 19, 1980, but prior to the effective date of those standards in Part 264, Subpart I *et seq.*, which are applicable to his facility, a person may begin physical construction of a new HWM facility, except for landfills, injection wells, land treatment facilities or surface impoundments (as defined in 40 CFR 260.10), without having received a finally effective RCRA permit. If prior to beginning physical construction, such person has:

(i) Obtained the Federal, State and local approvals or permits necessary to begin physical construction;

(ii) Submitted Part A of the permit application; and

(iii) Made a commitment to complete physical construction of the facility within a reasonable time. Such persons may continue physical construction of the HWM facility after the effective date of the permitting standards in Part 264, Subpart I *et seq.*, applicable to his facility if he submits Part B of the permit application on or before the effective date of such standards (or on some later date specified by the Administrator). Such person must not operate the HWM facility without having received a finally effective RCRA permit.

(g) *Updating permit applications.* (1) If any owner or operator of a HWM facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Regional Administrator, if the facility is located in a State which has not obtained interim authorization for phase II or final authorization, within six months after the promulgation of revised regulations under Part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing, or disposing of any of those newly listed or identified wastes.

(ii) With the State Director, if the facility is located in a State which has obtained Phase II interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 270.72 for changes during interim status or with the analogous provisions of a State program approved for final authorization or interim authorization for Phase II. Revised Part A applications necessary to comply with the provisions of § 270.72 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have Phase II interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision).

(2) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (g)(1) of this section does not receive interim status as to the wastes not covered by duly filed Part A applications.

(h) *Reapplications.* Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(i) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under §§ 270.10(d), 270.13, 270.14–270.21 for a period of at least 3 years from the date the application is signed.

§ 270.11 Signatories to permit applications and reports.

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official.

(b) *Reports.* All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

§ 270.12 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words

"confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

§ 270.13 Contents of Part A of the permit application.

Part A of the RCRA application shall include the following information:

(a) The activities conducted by the applicant which require it to obtain a permit under RCRA.

(b) Name, mailing address, and location, including latitude and longitude of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and phone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities, (1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and (2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under 40 CFR Part 261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under RCRA.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Ocean dumping permits under the Marine Protection Research and Sancturaies Act.

(8) Dredge or fill permits under section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within ¼ mile of the facility property boundary.

(m) A brief description of the nature of the business.

§ 270.14 Contents of Part B: General Requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.14–270.29 applicable to the facility. The Part B information requirements presented in §§ 270.14–270.29 reflect the standards promulgated in 40 CFR Part 264. These information requirements are necessary in order for EPA to determine compliance with the Part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the Director and signed in accordance with requirements in § 270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer.

(b) General information requirements. The following information is required for all HWM facilities, except as § 264.1 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264.

(3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable § 264.13(c).

(4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by § 264.15(b); 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.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227 and 264.255.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages; and

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with § 264.17 including documentation demonstrating compliance with § 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information:

(i) In order to determine the applicability of the seismic standard [§ 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[Comment: If the county or election district is not listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with § 264.18(a).]

(ii) If the facility is proposed to be located in an area listed in Appendix VI of Part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

(*1*) Published geologic studies,

(*2*) Aerial reconnaissance of the area within a five-mile radius from the facility,

(*3*) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(*4*) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass with 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found.

[Comment: The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.]

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

[Comment: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

(iv) Owners and operators of facilities located in the 100-year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (b)(11)(iv) (A) and (B) above, a detaild description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(*1*) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(*2*) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under Parts 270, 271, 124, and 264 through 266 of this Chapter.

(*3*) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(*4*) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with § 264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with § 264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in § 264.16(a)(3).

(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.

(14) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by § 264.120.

(15) The most recent closure cost estimate for the facility prepared in accordance with § 264.142 plus a copy of the financial assurance mechanism adopted in compliance with § 264.143.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the financial assurance mechanism adopted in compliance with § 264.145.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of § 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of § 264.147(a) and, if applicable, § 264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in § 264.147(d).

(18) Where appropriate, proof of coverage by a State financial mechanism in compliance with §§ 264.149 or 264.150.

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use large contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittant streams.

(iv) Surrounding land uses (residential, commercial, agricultural, recreational).

(v) A wind rose (i.e., prevailing wind-speed and direction).

(vi) Orientation of the map (north arrow).

(vii) Legal boundaries of the HWM facility site.

(viii) Access control (fences, gates).

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

[Note.—For large HWM facilities the Agency will allow the use of other scales on a case-by-case basis.]

(20) Applicants may be required to submit such information as may be necessary to enable the Regional Administrator to carry out his duties under other Federal laws as required in § 270.3 of this part.

(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 (b)(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 was submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix VIII 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 specified 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. 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 demonstrate the adequacy of the corrective action.

§ 270.15 Specific Part B information requirements for containers.

Except as otherwise provided in § 264.1, owners or operators of facilities that store containers of hazardous waste must provide the following additional information:

(a) A description of the containment system to demonstrate compliance with § 264.175. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with § 264.175(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with § 264.176 (location of buffer zone and containers holding ignitable or reactive wastes) and § 264.177(c) (location of incompatible wastes), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with §§ 264.177 (a) and (b), and 264.17 (b) and (c).

§ 270.16 Specific Part B information requirements for tanks.

Except as otherwise provided in § 264.1, owners and operators of facilities that use tanks to store or treat hazardous waste must provide a description of design and operation procedures which demonstrate complaince with the requirements of §§ 264.191, 264.192, 264.198 and 264.199 including: (a) References to design standards or other available information used (or to be used) in design and construction of the tank.

(b) A description of design specifications including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance).

(c) Tank dimensions, capacity, and shell thickness.

(d) A diagram of piping, instrumentation, and process flow.

(e) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).

(f) Description of procedures for handling incompatible ignitable, or reactive wastes, including the use of buffer zones.

§ 270.17 Specific Part B information requirements for surface impoundments.

Except as otherwise provided in § 264.1, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments must provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) 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:

(1) 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;

(2) Prevention of overtopping; and

(3) Structural integrity of dikes;

(c) If any 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;

(d) 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 § 270.14(b)(5);

(e) 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;

(f) 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 § 270.14(b)(7);

(g) 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 § 270.14(b)(13);

(h) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how § 264.229 will be complied with;

(i) 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.

§ 270.18 Specific Part B information requirements for waste piles.

Except as otherwise provided in § 264.1, owners and operators of facilities that store or treat hazardous waste in waste piles must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) 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 standards of § 264.250(c) will be complied with;

(c) 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:

(1) 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 § 264.252(b), the owner or operator must submit detailed plans and engineering and hydrogeologic reports, as applicable, 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;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) 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;

(e) 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 § 270.14(b)(5). 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;

(f) 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;

(g) 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;

(h) If incompatible wastes, or incompatible wastes and materials will be place in a waste pile, an explanation of how § 264.257 will be complied with;

(i) 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 § 270.14(b)(13).

§ 270.19 Specific Part B information requirements for incinerators.

Except as § 264.340 of this chapter provides otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of (a), (b), or (c) of this section.

(a) When seeking an exemption under § 264.340 (b) or (c) of this chapter (Ignitable, corrosive, or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of this chapter, solely because it is ignitable (Hazard Code I) or corrosive (Hazard Code C) or both; or

(2) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of this chapter, solely because it is reactive (Hazard Code R) for characteristics other than those listed in § 261.23(a) (4) and (5) of this chapter, and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Part 261, Subpart C of this Chapter; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in § 261.23(a) (1), (2), (3), (6), (7), or (8) of this Chapter, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with § 270.62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity (if applicable), or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII, of this Chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of this Chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test methods for the evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference, see § 270.6 and referenced in 40 CFR Part 261, Appendix III), or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference, see § 270.6).

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in 264.343 of this chapter.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Decription of auxiliary fuel system (type/feed).

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in paragraph (c)(1) of this section. This analysis should specify the POHC's which the applicant has idenitified in the waste for which a permit is sought, and any differeneces from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in § 264.343 of this chapter,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(6) The expected incinerator operation information to demonstrate compliance with §§ 264.343 and 264.345 of this chapter including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Director finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in paragraph (c)(1) of this section, sufficient to allow the Director to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Director shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under § 264.345 of this chapter) operating conditions that will ensure that the performance standards in § 264.343 of this Chapter will be met by the incinerator.

(3) [Reserved].

§ 270.20 Specific Part B information requirements for landfills.

Except as otherwise provided in § 264.1, owners and operators of facilities that use land treatment to dispose of hazardous waste must provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under § 264.272. The description must include the following information;

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste;

(2) The data sources to be used to make the demonstration (*e.g.*, literature, laboratory data, field data, or operating data);

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test (*e.g.*, column leaching, degradation);

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.

(b) 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:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with § 264.273(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content;

(3) Provisions for unsaturated zone monitoring, including:

(i) Sampling equipment, procedures, and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) 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);

(4) 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;

(5) The proposed dimensions of the treatment zone;

(c) 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:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under § 270.14(b)(5);

(6) Control of wind dispersal of particulate matter, if applicable;

(d) 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:

(1) Characteristics of the food-chain crop for which the demonstration will be made.

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown;

(5) 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;

(6) 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 § 270.14(b)(13);

(7) 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;

(8) 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.

§ 270.21 Specific Part B information requirements for land treatment facilities.

Except as otherwise provided in § 264.1, owners and operators of facilities that dispose of hazardous waste in landfills must provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) 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:

(1) 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;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(c) 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;

(d) 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 § 270.14(b)(5).

(e) 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 § 270.14(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the standards of § 264.312 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how § 264.313 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled, an explanation of how the requirements of § 264.314 will be complied with;

(i) 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.

§§ 270.22–270.29 [Reserved]

Subpart C—Permit Conditions

§ 270.30 Conditions applicable to all permits.

The following conditions apply to all RCRA permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See § 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the opration of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by RCRA, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. The permittee shall maintain records of all ground-water quality and ground-water surface elevations, for the active life of the facility, and for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirements.* All applications, reports, or information submitted to the Director shall be signed and certified (See § 270.11.)

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(i) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in paragraph (c)(1) of this section, the permittee has not received notice from the Director of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under RCRA. (See § 270.40)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five day written notice requirement in favor of a written report within fifteen days.

(7) *Manifest discrepancy report:* If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report, including a copy of the manifest, to the Director. (See 40 CFR 264.72.)

(8) *Unmanifested waste report:* This report must be submitted to the Director within 15 days of receipt of unmanifested waste. (See 40 CFR § 264.76)

(9) *Biennial report:* A biennial report must be submitted covering facility activities during odd numbered calendar years. (See 40 CFR 264.75.)

(10) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (L)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(11) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

§ 270.31 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Parts 264, 266 and 267. Reporting shall be no less frequent than specified in the above regulations.

§ 270.32 Establishing permit conditions.

(a) In addition to conditions required in all permits (§ 270.30), the Director shall establish conditions, as required on a case-by-case basis, in permits under §§ 270.50 (duration of permits), 270.33(a) (schedules of compliance), 270.31 (monitoring), and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law).

(b) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in 40 CFR Parts 264, 266, and 267. In satisfying this provision, the Director may incorporate applicable requirements of 40 CFR Parts 264, 266, and 267 directly into the permit or establish other permit conditions that are based on these parts.

(c) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any

interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for RCRA permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in §270.41.

(d) New or reissued permits, and to the extent allowed under § 270.41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in 40 CFR 270.31.

(e) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 270.33 Schedules of compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the director in writing, of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(2)(ii) of this section is applicable.

(b) *Alternative schedules of compliance.* A RCRA permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste) and for treatment and storage HWM facilities, closing pursuant to applicable requirements; and for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements, rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as resolution of the board of directors of a corporation.

§§ 270.34–270.39 [Reserved]

Subpart D—Changes to permit

§ 270.40 Transfer of permits.

Transfers by modification. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 270.41(b)(2)), or a minor modification made (under § 270.42(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

§ 270.41 Major modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30)), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraphs (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See 40 CFR 124.5(c)(2). If cause does not exist under this section or 40 CFR 270.42, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in 40 CFR 270.42 for a minor modification, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which

occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated Parts 260–266 regulation; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after **Federal Register** notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) The Director may also modify a permit:

(i) When modification of a closure plan is required under §§ 264.112(b) or 264.118(b).

(ii) After the Director receives the notification of expected closure under § 264.113, when the Director determines that extension of the 90 to 180 day periods under § 264.113, modification of the 30-year post-closure period under § 264.117(a), continuation of security requirements under § 264.117(b), or permission to disturb the integrity of the containment system under § 264.117(c) are unwarranted.

(iii) When the permittee has filed a request under § 264.147(d) for a variance to the level of financial responsibility or when the Director demonstrates under § 264.147(c) that an upward adjustment of the level of financial responsibility is required.

(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 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.

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 270.43, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 270.30(L)(3)) of a proposed transfer of the permit.

(c) *Facility siting.* Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environmental exists which was unknown at the time of permit issuance.

§ 270.42 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 270.41. Minor modifications may only:

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

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

(e) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;

(f) Change estimates of maximum inventory under § 264.112(a)(2);

(g) Change estimates of expected year of closure or schedules for final closure under § 264.112(a)(4);

(h) Approve periods longer than 90 days or 180 days under § 264.113 (a) and (b);

(i) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor;

(j) Change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor;

(k) Grant one extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste;

(l) Change the treatment program requirements for land treatment units under § 264.271 to improve treatment of hazardous constituents, provided that the change is minor;

(m) 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 § 270.63, provided that the change is minor; and

(n) 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 that the conditions for the second demonstration are substantially the

same as the conditions for the first demonstration.

§ 270.43 Termination of permits.

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Director shall follow the applicable procedures in Part 124 or State procedures in terminating any permit under this section.

§§ 270.44–270.49 [Reserved.]

Subpart E—Expiration and continuation of permits

§ 270.50 Duration of permits.

(a) RCRA permits shall be effective for a fixed term not to exceed 10 years.

(b) Except as provided in § 270.51, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 270.51 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under § 270.14 and the applicable sections in §§ 270.15–270.29 which is a complete (under § 270.10(c)) application for a new permit; and

(2) The Regional Administrator through no fault of the permittee, does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit, the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* An EPA issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the RCRA program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§§ 270.52–270.59 [Reserved].

Subpart F—Special forms of permits

§ 270.60 Permits by rule.

Notwithstanding any other provision of this Part or Part 124, the following shall be deemed to have a RCRA permit if the conditions listed are met:

(a) *Ocean disposal barges or vessels.* The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

(1) Has a permit for ocean dumping issued under 40 CFR Part 220 (Ocean Dumping, authorized by the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1420 *et seq.*);

(2) Complies with the conditions of that permit; and

(3) Complies with the following hazardous waste regulations:

(i) 40 CFR 264.11, Identification number;

(ii) 40 CFR 264.71, Use of manifest system;

(iii) 40 CFR 264.72, Manifest discrepancies;

(iv) 40 CFR 264.73(a) and (b)(1), Operating record;

(v) 40 CFR 264.75, Biennial report; and

(vi) 40 CFR 264.76, Unmanifested waste report.

(b) *Injection wells.* The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under Part 144 or 145; and

(2) Complies with the conditions of that permit and the requirements of § 144.14 (requirements for wells managing hazardous waste).

(c) *Publicly owned treatment works.* The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

(1) Has an NPDES permit;

(2) Complies with the conditions of that permit; and

(3) Complies with the following regulations:

(i) 40 CFR 264.11, Identification number;

(ii) 40 CFR 264.71, Use of manifest system;

(iii) 40 CFR 264.72, Manifest discrepancies;

(iv) 40 CFR 264.73(a) and (b)(1), Operating record;

(v) 40 CFR 264.75, Biennial report;

(vi) 40 CFR 264.76, Unmanifested waste report; and

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

§ 270.61 Emergency permits.

(a) Notwithstanding any other provision of this part or Part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit for a facility to allow treatment, storage, or disposal of hazardous waste for a non-permitted facility or not covered by the permit for a facility with an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if he or she determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under § 124.11(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted HWM facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and 40 CFR Parts 264 and 266.

§ 270.62 Hazardous waste incinerator permits.

(a) For the purposes of determining operational readiness following completion of physical construction, the Director must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to § 270.42 (Minor modifications of permits) of this Chapter.

(1) Applicants must submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of § 264.343 of this Chapter during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in § 264.345 of this Chapter.

(2) The Director will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of § 264.343 of this Chapter based on his engineering judgment.

(b) For the purposes of determining feasibility of compliance with the performance standards of § 264.343 of this Chapter and of determining adequate operating conditions under § 264.345 of this Chapter, the Director must establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants must propose a trial burn plan, prepared under paragraph (b)(2) of this section with a Part B of the permit application.

(2) The trial burn plan must include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity (if applicable), or description of the physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of this Chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of this Chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference, see § 270.6), or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," (incorporated by reference, see § 270.6), or their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator (if available).

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system (type/feed).

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under paragraph (b)(5) of this section.

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(5) of this section.

(3) The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Director will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Part 261, Subpart D, of this Chapter, the hazardous waste organic constituent or constituents identified in Appendix VII of that Part as the basis for listing.

(5) The Director shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by § 264.343 of this Chapter can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Director to determine operating requirements to be specified under § 264.345 of this Chapter; and

(iv) The information sought in paragraphs (b)(5) (i) and (ii) of this Section cannot reasonably be developed through other means.

(6) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in § 264.343(a) of this Chapter.

(v) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with 264.343(b) of this Chapter.

(vi) A computation of particulate emissions, in accordance with § 264.343(c) of this Chapter.

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in § 264.343 of this Chapter and to establish the operating conditions required by § 264.345 of this Chapter as necessary to meet that performance standard.

(7) The applicant must submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(8) All data collected during any trial burn must be submitted to the Director following the completion of the trial burn.

(9) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under § 270.11.

(10) Based on the results of the trial burn, the Director shall set the operating requirements in the final permit according to § 264.345 of this Chapter. The permit modification shall proceed as a minor modification according to § 270.42.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Director may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of § 264.345 of this Chapter, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Director.

(1) Applicants must submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of § 264.343 of this Chapter, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in § 264.345 of this Chapter.

(2) The Director will review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of § 264.343 of this Chapter based on his engineering judgment.

(d) For the purposes of determining feasibility of compliance with the performance standards of § 264.343 of this Chapter and of determining adequate operating conditions under § 264.345 of this Chapter, the applicant for a permit to an existing hazardous waste incinerator may prepare and submit a trial burn plan and perform a trial burn in accordance with paragraphs (b)(2) through (b)(9) of this Section. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(6), with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results submitted within a time period to be specified by the Director.

§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.

(a) 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.

(1) 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.

(2) 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.

(b) 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.

(1) The first phase of the permit will be effective as provided in § 124.15(b) of this Chapter.

(2) The second phase of the permit will be effective as provided in paragraph (d) of this Section.

(c) 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 § 270.11, 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.

(d) 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.

(1) This permit modification may proceed as a minor modification under § 270.42, provided any such change is minor, or otherwise will proceed as a modification under § 270.41(a)(2).

(2) 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 the 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).

(3) If modifications under § 270.41(a)(2) are necessary, the second phase of the permit will become effective only after those modifications have been made.

§ 270.64 Interim permits for UIC wells.

The Director may issue a permit under this part to any Class I UIC well (see § 144.7) injecting hazardous wastes within a State in which no UIC program has been approved or promulgated. Any such permit shall apply and insure compliance with all applicable requirements of 40 CFR Part 264, Subpart R (RCRA standards for wells), and shall be for a term not to exceed two years. No such permit shall be issued after approval or promulgation of a UIC program in the State. Any permit under this section shall contain a condition providing that it will terminate upon final action by the Director under a UIC program to issue or deny a UIC permit for the facility.

§§ 270.65–270.69 [Reserved]

Subpart G—Interim Status

§ 270.70 Qualifying for interim status.

(a) Any person who owns or operates an "existing HWM facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity.

[Comment: Some existing facilities may not be required to file a notification under Section 3010(a) of RCRA. These facilities may qualify for interim status by meeting paragraph (a)(2) of this section.]

(2) Complied with the requirements of § 270.10 governing submission of Part A applications;

(b) When EPA determines on examination or reexamination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to EPA enforcement for operating without a permit.

§ 270.71 Operation during interim status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) Employ processes not specified in Part A of the permit application; or

(3) Exceed the design capacities specified in Part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at 40 CFR Part 265.

§ 270.72 Changes during interim status.

(a) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change;

(b) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities;

(c) Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(2) It is necessary to comply with Federal regulations (including the interim status standards at 40 CFR Part 265) or State or local laws.

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Director that it is complying with that Subpart. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with that Subpart, the Director shall notify the old owner or operator in writing that it no longer needs to comply with that part as of the date of demonstration.

(e) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility.

§ 270.73 Termination of interim status.

Interim status terminates when:

(a) Final administrative disposition of a permit application is made; or

(b) Interim status is terminated as provided in § 270.10(e)(5).

Part 271 is added to read as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

Subpart A—Requirements for Final Authorization

Sec.

271.1 Purpose and scope.
271.2 Definitions.
271.3 Availability of final authorization.
271.4 Consistency.
271.5 Elements of a program submission.
271.6 Program description.
271.7 Attorney General's statement.
271.8 Memorandum of Agreement with Regional Administrator.
271.9 Requirements for identification and listing of hazardous wastes.
271.10 Requirements of generators of hazardous wastes.

Sec.

271.11 Requirements for transporters of hazardous wastes.
271.12 Requirements for hazardous waste management facilities.
271.13 Requirements with respect to permits and permit application.
271.14 Requirements for permitting.
271.15 Requirements for compliance evaluation programs.
271.16 Requirements for enforcement authority.
271.17 Sharing of information.
271.18 Coordination with other programs.
271.19 EPA review of State permits.
271.20 Approval process.
271.21 Procedures for revision of State programs.
271.22 Criteria for withdrawing approval of State programs.
271.23 Procedures for withdrawing approval of State programs

Subpart B—Requirements for Interim Authorization.

271.121 Purpose and scope.
271.122 Schedule.
271.123 Elements of a program submission.
271.124 Program description.
271.125 Attorney General's statement.
271.126 Memorandum of Agreement with the Regional Administrator.
271.127 Authorization plan.
271.128 Program requirements for interim authorization for Phase I.
271.129 Additional program requirements for interim authorization for Phase II.
271.130 Interstate movement of hazardous waste.
271.131 Progress reports.
271.132 Sharing of information.
271.133 Coordination with other programs.
271.134 EPA review of State permits.
271.135 Approval process.
271.136 Withdrawal of State programs.
271.137 Reversion of State program.

Authority: Pub. L. 94–580, as amended by Pub. L. 94–609, 42 U.S.C. 6901 et seq.

Subpart A—Requirements for Final Authorization

§ 271.1 Purpose and scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing approval of State programs and the requirements State programs must meet to be approved by the Administrator under Section 3006(b) (hazardous waste—final authorization) of RCRA.

(b) State submissions for program approval must be made in accordance with the procedures set out in this subpart.

(c) The substantive provisions which must be included in State programs for them to be approved include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of Parts 270 and 124 are made applicable to States by the references contained in § 271.14.

(d) Upon receipt of a complete submission, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this subpart, the Act and any comments received.

(e) The Administrator shall approve State programs which conform to the applicable requirements of this subpart.

(f) Upon approval of a State permitting program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(g) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this subpart.

(h) Partial State programs are not allowed for programs operating under RCRA final authorization. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this subpart, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if the State does not seek this authority.

Note.—States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.

(i) Except as provided in § 271.4, nothing in this subpart precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this subpart;

(2) Operating a program with a greater scope of coverage than that required under this subpart. Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the Federally approved program.

§ 271.2 Definitions.

The definitions in Part 270 apply to all subparts of this part.

§ 271.3 Availability of final authorization.

(a) States approved under this Subpart are authorized to administer and enforce their hazardous waste program in lieu of the Federal program.

(b)(1) States may apply for final authorization at any time after the promulgation of the last component of Phase II.

(2) State programs under final authorization shall not take effect until the effective date of the last component of Phase II.

(c) State operating under interim authorization may apply for and receive final authorization as specified in paragraph (b) of this section. Notwithstanding approval under Subpart B such States must meet all the requirements of this Subpart in order to qualify for final authorization.

(d) States need not have been approved under Subpart B in order to qualify for final authorization.

§ 271.4 Consistency.

To obtain approval, a State program must be consistent with the Federal program and State programs applicable in other States and in particular must comply with the provision below. For purposes of this section the phrase "State programs applicable in other States" refers only to those State hazardous waste programs which have received final authorization under this part.

(a) Any aspect of the State program which unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous wastes from other States for treatment, storage, or disposal at facilities authorized to operate under the Federal or an approved State program shall be deemed inconsistent.

(b) Any aspect of State law or of the State program which has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent.

(c) If the State manifest system does not meet the requirements of this Part, the State program shall be deemed inconsistent.

§ 271.5 Elements of a program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 271.6 describing how the State intends to carry out its responsibilities under this subpart;

(3) An Attorney General's statement as required by § 271.7;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 271.8;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures; and

(6) The showing required by § 271.20(c) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under section 3006(b) of the Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the review period shall not begin until all necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the review period by agreement.

§ 271.6 Program description.

Any State that seeks to administer a program under this subpart shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibilities. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. This estimate must cover the first two years after program approval.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding. This estimate must cover the first two years after program approval.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

Note:—States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of the State manifest tracking system, and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

(1) Generators;

(2) Transporters; and

(3) On- and off-site storage, treatment and disposal facilities, and a brief description of the types of facilities and an indication of the permit status of these facilities.

(h) If available, an estimate of the annual quantities of hazardous wastes generated within the State; transported into and out of the State; and stored, treated, or disposed of within the State: On-site; and Off-site.

§ 271.7 Attorney General's statement.

(a) Any State that seeks to administer a program under this subpart shall submit a statement from the State Attorney General (or the attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to carry out the program described under § 271.6 and to meet the requirements of this subpart. This statement shall include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statues and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

Note:—EPA will supply States with an Attorney General's statement format on request.

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 271.8 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this subpart shall submit a Memorandum of Agreement (MOA). The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this subpart and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) All Memoranda of Agreement shall include the following:

(1) Provisions for the Regional Administrator to promptly forward to the State Director information obtained prior to program approval in notifications provided under section 3010(a) of RCRA. The Regional Administrator and the State Director

shall agree on procedures for the assignment of EPA identification numbers for new generators, transporters, treatment, storage, and disposal facilities.

(2) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities in each year for which the State is operating under final authorization. The Regional Administrator and the State Director may agree to limitations on compliance inspections of generators, transporters, and non-major HWM facilities.

(5) No limitations on EPA compliance inspections of generators, transporters, or non-major HWM facilities under paragraph (b)(4) of this section shall restrict EPA's right to inspect any generator, transporter, or HWM facility which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(6) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

Note.—For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(7) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(8) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4

Note.—To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance.

(9) Provisions for the State Director to promptly forward to EPA copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on draft permits and/or permit applications for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(10) Provisions for the State Director to review all permits issued under State law prior to the date of program approval and modify or revoke and reissue them to require compliance with the requirements of this subpart. The Regional Administrator and the State Director shall establish a time within which this review must take place.

(11) Provisions for modification of the Memorandum of Agreement in accordance with this subpart.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this subpart. The State/EPA Agreement may not override the Memorandum of Agreement.

Note.—Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.

§ 271.9 Requirements for identification and listing of hazardous wastes.

The State program must control all the hazardous wastes controlled under 40 CFR Part 261 and must adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 CFR Part 261.

§ 271.10 Requirements for generators of hazardous waste.

(a) The State program must cover all generators covered by 40 CFR Part 262. States must require new generators to contact the State and obtain an EPA identification number before they perform any activity subject to regulation under the approved State hazardous waste program.

(b) The State shall have authority to require and shall require all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR 262.40 and 262.41. States must require that generators keep these records at least 3 years.

(c) The State program must require that generators who accumulate hazardous wastes for short periods of time comply with requirements that are equivalent to the requirements for accumulating hazardous wastes for short periods of time under 40 CFR 262.34.

(d) The State program must require that generators comply with requirements that are equivalent to the requirements for the packaging, labeling, marking, and placarding of hazardous waste under 40 CFR 262.30 to 262.33, and are consistent with relevant DOT regulations under 49 CFR Parts 172, 173, 178 and 179.

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR 262.50, except that advance notification of international shipments, as required by 40 CFR 262.50(b)(1), shall be filed with the Administrator. The State may require that a copy of such advance notice be filed with the State Director, or may require equivalent reporting procedures. Note: Such notices shall be mailed to Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A–107), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(f) The State must require that all generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site:

(1) Use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery, and, in the case of intrastate

shipments, are delivered to facilities that are authorized to operate under an approved State program or the Federal program;

(2) Initiate the manifest and designate on the manifest the storage, treatment, or disposal facility to which the waste is to be shipped;

(3) Ensure that all wastes offered for transportation are accompanied by the manifest, except in the case of shipments by rail or water specified in 40 CFR 262.23 (c) and (d) and § 262.20 (e) and (f). The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR § 262.23 (c) and (d) and § 263.20 (e) and (f).

(4) Investigate instances where manifests have not been returned by the owner or operator of the designated facility and report such instances to the State in which the shipment originated.

(g) In the case of interstate shipments for which the manifest has not been returned, the State program must provide for notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of unauthorized States).

(h) The State must follow the Federal manifest format (40 CFR 262.21) and may supplement the format to a limited extent subject to the consistency requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.).

§ 271.11 Requirements for transporters of hazardous wastes.

(a) The State program must cover all transporters covered by 40 CFR Part 263. New transporters must be required to contact the State and obtain an EPA identification number from the State before they accept hazardous waste for transport.

(b) The State shall have the authority to require and shall require all transporters to comply with recordkeeping requirements equivalent to those found at 40 CFR 263.22. States must require that records be kept at least 3 years.

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirement for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f).

(d) For hazardous wastes that are discharged in transit, the State program must require that transporters notify appropriate State, local, and Federal agencies of such discharges, and clean up such wastes, or take action so that such wastes do not present a hazard to human health or the environment. These requirements shall be equivalent to those found at 40 CFR 263.30 and 263.31.

§ 271.12 Requirements for hazardous waste management facilities.

The State shall have standards for hazardous waste management facilities which are equivalent to 40 CFR Parts 264 and 266. These standards shall include:

(a) Technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, and land treatment facilities;

(b) Financial responsibility during facility operation;

(c) Preparedness for and prevention of discharges or releases of hazardous waste; contingency plans and emergency procedures to be followed in the event of a discharge or release of hazardous waste;

(d) Closure and post-closure requirements including financial requirements to ensure that money will be available for closure and post-closure monitoring and maintenance;

(e) Groundwater monitoring;

(f) Security to prevent unauthorized access to the facility;

(g) Facility personnel training;

(h) Inspections, monitoring, recordkeeping, and reporting;

(i) Compliance with the manifest system, including the requirements that facility owners or operators return a signed copy of the manifest to the generator to certify delivery of the hazardous waste shipment;

(j) Other requirements to the extent that they are included in 40 CFR Parts 264 and 266.

§ 271.13 Requirements with respect to permits and permit applications.

(a) State law must require permits for owners and operators of all hazardous waste management facilities required to obtain a permit under 40 CFR Part 270 and prohibit the operation of any hazardous waste management facility without such a permit, except that States may, if adequate legal authority exists, authorize owners and operators of any facility which would qualify for interim status under the Federal program to remain in operation until a final decision is made on the permit application. When State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards at least as stringent as EPA's interim status standards at 40 CFR Part 265.

(b) The State must require all new HWM facilities to contact the State and obtain an EPA identification number before commencing treatment, storage, or disposal of hazardous waste.

(c) All permits issued by the State shall require compliance with the standards adopted by the State under § 271.12.

(d) All permits issued under State law prior to the date of approval of final authorization shall be reviewed by the State Director and modified or revoked and reissued to require compliance with the requirements of this Part.

§ 271.14 Requirements for permitting.

All State programs under this Subpart must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(a) Section 270.1(c)(1)—(Specific inclusions);

(b) Section 270.4—(Effect of permit);

(c) Section 270.5—(Noncompliance reporting);

(d) Section 270.10—(Application for a permit);

(e) Section 270.11—(Signatories);

(f) Section 270.12—(Confidential information);

(g) Section 270.13—(Contents of Part A);

(h) Sections 270.14–.29—(Contents of Part B);

[Note.—States need not use a two part permit application process. The State application process must, however, require information in sufficient detail to satisfy the requirements of §§ 270.13–.29.]

(i) Section 270.30—(Applicable permit conditions);

(j) Section 270.31—(Monitoring requirements);

(k) Section 270.32—(Establishing permit conditions);

(l) Section 270.33—(Schedule of compliance);

(m) Section 270.40—(Permit transfer);

(n) Section 270.41—(Permit modification);

(o) Section 270.43—(Permit termination);

(p) Section 270.50—(Duration);

(q) Section 270.60—(Permit by rule);

(r) Section 270.61—(Emergency permits);

(s) Section 270.64—(Interim permits for UIC wells);

(t) Section 124.3(a)—(Application for a permit);

(u) Section 124.5 (a), (c), (d), and (f)—(Modification of permits);

(v) Section 124.6 (a), (c), (d), and (e)—(Draft permit);

(w) Section 124.8—(Fact sheets);

(x) Section 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);

(y) Section 124.11—(Public comments and requests for hearings);

(z) Section 124.12(a)—(Public hearings); and

(aa) Section 124.17 (a) and (c)—(Response to comments).

[Note.—States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.]

§ 271.15 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 271.16 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

[Note.—This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To access or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for any program violation in at least the amount of $10,000 per day.

(ii) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement, or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance. Criminal fines shall be recoverable in at least the amount of $10,000 per day for each violation, and imprisonment for at least six months shall be available.

(b)(1) The maximum civil penalty or criminal fines (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Act.

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. If such civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation," as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to address the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires).

[Note.—In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil action to obtain remedies specified in paragraphs (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 271.15(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 271.17 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this subpart. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 271.18 Coordination with other programs.

(a) Issuance of State permits under this subpart may be coordinated, as provided in Part 124, with issuance of UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

(b) The State Director of any approved program which may affect the planning for and development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA (40 CFR Part 255) as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 271.19 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits as provided in the Memorandum of Agreement under § 271.8.

(b) Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

(1) A statement of the reasons for the comment (including the section of RCRA or regulations promulgated thereunder that support the comment); and

(2) The actions that should be taken by the State Director in order to address the comments (including the conditions which the permit would include if it were issued by the Regional Administrator).

(c) A copy of any comment shall be sent to the permit applicant by the Regional Administrator.

(d) The Regional Administrator shall withdraw such a comment when satisfied that the State has met or refuted his or her concerns.

(e) Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the following conditions:

(1) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition of that permit.

(2) The Regional Administrator may take action under Section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition that the Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

(3) The Regional Administrator may not take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition necessary to implement approved State program requirements unless the Regional Administrator stated in commenting on the permit application or draft permit that the condition was necessary.

(4) The Regional Administrator may take action under Section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with permit conditions.

§ 271.20 Approval process.

(a) Prior to submitting an application to EPA for approval of a State program, the State shall issue public notice of its intent to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons including:

(i) Publication in enough of the largest newspapers in the State to attract statewide attention; and

(ii) Mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which time

interested members of the public may express their views on the proposed program;

(5) Provide that a public hearing will be held by the State or EPA if sufficient public interest is shown or, alternatively, schedule such a public hearing. Any public hearing to be held by the State on its application for authorization shall be scheduled no earlier than 30 days after the notice of hearing is published;

(6) Briefly outline the fundamental aspects of the State program; and

(7) Identify a person that an interested member of the public may contact with any questions.

(b) If the proposed State program is substantially modified after the public comment period provided in paragraph (a)(4) of this section, the State shall, prior to submitting its program to the Administrator, provide an opportunity for further public comment in accordance with the procedures of paragraph (a) of this section. Provided, that the opportunity for further public comment may be limited to those portions of the State's application which have been changed since the prior public notice.

(c) After complying with the requirements of paragraphs (a) and (b) of this section, the State may submit, in accordance with § 271.3, a proposed program to EPA for approval. Such formal submission may only be made after the date of promulgation of the last component of Phase II. The program submission shall include copies of all written comments received by the State, a transcript, recording, or summary of any public hearing which was held by the State, and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and responds to these comments.

(d) Within 90 days from the date of receipt of a complete program submission for final authorization, the Administrator shall make a tentative determination as to whether or not he expects to grant authorization to the State program. If the Administrator indicates that he may not approve the State program he shall include a general statement of his areas of concern. The Administrator shall give notice of this tentative determination in the **Federal Register** and in accordance with paragraph (a)(1) of this section. Notice of the tentative determination of authorization shall also:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination of authorization. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed.

(2) Afford the public 30 days after the notice to comment on the State's submission and the tentative determination; and

(3) Note the availability of the State submission for inspection and copying by the public.

(e) Within 90 days of the notice given pursuant to paragraph (d) of this section, the Administrator shall make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator will grant final authorization only after the effective date of the last component of Phase II. The Administrator shall give notice of this final determination in the **Federal Register** and in accordance with paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

§ 271.21 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this subpart and of the Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 271.6(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) All new programs must comply with these regulations immediately upon approval. Any approved program which requires revision because of a modification to this subpart or to 40 CFR Parts 270, 124, 260, 261, 262, 263, 264, 265, or 266 shall be so revised within one year of the date of promulgation of such regulation, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within two years.

§ 271.22 Criteria for withdrawing approval of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this subpart, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 271.8.

§ 271.23 Procedures for withdrawing approval of State programs.

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevent program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 271.22. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of "Act", "Administrative Law Judge", "Hearing", "Hearing Clerk", and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the proceeding.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.* The following provisions of 40 CFR Part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

(i) § 22.02—(use of number/gender);

(ii) § 22.04(c)—(authorities of Presiding Officer);

(iii) § 22.06—(filing/service of rulings and orders);

(iv) § 22.07 (a) and (b)—except that, the time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator (computation/extension of time);

(v) § 22.08—however, substitute "order commencing proceedings" for "complaint"—(Ex Parte contacts);

(vi) § 22.09—(examination of filed documents);

(vii) § 22.11 (a), (c) and (d), however, motions to intervene must be filed 15 days from the date the notice of the Administrator's order is first published—(intervention);

(viii) § 22.16 except that, service shall be in accordance with paragraph (b)(4) of this section, the first sentence in § 22.16(c) shall be deleted, and, the word "recommended" shall be substituted for the word "initial" in § 22.16(c)—(motions);

(ix) § 22.19 (a), (b) and (c)—(prehearing conference);

(x) § 22.22—(evidence);

(xi) § 22.23—(objections/offers of proof);

(xii) § 22.25—(filing the transcript); and

(xiii) § 22.26—(findings/conclusions).

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service; and

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, at the discretion of the Presiding Officer, be permitted to make a limited appearance by makng an oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the

Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* All parties to the proceeding may:

(i) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(ii) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the Act and regulations his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the Act and regulations he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(c) Withdrawal of authorization under this section and the Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions by the State prior to withdrawal.

Subpart B—Requirements for Interim Authorization

§ 271.121 Purpose and scope.

(a) This subpart specifies requirements a State program must meet in order to obtain interim authorization under Section 3006(c) of RCRA. A State must meet all the requirements of this Subpart in order to qualify for interim authorization. The requirements a State program must meet in order to obtain final authorization under Section 3006(b) of RCRA are specified in Subpart A.

(b) Interim Authorization of State programs under this Subpart may occur in two phases. The phase (Phase I) allows States to administer a hazardous waste program in lieu of and corresponding to that portion of the Federal program which covers identification and listing of hazardous waste (40 CFR Part 26), generators (40 CFR Part 262) and transporters (40 CFR Part 263) of hazardous wastes, and establishes preliminary (interim status) standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 265). The second phase (Phase II) allows States to administer a permit program for hazardous waste treatment, storage and disposal facilities in lieu of and corresponding to the Federal hazardous waste permit program (40 CFR Parts 270, 124 and 264), as explained in paragraph (c) of this section.

(c) Because some of the Subparts of the Federal regulations containing standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 264) will be promulgated at different times, Phase II of interim authorization will be implemented in several components.

(1) Each component of Phase II of interim authorization will correspond to specified Parts and Subparts of the Federal regulations.

(2) EPA will announce each component of Phase II of interim authorization in a Federal Register notice. The notice will announce that States may apply for interim authorization for one or more components. The notice will also provide the effective date of the component(s) and specifically identify the Parts and Subparts of the Federal regulations comprising the component(s).

(3) States meeting the requirements of this Subpart will be allowed to administer a permit program in lieu of the corresponding Federal hazardous waste permit program for each component for which they have received interim authorization.

(d) States may apply for interim authorization either sequentially or all at once, as long as they adhere to the schedule in § 271.122. For example, States may:

(1) Apply for interim authorization for Phase I and amend that application each time a component of Phase II is announced; or

(2) Apply for interim authorization for Phase I, wait until the last component of Phase II had been announced, and amend the Phase I application at that time to include all components of Phase II; or

(3) Apply at the same time for interim authorization for Phase I and for already announced components of Phase II, and amend the application each time an additional component of Phase II is announced; or

(4) Wait until the last component of Phase II has been announced, and apply at the same time for interim authorization for Phase I and for all components of Phase II.

(e) The Administrator shall approve a State program which meets the applicable requirements of this Subpart.

(f) Upon approval of a State program for a component of Phase II, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(g) Any State program approved by the Administrator under this Subpart shall at all times be conducted in accordance with this Subpart.

(h) Lack of authority to regulate activities on Indian lands does not impair a State's ability to obtain interim authorization under this Subpart. EPA will administer the program on Indian lands if the State does not seek this authority.

Note.—States are advised to contact the United States Department of Interior, Bureau of Indian Affairs, concerning authority over Indian lands.

(1) Nothing in this Subpart precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Subpart.

(2) Operating a program with a greater scope of coverage than that required under this Subpart. Where an approved program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

§ 271.122 Schedule.

(a) Interim authorization for Phase I shall not take effect until Phase I commences. Interim authorization for each component of Phase II shall not take effect until the effective date of that component.

(b)(1) Interim authorization may extend for a 24-month period from the effective date of the last component of Phase II.

Note.—EPA will publish a notice in the Federal Register announcing the beginning of this 24-month period.

(2) At the end of this period all interim authorizations automatically expire and EPA shall administer the Federal program in any State which has not received final authorization.

(c)(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 requirement 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 component of Phase II) is substantially eqivalent to the Federal program, including modifications 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 programs 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.

§ 271.123 Elements of a program submission.

(a) Any State that seeks to administer a program under this subpart shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 271.124 describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 271.125;

(4) Memorandum of Agreement with the Regional Administrator as required by § 271.126;

(5) An authorization plan as required by § 271.127; and

(6) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the formal review period shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the review period shall not begin until all necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period shall begin again upon receipt of the revised submission.

(d) A State simultaneously applying for interim authorization for both Phase I and a component of Phase II shall prepare a single submission.

(e) A State applying for interim authorization for a component of Phase II after receiving interim authorization for Phase I (or for Phase I and previous components of Phase II) shall amend its previous submission for interim authorization as specified in §§ 271.124 to 271.127.

§ 271.124 Program description.

Any State that seeks to administer a program under this subpart shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. A State applying only for interim authorization for a component of Phase II shall amend its program description for interim authorization for Phase I (or for Phase I and previous components of Phase II) as necessary to reflect the program it proposes to administer to meet the requirements for interim authorization corresponding to the component of Phase II for which the State is applying. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibilities. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number,

occupations, and general duties of the employees. The State need not submit complete job description for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitation upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

Note.—States applying only for interim authorization for Phase I need describe permitting procedures only to the extent they will be utilized to assure compliance with standards substantially equivalent to CFR Part 265.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of the State manifest tracking system, if the State has such a system and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

(1) Generators;

(2) Transporters; and

(3) On- and off-site storage, treatment and disposal facilities, and a brief description of the types of facilities and an indication of the permit status of these facilities.

§ 271.125 Attorney General's statement.

(a) Any State that seeks to administer a program under this subpart shall submit a statement from the Attorney General (or the attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to carry out the program described under § 271.124 and to meet the 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 § 271.128(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 in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. 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 previous components of Phase II) shall be amended and recertified to demonstrate adequate authority to carry out all requirements of that component.

(b)(1) In the case of a State applying for interim authorization for Phase I, the Attorney General's statement shall certify that the authorization plan under § 271.127(a), if carried out, would provide the State with enabling authority and regulations adequate to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying for interim authorization for a component of Phase II, the Attorney General's statement shall certify that the authorization plan under § 271.127(b), if carried out, would provide the State with enabling authority and regulations adequate to meet all the requirements for final authorization contained in that component of Phase II.

[Note.—EPA will supply States with an Attorney General's statement format on request.]

(c) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 271.126 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this subpart shall submit a Memorandum of Agreement (MOA). The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section and, if applicable, paragraph (c) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrators shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility. In the case of a State applying for interim authorization for a component of Phase II, the Memorandum of Agreement shall be amended and reexecuted to include the requirements of paragraph (c) of this section and any necessary revisions to the requirements of paragraph (b) of this section.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the Regional Administrator to promptly forward to the State Director information obtained prior to program approval in notifications provided under section 3010 (a) of RCRA. The Regional Administrator and the State Director shall agree on procedures for the assignment of EPA identification numbers for new generators, transporters, treatment, storage, and disposal facilities.

(2) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities during interim authorization. The Regional Administrator and the State Director may agree to limitations on compliance inspections of generators,

transporters, and non-major HWM facilities.

(5) No limitations on EPA compliance inspections of generators, transporters, or non-major HWM facilities under paragraph (b)(4) of this section shall restrict EPA's right to inspect any generator, transporter, or HWM facility which it has cause to believe is not compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(6) Provisions delineating respective State and EPA responsibilities during the interim authorization period.

(7) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) In addition, Memoranda of Agreement for Phase II shall also include the following, as applicable to the component of Phase II for which the State is applying:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications and draft permits that the State Director will send to the Regional Administrator for review and comment.

(3) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4.

(4) Provisions for the State Director to promptly forward to EPA copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on draft permits and/or permit applications for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

§ 271.127 Authorization plan.

The State must submit an "authorization plan" which shall describe the additions and modifications necessary for the State program to qualify for final authorization as soon as practicable, but no later then the end of the interim authorization period. This plan shall include the nature of and schedules for any changes in State legislation and regulations; resources levels; actions the State must take to control the complete universe of hazardous waste listed or designated under section 3001 of RCRA as soon as possible; the manifest and permit systems; and the surveillance and enforcement program which will be necessary in order for the State to become eligible for final authorization.

(a)(1) In the case of a State applying only for interim authorization for Phase I, the authorization plan shall describe the additions and modifications necessary for the State program to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying only for interim authorization for a component of Phase II, the authorization plan for Phase I (or for Phase I and previous components of Phase II) shall be amended to meet the requirements of paragraph (b) of this section.

(b)(1) In the case of a State applying for interim authorization for a component of Phase II, the authorization plan shall describe the additions and modifications necessary for the State program to meet the requirements for final authorization corresponding to that component of Phase II and the requirements for final authorization corresponding to Phase I and previous components of Phase II.

(2) In the case of a State applying for interim authorization for the last component of Phase II, the authorization plan shall describe the additions and modifications necessary for the State program to meet all the requirements for final authorization.

§ 271.128 Program requirements for interim authorization for Phase I.

The following requirements are applicable to States applying for interim authorization for Phase I. If a State does not have legislative authority or regulatory control over certain activities that do not occur in the State, the State may be granted interim authorization for Phase I provided the State authorization plan under § 271.127 provides for the development of a complete program as soon as practicable after receiving interim authorization.

(a) Requirements for identification and listing of hazardous waste. The State program must control a universe of hazardous wastes generated, transported, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261.

(b) Requirements for generators of hazardous waste.

(1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all generators of hazardous waste controlled by the State.

(3) The State shall have the authority to require and shall require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR 262.40 and 262.41.

(4) The State program must require that generators who accumulate hazardous wastes for short periods of time do so in a manner that does not present a hazard to human health or the environment.

(5) The State program shall provide requirements respecting international shipments which are substantially equivalent to those at 40 CFR 262.50, except that advance notification of international shipment, as required by 40 CFR 262.50(b)(1), shall be filed with the Administrator. The State may require that a copy of such advance notice be filed with the State Director, or may require equivalent reporting procedures.

[Note.—Such notices shall be mailed to Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A-107), U.S. Environmental Protection Agency, Washington, D.C. 20460.]

(6) The State program must require that such generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are designated for delivery, and, in the case of intrastate shipments, are delivered only to facilities that are authorized to operate under an approved State program or the Federal program.

(7) The State manifest system must require that:

(i) The manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported;

(ii) The manifest accompany all wastes offered for transport, except in the case of shipments by rail or water

specified in § 262.23 (c) and (d) and 263.20 (e) and (f); and

(iii) Shipments of hazardous waste that are not delivered to a designated facility are either identified and reported by the generator to the State in which the shipment originated or are independently identified by the State in which the shipment originated.

(8) In the case of interstate shipments for which the manifest has not been returned, the State program must provide for notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of unauthorized States).

(c) Requirements for transporters of hazardous wastes.

(1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all transporters of hazardous waste controlled by the State.

(3) The States shall have the authority to require and shall require all transporters covered by the State program to comply with recordkeeping requirements substantially equivalent to those found at 40 CFR 263.22.

(4) The State program must require such transporters of hazardous waste to use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are delivered only to facilities that are authorized under an approved State program or the Federal program.

(5) The State program must require that transportation carry the manifest with all shipments, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f).

(6) For hazardous wastes that are discharged in transit, the State program must require that transporters notify appropriate State, local and Federal agencies of the discharges, and clean up the wastes or take action so that the wastes do not present a hazard to human health or the environment. These requirements shall be substantially equivalent to those found at 40 CFR 263.20 and 263.31.

(d) Limited exceptions from generator, transporter, and related manifest requirements. A State applying for interim authorization for Phase I which meets all the requirements for such interim authorization except that it does not have statutory or regulatory authority for the manifest system or other generator or transporter requirements discussed in paragraphs (b) and (c) of this section may be granted in interim authorization, if the State authorization plan under § 271.127 delineates the necessary steps for obtaining this authority no later than the end of the interim authorization period under § 271.122(b). A State may apply for interim authorization to implement the manifest system and other generator and transporter requirements if the enabling legislation for that part of the program was in existence within 90 days of the announcement of the last component of Phase II. States which received interim authorization for Phase I under the terms of this paragraph may apply for interim authorization to implement the manifest system and other generator and transporter requirements as a part of the State's submission for Phase II or as mutually agreed upon between EPA and the State. Until the State manifest system and other generator and transporter requirements are approved by EPA, all Federal requirements for generators and transporters (including use of the Federal manifest system) shall apply in such States and enforcement responsibility for that part of the program shall remain with the Federal government. The universe of wastes for which these Federal requirements apply shall be the universe of wastes controlled by the State under paragraph (a) of this section.

(e) Requirements for hazardous waste treatment, storage and disposal facilities. States must have standards applicable to HWM facilities which are substantially equivalent to 40 CFR Part 265. State law shall prohibit the operation of facilities not in compliance with such standards. These standards shall include:

(1) Preparedness for and prevention of releases of hazardous waste controlled by the State under paragraph (a) of this section and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste;

(2) Closure and post-closure requirements;

(3) Ground-water monitoring;

(4) Security to prevent unknowing and unauthorized access to the facility;

(5) Facility personnel training;

(6) Inspection, monitoring, recordkeeping, and reporting;

(7) Compliance with the manifest system including the requirement that the facility owner or operator or the State in which the facility is located must return a copy of the manifest to the generator or to the State in which the generator is located indicating delivery of the waste shipment; and

(8) Other facility standards to the extent that they are included in 40 CFR Part 265, except that Subpart R (standards for injection wells) may be included in the State standards, at the State's option.

(f) Requirements for enforcement authority. (1) Any State agency administering a program under this Subpart shall have the following authority to remedy violations of State program requirements:

(i) Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(ii) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including, where appropriate, permit conditions, without the necessity of a prior revocation of the permit; and

(iii) for any program violation, to assess or sue to recover in court civil penalties in at least the amount of $1000 per day or to seek criminal fines in at least the amount of $1000 per day.

(2) Any State administering a program under this Subpart shall provide for public participation in the State enforcement process by providing either:

(i) Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraphs (f)(1) (ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected; or

(ii)(A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

(g) Requirements for compliance evaluation programs.

(1) A State program under this Subpart shall have procedures for receipt, evaluation, recordkeeping, and investigation for possible enforcement of all required notices and reports.

(2) The State program shall (i) include independent State inspection and surveillance authority to determine compliance or non-compliance with applicable program requirements; or (ii) the State program shall indicate that the State will rely on and act under the inspection authority provided in Section 3007(a) of RCRA.

(3) If the State is relying on independent State inspection and surveillance authority, the authority shall include authority to enter any conveyance, vehicle, facility, or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, obtain samples, monitor or otherwise investigate compliance with the State program. States whose law requires a search warrant prior to entry comply with this requirement.

(4) If the State is relying on the authority in section 3007(a), the State program must contain assurances that there are no provisions of State law which prevent the State from using that authority.

(5) The State program must include:

(i) The capability to make comprehensive surveys of any activities subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with program requirements;

(ii) A program for periodic inspection of the activities subject to regulation;

(iii) The capability to investigate evidence of violations of applicable program and permit requirements;

(iv) Procedures to determine compliance or non-compliance with applicable program requirements including procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(6) Investigatory inspections shall be conducted, samples shall be taken, and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 271.129 Additional program requirements for interim authorization for Phase II.

In addition to the requirements of § 271.128, the following requirements are applicable to States applying for a component of Phase II.

(a)(1) State programs must have standards applicable to hazardous waste management facilities that provide substantially the same degree of human health and environmental protection as the standards promulgated in the Subparts of 40 CFR Part 264 comprising that component.

(2) The Administrator may authorize a State program for Phase II Components A or B, or both, even though the State program does not include liability coverage requirements, if (i) the State submitted a draft application for the component or components of Phase II interim authorization prior to April 16, 1982, and (ii) the State commits in its Memorandum of Agreement to adopt State liability coverage requirements as quickly as practicable, but in no case later than the State's application for an additional component of Phase II interim authorization.

(3) Any State which receives interim authorization for Components A or B or both without liability coverage requirements, pursuant to paragraph (a)(2) of this section, may not receive an additional component of Phase II interim authorization unless it has liability coverage requirements in effect.

(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 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.

(b)(1) State programs shall require a permit for owners and operators of those hazardous waste treatment, storage and disposal facilities:

(i) corresponding to that component;

(ii) which handle any waste controlled by the State under § 271.128(a); and

(iii) for which a permit is required under 40 CFR Part 270.

(2) The State program shall prohibit the operation of such facilities without a permit, provided States may authorize owners and operators of facilities which would qualify for interim status under the Federal program (if State law so authorizes) to remain in operation pending permit action. Where State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards substantially equivalent to EPA's interim status standards under 40 CFR Part 265.

(c) All permits issued by the State under this section shall require compliance with the standards adopted by the State in accordance with paragraph (a) of this section.

(d) State programs shall have requirements for permitting which are substantially equivalent to the provisions listed in § 271.14, except that States must have requirements equivalent to § 124.10(b)(1), (c)(1)(ix), (c)(2)(ii) and § 124.12(a).

(e) A State with interim authorization for a component of Phase II may not issue permits pursuant to that component with a term greater than ten years.

(f) State programs shall require that a facility which, under the Federal hazardous waste management program would be deemed to have a Federal permit if the conditions established in § 270.60 of this chapter are met, comply with standards at least substantially equivalent to the applicable standards in § 270.60 of this chapter. Such standards need not be imposed through issuance of a permit, but must be fully enforceable.

§ 271.130 Interstate movement of hazardous waste.

(a) If a waste is transported from a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, into a State with interim authorization where it is not listed or designated, the waste must be manifested in accordance with the laws of the State where the waste was generated and must be treated, stored, or disposed of as required by the laws of the State into which it has been transported.

(b) If a waste is transported from a State with interim authorization where it is not listed or designated as hazardous into a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, the waste must be treated, stored, or disposed of in accordance with the law applicable in the State into which it has been transported.

(c) In all cases of interstate movement of hazardous waste, as defined by 40 CFR Part 261, generators and transporters must meet DOT requirements in 49 CFR Parts 172, 173, 178, and 179 (e.g., for shipping paper,

packaging, labeling, marking, and placarding).

§ 271.131 Progress reports.

The State Director shall submit a semi-annual progress report to the EPA Regional Administrator within 4 weeks of the date 6 months after Phase I commences, and at 6-month intervals thereafter until the expiration of interim authorization. The reports shall briefly summarize, in a manner and form prescribed by the Regional Administrator, the State's compliance in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and solutions for the next reporting period.

§ 271.132 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this subpart. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the States needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 271.133 Coordination with other programs.

(a) Issuance of State permits under this part may be coordinated, as provided in Part 124, with issuance of UIC, NPDES, and 404 permits whether they are controlled by the State, EPA or the Corps of Engineers. See § 124.4.

(b) The State Director of any approved program which may effect the planning for the development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA (40 Part 255) as responsible for the development and implementation of State and solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 271.134 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits as provided in the Memorandum of Agreement under § 271.126.

(b) Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

(1) A statement of the reasons for the comment (including the section of RCRA or regulations promulgated thereunder that support the comment); and

(2) The actions that should be taken by the State Director in order to address the comments (including the conditions which the permit would include if it were issued by the Regional Administrator).

(c) A copy of any comment shall be sent to the permit applicant by Regional Administrator.

(d) The Regional Administrator shall withdraw such a comment when satisfied that the State has met or refuted his or her concerns.

(e) Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the following conditions:

(1) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that permittee is not complying with a condition of that permit.

(2) The Regional Administrator may take action under Section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition that the Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

(3) The Regional Administrator may not take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition necessary to implement approved State program requirements unless the Regional Administrator stated in commenting on the permit application or draft permit that the condition was necessary.

(4) The Regional Administrator may take action under Section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with permit conditions.

§ 271.135 Approval process.

(a) Within 30 days of receipt of a complete program submission for Phase I or for a component of Phase II of interim authorization, the Regional Administrator shall:

(1) Issue notice in the **Federal Register** and in accordance with § 271.20(a)(1) of a public hearing on the State's application for interim authorization. Such public hearing will be held by EPA no earlier than 30 days after notice of the hearing, provided that if significant public interest in a hearing is not expressed, the hearing may be cancelled if a statement to this effect is included in the public notice. The State shall participate in any public hearing held by EPA.

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State's submission for inspection and copying by the public. The State submission shall, at a minimum, be available in the main office of the lead State agency and in the EPA Regional Office.

(b) Within 90 days of the notice in the **Federal Register** required by paragraph (a)(1) of this section, the Administrator shall make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator will give notice of this final determination in the **Federal Register** and in accordance with § 271.20(a)(1). The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

(c) Where a State has received interim authorization for Phase I or for Phase I and for some, but not all, components of Phase II, the same procedures required in paragraphs (a) and (b) of this section shall be used in determining whether the amended program submission meets the requirements of the Federal Program.

§ 271.136 Withdrawal of State programs.

(a) The criteria and procedures for withdrawal set forth in §§ 271.22 and 271.23 apply to this section.

(b) In addition to the criteria in § 271.22, State program approval may be withdrawn if a State which has obtained interim authorization fails to meet the schedule for or accomplish the additions

or revisions of its program set forth in its authorization plan.

§ 271.137 Reversion of State programs.

(a) A State program approved for interim authorization for Phase I or for Phase I and 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 § 271.122(c)(4). The Regional Administrator may extend this deadline for good cause.

(b) 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 and EPA shall administer and enforce the Federal program in the State if the Regional Administrator determines pursuant to § 271.135(c) that a program submission amended pursuant to § 271.122(c)(4) does not meet the requirements of the Federal program.

Part 124 is revised to read as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

Sec.
124.1 Purpose and scope.
124.2 Definitions.
124.3 Application for a permit.
124.4 Consolidation of permit processing.
124.5 Modification, revocation and reissuance, or termination of permits.
124.6 Draft permit.
124.7 Statement of basis.
124.8 Fact sheet.
124.9 Administrative record for draft permits when EPA is the permitting authority.
124.10 Public notice of permit actions and public comment period.
124.11 Public comments and requests for public hearings.
124.12 Public hearings.
124.13 Obligation to raise issues and provide information during the public comment period.
124.14 Reopening of the public comment period.
124.15 Issuance and effective date of permit.
124.16 Stays of contested permit conditions.
124.17 Response to comments.
124.18 Administrative record for final permit when EPA is the permitting authority.
124.19 Appeal of RCRA, UIC and PSD permits.
124.20 Computation of time.
124.21 Effective date of Part 124.

Subpart B—Specific Procedures Applicable to RCRA Permits [Reserved]

Subpart C—Specific Procedures Applicable to PSD Permits

Sec.
124.41 Definitions applicable to PSD permits.
124.42 Additional procedures for PSD permits affecting Class I areas.

Subpart D—Specific Procedures Applicable to NPDES Permits

124.51 Purpose and scope.
124.52 Permits required on a case-by-case basis.
124.53 State certification.
124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.
124.55 Effect of State certification.
124.56 Fact sheets.
124.57 Public notice.
124.58 Special procedures for EPA-issued general permits for point sources other than separate storm sewers.
124.59 Conditions requested by the Corps of Engineers and other government agencies.
124.60 Issuance and effective date and stays of NPDES permits.
124.61 Final environmental impact statement.
124.62 Decision on variances.
124.63 Procedures for variances when EPA is the permitting authority.
124.64 Appeal of variances.
124.65 Special procedures for discharge into marine waters under section 301(h).
124.66 Special procedures for decisions on thermal variances under section 316(a).

Subpart E—Evidentiary Hearing for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

124.71 Applicability.
124.72 Definitions.
124.73 Filing and submission of documents.
124.74 Requests for evidentiary hearing.
124.75 Decision on request for a hearing.
124.76 Obligation to submit evidence and raise issues before a final permit is issued.
124.77 Notice of hearing.
124.78 *Ex parte* communications.
124.79 Additional parties and issues.
124.80 Filing and service.
124.81 Assignment of Administrative Law Judge.
124.82 Consolidation and severance.
124.83 Prehearing conferences.
124.84 Summary determination.
124.85 Hearing procedure.
124.86 Motions.
124.87 Record of hearings.
124.88 Proposed findings of fact and conclusions; brief.
124.89 Decisions.
124.90 Interlocutory appeal.
124.91 Appeal to the Administrator.

Subpart F—Non-Adversary Panel Procedures

Sec.
124.111 Applicability.
124.112 Relation to other Subparts.
124.113 Public notice of draft permits and public comment period.
124.114 Request for hearing.
124.115 Effect of denial of or absence of request for hearing.
124.116 Notice of hearing.
124.117 Request to participate in hearing.
124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
124.120 Panel hearing.
124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
124.127 Final decision if there is no review.
124.128 Delegation of authority; time limitations.

Appendix A to Part 124—Guide to Decisionmaking under Part 124.

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This Part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" other than RCRA and UIC "emergency permits" (see §§ 270.61 and 144.34) and RCRA "permits by rule" (§ 270.60). The latter kinds of permits are governed by Part 270. RCRA interim status and UIC authorization by rule are not "permits" and are covered by specific provisions in Parts 144, Subpart C, and 270. This Part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR Parts 320–327.

(b) Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through F supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an

administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B is reserved for specific procedural requirements for RCRA permits. There are none of these at present but they may be added in the future. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when Subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the "initial licensing" provisions of the Administrative Procedure Act (APA), can be used instead of Subparts A through E in appropriate cases.

(c) Part 124 offers an opportunity for three kinds of hearings: a public hearing under Subpart A, an evidentiary hearing under Subpart E, and a panel hearing under Subpart F. This chart describes when these hearings are available for each of the five permit programs.

HEARINGS AVAILABLE UNDER THIS PART

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
RCRA	On draft permit, at Director's discretion or on request (§ 124.12).	(1) Permit termination (RCRA section 3008). (2) With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
UIC	On draft permit, at Director's discretion or on request (§ 124.12).	With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
PSD	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(c))	When consolidated with NPDES draft permit processed under Subpart F if RA determines that CAA one year deadline will not be violated.
NPDES (other than general permit)	On draft permit, at Director's discretion or on request (§ 124.12).	(1) On request to challenge any permit condition or variance (§ 124.74). (2) At RA's discretion for any 301(h) request (§ 124.64(b)).	(1) At RA's discretion when first decision on permit or variance request (§ 124.111). (2) At RA's discretion when request for evidentiary hearing is granted under § 124.75(a)(2) (§§ 124.74(c)(8) and 124.111(a)(2)). (3) At RA's discretion for any 301(h) request (§ 124.64(b)).
NPDES (general permit)	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(a))	At RA's discretion in lieu of public hearing (§ 124.111(a)(3)).
404	On draft permit or on application when no draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)	Not available (§ 124.111).

(d) This Part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This Part also allows consolidated permits to be subject to a single public hearing under § 124.12, a single evidentiary hearing under § 124.75, or a single non-adversary panel hearing under § 124.120. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in Part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs.These requirements are listed in §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA) and signaled by the following words at the end of the appropriate Part 124 section or paragraph heading: *(applicable to State programs see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this Part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memorandum of Agreement developed under §§ 123.24 (NPDES), 145.24 (UIC), 233.24 (404), and 271.8 (RCRA).

§ 124.12 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 144.3 and 145,2 (UIC); 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions listed below apply to this Part, except for PSD permits which are governed by the definitions in §124.41. Terms not defined in this section have the meaning given by the appropriate Act.

Administrator means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations (NPDES) means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity in subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under §270.14–270.29 [contents of Part B of the RCRA application].

Appropriate Act and regulations means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an "approved State program" appropriate

Act and regulations includes program requirements.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act of Federal Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576; 33 U.S.C. 1251 et seq.

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director"means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permits prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1) In such cases, the term "Director means the Regional Administrator and not the State Director.

Draft permit means a document prepared under §124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance or termination, as discussed in §124.5, is not a "draft permit." A "proposal permit" is not a "draft permit."

EPA ("EPA") means the United States "Environmental Protection Agency."

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source," or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

General Permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges under the CWA within a geographical area. For NPDES, a general permit means a permit issued under § 122.28. For 404, a general permit means a permit issued under § 233.37.

Interstate Agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the "appropriate Act and regulations."

Major Facility means any RCRA, UIC, NPDES, or 404 "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

NPDES means National Pollutant Discharge Elimination System.

Owner or Operator means owner or operator of any "facility or activity" subject to regulation under the RCRA,UIC, NPDES, or 404 programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this Part and Parts 122, 123, 144, 145, 233, 270, and 271. "Permit" includes RCRA "permit by rule" (Section 270.60), UIC area permit (Section 144.33), NPDES or 404 "general permit" (Sections 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (Section 270.70), UIC authorization by rule (Section 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agency or employee thereof.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, 42 U.S.C. Section 6901 et seq).

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the "appropriate Act and regulations."

SDWA means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900; 42 U.S.C. 300f et seq).

Section 404 program or State 404 program or 404 means an "approved State program" to regulate the "discharge of dredged material" and the "discharge of fill material" under Section 404 of the Clean Water Act in "State regulated waters."

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Commonwealth Northern Mariana Islands (except in the case of CWA).

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the state Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved program."

Variance (NPDES) means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

(b) For the purposes of Part 124, the term "Director" means the State Director or Regional Administrator and is used when the accompanying provision is required of EPA-administered programs and of State programs under §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA). The term "Regional Administrator" is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under these sections. While States are not required to implement these latter provisions, they are not precluded from doing so, notwithstanding use of the term "Regional Administrator."

(c) The term "formal hearing" means any evidentiary hearing under Subpart E or any panel hearing under Subpart F but does not mean a public hearing conducted under § 124.12.

§ 124.3 Application for a permit.

(a) *Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).* (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the

Director an application for each permit required under §§ 270.1 (RCRA), 144.1 (UIC), 40 CFR 52.21 (PSD), and 122.1 (NPDES). Applications are not required for RCRA permits by rule (§ 270.60), underground injections authorized by rule (§ 144.21–26), NPDES general permits (§ 122.28) and 404 general permits (§ 233.37).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), and 270.11 (RCRA).

(b) [Reserved.]

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source, the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k).

(e) If the Regional Administrator decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Regional Administrator notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, major new UIC injection well, major NPDES new source, or major NPDES new discharger, the Regional Administrator shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. (This paragraph does not apply to PSD permits.) The schedule shall specify target dates by which the Regional Administrator intends to:

(1) Prepare a draft permit;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing;

(4) Issue a final permit; and

(5) In the case of an NPDES permit, complete any formal proceedings under Subparts E or F.

§ 124.4 Consolidation of permit processing.

(a)(1) Whenever a facility or activity requires a permit under more than one statute covered by these regulations, processing of two or more applications for those permits may be consolidated. The first step in consolidation is to prepare each draft permit at the same time.

(2) Whenever draft permits are prepared at the same time, the statements of basis (required under § 124.7 for EPA-issued permits only) or fact sheets (§ 124.8), administrative records (required under § 124.9 for EPA-issued permits only), public comment periods (§ 124.10), and any public hearings (§ 124.12) on those permits should also be consolidated. The final permits may be issued together. They need not be issued together if in the judgment of the Regional Administrator or State Director(s), joint processing would result in unreasonable delay in the issuance of one or more permits.

(b) Whenever an existing facility or activity requires additional permits under one or more of the statutes covered by these regulations, the permitting authority may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously. Processing of the subsequent applications for renewal permits may then be consolidated.

(c) Processing of permit applications under paragraph (a) or (b) of this section may be consolidated as follows:

(1) The Director may consolidate permit processing at his or her discretion whenever a facility or activity requires all permits either from EPA or from an approved State.

(2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State.

(3) Permit applicants may recommend whether or not the processing of their applications should be consolidated.

(d) Whenever permit processing is consolidated and the Regional Administrator invokes the "initial licensing" provisions of Subpart F for an NPDES, RCRA, or UIC permit, any permit(s) with which that NPDES, RCRA or UIC permit was consolidated shall likewise be processed under Subpart F.

(e) Except with the written consent of the permit applicant, the Regional Administrator shall not consolidate processing a PSD permit with any other permit under paragraphs (a) or (b) of this section or process a PSD permit under Subpart F as provided in paragraph (d) of this section when to do so would delay issuance of the PSD permit more than one year from the effective date of the application under § 124.3(f).

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 122.62 or 122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 270.41 or 270.43 (RCRA). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Administrator by a

letter briefly setting forth the relevant facts. The Administrator may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Administrator takes no action on the letter within 60 days after receiving it. This informal appeal is, under 5 U.S.C. § 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Minor modifications" as defined in Sections 122.63 (NPDES), 144.41 (UIC), 233.16 (404), and 270.42 (RCRA) are not subject to the requirements of this section.

(d) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* If the Director tentatively decides to terminate a permit under Sections 122.64 (NPDES), 144.40 (UIC), 233.15 (404), or 270.43 (RCRA), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 124.6. In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under Sections 123.24(b)(1) (NPDES), 145.24(b)(1) (UIC), or 271.8(b)(6) (RCRA).

(e) When EPA is the permitting authority, all draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in Section 124.9.

(f) *(Applicable to State programs, see Section 233.26 (404)).* Any request by the permittee for modification to an existing 404 permit (other than a request for a minor modification as defined in Section 233.16 (404)) shall be treated as a permit application and shall be processed in accordance with all requirements of Section 124.3.

(g)(1) (Reserved for PSD Modification Provisions)

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be precessed under § 52.21(w) and are not subject to this Part.

§ 124.6 Draft permits.

(a) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under Section 233.39) or to deny the application.

(b) If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See Section 124.6(e). If the Director's final decision (Section 124.15) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) *(Applicable to State programs, see Sections 123.25 (NPDES) and 233.26 (404).)* If the Director tentatively decides to issue an NPDES or 404 general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under Sections 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC, 233.7 and 233.8 (404, or 270.30 and 270.32 (RCRA) (except for PSD permits)));

(2) All compliance schedules under Section 122.47 (NPDES), 144.53 (UIC), 233.10 (404), or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under Section 122.48 (NPDES), 144.54 (UIC), 233.11 (404), or 270.31 (RCRA) (except for PSD permits); and

(4) For:

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under Section 270.30;

(ii) UIC permits, permit conditions under Section 144.52;

(iii) PSD permits, permit conditions under 40 CFR Section 52.21;

(iv) 404 permits, permit conditions under Sections 233.7 and 233.8;

(v) NPDES permits, effluent limitations, standards, prohibitions and conditions under Section 122.41 and 122.42, including when applicable any conditions certified by a State agency under Section 124.55, and all variances that are to be included under Section 124.63.

(e) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (Section 124.7) or fact sheet (Section 124.8), and shall be based on the administrative record (Section 124.9), publicly noticed (Section 124.10) and made available for public comment (Section 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (Section 124.12), issue a final decision (Section 124.15) and respond to comments (Section 124.17). For RCRA, UIC or PSD permits, an appeal may be taken under Section 124.19 and, for NPDES permits, an appeal may be taken under Section 124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under § 124.8.

§ 124.7 Statement of basis.

EPA shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

§ 124.8 Fact sheet.

(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)

(a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every 404 and NPDES general permit (§§ 233.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(7) Name and telephone number of a person to contact for additional information.

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

§ 124.9 Administrative record for draft permits when EPA is the permitting authority.

(a) The provisions of a draft permit prepared by EPA under § 124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under § 124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

(c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

§ 124.10 Public notice of permit actions and public comment period.

(a) *Scope.* (1) The Director shall given public notice that the following sections have occurred:

(i) A permit application has been tentatively denied under Section 124.6(b);

(ii) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* A draft permit has been prepared under Section 124.6(d);

(iii) *(Applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA)).* A hearing has been scheduled under Section 124.12, Subpart E, or Subpart F;

(iv) An appeal has been granted under Section 124.19(c);

(v) *(Applicable to State programs, see Section 233.26 (404)).* A State section 404 application has been received in cases when no draft permit will be prepared (see Section 233.39); or

(vi) An NPDES new source determination has been made under Section 122.29.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) *Timing (applicable to State programs, see Sections 123.25 (NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA)).* (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR Part 6, Subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) *Methods (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);

(i) The applicant (except for NPDES and 404 general permits when there is no applicant);

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States;

(iv) For NPDES and 404 permits only, any State agency responsible for plan

development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;

(vi) For 404 permits only, any reasonably ascertainable owner of property adjacent to the regulated facility or activity and the Regional Director of the Federal Aviation Administration if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations;

(vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(viii) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(2) For major permits and NPDES and 404 general permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES general permits, in the **Federal Register**;

[Note.—The Director is encouraged to provide as much notice as possible of the NPDES or 404 draft general permit to the facilities or activities to be covered by the general permit.]

(3) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; *and*

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) *Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) *All public notices.* All public notices issued under this Part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;

(iii) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(vi) For EPA-issued permits, the location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record.

(vii) For NPDES permits only, a general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared.

(viii) For 404 permits only,

(A) The purpose of the proposed activity (including, in the case of fill material, activities intended to be conducted on the fill), a description of the type, composition, and quantity of materials to be discharged and means of conveyance; and any proposed conditions and limitations on the discharge;

(B) The name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general discription of the site of each proposed discharge and the portions of the site and the discharges which are within State regulated waters;

(C) A description of the anticipated environmental effects of activities conducted under the permit;

(D) References to applicable statutory or regulatory authority; and

(E) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water.

(ix) Any additional information considered necessary or proper.

(2) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 124.12, Subpart E, or Subpart F shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(iv) For 404 permits only, a summary of major issues raised to date during the public comment period.

(e) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1)(i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any).

§ 124.11 Public comments and requests for public hearings.

(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)

During the public comment period provided under § 124.10, any interested person may submit written comments on the draft permit or the permit application for 404 permits when no draft permit is required (see § 233.39) and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17.

§ 124.12 Public hearings.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* (1) The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(2) The Director may also hold a public hearing at his or her discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision;

(3) For RCRA permits only, (i) the Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under § 124.10(b)(1); (ii) whenever possible the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility;

(4) Public notice of the hearing shall be given as specified in § 124.10.

(b) Whenever a public hearing will be held and EPA is the permitting authoriy, the Regional Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) At his or her discretion, the Regional Administrator may specify that RCRA and UIC permits be processed under the procedures in Subpart F.

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under § 124.10. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they should be freely established under § 124.10 to the extent they appear necessary.)

§ 124.14 Reopening of the public comment period.

(a) If any data information or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 124.6;

(2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under § 124.8 and reopen the comment period under § 124.14; or

(3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(c) For RCRA, UIC, or NPDES permits, the Regional Administrator may also, in the circumstances described above, elect to hold further proceedings under Subpart F. This decision may be combined with any of the actions enumerated in paragraph (a) of this section.

(d) Public notice of any of the above actions shall be issued under § 124.10.

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision. The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, or PSD permit or for contesting a decision on an NPDES permit or a decision to terminate a RCRA permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision shall become effective 30 days after the service of notice of the decision under paragraph (a) of this section, unless:

(1) A later effective date is specified in the decision; or

(2) Review is requested under § 124.19 (RCRA, UIC, and PSD permits) or an evidentiary hearing is requested under § 124.74 (NPDES permit and RCRA permit terminations); or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

§ 124.16 Stays of contested permits conditions.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.19 or an NPDES permit under § 124.74 or § 124.114 is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in an evidentiary hearing on an NPDES permit under §§ 124.74, 124.82 or 124.114, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also § 124.60.

(2) Uncontested conditions which are not serverable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities, injection wells, and sources shall be identified by the Regional Administrator. All other provisions of the permit for the existing facility, injection well, or source shall remain fully effective and enforceable.

(b) *Stays based on cross effects.* (1) A stay may be granted based on the grounds that an appeal to the Administrator under § 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed

to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under § 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 124.17 Response to comments.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* The response to comments shall be available to the public.

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(e) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or an important policy consideration which the Administrator should, in his or her discretion, review.

(b) The Administrator may also decide on his or her initiative to review any condition of any RCRA, UIC, or PSD permit issued under this Part. The Administrator must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Administrator under paragraph (a) or (b) of this section shall be given as provided in § 124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) The Administrator may defer consideration of an appeal of a RCRA or UIC permit under this section until the completion of formal proceedings under Subpart E or F relating to an NPDES permit issued to the same facility or activity upon concluding that:

(1) The NPDES permit is likely to raise issues relevant to a decision of the RCRA or UIC appeals;

(2) The NPDES permit is likely to be appealed; and

(3) Either: (i) The interests of both the facility or activity and the public are not likely to be materially adversely affected by the deferral; or

(ii) Any adverse effect is outweighed by the benefits likely to result from a consolidated decision on appeal.

(e) A petition to the Administrator under paragraph (a) of this section is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final agency action.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, or PSD permit is issued or denied by EPA and agency review procedures are

exhausted. A final permit decision shall be issued by the Regional Administrator: (i) When the Administrator issues notice to the parties that review has been denied; (ii) when the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or (iii) upon the completion of remand proceedings if the proceedings are remanded, unless the Administrator's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the **Federal Register.**

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

§ 124.21 Effective date of Part 124.

(a) Except for paragraph (b) and (c) of this section, Part 124 will become effective July 18, 1980. Because this effective date will precede the processing of any RCRA or UIC permits, Part 124 will apply in its entirety to all RCRA and UIC permits.

(b) All provisions of Part 124 pertaining to the RCRA program will become effective on November 19, 1980.

(c) All provisions of Part 124 pertaining to the UIC program will become effective July 18, 1980, but shall not be implemented until the effective date of 40 CFR Part 146.

(d) This Part does not significantly change the way in which NPDES permits are processed. Since October 12, 1979, NPDES permits have been the subject to almost identical requirements in the revised NPDES regulations which were promulgated on June 7, 1979. See *44 FR 32948.* To the extent this Part changes the revised NPDES permit regulations, those changes will take effect as to all permit proceedings in progress on July 3, 1980.

(e) This part also does not significantly change the way in which PSD permits are processed. For the most part, these regulations will also apply to PSD proceedings in progress on July 18, 1980. However, because it would be disruptive to require retroactively a formal administrative record for PSD permits issued without one, §§ 124.9 and 124.18 will apply to PSD permits for which draft permits were prepared after the effective date of these regulations.

Subpart B—Specific Procedures Applicable to RCRA Permits—[Reserved]

Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Definitions applicable to PSD permits.

Whenever PSD permits are processed under this Part, the following terms shall have the following meanings:

"Administrator," "EPA," and "Regional Administrator" shall have the meanings set forth in § 124.2, except when EPA has delegated authority to administer those regulations to another agency under the applicable subsection of 40 CFR § 52.21, the term "EPA" shall mean the delegate agency and the term "Regional Administrator" shall mean the chief administrative officer of the delegate agency.

"Application" means an application for a PSD permit.

"Appropriate Act and Regulations" means the Clean Air Act and applicable regulations promulgated under it.

"Approved program" means a State implementation plan providing for issuance of PSD permits which has been approved by EPA under the Clean Air Act and 40 CFR Part 51. An "approved State" is one administering an "approved program." "State Director" as used in § 124.4 means the person(s) responsible for issuing PSD permits under an approved program, or that person's delegated representative.

"Construction" has the meaning given in 40 CFR 52.21.

"Director" means the Regional Administrator.

"Draft permit" shall have the meaning set forth in § 124.2.

"Facility or activity" means a "major PSD stationary source" or "major PSD modification."

"Federal Land Manager" has the meaning given in 40 CFR 52.21.

"Indian Governing Body" has the meaning given in 40 CFR 52.21.

"Major PSD modification" means a "major modification" as defined in 40 CFR 52.21.

"Major PSD stationary source" means a "major stationary source" as defined in 40 CFR 52.21(b)(1).

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under 40 CFR 52.21 or by an approved State.

"Permit" or "PSD permit" means a permit issued under 40 CFR 52.21 or by an approved State.

"Person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.

"Regulated activity" or "activity subject to regulation" means a "major PSD stationary source" or "major PSD modification."

"Site" means the land or water area upon which a "major PSD stationary source" or "major PSD modification" is physically located or conducted, including but not limited to adjacent land used for utility systems; as repair, storage, shipping or processing areas; or otherwise in connection with the "major PSD stationary source" or "major PSD modification."

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 124.42 Additional procedures for PSD permits affecting Class I areas.

(a) The Regional Administrator shall provide notice of any permit application for a proposed major PSD stationary source or major PSD modification the emissions from which would affect a Class I area to the Federal Land Manager, and the Federal official charged with direct responsibility for management of any lands within such area. The Regional Administrator shall provide such notice promptly after receiving the application.

(b) Any demonstration which the Federal Land Manager wishes to present under 40 CFR § 52.21(q)(3), and any variances sought by an owner or operator under § 52.21(q)(4) shall be submitted in writing, together with any necessary supporting analysis, by the end of the public comment period under §§ 124.10 or 124.118. (40 CFR 52.21(q)(3) provides for denial of a PSD permit to a facility or activity when the Federal Land Manager demonstrates that its emissions would adversely affect a Class I area even though the applicable increments would not be exceeded. 40 CFR 52.21(q)(4) conversely authorizes

EPA, with the concurrence of the Federal Land Manager and State responsible, to grant certain variances from the otherwise applicable emission limitations to a facility or activity whose emissions would affect a Class I area.)

(c) Variances authorized by 40 CFR 52.21 (q)(5) through (q)(7) shall be handled as specified in those subparagraphs and shall not be subject to this Part. Upon receiving appropriate documentation of a variance properly granted under any of these provisions, the Regional Administrator shall enter the variance in the administrative record. Any decisions later made in proceedings under this Part concerning that permit shall be consistent with the conditions of that variance.

Subpart D—Specific Procedures Applicable to NPDES Permits

§ 124.51 Purpose and scope.

(a) This Subpart sets forth additional requirements and procedures for decisionmaking for the NPDES program.

(b) Decisions on NPDES variance requests ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures as the basic permit.

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of Part 122, Subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ 122.24), separate storm sewers (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

§ 124.53 State certification.

(a) Under CWA section 401(a)(1), EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) Applications received without a State certification shall be forwarded by the Regional Administrator to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of a draft permit;

(2) A statement that EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.55, or waived its right to certify; and

(3) A statement that the State will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time not to exceed 60 days from the date the draft permit is mailed to the certifying State agency unless the Regional Administrator finds that unusual circumstances require a longer time.

(d) State certification shall be granted or denied within the reasonable time specified under paragraph (c)(3) of this section. The State shall send a notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(e) State certification shall be in writing and shall include:

(1) Conditions which are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law;

(2) When the State certifies a draft permit instead of a permit application, any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition; and

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.

(a) When an application for a permit incorporating a variance request under CWA section 301(h) is submitted to a State, the appropriate State official shall either:

(1) Deny the request for the CWA section 301(h) variance (and so notify the applicant and EPA) and, if the State is an approved NPDES State and the permit is due for reissuance, process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of § 124.53 to the Regional Administrator.

(b) When EPA issues a tentative decision on the request for a variance under CWA section 301(h), and no certification has been received under paragraph (a) of this section, the Regional Administrator shall forward the tentative decision to the State in accordance with § 124.53(b) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) of this section within such reasonable time, certification shall be waived and the State shall be deemed to have concurred in the issuance of a CWA section 301(h) variance.

(c) Any certification provided by a State under paragraph (a)(2) of this section shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the permit incorporating a section 301(h) variance subject to any conditions specified therein by the State. CWA section 301(h) certification and concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process; States must specify any conditions required by State law, including water quality standards, in the initial certification.

§ 124.55 Effect of State certification.

(a) When certification is required under CWA section 401(a)(1) no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates the requirements specified in the certification under § 124.53(d)(1) and (2).

(b) If there is a change in the State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate State board or agency stays, vacates, or remands a certification, a State which has issued a certification under § 124.53 may issue a modified certification or

notice of waiver and forward it to EPA. If the modified certification is received before final agency action on the permit, the permit shall be consistent with the more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final agency action on the permit, the Regional Administrator may modify the permit on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.

(c) A State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition. The Regional Administrator shall disregard any such certification conditions, and shall consider those conditions or denials as waivers of certification.

(d) A condition in a draft permit may be changed during agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such changes shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

(f) Nothing in this section shall affect EPA's obligation to comply with § 122.47. See CWA section 301(b)(1)(C).

§ 124.56 Fact sheets.

(Applicable to State programs, see § 123.25 (NPDES)).

In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under § 122.4 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e);

(ii) Limitations on internal waste streams under § 122.45(i); or

(iii) Limitations on indicator pollutants under §125.3(g).

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge described in the application; and

(d) For EPA-issued NPDES permits, the requirements of any State certification under § 124.53.

§ 124.57 Public notice.

(a) *Section 316(a) requests (applicable to State programs, see section 123.25).* In addition to the information required under section 124.10(d)(1), public notice to an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under section 122.21(1) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA sections 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306; and

(2) A statement that a section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(3) If the applicant has filed an early screening request under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

(b) *Evidentiary hearings under Subpart E.* In addition to the information required under § 124.10(d)(2), public notice of a hearing under Subpart E shall include:

(1) Reference to any public hearing under § 124.12 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) A statement of the following procedures:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of the notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administative decision.

(c) *Non-adversary panel procedures under Subpart F.* (1) In addition to the information required under § 124.10(d)(2), mailed public notice of a draft permit to be processed under Subpart F shall include a statement that any hearing shall be held under Subpart F (panel hearing).

(2) Mailed public notice of a panel hearing under Subpart F shall include:

(i) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(ii) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(iii) The due date for filing a written request to participate in the hearing under § 124.117; and

(iv) The due date for filing comments under § 124.118.

§ 124.58 Special procedures for EPA-issued general permits for point sources other than separate storm sewers.

(a) The Regional Administrator shall send a copy of the draft general permit and the administrative record to the Deputy Assistant Administrator for Water Enforcement during the public comment period.

(b) The Deputy Assistant Administrator for Water Enforcement shall have 30 days from receipt of the draft general permit, or shall have until the end of the public comment period, whichever is later, to comment upon, object to, or make recommendations with respect to the draft general permit.

(c) If the Deputy Assistant Administrator for Water Enforcement objects to a draft general permit within the period specified in paragraph (b) of this section, the Regional Administrator shall not issue the final general permit until the Deputy Assistant Administrator for Water Enforcement concurs in writing with the conditions of the general permit.

§ 124.59 Conditions requested by the Corps of Engineers and other government agencies.

(Applicable to State programs, see § 123.25 (NPDES)).

(a) If during the comment period for an NPDES draft permit, the District Engineer advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If

the District Engineer advised the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of § 122.47 and of the CWA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

§ 124.60 Issuance and effective date and stays of NPDES permits.

In addition to the requirements of §124.15, the following provisions apply to NPDES permits and to RCRA or UIC permits to the extent those permits may have been consolidated with an NPDES permit in a formal hearing:

(a)(1) If a request for a formal hearing is granted under § 124.75 or § 124.114 regarding the initial permit issued for a new source, a new discharger, or a recommencing discharger, or if a petition for review of the denial of a request for a formal hearing with respect to such a permit is timely filed with the Administrator under § 124.91, the applicant shall be without a permit pending final Agency action under § 124.91.

(2) Wherever a source subject to this paragraph has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin operation before final agency action if it complies with all conditions of that final permit during the period until final agency action. The Presiding Officer may grant such a motion in any case where no party opposes it, or, if a party opposes the motion, where the source demonstrates that (i) it is likely to prevail on the merits; (ii) irreparable harm to the environment will not result pending final agency action if it is allowed to commence operations before final agency action; and (iii) the public interest requires that the source be allowed to commence operations. All the conditions of any permit covered by that order shall be fully effective and enforceable.

(b) The Regional Administrator, at any time prior to the rendering of an initial decision in a formal hearing on a permit, may withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under this section shall remain in effect.

(c)(1) If a request for a formal hearing is granted in whole or in part under § 124.75 regarding a permit for an existing source, or if a petition for review of the denial of a request for a formal hearing with respect to that permit is timely filed with the Administrator under § 124.91, the force and effect of the contested conditions of the final permit shall be stayed. The Regional Administrator shall notify, in accordance with § 124.75, the discharger and all parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger.

(2) When effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) When a combination of technologies is contested, but a portion of the combination is not contested, that portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) Uncontested conditions, if inseverable from a contested condition, shall be considered contested.

(5) Uncontested conditions shall become enforceable 30 days after the date of notice under paragraph (c)(1) of this section granting the request. If, however, a request for a formal hearing on a condition was denied and the denial is appealed under § 124.91, then that condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing.

(6) Uncontested conditions shall include:

(i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures;

(ii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iii) When the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

(iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(d) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (c)(1) of this section it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(e) When a formal hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit as well as uncontested provisions of the new permit, shall continue fully enforceable and effective until final agency action under § 124.91. (See § 122.6) Upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit.

(f) When issuing a finally effective NPDES permit the conditions of which were the subject of a formal hearing under Subparts E or F, the Regional Administrator shall extend the permit compliance schedule to the extent

required by a stay under this section provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than 5 years after issuance under § 124.15(a).

Note.—Extensions of compliance schedules under § 124.60(f)(2) will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the CWA where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, when application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.

(g) For purposes of judicial review under CWA section 509(b), final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under Subparts E and F and § 124.91. Any party which neglects or fails to seek review under § 124.91 thereby waives its opportunity to exhaust available agency remedies.

§ 124.61 Final environmental impact statement.

No final NPDES permit for a new source shall be issued until at least 30 days after the date of issuance of a final environmental impact statement if one is required under 40 CFR § 6.805.

§ 124.62 Decision on variances.

(*Applicable to State programs, see § 123.25 (NPDES)*).

(a) The Director may grant or deny requests for the following variances (subject to EPA objection under § 123.44 for State permits):

(1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under CWA section 301(c);

(3) A variance based upon certain water quality factors under CWA section 301(g); or

(4) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Deputy Assistant Administrator for Water Enforcement with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the State Director, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance request submitted under paragraph (c) of this section. If the Deputy Assistant Administrator approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.54.

§ 124.63 Procedures for variances when EPA is the permitting authority.

(a) In States where EPA is the permit issuing authority and a request for a variance is filed as required by § 122.21, the request shall be processed as follows:

(1) If at the time that a request for a variance is submitted the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Regional Administrator, after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.62, shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(2) If at the time that a request for a variance is filed the Regional Administrator has given notice under § 124.10 of a draft permit covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by § 124.8. However, if this will significantly delay the processing of the existing draft permit or the Regional Administrator, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the administrative dispositon of the existing draft permit shall proceed without delay.

(3) If the permit has become final and no application under § 124.3 concerning it is pending or if the variance request has been separated from a draft permit as described in paragraphs (a) (1) and (2) of this section, the Regional Administrator may prepare a new draft permit and give notice of it under § 124.10. This draft permit shall be accompanied by the fact sheet required by § 124.8 except that the only matters considered shall relate to the requested variance.

§ 124.64 Appeals of variances.

(a) When a State issues a permit on which EPA has made a variance decision, separate appeals of the State permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Variance decisions made by EPA may be appealed under either Subparts E or F, provided the requirements of the applicable Subpart are met. However, whenever the basic permit decision is eligible only for an evidentiary hearing under Subpart E while the variance decision is eligible only for a panel hearing under Subpart F, the issues relating to both the basic permit decision and the variance decision shall be considered in the Subpart E proceeding. No Subpart F hearing may be held if a Subpart E hearing would be held in addition. See § 124.111(b).

(c) *Stays for section 301(g) variances.* If a request for an evidentiary hearing is granted on a variance requested under CWA section 301(g), or if a petition for review of the denial of a request for the hearing is filed under § 124.91, any otherwise applicable standards and limitations under CWA section 301 shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of

pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files a bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances other than section 301(g) are governed by § 124.60.

§ 124.65 Special procedures for discharge into marine waters section 301(h).

(a) Where it is clear on the face of a section 301(h) request that the discharger is not entitled to a variance, the request shall be denied.

(b) In the case of all other section 301(h) requests the Administrator, or a person designated by the Administrator, may either:

(1) Give written authorization to a requester to submit information required by part 125, Subpart G or the final request by a date certain, not to exceed 9 months, if:

(i) The requester proposes to submit new or additional information and the request demonstrates that:

(A) The requester made consistent and diligent efforts to obtain such information prior to submitting the final request;

(B) The failure to obtain such information was due to circumstances beyond the control of the requester, and

(C) Such information can be submitted promptly; or

(ii) The requester proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of a requester to submit additional information by a certain date, not to exceed 9 months, if such information is necessary to issue a tentative decision under § 124.62(a)(1).

All additional information submitted under this paragraph which is timely received, shall be considered part of the original request.

(c) The otherwise applicable sections of this Part apply to draft permits incorporating section 301(h) variance, except that because 301(h) permits may only be issued by EPA, the terms "Administrator or a person designated by the Regional Administrator" shall be substituted for the term "Director" as appropriate.

(d) No permit subject to a 301(h) variance shall be issued unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.54. In the case of a permit issued to a requester in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued permit subject to a 301(h) variance; and

(2) Co-sign the permit subject to the 301(h) variance, if the Director has indicated an intent to do so in the written concurrence.

§ 124.66 Special procedures for decisions on thermal variances under section 316(a).

(a) Except as provided in § 124.65, the only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under §§ 124.15 and 124.60 are whether alternative effluent limitations would be justified under CWA section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Permit applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their permit applications are filed under § 122.21. The Regional Administrator will then decide whether or not to make an early decision. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary or panel hearing under Subparts E or F.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not the CWA section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Regional Administrator may issue a permit under § 124.15 for a term up to 5 years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by law. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a) after conducting such studies as are required under 40 CFR Part 125, Subpart H. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its CWA section 316(a) variance request is finally approved.

(c) Any proceeding held under paragraph (a) of this section shall be publicly noticed as required by § 124.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Regional Administrator defers the decision under CWA section 316(a), any decision under section 316(b) may be deferred.

Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

§ 124.71 Applicability.

(a) The regulations in this Subpart govern all formal hearings conducted by EPA under CWA section 402, except for those conducted under Subpart F. They also govern all evidentiary hearings conducted under RCRA section 3008 in connection with the termination of a RCRA permit. This includes termination of interim status for failure to furnish information needed to make a final decision. A formal hearing is available to challenge any NPDES permit issued under §124.15 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as of right in further agency proceedings. They may instead either challenge the general permit in court, or apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 and then request a formal hearing on the issuance or denial of an individual permit. (The Regional Administrator also has the discretion to use the procedures of Subpart F for general permits. See § 124.111).

(b) In certain cases, evidentiary hearings under this Subpart may also be held on the conditions of UIC permits, or of RCRA permits which are being issued, modified, or revoked and reissued, rather than terminated or suspended. This will occur when the conditions of the UIC or RCRA permit in question are closely linked with the conditions of an NPDES permit as to which an evidentiary hearing has been granted. See § 124.74(b)(2). Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under this Part. See § 122.29.

(c) PSD permits may never be subject to an evidentiary hearing under this Subpart. Section 124.74(b)(2)(iv) provides only for consolidation of PSD

permits with other permits subject to a panel hearing under Subpart F.

§ 124.72 Definitions.

For the purpose of this Subpart, the following definitions are applicable:

"Hearing Clerk" means The Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

"Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(a) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions, or which is factually related to such a case.

(b) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that the delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides such action would be appropriate. The Administrator, in deciding a case, may consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

"Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under § 124.79 or § 124.117 has been granted.

"Presiding Officer" for the purposes of this Subpart means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing. Under Subpart F other persons may also serve as hearing officers. See § 124.119.

"Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents, and other materials relating to hearings under this Subpart.

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with the Agency under this Subpart shall be filed with the Regional Hearing Clerk, unless otherwise provided by regulation. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any submission shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding. This requirement does not apply to State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other generally available reference material which may be incorporated by reference. Any party incorporating materials by reference shall provide copies upon request by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted or the relevant portions shall be indicated.

(4) Failure to comply with the requirements of this section or any other requirement in this Subpart may result in the noncomplying portions of the submission being excluded from consideration. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Regional Hearing Clerk to return the submission, together with a reference to the applicable regulations. A party whose materials have been rejected has 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer finds good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address, and the representative capacity of the person making the submission.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to reconsider or contest that decision. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by § 124.73 unless they are already part of the administrative record required by § 124.18.

Note.—This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial the Administrator is authorized by § 124.91(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA or UIC permit. PSD permits may never be made part of an evidentiary hearing under Subpart E. This request is subject to all the requirements of paragraph (b)(1) of this section and in addition will be granted only if:

(i) Processing of the RCRA or UIC permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.4;

(ii) The standards for granting a hearing on the NPDES permit are met;

(iii) The resolution of the NPDES permit issues is likely to make necessary or appropriate modification of the RCRA or UIC permit; and

(iv) If a PSD permit is involved, a permittee who is eligible for an evidentiary hearing under Subpart E on his or her NPDES permit requests that the formal hearing be conducted under the procedures of Subpart F and the Regional Administrator finds that consolidation is unlikly to delay final permit issuance beyond the PSD one-year statutory deadline.

(c) These requests shall also contain:

(1) The name, mailing address, and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party granted by the Presiding Officer, or upon order of the Presiding Officer *sua sponte* without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants, and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the CWA.

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in Subpart F. An applicant may make such a request even if the proceeding does not constitute "initial licensing" as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by, or considered at, the evidentiary hearing. The Regional Administrator shall specify these conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for an evidentiary hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single evidentiary hearing.

(f) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

§ 124.75 Decision on request for a hearing.

(a)(1) Within 30 days following the expiration of the time allowed by § 124.74 for submitting an evidentiary hearing request, the Regional Administrator shall decide the extent to which, if at all, the request shall be granted, provided that the request conforms to the requirements of § 124.74, and sets forth material issues of fact relevant to the issuance of the permit.

(2) When an NPDES permit for which a hearing request has been granted constitutes "initial licensing" under § 124.111, the Regional Administrator may elect to hold a formal hearing under the procedures of Subpart F rather than under the procedures of this Subpart even if no person has requested that Subpart F be applied. If the Regional Administrator makes such a decision, he or she shall issue a notice of hearing under § 124.116. All subsequent proceedings shall then be governed by §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit.

(3) Whenever the Regional Administrator grants a request made under § 124.74(c)(8) for a formal hearing under Subpart F on an NPDES permit that does not constitute an intitial license under § 124.111, the Regional Administrator shall issue a notice of hearing under § 124.116 including a statement that the permit will be processed under the procedures of Subpart F unless a written objection is received within 30 days. If no valid objection is received, the application shall be processed in accordance with §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit. If a valid objection is received, this Subpart shall be applied instead.

(b) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is subject to review by the Administrator under § 124.91.

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues or introduce new information shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15; or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced. Good cause exists for the introduction of data available on operation authorized under § 124.60(a)(2).

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.57(b) and by mailing a copy to all persons who commented on the draft permit, testified at the public hearing, or submitted a request for a hearing. Before the issuance of the notice, the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate, and present the evidence, arguments, and position of the Agency in the evidentiary hearing or nonadversary panel hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he or she does not designate himself or herself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a nonadversary panel hearing, the decisional body shall also include the panel members, whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or

(B) The Agency trial staff, *if* all parties have received prior written notice of the proposed communications and have been given the opportunity to be present and participate therein.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant in the hearing and any other interested person not employed by the Agency at the time of the communications, and any attorney of record for those persons.

(b)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body, an *ex parte* communication on the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff, an *ex parte* communication on the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or who knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all oral responses.

(c) Whenever any member of the decisionmaking body receives an *ex parte* communication knowingly made or knowingly caused to be made by a party or representative of a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the CWA, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(d) The prohibitions of this section begin to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final agency action.

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication, or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant requests that meet the requirements of §§ 124.74 and 124.76.

(b) After the expiration of the time prescribed in paragraph (a) of this section any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for the proposed intervention. No factual or legal issues, besides those raised by timely hearing requests, may be proposed except for good cause. A motion for leave to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Presiding Officer shall grant the motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties; and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall also serve a copy of each submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgment of service by the person served or a certificate of service citing the date, place, time, and manner of service and the names of the persons served.

(d) The Regional Hearing Clerk shall maintain and furnish a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives to any person upon request.

§ 124.81 Assignment of Administrative Law Judge.

No later than the date of mailing, publication, or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall assign an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator, or Presiding Officer has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full, and fair hearing, any party or issues may be severed and heard in a separate proceeding.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the

submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer may call a prehearing conference to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a) of this section, the following matter may be considered:

(1) Simplification, clarification, amplification, or limitation of the issues.

(2) Admission of facts and of the genuineness of documents, and stipulations of facts.

(3) Objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.19 shall be received in evidence subject to the provisions of § 124.85(d)(2). At any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency, or materiality.

(4) Matters subject to official notice may be taken.

(5) Scheduling as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) Submission of narrative statements of position on each factual issue in controversy;

(ii) Submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports, and any other type of written material) in support of those statements; or

(iii) Requests by any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) Grouping participants with substantially similar interests to eliminate redundant evidence, motions, and objections.

(7) Such other matters that may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or at some other reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of the expert and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.18 shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony, and other evidence may be added or amended upon order of the Presiding Officer for good cause shown. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16).)

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at each prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown the motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a countermotion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer may set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs, or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all factual issues are decided by summary determination, no hearing will be held and the Presiding Officer shall prepare an initial decision under § 124.89. If summary determination is denied or if partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

(f) Should it appear from the affidavits of a party opposing a motion for summary determination that he or she cannot for reasons stated present, by affidavit or otherwise, facts essential to justify his or her opposition, the Presiding Officer may deny the motion or order a continuance to allow additional affidavits or other information to be obtained or may make such other order as is just and proper.

§ 124.85 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

Note.—In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments, should adequately discharge this burden.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged condition of a final permit.

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different conditions or requirements; or

(B) The deletion of those conditions or requirements; or

(ii) That the denial or issuance of a permit is otherwise improper or invalid, shall have the burden of going forward to present an affirmative case at the conclusion of the Agency case on the challenged requirement.

(b) The Presiding Officer shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the Presiding Officer may:

(1) Arrange and issue notice of the date, time, and place of hearings and conferences;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this Subpart for the maintenance of order at the hearing and for the expeditious, fair, and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated as confidential business information in accordance with §§ 122.7 (NPDES) and 270.12 (RCRA) and 40 CFR Part 2; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an evidentiary hearing. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In deciding whether or not to allow cross-examination, the Presiding Officer shall consider the likelihood of clarifying or resolving a disputed issue of material fact compared to other available methods. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the issues. Written testimony shall be prepared in narrative form.

(d)(1) The Presiding Officer shall admit all relevant, competent, and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record required by § 124.18 shall be admitted and received in evidence. Upon motion by any party the Presiding Officer may direct that a witness be provided to sponsor a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards in § 124.85(b)(3) have been met, shall direct the appropriate party to produce the witness for cross-examination. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight accorded the appropriate portion of the record.

[Note.—Receiving the administrative record into evidence automatically serves several purposes: (1) it documents the prior course of the proceedings; (2) it provides a record of the views of affected persons for consideration by the agency decisionmaker; and (3) it provides factual material for use by the decisionmaker.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof, by means of a brief statement on the record describing the testimony excluded.

(4) When two or more parties have substantially similar interests and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of those parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

§ 124.86 Motions.

(a) Any party may file a motion (including a motion to dismiss a particular claim on a contested issue) with the Presiding Officer on any matter relating to the proceeding. All motions shall be in writing and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any part to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional 10 days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.4, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory provision issued or made available after the issuance of the permit under § 124.15. The Presiding Officer shall grant any motion to apply a new statutory provision unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of CWA, and when no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the hearing record and shall be available to the public except as provided in §§ 122.7 (NPDES) and 270.12 (RCRA), in the Office of the Regional Hearing Clerk, as soon as it is received in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and

thereupon transcribed. After the hearing, the reporter shall certify and file with the Regional Hearing Clerk:

(1) The original of the transcript, and

(2) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than 30 days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions of law and a brief in support thereof. Briefs shall contain appropriate references to the record. A copy of these findings, conclusions, and brief shall be served upon all the other parties and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties, and any interlocutory decisions under § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision 30 days after its service unless within that time:

(1) A party files a petition for review by the Administrator pursuant to § 124.91; or

(2) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.91.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.91. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within 10 days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion, and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding; or

(ii) A review after the final order is issued will be inadequate or ineffective.

(c) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within that time, the appeal shall be automatically dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within 5 days after receipt of notification that the Presiding Officer has refused to certify an order or ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(d) In exceptional circumstances, the Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer.

(e) The failure to request an interlocutory appeal shall not prevent taking exception to an order or ruling in an appeal under § 124.91.

§ 124.91. Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or a denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in the initial decision or denial, or any adverse order or ruling to which the party objected during the hearing, by filing with the Administrator notice of appeal and petition for review. The petition shall include a statement of the supporting reasons and, when appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should review.

(2) Within 15 days after service of a petition for review under paragraph (c)(1) of this section, any other party to the proceeding may file a responsive petition.

(3) Policy decisions made or legal conclusions drawn in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 days of an initial decision or denial or a request for an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within 7 days after the Administrator has decided under this section to review an initial decision or the denial of a request for an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c)(1) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) of this section to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(2) Upon granting a petition for review, the Regional Hearing Clerk shall promptly forward a copy of the record to the Judicial Officer and shall retain a complete duplicate copy of the record in the Regional Office.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Administrator may summarily affirm without opinion and initial decision or the denial of a request for an evidentiary hearing.

(e) A petition to the Administrator under paragraph (a) of this section for review of any initial decision or the

denial of an evidentiary hearing is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(f) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Administrator denies review or summarily affirms without opinion as provided in § 124.91(d), then the initial decision or denial becomes the final Agency action and occurs upon the service of notice of the Administrator's action.

(2) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's original decision, shall be reissued and served upon all parties to the appeal.

(3) If the Administrator issues a decision remanding the proceeding, then final Agency action occurs upon completion of the remanded proceeding, including any appeals to the Administrator from the results of the remanded proceeding.

(g) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of the petitioner's brief. The petitioner then may file a reply brief within 14 days of service of the responsive brief. Any person may file an *amicus brief* for the consideration of the Administrator within the same time periods that govern reply briefs. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of a request for an evidentiary hearing, the Administrator shall notify the parties of the schedule for filing briefs.

(h) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to the issues specified under paragraph (a) of this section, except that after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

Subpart F—Non-Adversary Panel Procedures

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to complete exclusion of, Subparts A through E in the following cases:

(1)(i) In any proceedings for the issuance of any NPDES permit which constitutes "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. If an NPDES draft permit is processed under this Subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.4 shall likewise be processed under this Subpart, except for PSD permits when the Regional Administrator makes a finding under § 124.4(e) that consolidation would be likely to result in missing the one year statutory deadline for issuing a final PSD permit under the CAA.

(ii) "Initial licensing" includes both the first decision on an NPDES permit applied for by a discharger that has not previously held one and the first decision on any variance requested by a discharger.

(iii) To the extent this Subpart is used to process a request for a variance under CWA section 301(h), the term "Administrator or a person designated by the Administrator" shall be substituted for the term "Regional Administrator".

(2) In any proceeding for which a hearing under this Subpart was granted under § 124.75 following a request for a formal hearing under § 124.74. See §§ 124.74(c)(8) and 124.75(a)(2).

(3) Whenever the Regional Administrator determines as a matter of discretion that the more formalized mechanisms of this Subpart should be used to process draft NPDES general permits (for which evidentiary hearings are unavailable under § 124.71), or draft RCRA or draft UIC permits.

(b) EPA shall not apply these procedures to a decision on a variance where Subpart E proceedings are simultaneously pending on the other conditions of the permit. See § 124.64(b).

§ 124.112 Relation to other subparts.

The following provisions of Subparts A through E apply to proceedings under this Subpart:

(a)(1) §§ 124.1 through 124.10.

(2) § 124.14 "Reopening of comment period."

(3) § 124.16 "Stays of contested permit conditions."

(4) § 124.20 "Computation of time."

(b)(1) § 124.41 "Definitions applicable to PSD Permits."

(2) § 124.42 "Additional procedures for PSD permits affecting Class I Areas."

(c)(1) §§ 124.51 through 124.56.

(2) § 124.57(c) "Public notice."

(3) §§ 124.58 through 124.66.

(d)(1) § 124.72 "Definitions," except for the definition of "Presiding Officer," see § 124.119.

(2) § 124.73 "Filing."

(3) § 124.78 "*Ex parte* communications."

(4) § 124.80 "Filing and service."

(5) § 124.85(a) (Burden of proof).

(6) § 124.86 "Motions."

(7) § 124.87 "Record of hearings."

(8) § 124.90 "Interlocutory appeal."

(e) In the case of permits to which this Subpart is made applicable after a final permit has been issued under § 124.15, either by the grant under § 124.75 of a hearing request under § 124.74, or by notice of supplemental proceedings under § 124.14, §§ 124.13 and 124.76 shall also apply.

§ 124.113 Public notice of draft permits and public comment period.

Public notice of a draft permit under this Subpart shall be given as provided in §§ 124.10 and 124.57. At the discretion of the Regional Administrator, the public comment period specified in this notice may include an opportunity for a public hearing under § 124.12.

§ 124.114 Request for hearing.

(a) By the close of the comment period under § 124.113, any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at the hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall notify each person requesting the hearing and the applicant, and shall provide public notice under § 124.57(c). If the Regional Administrator determines that a request does not meet the requirements of paragraph (a) of this section or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of that determination on all persons requesting the hearing.

(c) The Regional Administrator may also decide before a draft permit is prepared under § 124.6 that a hearing should be held under this section. In such cases, the public notice of the draft

permit shall explicitly so state and shall contain the information required by § 124.57(c). This notice may also provide for a hearing under § 124.12 before a hearing is conducted under this section.

§ 124.115 Effect of denial of or absence of request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the Regional Administrator shall then prepare a recommended decision under § 124.124. Any person whose hearing request has been denied may then appeal that recommended decision to the Administrator as provided in § 124.91.

§ 124.116 Notice of hearing.

(a) Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.57(c). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the Recommended decision. The mailed notice shall also allow the participants at least 30 days to submit written comments as provided under § 124.118.

(b) The Regional Administrator may also give notice of a hearing under this section at the same time as notice of a draft permit under § 124.113. In that case the comment periods under §§ 124.113 and 124.118 shall be merged and held as a single public comment period.

(c) The Regional Administrator may also give notice of hearing under this section in response to a hearing request under § 124.74 as provided in § 124.75.

§ 124.117 Request to participate in hearing.

(a) Persons desiring to participate in any hearing noticed under this section, shall file a request to participate with the Regional Hearing Clerk before the deadline set forth in the notice of the grant of the hearing. Any person filing such a request becomes a party to the proceedings within the meaning of the Administrative Procedure Act. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) The requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than 2 weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that party. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They shall be restricted either to points that could not have been made in written comments, or to emphasize points which are made in the comments, but which the party believes can more effectively be argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that the party will be prejudiced if required to submit the comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other parties under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1)(i) Before giving notice of a hearing under this Subpart in a proceeding involving an NPDES permit, the Regional Administrator shall request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge shall then make the assignment.

(ii) If all parties to such a hearing waive in writing their statutory right to have an Administrative Law Judge named as the Presiding Officer in a hearing subject to this subparagraph the Regional Administrator may name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(2) Before giving notice of a hearing under this Subpart in a proceeding which does not involve an NPDES permit or a RCRA permit termination, the Regional Administrator shall either:

(i) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge may thereupon make such an assignment if he concludes that the other duties of his office allow, or

(ii) Name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer;

(iii) If the Chief Administrative Law Judge declines to name an Administrative Law Judge as Presiding Officer upon receiving a request under paragraph (a)(2)(i) of this section, the Regional Administrator shall name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83 (b) and (c), and;

(2) To receive relevant evidence, provided that all comments under §§ 124.113 and 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.9 or in § 124.18 as the case may be shall be received in evidence, and

(3) Either upon motion or *sua sponte*, to change the date of the hearing under § 124.120, or to recess such a hearing until a future date. In any such case the notice required by § 124.10 shall be given.

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise or responsibility in areas related to the hearing issue, at least two of whom shall not have taken part in writing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership, at the discretion of the Regional Administrator, may change or may include persons not employed by EPA.

(b) At the time of the hearing notice under § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the

Regional Administrator shall file with the Regional Hearing Clerk the name and address of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. The designated persons shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the hearing the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except when the Presiding Officer determines, after consultation with the panel, that the cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions.

(e) At any time before the close of the hearing, any party may submit to the Presiding Officer written questions specifically directed to any person appearing or testifying in the hearing. The Presiding Officer, after consultation with the panel may, at his sole discretion, ask the written question so submitted.

(f) Within 10 days after the close of the hearing, any party shall submit such additional written testimony, affidavits, information, or material as they consider relevant or which the panel may request. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

§ 124.121 Opportunity for cross-examination.

(a) Any party to a panel hearing may submit a written request to cross-examine any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact. This shall include an explanation of why the questions at issue are factual rather than of an analytical or policy nature, the extent to which they are in dispute in light of the then-existing record, and the extent to which they are material to the decision on the application; and

(2) The person(s) to be cross-examined, and an estimate of the time necessary to conduct the cross-examination. This shall include a statement explaining how the cross-examination will resolve the disputed issues of material fact.

(b) After receipt of all motions for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each request. Orders granting requests for cross-examination shall be served on all parties and shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time, and place of the supplementary hearing at which cross-examination shall take place.

(6) In issuing this order, the Presiding Officer may determine that two or more parties have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In that case, the order shall simply assign time for cross-examination without further identifying the representative. If the designated parties fail to choose a single representative, the Presiding Officer may divide the assigned time among the representatives or issue any other order which justice may require.

(d) The Presiding Officer and, to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(e)(1) No later than the time set for requesting cross-examination, a party may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying this request at the time he or she issues (or would have issued) an order granting or denying a request for cross-examination, under paragraph (b) of this section. If the request for an alternative method is granted, the order shall specify the alternative and any other relevant information (such as the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of the request, require alternative means of clarifying the record to be used whether or not a request to do so has been made. The party requesting cross-examination shall have one week to comment on the results of using the alternative method. After considering these comments the Presiding Officer shall issue an order granting or denying the request for cross-examination.

(f) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

The record on which the final permit shall be based in any proceeding under this Subpart consists of:

(a) The administrative record compiled under §§ 124.9 or 124.18 as the case may be;

(b) Any material submitted under § 124.78 relating to *ex parte* contacts;

(c) All notices issued under § 124.113;

(d) All requests for hearings, and rulings on those requests, received or issued under § 124.114;

(e) Any notice of hearing issued under § 124.116;

(f) Any request to participate in the hearing received under § 124.117;

(g) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113;

(h) The full transcript and other material received into the record of the panel hearing under § 124.120;

(i) Any motions for, or rulings on, cross-examination filed or issued under § 124.121;

(j) Any motions for, orders for, and the results of, any alternatives to cross-examination under § 124.121; and

(k) The full transcript of any cross-examination held.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding Officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material

issues of law, fact, or discretion; a proposed modified permit (if such person is urging that the draft or final permit be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit where appropriate. Oral argument may be held at the discretion of the Presiding Officer on motion of any party or *sua sponte*.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respect the draft or final permit should be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of that decision on each party and upon the Administrator.

§ 124.125 Appeal from or review of recommended decision.

(a)(1) Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in that decision or to any adverse order or ruling of the Presiding Officer to which that party objected, and may appeal those exceptions to the Administrator as provided in § 124.91, except that references to "initial decision" will mean recommended decision under § 124.124.

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. That final decision shall include findings of fact; conclusions regarding material issue of law, fact, or discretion, as well as reasons therefore; and a modified permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or his or her designee may consult with the Presiding Officer, members of the hearing panel, or any other EPA employee other than members of the Agency Trial Staff under § 124.78 in preparing the final decision. The Hearing Clerk shall file a copy of the decision on all parties.

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it, the recommended decision becomes the final decision of the Agency upon the expiration of the time for filing any appeals.

§ 124.128 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority under this Subpart.

(b) The failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified under this Part shall not waive or diminish any right, power, or authority of the United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified under this Part the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant that party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

Appendix A to Part 124—Guide to Decisionmaking Under Part 124

This Appendix is designed to assist in reading the procedural requirements set out in Part 124. It consists of two flow charts.

Figure 1 diagrams the more conventional sequence of procedures EPA expects to follow in processing permits under this Part. It outlines how a permit will be applied for, how a draft permit will be prepared and publicly noticed for comment, and how a final permit will be issued under the procedures in Subpart A.

This permit may then be appealed to the Administrator, as specified both in Subpart A (for RCRA, UIC, or PSD permits), or Subpart E or F (for NPDES permits). The first flow chart also briefly outlines which permit decisions are eligible for which types of appeal.

Part 124 also contains special "non-adversary panel hearing" procedures based on the "initial licensing" provisions of the Administrative Procedure Act. These procedures are set forth in Subpart F. In some cases, EPA may only decide to make those procedures applicable after it has gone through the normal Subpart A procedures on a draft permit. This process is also diagrammed in Figure 1.

Figure 2 sets forth the general procedure to be followed where these Subpart F procedures have been made applicable to a permit from the beginning.

Both flow charts outline a sequence of events directed by arrows. The boxes set forth elements of the permit process; and the diamonds indicate key decisionmaking points in the permit process.

The charts are discussed in more detail below.

Figure 1—Conventional EPA Permitting Procedures

This chart outlines the procedures for issuing permits whenever EPA does not make use of the special "panel hearing" procedures in Subpart F. The major steps depicted on this chart are as follows:

1. The permit process can begin in any one of the following ways:

a. Normally, the process will begin when a person applies for a permit under §§ 122.21 (NPDES), 144.31 (UIC), 233.4 (404), and 270.10 (RCRA) and 124.3.

b. In other cases, EPA may decide to take action on its own initiative to change a permit or to issue a general permit. This leads directly to preparation of a draft permit under §124.6.

c. In addition, the permittee or any interested person (other than for PSD permits) may request modification, revocation and reissuance or termination of a permit under §§ 122.62, 122.64 (NPDES), 144.39, 144.40 (UIC), 233.14, 233.15, (404), 270.41, 270.43 (RCRA), and 124.5.

Those requests can be handled in either of two ways:

i. EPA may tentatively decide to grant the request and issue a new draft permit for public comment, either with or without requiring a new application.

ii. If the request is denied, an informal appeal to the Administrator is available.

2. The next major step in the permit process is the preparation of a draft permit. As the chart indicates, preparing a draft permit also requires preparation of either a statement of basis (§ 124.7), a fact sheet (§ 124.5) or, compilation of an "administrative record" (§ 124.9), and public notice (§ 124.10).

3. The next stage is the public comment period (§ 124.11). A public hearing under § 124.12 may be requested before the close of the public comment period.

EPA has the discretion to hold a public hearing, even if there were no requests during the public comment period. If EPA decides to schedule one, the public comment period will be extended through the close of the hearing. EPA also has the discretion to conduct the public hearing under Subpart F panel procedures. (See Figure 2.)

The regulations provide that all arguments and factual materials that a person wishes EPA to consider in connection with a particular permit must be placed in the record by the close of the public comment period (§ 124.13).

4. Section 124.14 states that EPA, at any time before issuing a final permit decision may decide to either reopen or extend the comment period, prepare a new draft permit and begin the process again from that point, or for RCRA and UIC permits, or for NPDES permits that constitute "initial licensing", to begin "panel hearing" proceedings under Subpart F. These various results are shown schematically.

5. The public comment period and any public hearing will be followed by issuance of a final permit decision (§ 124.15). As the chart shows, the final permit must be accompanied by a response to comments (§ 124.17) and be based on the administrative record (§ 124.18).

6. After the final permit is issued, it may be appealed to higher agency authority. The exact form of the appeal depends on the type of permit involved.

a. RCRA, UIC or PSD permits standing alone will be appealed directly to the Administrator under § 124.19.

b. NPDES permits which do not involve "initial licensing" may be appealed in an evidentiary hearing under Subpart E. The regulations provide (§ 124.74) that if such a hearing is granted for an NPDES permit and if RCRA or UIC permits have been consolidated with that permit under § 124.4 then closely related conditions of those RCRA or UIC permits may be reexamined in an evidentiary hearing. PSD permits, however, may never be reexamined in a Subpart E hearing.

c. NPDES permits which do involve "initial licensing" may be appealed in a panel hearing under Subpart F. The regulations provide that if such a hearing is granted for an NPDES permit, consolidated RCRA, UIC, or PSD permits may also be reexamined in the same proceeding.

As discussed below, this is only one of several ways the panel hearing procedures may be used under these regulations.

7. This chart does not show EPA appeal procedures in detail. Procedures for appeal to the Administrator under § 124.19 are self-explanatory; Subpart F procedures are diagrammed in Figure 2; and Subpart E procedures are basically the same that would apply in any evidentiary hearing.

However, the chart at this stage does reflect the provisions of § 124.60(b), which allows EPA, even after a formal hearing has begun, to "recycle" a permit back to the draft permit stage at any time before that hearing has resulted in an initial decision.

Figure 2—Non-Adversary Panel Procedures

This chart outlines the procedures for processing permits under the special "panel hearing" procedures of Subpart F. These procedures were designed for making decisions that involve "initial licensing" NPDES permits. Those permits include the first decisions on an NPDES permit applied for by any discharger that has not previously held one, and the first decision on any statutory variance. In addition, these procedures will be used for any RCRA, UIC, or PSD permit which has been consolidated with such an NPDES permit, and may be used, if the Regional Administrator so chooses, for the issuance of individual RCRA or UIC permits. The steps depicted on this chart are as follows:

1. Application for a permit. These proceedings will generally begin with an application, since NPDES initial licensing always will begin with an application.

2. Preparation of a draft permit. This is identical to the similar step in Figure 1.

3. Public comment period. This again is identical to the similar step in Figure 1. The Regional Administrator has the opportunity to schedule an informal public hearing under § 124.12 during this period.

4. Requests for a panel hearing must be received by the end of the public comment period under § 124.113. See § 124.114.

If a hearing request is denied, or if no hearing requests are received, a recommended decision will be issued based on the comments received. The recommended decision may then be appealed to the Administrator. See § 124.115.

5. If a hearing is granted, notice of the hearing will be published in accordance with § 124.116 and will be followed by a second comment period during which requests to participate and the bulk of the remaining evidence for the final decision will be received (§§ 124.117 and 124.118).

The regulations also allow EPA to move directly to this stage by scheduling a hearing when the draft permit is prepared. In such cases the comment period on the draft permit under § 124.113 and the prehearing comment period under § 124.118 would occur at the same time. EPA anticipates that this will be the more frequent practice when permits are processed under panel procedures.

This is also a stage at which EPA can switch from the conventional procedures diagramed in Figure 1 to the panel hearing procedures. As the chart indicates, EPA would do this by scheduling a panel hearing either through use of the "recycle" provision in § 124.14 or in response to a request for a formal hearing under § 124.74.

6. After the close of the comment period, a panel hearing will be held under § 124.120, followed by any cross-examination granted under § 124.121. The recommended decision will then be prepared (§ 124.124) and an opportunity for appeal provided under § 124.125. A final decision will be issued after appeal proceedings, if any, are concluded.

BILLING CODE 6560-50-M

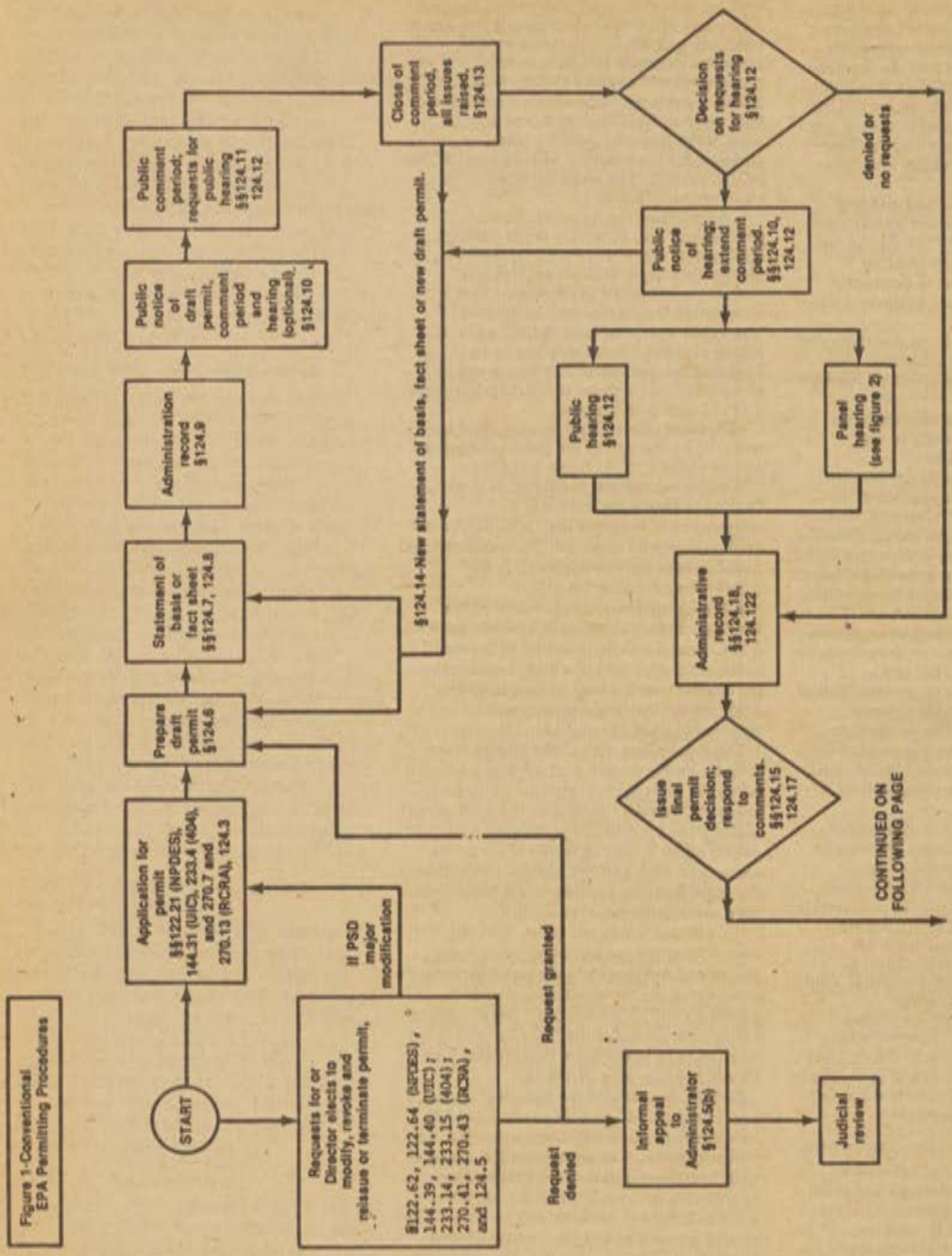


Figure 1-Conventional EPA Permitting Procedures

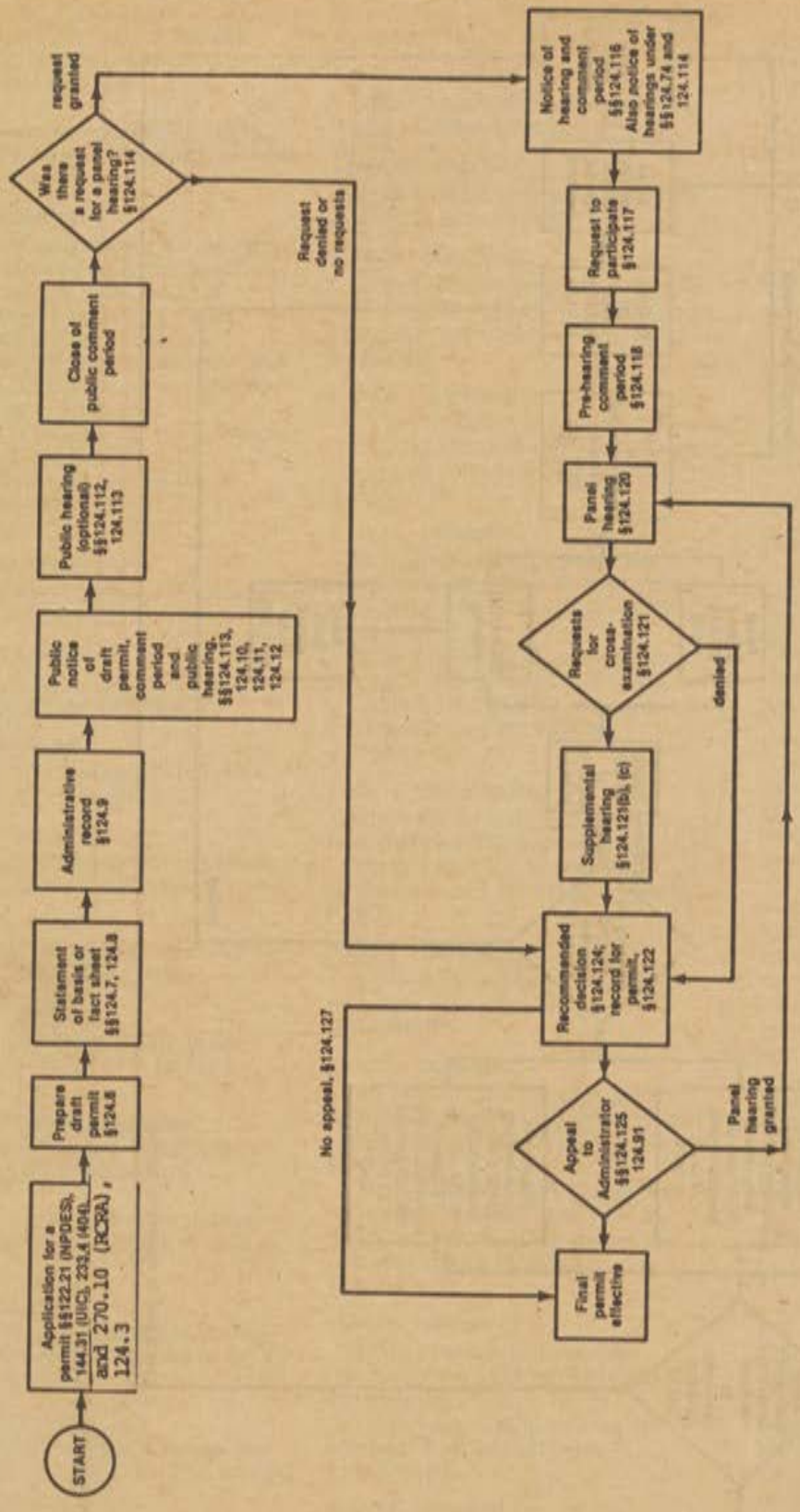
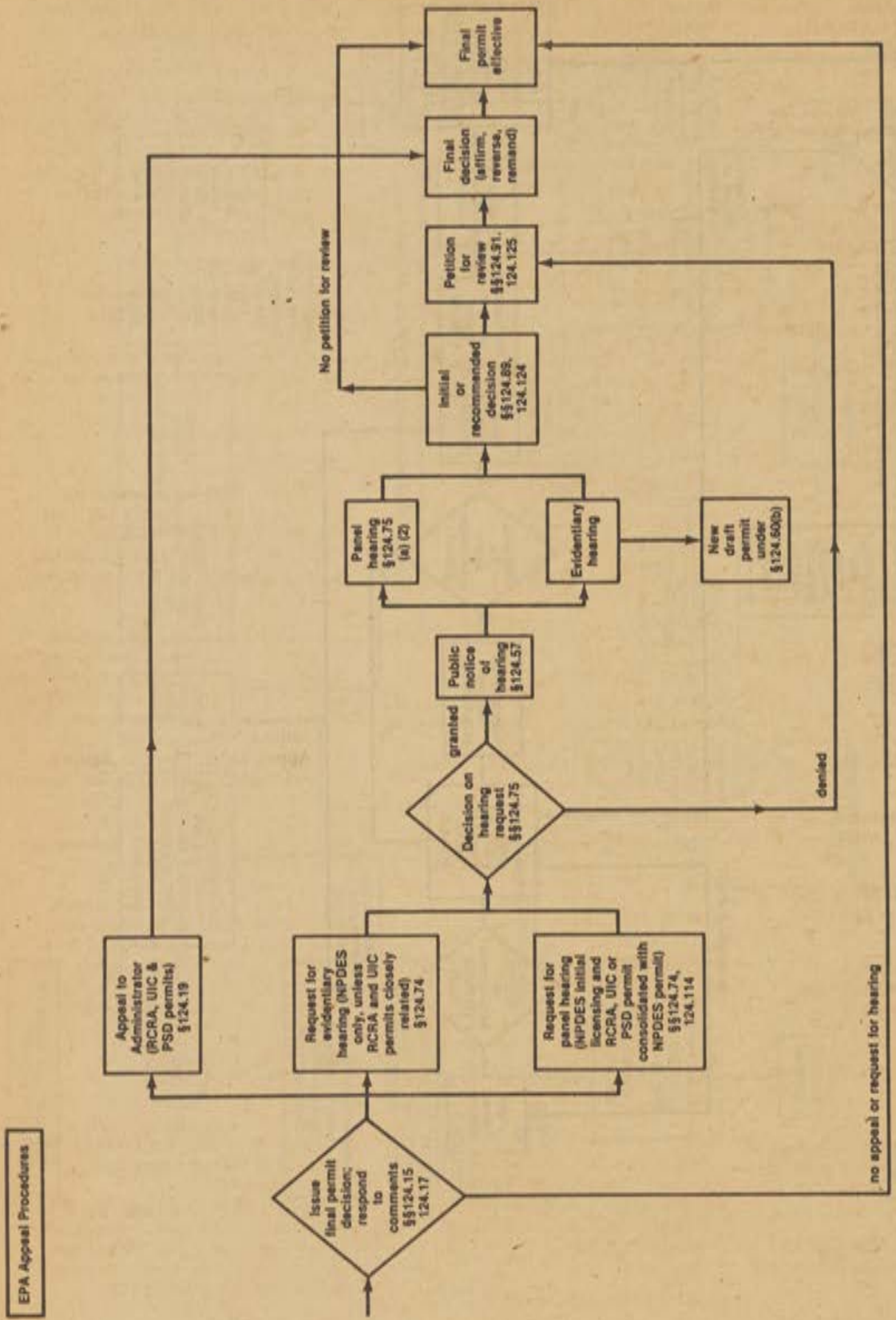


Figure 2-Non-Adversary Panel Procedures



EPA Appeal Procedures

BILLING CODE 6560-50-C

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The cross-references in Part 125 to former Parts 122 and 123 are revised as follows:

§ 125.3 [Amended]

(1) In § 125.3(a), change the reference from § 122.60 to § 122.41; the reference from § 122.61 to § 122.42; and the reference from § 122.62 to § 122.44.

(2) In § 125.3(a)(2), change the reference from § 122.67(d) to § 122.29(d).

(3) In § 125.3(b), change the reference from § 122.53 to § 122.21.

(4) In § 125.3(c), change the reference from §122.53 to §122.21.

(5) In §125.3(g)(4), change the reference from §122.61(a)(1) to § 122.42(a)(1).

§125.30 [Amended]

(6) In § 125.30(b), change the reference from §122.53(i)(1) to § 122.21(l)(1).

§ 125.59 [Amended]

(7) In § 125.59(d), change the reference from §122.5(a)(3) to § 122.6(a)(3).

§ 125.67 [Amended]

(8) In § 125.67, change the reference from § 122.14 to § 122.61.

§ 125.92 [Amended]

(9) In § 125.92, change the reference from § 122.53(j) to § 122.21(m).

§ 125.95 [Amended]

(10) In § 125.95, change the reference from § 122.53(i) to § 122.21(l).

§ 125.104 [Amended]

(11) In § 125.104(c)(2), change the reference from § 122.15 to § 122.62.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

The cross-references in Part 146 to former Parts 122 and 123 are revised as follows:

§ 146.01 [Amended]

(1) In § 146.01, change the references from 40 CFR Parts 122 and 123 to 40 CFR Parts 144 and 145.

§ 146.02 [Amended]

(2) In § 146.02, change the reference from 40 CFR Part 122 to 40 CFR Part 144.

§ 146.03 [Amended]

(3) In § 146.03, change the reference from § 122.35(b) to § 144.8(b); the reference from part 122 to Part 144; the reference from Part 123 to Part 145; and the reference from § 122.37 to §§ 144.21–.26 and 144.15.

§ 146.04 [Amended]

(4) In § 146.04, change the reference from § 122.35 to § 144.8.

§ 146.07 [Amended]

(5) In § 146.07, change the reference from § 122.44 to § 144.55.

§ 146.09 [Amended]

(6) In § 146.09, change the reference from § 122.38 to § 144.31 (a), (c), (g); and change the reference from § 123.4(g) to § 144.22(f).

§ 146.10 [Amended]

(7) In § 146.10(d), change the reference from § 122.42(f) to § 144.52(a)(6); and change the reference from § 122.41(e) to § 144.51(n).

§ 146.14 [Amended]

(8) In § 146.14(a)(1), change the reference from § 122.4 to § 144.31; and change the reference from § 122.38(c) to § 144.31(g).

(9) In § 146.14(a)(14), change the reference from § 122.44 to § 144.55.

(10) In § 146.14(a)(16), change the reference from § 122.42(a) to § 144.52(a)(1).

§ 146.15 [Amended]

(11) In § 146.15, change the reference from § 122.18(c)(4)(C)(ii) to § 144.9(b)(2).

(12) In § 146.15(i), change the reference from § 122.41(d) to § 144.51 (l)(6).

§ 146.23 [Amended]

(13) In § 146.23(b)(4), change the reference from § 122.42(e) to § 144.52(a)(5).

§ 146.24 [Amended]

(14) In § 146.24(a)(1), change the reference from § 122.4 to § 144.31; and change the reference from § 122.38(c) to § 144.31(g).

(15) In § 146.24(a)(13), change the reference from § 122.44 to § 144.55.

(16) In § 146.24(a)(14), change the reference from § 122.42(g) to § 144.52(a)(7).

§ 146.25 [Amended]

(17) In § 146.25(a), change the reference from § 122.18(c)(4)(C)(ii) to § 144.9(b)(2).

(18) In § 146.25(a)(8), change the reference from § 122.41(d) to § 144.51(1)(6).

§ 146.34 [Amended]

(19) In § 146.34(a)(1), change the reference from § 122.4 to § 144.31; and change the reference from § 122.38(c) to § 144.31(g).

(20) In § 146.34(a)(15), change the reference from § 122.42(9) to § 144.52(a)(7).

(21) In § 146.34(a)(16), change the reference from § 122.44 to § 144.55.

§ 146.35 [Amended]

(22) In § 146.35, change the reference from § 122.18(c)(4)(C)(ii) to § 144.9(b)(2).

(23) In § 146.35(h), change the reference from § 122.41(d) to § 144.51(1)(6).

§ 146.52 [Amended]

(24) In § 146.52(a), change the reference from § 122.37(c)(1) to § 144.26(a).

Title 40 of the Code of Federal Regulations is further amended as follows:

PART 260—[AMENDED]

§ 260.10 [Amended]

1. Section 260.10 is amended by removing the words "Parts 122" and "Part 123" in the definition of. "Designated facility" and substituting "Parts 270" and "Part 271", respectively.

Appendix I [Amended]

2. Appendix I to Part 260, entitled "Overview of Subtitle C Regulations" is amended by removing the words "Part 122" and substituting "Part 270" in two places under "Hazardous Waste Regulations."

3. Appendix I to Part 260, figure 3, entitled "Special Provisions for Certain Hazardous Waste", is amended by removing the words "Part 122" and substituting Part 270 in the box entitled "It is subject to the following requirements * * *"

4. Appendix I to Part 260, figure 4, entitled "Regulations for Hazardous Waste Not Covered in Diagram 3," is amended by removing the words "Part 122" and substituting "Part 270" under "0/0 who don't qualify for interim status."

PART 261—[AMENDED]

§ 261.1 [Amended]

5. Section 261.1 paragraph (a) is amended by removing the words "Parts 122 through 124" and substituting "Parts 270, 271, and 124".

6. Section 261.1 paragraph (a)(1) is amended by removing the words "Parts 262 through 265 and 122 through 124" and substituting the words "Parts 262 through 265, 270, 271 and 124".

§ 261.4 [Amended]

7. Section 261.4 paragraph (c) is amended by removing the words "Parts 262 through 265 and Parts 122 through

124" and substituting the words "Parts 262 through 265, 270, 271 and 124".

§ 261.5 [Amended]

8. Section 261.5 paragraphs (b), (e), (f), (g)(3)(i) and (g)(3)(ii) are amended by removing the words "Part 122" and substituting the words "Part 270". Paragraph (g)(3)(iii) is amended by removing the words "Part 123" and substituting the words "Part 271".

§ 261.6 [Amended]

9. Section 261.6, paragraph (a) is amended by removing the words "Parts 122 through 124" and substituting the words "Parts 270, 271, and 124". Paragraph (b)(6) is amended by removing the words "Parts 122" and substituting the words "Parts 270".

§ 261.7 [Amended]

10. Section 261.7, paragraph (a)(1) is amended by removing the words "Part 122" and substituting the words "Part 270". Paragraph (a)(2) is amended by removing the words "Parts 122" and substituting the words "Parts 270".

§ 261.20 [Amended]

11. Section 261.20 paragraph (b) is amended by removing the words "Part 122" and substituting the words "Part 270".

§ 261.30 [Amended]

12. Section 261.30 paragraph (c) is amended by removing the words "Part 122" and substituting the words "Part 270".

PART 262—[AMENDED]

§ 262.10 [Amended]

13. Section 262.10 paragraph (d) is amended by removing the words "Parts 122" and substituting the words "Parts 270". The Note at the end of the section is amended by removing the words "Part 122" and substituting the words "Part 270".

§ 262.34 [Amended]

14. Section 262.34 paragraph (b) is amended by removing the words "Part 122" and substituting the words "Part 270".

§ 262.41 [Amended]

15. Section 262.41 paragraph (b) is amended by removing the words "Part 122" and substituting the words "Part 270".

§ 262.50 [Amended]

16. Section 262.50 is amended by removing the words "Part 123" from the Note, and substituting the words "Part 271".

§ 262.51 [Amended]

17. Section 262.51 is amended by removing the words "Part 122" and substituting the words "Part 270".

PART 263—[AMENDED]

§ 263.12 [Amended]

18. Section 263.12 is amended by removing the words "Parts 122," and substituting the words "Parts 270".

PART 264—[AMENDED]

§ 264.1 [Amended]

19. Section 264.1 paragraphs (c) and (e) are amended by removing the words "Part 122" and substituting the words "Part 270".

20. Section 264.1 paragraph (d) is amended by removing the words "§ 122.45" and substituting the words"§ 144.14".

21. Section 264.1 paragraph (f) is amended by removing the words "Subparts A and B of Part 123" and substituting the words "Subpart A of Part 271," and by removing the words "Subpart F of Part 123" and substituting the words "Subpart B of Part 271".

§ 264.3 [Amended]

22. Section 264.3 is amended by removing the words "§ 122.23" and substituting the words "§ 270.70". The comment is amended by removing the words "Parts 122" and substituting the words "Parts 270".

§ 264.12 [Amended]

23. Section 264.12 paragraph (c) is amended by removing the words "Part 122" and substituting the words "Part 270".

§ 264.13 [Amended]

24. Section 264.13 paragraph (a)(1) is amended by removing the words "Part 122, Subparts A and B" and substituting the words "Part 270". The comment is amended by removing the words "Part 122 Subpart B" and substituting the words "Part 270".

§ 264.14 [Amended]

25. Section 264.14 is amended by removing the words "Part 122, Subpart B" from the comment after paragraph (a)(2), and substituting the words "Part 270".

§ 264.15 [Amended]

26. Section 264.15 is amended by removing the words "Part 122 Subpart B" from the comment after paragraph (b)(4), and substituting the words "Part 270".

§ 264.16 [Amended]

27. Section 264.16 is amended by removing the words "Part 122, Subpart B" from the comment after paragraph (a)(1) and substituting the words "Part 270".

§ 264.18 [Amended]

28. Section 264.18 is amended by removing the words "§ 122.25(a)(11)" in the comment after paragraph (a) and substituting the words "§ 270.14(b)(11)". The comment after paragraph (b)(1) is amended by removing the words "Part 122", "Part 123", and "Parts 122" and substituting the words "Part 270", "Part 271", and "Parts 270", respectively.

§ 264.32 [Amended]

29. Section 264.32 is amended by removing the words "Part 122, Subpart B" from the comment after paragraph (d), and substituting the words "Part 270".

§ 264.35 [Amended]

30. Section 264.35 is amended by removing the words "Part 122, Subpart B" from the comment and substituting the words "Part 270".

§ 264.93 [Amended]

31. Section 264.93 paragraph (c) is amended by removing the words "§ 122.35" and substituting the words "§ 144.8".

§ 264.94 [Amended]

32. Section 264.94 paragraph (c) is amended by removing the words "§ 122.35" and substituting the words "§ 144.8".

§ 264.112 [Amended]

33. Section 264.112 paragraph (a) is amended by removing the words "§ 122.25(a)(13)" and substituting the words "§ 270.14(b)(13)".

34. Section 264.112 paragraph (a)(2) is amended by removing the words "122.17" and substituting the words "§ 270.42". The comment after paragraph (b) is amended by removing the words "§ 122.17(c)" and substituting the words "§ 270.42(c)".

§ 264.113 [Amended]

35. Section 264.113 is amended by removing the words "§ 122.17" and substituting the words "§ 270.42".

§ 264.118 [Amended]

36. Section 264.118 paragraph (a) is amended by removing the words "§ 122.25(a)(13)" and substituting the words "§ 270.14(b)(13)", and by removing the words "§ 122.29" and substituting the words "§ 270.32".

§ 264.272 [Amended]

37. Section 264.272 paragraph (b) is amended by removing the words to

"§ 122.27(c)" and substituting the words "§ 270.63".

§ 264.340 [Amended]

38. Section 264.340 paragraph (c) is amended by removing the words to "§ 122.27(b)" and substituting the words "§ 270.62".

§ 264.341 [Amended]

39. Section 264.341 paragraph (a) is amended by removing the words "§ 122.27(b)" and substituting the words "§ 270.62", by removing the words "§ 122.27(b)(2) and substituting the words "§ 270.62(b)", and by removing the words "§ 122.25(b)(5)" and substituting the words "§ 270.19".

§ 264.342 [Amended]

40. Section 264.342 paragraph (b)(2) is amended by removing the words "§ 122.27(b)" and substituting the words "§ 270.62".

§ 264.343 [Amended]

41. Section 264.343 paragraph (d) is amended by removing the words "§ 122.15" and substituting the words "§ 270.41".

§ 264.344 [Amended]

42. Section 264.344 paragraph (a)(1) is amended by removing the words "§ 122.27(b)" and substituting the words "§ 270.62".

43. Section 264.344 paragraph (b) is amended by removing the words "§ 122.25(b)(5)" and substituting the words "§ 270.19".

44. Section 264.344 paragraph (c)(4) is amended by removing the words "§ 122.25(b)(5)(iii)" and substituting the words "§ 270.19(c)".

PART 265—[AMENDED]

§ 265.1 [Amended]

45. Section 265.1 paragraph (b) is amended by removing the words "§ 122.22" and substituting the words "§ 270.10". The comment after paragraph (b) is amended by removing the words "Part 122" and substituting the words "Part 270". The comment after paragraph (c)(3) is amended by removing the words "§ 122.45" and substituting the words "§ 144.14".

46. Section 265.1 paragraph (c)(4) is amended by removing the words "Subparts A and B or Subpart F of Part 123" and substituting the words "Subparts A or B of Part 271".

§ 265.12 [Amended]

47. Section 265.12 paragraph (b) is amended by removing the words "Part 122" and substituting the words "Part 270", and by removing the words "§ 122.23(c)" and substituting the words "§ 270.72".

§ 265.147 [Amended]

48. Section 265.147 paragraphs (d) and (e) are amended by removing the words "§ 122.15(a)(5)" and substituting the words "§ 270.41".

§ 265.276 [Amended]

49. Section 265.276 is amended by removing the words "§ 122.23(c)(3)" from the comment after paragraph (a) and substituting words "§ 122.72(c)".

[FR Doc. 83-7928 Filed 3-31-83; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
April 1, 1983

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA82-5118	Aug. 20, 1982.
District of Columbia, Maryland & Virginia: DC82-3031.	Nov. 12, 1982.
Maryland: MD82-3036	Dec. 10, 1982.
Mississippi: MS82-1052	Oct. 1, 1982.
Idaho: ID82-5128	Nov. 26, 1982.
Illinois:	
IL83-2014	Mar. 4, 1983.
IL83-2011	Feb. 18, 1983.
Kansas:	
KS83-4015	Feb. 4, 1983.
KS83-4014	Do.
KS83-4013	Do.
KS83-4009	Do.
New York: NY81-3034	June 5, 1981.
Ohio:	
OH83-2006	Feb. 11, 1983.
OH83-2010	Do.
OH83-2013	Feb. 25, 1983.
Oregon: OR83-5100	Feb. 18, 1983.
West Virginia: WV83-3000	Mar. 11, 1983.
Washington: WA82-5117	Aug. 13, 1982.
Wisconsin:	
WI82-2023	Apr. 9, 1982.
WI82-2022	Do.
WI82-2021	Mar. 19, 1982.
WI82-2024	Apr. 9, 1982.
WI82-2020	Mar. 26, 1982.
Missouri: MO83-4021	Mar. 18, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	
FL79-1116(FL83-1017)	Aug. 17, 1979.
FL82-1032(FL83-1016)	June 25, 1982.
Massachusetts: MA82-3005(MA83-3004)	Apr. 30, 1982.
Minnesota: MN81-2029(MN83-2028)	June 19, 1981.
Mississippi: MS82-1068(MS83-1015)	Oct. 15, 1982.
Nebraska: NE82-4004(NE83-4025)	Jan. 29, 1982.

Cancellation of General Wage Determination Decision

The general wage decision listed below is cancelled. Agencies with

construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting Form SF–308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR.1.7(b)(2), the incorporation of the cancelled decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

IA81–4025—Story County, Iowa dated April 17, 1981 in 46 FR 22546—Building Construction.

Signed at Washington, D.C. this 25th day of March 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. CA82-5118 - Mod. 47
(47 FR 36513-August 20, 1982)
Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 9	$23.11	$4.47+ 3%
Line Construction:		
Area 1:		
Lineman	21.26	3.65+ 4%
Cable Splicers	21.56	3.65+ 4%
Area 8:		
Groundman	18.38	4.47+ 3%
Lineman Equipment Operators	23.11	4.47+ 3%
Cable Splicers	26.96	4.47+ 3%
Soft Floor Layers:		
Area 2	18.17	4.05

DECISION NO. DC82-3031-Mod #3
(47 FR 51304-November 12, 1982)
District of Columbia; Maryland-Montgomery & Prince Georges Counties; & DC Training School; Virginia-Independent City of Alexandria, Arlington, & Fairfax Counties.

CHANGE:
LABORERS (HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINE CONSTRUCTION PROJECTS-COMPRESSED AIR RATES)

GUAGE PRESSURE POUNDS		
1-14	$15.69	1.73
14-18	16.27	1.73
18-22	16.83	1.73
22-26	17.42	1.73
26-32	17.99	1.73
32-38	18.56	1.73
38-44	19.14	1.73

DECISION NO. MD82-3036 - MOD. #1
(47 FR 55588-Dec. 10, 1982)
HARFORD COUNTY, MARYLAND

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS	14.78	2.07

DECISION NO. MS82-1052 - MOD. # 1
(October 1, 1982 -- 47 FR 43523)
Hancock, Harrison, Jackson, & Pearl River Counties in MISSISSIPPI
Building Construction

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Heat & Frost Insulators & Asbestos Workers:		
Harrison & Jackson Counties	$ 14.90	2.43+ a
Hancock & Pearl River Counties	10.70	
Ironworkers, Structural Ornamental, &Reinforcing:		
Jackson Co. & eastern 1/3 of Harrison Co. (including Biloxi, Keesler AFB, & towns of BOWison & Success)	14.08	1.47
POWER EQUIPMENT OPERATORS:		
Cherry Picker	12.88	.95
Forklift	12.98	.95
Mechanic	13.48	.95

MODIFICATION PAGE 2

DECISION NO. ID82-5128 - Mod. #4
(47 FR 53612 - November 26, 1982
Statewide, Idaho

	Basic Hourly Rates	Fringe Benefits
Change:		
Line Construction:		
Area 1: - Zone 1:		
Group 1: Cable Splicers, Lineman Pole Sprayer	$19.93	$2.75+ 3%%
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	18.01	2.75+ 3%%
Group 3:* Tree Trimmer	16.25	2.75+ 3%%
Group 4: Line Equipment Man	15.51	2.05+ 3%%
Group 5: Head Groundman, Powderman, Jackhammer Man	13.56	2.05+ 3%%
Group 6:* Head Groundman (Chipper)	13.56	2.05+ 3%%
Group 7: Groundman	12.74	2.05+ 3%%
Zone Differential (add to Zone 1 Rate:		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Fringe Benefits - same as Zone 1:		
*Groups 3 and 6 receive Zone 1 rates ONLY (no Zone Differential)		

Zone Definitions:
Zone 1: 0 to 3 miles radius from the geographical center of Tacoma, Seattle, Medford, and Portland
Zone 2: 0 to 20 miles radius from the geographical center of Couer D'Alene, Kellogg, Lewiston, Orofino, Sandpoint.
NOTE: Zones 3 to 5: Same as in originally issued in the Decision

DECISION NO. IL83-1014 - MOD. #2
(48 FR 9432 - March 4, 1983)
Boone, DeKalb, DuPage, Kane,
Kendall, Lake, McHenry, & Will
Counties, Illinois

OMIT: POWER EQUIPMENT OPERATORS

ADD:
Power Equipment Operators:

	Basic Hourly Rates	Fringe Benefits
CLASS 1	$16.75	$4.50
CLASS 2	16.20	4.50
CLASS 3	15.10	4.50
CLASS 4	13.80	4.50
CLASS 5	12.65	4.50

Basic Hourly Rates	Fringe Benefits

CLASS 1: Asphalt Plant; Asphalt Heater & Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End Loader Machine (1 cu. yd. & over); Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes Hammerhead, Linden, Peco & Machines of a like nature; Creter Crane; Derricks; Derrick Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb & Gutter Machine; Gradall & Machines of a like nature; Grader, elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Truck mounted; Hoists, 1, 2, & 3 drum; Locomotives; Mucking Machine; Piledriver & Skid Rig; Pre-stress Mach; Pump Crete Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck mounted; Roto Mill Grinder; Slip Form Paver; Soil Test Drill Rig (Truck mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Tractor Drawn Belt Loader with or w/o attach. Pusher; Tractor with Boom; Tractairs with attachments; Trenching Machine; Truck Mounted Concrete Pump w/Boom; Raised or Blind Hole (tunnel shaft) Drill; Underground Boring and/or Mining Machines 5' in diameter & over tunnel, etc.; Underground Boring and/or Mining Machines under 5'; Wheel Excavator; & Widener (Apsco)

CLASS 2: Batch Plant; Bituminous Mixer; Bobcats (over 3/4 cu. yd.); Boiler & Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front End Loader Machine (less than 1 cu. yd.); Compressor & Throttle Valve; Concrete Breaker or Hydrohammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S series to & inclu. 27 cu.ft; Concrete Spreader; Concrete Curing Machine; Burlap Machine; Belting Machine & Sealing Machine; Finishing Mach.-Concrete; Greaser Engineer; Highlift Shovels or Front End Loader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinky; Pumpcretes; Squeeze Cretes - Screw type Pumps, Gypsum Bulker & Pump; Roller, Asphalt, Rotary Snow Plows; Rototiller, Seaman, etc., self-propelled; Scoops - Tractor Drawn; Self-propelled Compactor Spreader - Chip - Stone, etc.; Scraper; Scraper - Prime mover in Tandem (add $1.00 for each hour & each machine attached thereto); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc, Compactor, etc.; & Tug Boats

CLASS 3: Boilers; Brooms (all power propelled); Cement Supply Tender; Concrete Mixer (2 bag & Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Firemen on Boilers; Forklift trucks; Grouting Machine; Hoists, Automatic; Hoists, all Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post Hole Diggers; Power Saw, Concrete Power Driven; Pug Mills; Rollers, other than Asphalt; Steam Generators; Stone Crushers; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper - Form-Motor Driven

CLASS 4: Air Compressor; Asphalt Spreader Backend Man; Combination - small equipment op.; Generators; Heaters, Mechanical; Light Plants, (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractairs; Welding Machines (2 through 5); Winches, 4-small electric drill winches; & Bobcats (up to and inclu. 3/4 cu. yd.)

CLASS 5: Oilers

DECISION NO. IL83-1011 - MOD. #3
(48 FR 7368 - February 18, 1983)
Cook County, Illinois

Omit:
Power Equipment Operators

Add:
Power Equipment Operators

Building & Residential Construction

	Basic Hourly Rates	Fringe Benefits
CLASS 1	$17.10	$4.50
CLASS 2	15.80	4.50
CLASS 3	14.20	4.50
CLASS 4	12.60	4.50

Basic Hourly Rates	Fringe Benefits

CLASS 1: Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler & Throttle Valve; Caisson Rigs; Central Redi-mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver; Concrete Placer; Concrete Pump (truck mounted); Concrete Tower; Cranes; Cranes, Hammerhead; Creter Crane; Derricks; Derricks, traveling; Grader, elevating; Grouting Mach.; Highlift Shovels or Front Endloader, 2½ yards and over; Hoists, 1, 2, and 3 drum; Hoists, 2 tugger 1 floor; Hydraulic Boom Trucks; Locomotives; Mechanic; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-stress Machine; Pump Cretes Dual Ram; Pump Cretes; Squeeze Cretes - Screw Type Pumps, Gypsum Bulker and Pump; Rock Drill (Self-propelled); Rock Drill (truck mounted); Scoops, Tractor Drawn; Slip Form Paver; Straddle Buggies; Tournapull; Tractor with boom, and Side Boom; Trenching Machines

CLASS 2: Bobcat (over 3/4 cu. yd.); Boilers; Brick Forklift; Broom, Power prop.; Bulldozers Concrete Mixer (2 bag & over); Conveyor, Portable; Forklift Trucks; Greaser Eng r; Highlift Shovels or Front Endloaders, under 2½ yds.; Hoists, automatic; Hoist Elevators; Hoist, Sewer dragging Machine; Hoists, Tugger single drum; Rollers; Steam Generators; Stone Crushers; Tractors; Tractor drawn Vibratory Roller (receives an additional $.50 per hr); Winch Trucks with "A" Frame

CLASS 3: Air Compressor; Combination, small equipment operators; Generators; Heaters, Mechanical; Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 small electric drill winches; Bobcat (up to & including 3/4 cu. yd.); Brick Forklift

CLASS 4: Oilers

Sewer, Heavy & Highway Construction

	Basic Hourly Rates	Fringe Benefits
CLASS 1	$16.75	$4.50
CLASS 2	16.20	4.50
CLASS 3	15.10	4.50
CLASS 4	13.80	4.50
CLASS 5	12.65	4.50

Basic Hourly Rates	Fringe Benefits

CLASS 1: Asphalt Plant; Asphalt Heater & Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End Loader Machine (1 cu. yd. & over); Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes,

DECISION NO. IL83-2011 (Cont'd)

Hammerhead, Linden, Peco & Machines of a like nature; Creter Crane; Derricks; Derrick Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb & Gutter Mach; Gradeall & Machines of a like nature; Grader, elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Truck mounted; Hoists 1, 2, & 3 drum; Locomotives; Mucking Machine; Piledriver & Skid Rig; Pre-stress Mach; Pump Cretes Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck mounted; Roto Mill Grinder; Slip Form Paver; Soil Test Drill Rig (Truck mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Tractor Drawn Belt Loader with or w/o attach. Pusher; Tractor w/Boom; Tractaire with attachments; Trenching Machine; Truck Mounted Concrete Pump w/Boom; Raised or Blind Hole (tunnel shaft) Drill; Underground Boring and/or Mining Machines 5' in diameter & over tunnel, etc.; Underground Boring and/or Mining Machines under 5'; Wheel Excavator; & Widener (Apsco)

CLASS 2: Batch Plant; Bituminous Mixer; Bobcats (over 3/4 cu. yd.); Boiler & Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front End Loader Mach. (less than 1 cu. yd.); Compressor & Throttle Valve; Concrete Breaker or Hydrohammer; Concrete Grinding Machine; Concrete Mixer or Paver 75 series to & inclu. 27 cu.ft.; Concrete Spreader; Concrete Curing Machine; Burlap Machine; Belting Machine & Sealing Machine; Finishing Mach.-Concrete; Greaser Engineer; Highlift Shovels or Front End Loader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinky; Pumpcretes: Squeeze Cretes - Screw type Pumps, Gypsum Bulker & Pump; Roller, Asphalt; Rotary Snow Plows; Rototiller Seaman, etc., self-propelled; Scoops - Tractor Drawn; Self-propelled Compactor Spreader - Chip - Stone, etc.; Scraper; Scraper - Prime mover in Tandem (add $1.00 for each hour & each machine attached thereto); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc, Compactor etc.; & Tug Boats

CLASS 3: Boilers; Brooms (all power propelled); Cement Supply Tender; Concrete Mixer (2 Bag & Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Firemen on Boilers; Forklift trucks; Grouting Machine; Hoists, Automatic; Hoists, all Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Steam Generators; Stone Crushers; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper - Form-Motor Driven

CLASS 4: Air Compressor; Asphalt Spreader Backend Man; Combination - small equipment opr.; Generators; Heaters, Mechanical; Light Plants, (1 through 5); pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4-small electric drill winches; & Bobcats (up to and inclu. 3/4 cu. yd.)

CLASS 5: Oilers

DECISION #KS83-4015-Mod.#1 (48 FR 5443 February 4, 1983) Douglas, Jefferson, Shawnee, Miami & Leavenworth Cos.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Zone 1	$12.10	$1.80
Zone 2	16.05	2.67
Zone 3	15.04	1.80
Cement Masons:		
Zone 2	12.50	1.05
Zone 3	12.20	1.05
Electricians:		
Zone 1	16.18	10% + 2.51
Ironworkers	16.25	4.25
Laborers:		
Zone 2		
Group 1	8.80	2.30
Group 2	8.95	2.30
Group 3	9.05	2.30
Group 4	9.20	2.30
Laborers:		
Zone 3		
Group 1	9.05	2.05
Group 2	9.20	2.05
Group 3	9.30	2.05
Group 4	9.45	2.05
Laborers:		
Zone 1 and 4		
Group 1	8.00	2.30
Group 2	8.15	2.30
Group 3	8.25	2.30
Group 4	8.40	2.30
Power Equipment Operators:		
Zone 3: Douglas & Shawnee Cos.		
Group 1	12.87	2.70
Group 2	12.62	2.70
Group 3	12.37	2.70
Group 4	12.02	2.70
Group 4A	12.12	2.70
Power Equipment Operators:		
Zone 1: Leavenworth Co.		
Group 1	14.00	3.77
Group 2	13.75	3.77
Group 3	13.05	3.77
Group 4		
A	9.03	3.77
B	12.05	3.77
Electricians:		
Zone 2	16.05	3%+2.13
Truck Drivers:		
Zone 1: Leavenworth & Miami Counties		
Group 1	12.66	3.50
Group 2	12.86	3.50
Group 3	13.17	3.50
Group 4	13.32	3.50
Group 5	12.44	3.50
Truck Drivers:		
Zone 2: Douglas, Jefferson, & Shawnee Counties		
Group 1	10.20	1.20
Group 2	10.30	1.20
Group 3	10.45	1.20

DECISION #KS83-4014-Mod.#2 (48 FR 5441-February 4, 1983) Sedgwick County	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers; Stonemasons	$13.90	$1.78
Carpenters	13.40	1.08
Millwrights & Piledrivermen	13.70	1.08
Glaziers	12.90	4.53
Ironworkers	15.29	1.14
Laborers (building)		
Group 1	9.00	2.30
Group 2	9.20	2.30
Power Equipment Operators:		
Cranes with lifting ring	14.55	3.57
Cranes with shovels-100 ft. of boom or over including jib or 30 tons or over or 2 yd. capacity, three (3) drum hoist	13.80	3.57
Cranes and shovels-boom 200 ft. and over four (4) drum hoist, Frankie-type pile driving machines, and tower cranes and derricks	14.05	3.57
Group I	13.55	3.57
Group II	13.15	3.57
Group III		
Class A	11.50	3.57
Class B	11.75	3.57
Group IV		
Class A	10.95	3.57
Class B	11.20	3.57

DECISION #KS83-4013-Mod.#2 (48 FR 5446-February 4, 1983) Shawnee County	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers, Stonemasons	$15.79	$ .95
Carpenters (Building)		
Carpenters	13.69	1.50
Millwright	14.15	1.50
Piledrivermen	14.025	1.50
Carpenters - Residential	10.94	1.50
Cement Masons	12.60	1.05
Glaziers (Building)	12.83	5.54
Ironworkers	16.25	4.25
Laborers (Building and Residential)		
Group 1	9.65	2.30
Group 2	9.85	2.30
Group 3	9.95	2.30
Group 4	10.05	2.30
Painters (Building)		
Brush,Drywall,Tapers	13.25	.98
Spray & Sandblast	13.75	.98
Painters (Residential)	10.00	.98
Plasterers	15.70	.01
Truck Drivers (Building & Residential)		
Class 1	11.32	1.20
Class 2	11.42	1.20
Class 3	11.67	1.20
Class 4	11.82	1.20
Electricians (Building)	16.05	3%+2.13
Cable Splicers (Building)	17.665	3%+2.13
Power Equipment Operators:		
Cranes with lifting ring Cranes & shovels 100 ft. of boom or over including jib or 30 tons or over 2 yd. capacity, three (3) drum hoist	14.75	3.77
Cranes & shovels-booms 200 ft. & over four (4) drum hoist,Frankie-type pile driving machines, and tower cranes & derricks	14.00	3.77
Group I	14.25	3.77
Group II	13.75	3.77
Group III	13.35	3.77
Class A	11.55	3.77
Class B	11.80	3.77
Group IV		
Class A	11.00	3.77
Class B	11.25	3.77

DECISION #KS83-4009-Mod.#3 (48 FR 5438-February 4, 1983) Leavenworth County	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$16.05	$2.67
Millwrights & Piledrivermen	16.05	2.67
Lathers	16.05	2.67
Electricians		
Zone 1: Deleware,Kickapoo,High Prairie & Leavenworth Townships	16.18	10% + 2.51
Ironworkers	16.25	4.25
Laborers (Bldg. Construction)		
Group 1	9.50	2.05
Group 2	9.70	2.05
Group 3	9.80	2.05
Group 4	9.90	2.05
Line Construction		
Zone 2 (Remainder of Leavenworth County)		
Lineman	18.28	3-1/2% +1.06
Lineman Operator	17.02	3-1/2% +1.06
Groundman Powderman	12.68	3-1/2% 1.06
Groundman	12.05	3-1/2% 1.06
Painters:		
Brush, Roller, Tapers	16.49	1.55
Spray	17.49	1.55
Electricians		
Zone 2		
Remainder of county	16.05	3%+2.13

DECISION NO. NY81-3034 - MOD. #4 (46 FR 30271 - June 5, 1981) ONEIDA, NEW YORK	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS		
Structural, Ornamental, Reinforcing, Machinery mover, Rigger, Fence Erector and Stone		
Derrickman	13.75	2.70
Sheeter	14.00	2.70
Sheeter, bucker-up	13.875	2.70
POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY):		
GROUP 1	15.19	3.60+a
GROUP 2	14.69	3.60+a
GROUP 3	13.26	3.60+a
GROUP 4	12.00	3.60+a

DECISION NO. OH83-2006 - MOD. #1 (48 FR 6459 - February 11, 1983) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 11	$17.10	$3.42
Line Construction:		
Area 9:		
Cable Splicers	15.99	3.37
Linemen	17.10	3.42
Line Equipment Operators	14.84	3.31
Groundmen; Truck Drivers	11.24	3.14

DECISION NO. OH83-2010 - MOD. #3 (48 FR 6469 - February 11, 1983) Adams, Allen, ... Wood & Wyandot Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Carroll (N½ incl. Fox, Harrison, Rose & Washington Twps.) Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Coe.	17.10	3.42
Line Construction:		
Carroll (N½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:		
Cable Splicers	15.99	3.37
Line Equipment Operators	14.84	3.31
Groundmen; Truck Drivers	11.24	3.14
Linemen	17.10	3.42

DECISION NO. OH83-2013 - MOD. #1 (48 FR 8230 - February 25, 1983) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Stark Co.:		
Commercial Building	$17.10	$3.42
Line Construction:		
Stark Co.:		
Cable Splicers	15.99	3.37
Linemen	17.10	3.42
Truck Drivers; Groundmen	11.24	3.14
Line Equipment Operators	14.84	3.31

DECISION NO. OR83-5100 - Mod. #1 (48 FR 7179 - February 18, 1983)
Statewide, Oregon

MODIFICATION PAGE 9

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 3:		
Electricians	$19.05	$4.35+ 3%
Cable Splicers	20.95	4.35+ 3%
Area 6:		
Electricians	19.06	3.42+ 3%
Cable Splicers	20.98	3.42+ 3%
Elevator Constructors:		
Mechanics	20.13	2.69+ a
Helpers	70%JR	2.69+ a
Probationary Helpers	50%JR	
Line Construction:		
Area 1:		
Group 1: Cable Splicers, Lineman Pole Sprayer	19.93	2.75+ 3½%
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	18.01	2.75+ 3½%
Group 3:* Tree Trimmer	16.25	2.75+ 3½%
Group 4: Line Equipment Man	15.51	2.05+ 3½%
Group 5: Head Groundman, Powderman, Jackhammer Man	13.56	2.05+ 3½%
Group 6:* Head Groundman (Chipper)	13.56	2.05+ 3½%
Group 7: Groundman	12.74	2.05+ 3½%
Zone Differential (add to Zone 1 Rate:		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Fringe Benefits - same as Zone 1		
Groups 3 and 6 receive Zone 1 rate Only (no zone differential)		

	Basic Hourly Rates	Fringe Benefits
Zone Definitions:		
Zone 1: 0 to 3 miles radius from the geographical center of Tacoma, Seattle, Medford, and Portland		
Zone 2: 0 to 20 miles radius from the geographical center of Astoria, Baker, Burns, Bend, Corvallis, Eugene, Klamath Falls, Lakeview, Pendleton, Salem, Roseburg, The Dalles, Umatilla		
NOTE: Zones 3 to 5: Same as originally issued in the Decision		

DECISION NO. WV83-3000
MOD. # 1
(48 FR 10585 - March 11, 1983)
Statewide, West Virginia

	Basic Hourly Rates	Fringe Benefits
OMIT:		
LABORERS:		
HEAVY CONSTRUCTION		
GROUP 6	$10.92	2.15

DECISION NO. WA82-5117 - Mod. #8
(47 FR 35431 - August 13, 1982)
Statewide, Washington

MODIFICATION PAGE 10

	Basic Hourly Rates	Fringe Benefits
Change:		
Line Construction:		
Zone 1:		
Group 1: Cable Splicers, Lineman Pole Sprayer	$19.93	$2.75+ 3½%
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	18.01	2.75+ 3½%
Group 3:* Tree Trimmer	16.25	2.75+ 3½%
Group 4: Line Equipment Man	15.51	2.05+ 3½%
Group 5: Head Groundman, Powderman, Jackhammer Man	13.56	2.05+ 3½%
Group 6:* Head Groundman (Chipper)	13.56	2.05+ 3½%
Group 7: Groundman	12.74	2.05+ 3½%
Zone Differential (add to Zone 1 Rate:		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Fringe Benefits - same as Zone 1:		
*Groups 3 and 6 receive Zone 1 rates ONLY (no Zone Differential)		

	Basic Hourly Rates	Fringe Benefits
Zone Definitions		
Zone 1: 0 to 3 miles radius from the geographical center of Tacoma, Seattle, Medford, and Portland		
Zone 2: 0 to 20 miles radius from the geogrpahical center of Bellingham, Ellenburg, Ephrata, Everett, Kennewick, Longview, Olympia, Spokane, Walla Walla, Wenatchee, Yakima, Wilbur		
NOTE: Zones 3 to 5 - Same as originally issued in the Decision		

DECISION NO. WI82-2023 - Mod. #1 (47 FR-15516-April 9,1982) Milwaukee,Ozaukee,Waukesha, and Washington Cos., Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$16.50	2.70
Boilermakers	16.12	2.825
Bricklayers	14.82	4.09
Carpenters	14.30	3.89
Millwrights	16.44	3.89
Piledrivermen	15.27	3.89
Cement Masons	13.39	3.84
Electricians	16.11	1.88+ 15%
Elevator Mechanic	15.975	2.46
Helpers	11.18	2.46
Prob. Helpers	7.99	
Glaziers	14.73	2.98
Ironworkers:		
Structural,Ornamental & Reinforcing	14.81	4.49
Lathers	14.30	3.89
Line Construction:		
Lineman	15.47	.65+ 10-1/2%
Heavy Equipment Operators	13.92	.65+ 10-1/2%
Light Equipment Operators	12.38	.65+ 10-1/2%
Heavy Groundman,Truck Driver	10.83	.65+ 10-1/2%
Light Groundman, Truck Driver	10.06	.65+ 10-1/2%
Groundman	8.51	.65+ 10-1/2%
Painters:		
Brush	13.10	3.26
Structural Steel	13.45	3.26
Spray	13.60	3.26
Plasterers	13.50	4.03
Plumbers	15.49	4.14
Steamfitters	15.80	4.15
Roofers	14.00	3.44
Sheet Metal Workers	15.18	4.66
Sprinkler Fitters	17.12	2.79
Terrazzo Mechanic	14.60	3.88
Tile Setters	13.55	3.30
Truck Drivers:		
Building Material 2 axle	11.92	98.50 per wk.
Building Material 3 axle	11.97	98.50 per wk.
Power Equipment Operators:		
Group I	15.67	3.20
Power Equipment Operators:		
Group I	$15.67	3.20
Group II	15.40	3.20
Group III	14.65	3.20
Group IV	14.52	3.20
Group V	13.61	3.20
Group VI	13.19	3.20

DECISION #WI82-2022-Mod.#1 (47 FR-15512-April 9,1982) Langlade,Lincoln & Marathon Cos., Wisconsin	Basic Hourly Rates	Fringe Benefits
Asbestos Worker	$16.71	$3.05
Boilermakers	16.12	2.825
Bricklayers & Stonemasons	13.22	2.20
Carpenters,Soft Floor Layers,Lathers	13.76	1.91
Cement Masons	12.72	2.20
Electricians	15.13	.75+ 12-1/4%
Elevator Constructors:		
Constructor Mechanic	15.03	2.69 a & b
Helpers	10.52	2.69 a & b
Prob. Helpers	7.515	
Ironworkers:		
Structural,Ornamental and Reinforcing	14.08	2.85
Laborers:		
General & Air Spade Operator	11.03	1.43
Mason Tender	11.13	1.43
Jackhammer Operator, Mortar Mixer	11.28	1.43
Painters:		
Brush	13.85	.50
Spray	14.60	.50
Plasterers	13.22	2.20
Plumbers & Steamfitters	16.25	2.70
Roofers	12.60	
Sheet Metal Workers	15.94	1.68
Terrazzo Mechanic & Tile Setter	12.97	2.20
Power Equipment Ops.:		
Group I	15.22	2.90
Group II	14.92	2.90
Group III	14.56	2.90
Group IV	14.44	2.90
Group V	13.88	2.90
Group VI	13.41	2.90

DECISION #WI82-2021-Mod.#3 (47 FR-12034-March 19,1982) LaCrosse,Monroe & Vernon Cos., Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$16.50	$2.70
Boilermakers	16.12	2.825
Bricklayers	13.55	1.90
Carpenters	13.76	1.91
Millwrights & Piledrivermen	14.16	1.91
Cement Masons	13.38	1.50
Electricians	15.79	.70+4%
Elevator Constructors:		
Constructors	15.03	2.69
Helper	10.52	2.69
Helper (Prob.)	7.515	
Glaziers	13.99	1.58
Ironworkers:		
(All but the N.W. corner of County)	14.08	2.85
Laborers:		
General, Mason Tenders	11.62	1.43
Mortar Mixers, Air Hammer Operator, Air Spade Operator, & Jack Hammer Operator	11.77	1.43
Lathers	13.25	1.51
Painters:		
Brush	12.53	1.00
Structural Steel	12.80	1.00
Spray & Sandblaster	13.22	1.00
Plasterers	13.08	.90
Plumbers & Steamfitters	17.00	2.30
Roofers	14.12	3%
Sheet Metal Worker	14.41	1.56
Soft Floor Layer	12.95	.43
Terrazzo Mechanic & Tile Setter	12.25	1.90
Truck Drivers:		
Dump Truck	10.27	c
Footnote #C to read		
C. $152.74 per Month Health & Welfare		
Power Equipment Operators:		
Group I	15.22	2.90
Group II	14.92	2.90
Group III	14.56	2.90
Group IV	14.44	2.90
Group V	13.88	2.90
Group VI	13.41	2.90

DECISION #WI82-2024-Mod.#3 (47 FR-15513-April 9,1982) Racine County, Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$16.50	$2.70
Boilermakers	16.12	2.825
Bricklayers	14.77	1.97
Carpenters:		
(West of Hwy. #75)		
Carpenters & Soft Floor Layers	15.59	2.21
Millwrights	16.19	2.21
Piledrivermen	15.74	2.21
Carpenters:		
(Remainder of County)		
Carpenters & Soft Floor Layers	14.56	1.71
Millwrights	14.85	1.71
Piledrivermen	14.65	1.71
Cement Masons	13.39	3.84
Electricians	17.50	.70+ 4-1/2%
Elevator Constructors:		
Constructor	15.975	2.465
Helpers	11.18	2.465
Probationary Helpers	7.99	
Ironworkers	14.81	4.49
Laborers:		
General	10.62	3.29
Plasterer Laborer	10.77	3.29
Air Spade	10.92	3.29
Jackhammer Operator	11.32	3.29
Painters:		
Brush	12.70	2.15
Structural Steel	12.85	2.15
Spray	13.45	2.15
Plasterers	12.91	1.66
Plumbers & Steamfitters	15.65	2.42
Roofers	13.32	1.66
Sheet Metal Workers	15.16	3.79
Terrazzo Mechanic	14.60	3.88
Tile Setter	11.96	2.97
Power Equipment Operators:		
Group I	15.67	3.20
Group II	15.40	3.20
Group III	14.65	3.20
Group IV	14.52	3.20
Group V	13.61	3.20
Group VI	13.19	3.20

DECISION NO. WI82-2020 - MOD. #1 (47 FR 13111 - March 26, 1982) Kenosha County, Wisconsin	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$16.50	2.70
Boilermakers	16.12	2.825
Bricklayers & Stonemasons	14.77	1.97
Carpenters, Soft Floor Layers & Lathers	14.16	2.10
Millwrights	14.48	2.10
Piledrivermen	14.25	2.10
Cement Masons	12.42	2.81
Electricians	13.50	.71+ 4 3/4%
Elevator Constructors	15.975	2.465
Helpers	11.18	2.465
Helpers (Probationary)	7.99	
Ironworkers:		
Structural, Ornamental and Reinforcing	14.81	4.49
Painters:		
Brush	11.975	2.25
Structural Steel	12.125	2.25
Swing Stage	12.175	2.25
Spray & Sandblaster	12.725	2.25
Plasterers	12.91	1.66
Roofers	13.32	1.66
Sheet Metal Workers	15.16	3.79
Terrazzo Workers	14.60	3.88
Tile Setters	11.96	2.97
Laborers:		
General	10.62	3.29
Plaster Tender	10.77	3.29
Air and Electric Tool Operator	10.92	3.29
Jackhammer Operator	11.32	3.29
Power Equipment Operators:		
Group I	15.22	2.90
Group II	14.92	2.90
Group III	14.56	2.90
Group IV	14.44	2.90
Group V	13.88	2.90
Group VI	13.41	2.90
Plumbers & Steamfitters	15.48	2.59

DECISION #MO83-4021-Mod.#1 (48 FR 11619-March 18, 1983) Statewide, Missouri	Basic Hourly Rates	Fringe Benefits
OMIT:		
Laborers:		
Zone 5:		
Group 1	$12.05	3.10
Group 2	12.17	3.10
Group 3	12.32	3.10
Group 4	12.52	3.10
Group 5	12.82	3.10
Laborers Classification Definitions - Zone 5		
Power Equipment Operators:		
Zone 4:		
Group 1	15.35	1.97
Group 2	15.00	1.97
Group 3	14.80	1.97
Group 5	14.10	1.97
Group 6	15.85	1.97
ADD:		
Laborers:		
Zone 5: (Clay, Jackson, Platte & Ray Cos.)		
Group 1	12.02	3.30
Group 2	12.82	3.30
Laborers Classification Definitions - Zone 5 (Clay, Jackson, Platte & Ray Cos.) (See Attachment)		
Power Equipment Operators:		
Zone 4:		
Group 1	14.45	2.87
Group 2	14.10	2.87
Group 3	13.90	2.87
Group 4	13.05	2.87
Group 5	14.70	2.87
Group 6	14.95	2.87
CHANGE:		
Power Equipment Operators:		
Zone 3:		
Group 1	15.30	2.87
Group 2	15.10	2.87
Group 3	14.90	2.87
Group 4	14.30	2.87
Group 5	15.55	2.87
Group 6	15.80	2.87
Zone 9:		
Group 1	14.75	2.87
Group 2	14.55	2.87
Group 3	14.35	2.87
Group 4	13.75	2.87
Group 5	15.00	2.87
Group 6	15.25	2.87

LABORER CLASSIFICATION DEFINITIONS - ZONE 5 - CLAY JACKSON, PLATTE AND RAY COUNTIES

Group 1 - General laborer - Carpenter tenders, salamander tenders; loading trucks under bins, hopper and conveyors; track men and all other general laborers; Air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgia buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams; abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only);Crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used

Group 2 - Skilled Laborers - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air track drills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters and etc.; hot mastic kettleman; hot tar applicator; hand blade operators; mortar men on brick or block manholes; sand blasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; head pipe layer on sewer work; manhole builder (brick or block); dynamite; powder men; welder

SUPERSEDEAS DECISION

STATE: FLORIDA
DECISION NUMBER: FL83-1017
COUNTIES: ESCAMBIA & SANTA ROSA
DATE: DATE OF PUBLICATION
Supersedes Decision No.: FL79-1116 dated August 17, 1979 in 44 FR 48550.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.15	2.43
AIR CONDITIONING MECHANICS	9.00	
BRICKLAYERS	9.00	
CARPENTERS	7.77	
CEMENT MASONS	6.62	
DRYWALL HANGERS	7.00	
ELECTRICIANS	6.83	
GLAZIERS	8.86	.35
INSULATION INSTALLERS (Batt or Blown)	6.29	
IRONWORKERS	9.16	
LABORERS:		
Pipelayers	4.75	
Unskilled	4.57	
PAINTERS	7.50	
PLUMBERS & PIPEFITTERS	8.57	
ROOFERS	5.85	
SHEET METAL WORKERS	$ 7.00	.15
SOFT FLOOR LAYERS	6.96	
SPRINKLER FITTERS	9.18	
TILE SETTERS	7.75	
TRUCK DRIVERS	6.00	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader	5.00	
Backhoe	5.13	
Bulldozer	5.48	
Crane	9.72	
Grader	4.70	
Motor Grader	4.63	
Roller	4.76	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA
COUNTY: DADE
DECISION NUMBER: FL83-1016
DATE: DATE OF PUBLICATION
Supersedes Decision No.: FL82-1032 dated June 25, 1982 in 47 FR 27683.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments of 4 stories or less).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.23	2.45
BOILERMAKERS	17.20	3.315
BRICKLAYERS:		
Bricklayers,Cement Masons, Marble Setters,Plasterers, Stonemasons, & Tile & Terrazzo Workers	14.70	1.77
CARPENTERS & SOFT FLOOR LAYERS	13.30	1.53
ELECTRICIANS	17.35	1.05 + 10%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.115	2.465 + a
Helpers	9.88	2.465 + a
IRONWORKERS	14.15	2.48
LABORERS:		
1)Permit value $500,000 +:		
Air Tool Operator,Mason Tenders, Mortar Mixers,& Pipelayers	8.37	1.57
Plasterers Tenders	8.95	1.57
Unskilled	8.67	1.57
b)Permit value up to $500,000:		
Air Tool Operator,Mason Tenders,Mortar Mixers,& Pipelayers	7.07	1.57
Plasterers Tenders	7.25	1.57
Unskilled	6.97	1.57
LINEMEN:		
Lineman	13.37	1.199
Groundman	7.75	.884
MILLWRIGHTS	$12.67	1.50
PAINTERS:		
Brush	12.55	1.82
Tapers,Paperhangers	12.80	1.82
Spray,Sandblasters	13.05	1.82
PILEDRIVERS	12.15	1.50
PLUMBERS & PIPEFITTERS	16.56	3.12
POWER EQUIPMENT OPERATORS:		
Group A	15.20	1.25
Group B	14.18	1.25
Group C	13.06	1.25
Group D	12.04	1.25
Group E	10.81	1.25
REFRIGERATION & A/C MECHANICS:		
A/C units 10 tons +	15.44	2.53
A/C units over 7.5 tons but under 10 tons	11.52	2.53
ROOFERS:		
Slate,Tile,Composition,Damp, & Waterproofers	13.88	1.45
Kettlemen	10.68	1.45
SHEET METAL WORKERS	18.51	1.78
SPRINKLER FITTERS	15.00	2.18
WELDERS--Rate for Craft		

FOOTNOTES: a. Six Paid Holidays: New Year's Day,Memorial Day,Independence Day,Labor Day, Thanksgiving Day,&Christmas Day. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Credit for employee who has worked less than 5 years.

POWER EQUIPMENT OPERATORS -- Classification Definitions:
Group A: Field shop mechanic,Crane,Derrick,Hoist,Field Batch Plant Operator,Inside elevator Operator.
Group B: Dragline,Backhoe,Finisher Grader,Fireman,Forklift,Pumps 3" or larger combination of 5 or less pumps, Air compressor(over 125 CFM) or other equipment.
Group C: Bulldozer,Distributer,Scraper,Motor Grader,Trenching Machine,Front End Loader,Air Compressor(up to 125 CFM),Welding Machine,Winch Truck.
Group D: Roller,Finishing Machine,Tractor,Oiler, & Drivers,Mixers.
Group E: Oiler on Crawler Cranes, Drivet.

Unlisted classification needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR,5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MASSACHUSETTS

COUNTIES: BERKSHIRE, FRANKLIN, HAMPDEN AND HAMPSHIRE

DECISION NO.: MA83-3004

DATE: DATE OF PUBLICATION

Supersedes Decision No. MA82-3005, dated April 30, 1982 in 47 FR 18737

DESCRIPTION OF WORK: Building, Heavy, Highway and Residential Construction

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.45	3.31
BOILERMAKERS	16.44	1.415+ 10%
BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; MARBLE, TILE & TERRAZZO WORKERS; POINTERS; CLEANERS		
CAULKERS:		
HAMPDEN; HAMPSHIRE; FRANKLIN; BERKSHIRE (Becket, Otis, Sandisfield)	13.55	4.22
BERKSHIRE (Adams, North Adams, Cheshire, Floride, Savoy, Clarksbury, Williamstown)	11.85	
BERKSHIRE (Remainder of County)	14.58	1.65
CARPENTERS; SOFT FLOOR LAYERS; DRYWALL CARPENTERS		
BERKSHIRE; FRANKLIN (Monroe, Monroe Bridge)	13.09	2.54
FRANKLIN (Erving, Warwick, Orange, North Orange) HAMPDEN; HAMPSHIRE (South Hadley, Granby, Belchertown, Amherst, Pelham)	15.81	3.52
FRANKLIN (Leverett, Shutesbury, Sunderland	14.90	2.72
HAMPSHIRE (Remainder of County); FRANKLIN (Remainder of County)	15.40	2.22
ELECTRICIANS		
BERKSHIRE; FRANKLIN (Rawley, Monroe, Rowe); HAMPSHIRE (Middlefield, Cummington, Plainfield)	15.54	1.96+ 3%
FRANKLIN (Remainder of County); HAMPSHIRE (Remainder of County); HAMPDEN (Chester, Holyoke and North portion of Chicopee)		
Electrical Contracts under $85,000	14.86	1.27+3%
Electrical Contracts over $85,000	16.86	1.27+3%
HAMPDEN (Remainder of County); HAMPSHIRE (Belchertown, Ware)	16.13	1.38+3%
ELEVATOR CONSTRUCTORS	15.16	2.69+a+b
ELEVATOR CONSTRUCTORS' HELPERS	10.61	2.69+a+b
ELEVATOR CONSTRUCTORS' PROBATIONARY HELPERS	7.58	
GLAZIERS	12.77	2.87
IRONWORKERS:		
HAMPSHIRE; HAMPDEN; FRANKLIN; BERKSHIRE Becket, Washington, Lee, Sandisfield, New Marlboro, Hinsdale, Peru, Savoy, Monterey, Sheffield, Windsor, Otis, N. & E. Otis)	15.50	5.07
BERKSHIRE (Remainder of County):		
Building, Heavy and Highway	13.90	2.79
Residential (4 stories or less)	10.42	2.79
LATHERS	10.85	.26
LATHERS, DRYWALL	9.00	.26
LABORERS; (BUILDING)		
GROUP 1	12.45	2.35
GROUP 2	12.70	2.35
GROUP 3	12.95	2.35
GROUP 4	13.20	2.35
GROUP 5	13.45	2.35
LABORERS: (HEAVY & HIGHWAY)		
CLASS I	12.45	2.35
CLASS II	12.70	2.35
CLASS III	13.20	2.35
CLASS IV	13.45	2.35

DECISION NO. MA83-3004

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Linemen, Cable splicers & Dynamite man	16.67	1.70+3%
Heavy equipment operators	15.17	1.70+3%
Equipment operator, tractor trailer driver & field mechanic	14.31	1.70+3%
Material man	14.07	1.70+3%
Groundman truck driver	12.86	1.70+3%
Groundman	11.37	1.70+3%
MARBLE, TILE & TERRAZZO FINISHERS:		
BERKSHIRE AND HAMPDEN COUNTIES	11.45	
MILLWRIGHTS	17.00	3.20
PAINTERS:		
Brush and Taper	14.56	2.34
Spray and Sandblating	17.34	2.34
Swing stage and steel riding under 40'	13.75	2.34
Swing stage and steel riding over 40'	14.06	2.34
SIGN PAINTERS	12.15	1.69
PILEDRIVERMEN	16.65	2.90
PLUMBERS & STEAMFITTERS:		
FRANKLIN (Orange) HAMPDEN; HAMPSHIRE; BERKSHIRE (Otis, Becket, Sandifield; FRANKLIN (Remainder of County)	16.28	1.85+4%
	16.82	3.61+c
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION:		
CLASS I	15.13	2.20+d
CLASS II	14.93	2.20+d
CLASS III	14.73	2.20+d
CLASS IIIA	14.36	2.20+d
CLASS IV	12.83	2.20+d
CLASS V	12.13	2.20+d
CLASS VI	10.98	2.20+d
CLASS VII	15.88	2.20+d
CLASS VIII	12.16	2.20+d
CLASS IX	15.71	2.20+d
CLASS X	15.63	2.20+d
CLASS XI	16.13	2.20+d
POWER EQUIPMENT OPERATOR HEAVY AND HIGHWAY CONSTRUCTION:		
CLASS I	15.13	2.20+e
CLASS II	14.93	2.20+e
CLASS III	14.73	2.20+e
CLASS IIIA	14.36	2.20+e
CLASS IV	12.83	2.20+e
CLASS V	12.13	2.20+e
CLASS VI	10.98	2.20+e
CLASS VII	15.88	2.20+e
CLASS VIII	12.16	2.20+e
CLASS IX	15.71	2.20+e
CLASS X	15.63	2.20+e
CLASS XI	16.13	2.20+e
ROOFERS:		
Composition, Damp Waterproof	10.565	3.13
Slate, Tile, Precast Concrete	11.065	3.13
SHEET METAL WORKERS	15.66	4.06
SPRINKLER FITTERS	18.00	2.83
TRUCK DRIVERS		
CLASS I	11.86	2.65+f + g
CLASS II	12.03	2.65+f +g
CLASS III	12.10	2.65+f +g
CLASS IV	12.22	2.65+f +g
CLASS V	12.32	2.65+f +g
CLASS VI	12.61	2.65+f +g
CLASS VII	12.90	2.65+f +g

DECISION NO. MA83-3004

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. 6 paid holidays: A through F providing employee has worked 5 consecutive days before and the working day after the holiday.

c. 2 paid holidays: C & D, provided the employee has been employed seven days prior to the holiday by the same employer.

d. 8 paid holidays: A through F, Washington's Birthday and Veterans Day.

e. 9 paid holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day.

f. 10 paid holidays: A through F, Washington's Birthday, Patriot's Day, Columbus Day, and Veterans Day.

g. Paid Vacation: 4 months to 1 year - ½ day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment.

DECISION NO. MA83-3004

CLASSIFICATIONS

LABORERS BUILDING

GROUP 1 - Laborers, carpenter tenders and wrecking laborers

GROUP 2 - Asphalt Rakers, Carbide Core Driller Operators, Chain Saw Operators, Pipelayers, Jackhammer and Paving Breaker Operators, Barco-type Jumping Tampers, Laser Beam Operators, Concrete Pump Operators, Mason-Tenders, Mortar Mixers, Ride-on Motorized Buggy Operators and Wagon Drill Operators

GROUP 3 - Pre-cast Floor and Roof Plank Erectors and Asbestos Removers

GROUP 4 - Air Track Operators, Block Pavers, Rammers and Curb Setters

GROUP 5 - Powdermen and Blasters

LABORERS HEAVY & HIGHWAY

CLASS I - Carpenter Tenders, Cement Finisher Tenders, Laborers, Wrecking Laborers

CLASS II - Asphalt Rakers, Fence and Guard Rail Erectors, Laser Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op., Pneumatic Tool Op., Wagon Drill Op.

CLASS III - Air Track Op., Block Pavers, Rammers, Curb Setters

CLASS IV - Blasterers, Powdermen

DECISION NO. MA83-3004

POWER EQUIPMENT OPERATORS: BUILDING

CLASS I - Shovels, Cranes (including all tower, climbing and bridge cranes, as used in Building Construction as defined in Scope of Employment), Hydraulic Cranes--10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Pile Driving Rigs, Concrete Road Pavers, all three Drum Hoisting and Trenching Machines, Belt-type Loaders, Foreman Mechanics, Front End Loaders--5½ yards or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.), Combination Backhoe-Loader--3/4 yard or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pump with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted compressor), Compressor House (3 to 6 compressors), rock and earth boring machines (excluding McCarthy and similar drills), Graders, Front End Loaders-4 yards to 5½ yards, two Drum Hoists, High Fork Lifts with capacity of 15 ft. and over, Scraper--21 yards and over (struck load), Sonic Hammer Console, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Combination Backhoe-Loader--up to 3/4 yard hoe, Bulldozers, Push Cats, Scrapers--up to 21 yards (struck load) selfpropelled or tractor drawn, Fireman, Front End Loaders--up to 4 yards, Asphalt Paver, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete pumps, and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-Loading Batch Plant, Well Point Operators (including installing), Electric pumps used in Well Point System, Pumps--17 inches and over (total discharge), Compressor (one or two 900 cu. ft. and over, Engineers in charge of Powered Grease Truck, all automatic elevators (permanent or temporary) operated manually or remote control (not to be confused with elevators operating from conventional hoist--1, 2 or 3 Drum), Grout pumps, Boom Truck, Hydraulic Cranes--under 10 ton.

CLASS IIIA - Asphalt Rollers, Self-powered Rollers and Compactors, Tractor without blade drawing sheepsfoot roller, rubber tire roller, vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Single Drum Hoist, Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading), Bulk Cement Plants, Self-propelled material spreaders, A-Frame Trucks, Fork Lifts--up to 15 ft., 3 or more 10KW Light Plants, 30 KW or more Generators.

CLASS V - Compressors (one or two) 315 cu. ft. to 900 cu. ft., Pumps--4 inches to 12 inches (total discharge).

DECISION NO. MA83-3004

POWER EQUIPMENT OPERATORS: BUILDING CONT'D

CLASS VI - Compressors (up to 315 cu. ft.), small mixers, pumps (up to 4 inches), power heaters, welding mahines, (when 3 or more heaters or welding machines are used on one job, classification 4 rate will be paid), Conveyors, Oiler, helpers on grease trucks with hand greasing equipment.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY

CLASS I - Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processing Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mocking Machines, Front End Loader--5¼ yards and over, Tower Cranes, Self-propelled Hydraulic Cranes--10 tons and over, Dual Pavers, Automatic Grader--Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi-automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine, Combination Back Hoe-Loader--3/4 yard hoe or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pumps with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted Compressor), Compressor House (3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-- 4 yards to 5½ yards, Scraper--21 yards and over (struck load), Forklifts--7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Concole, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Bulldozer, Push Cats, Scrapers--up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders--up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant(on job), Well Point Operators, Electric Pumps used in Well point system, Fireman, Pumps--16 inches or over total discharge, Compressors (1 or 2) 900 cu. ft. and over, Powered Grease Truck, Tunnel Locomotives and Dinkeys, Grout pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck, self-propelled Hydraulic Cranes--up to 10 ton, Combination Back Hoe-Loader--up to 3/4 yard hoe.

DECISION NO. MA83-3004

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONT'D

CLASS IIIA - Asphalt Rollers, Self-Powered Rollers and Compactors, Tractor without blade drawing sheeps foot roller, Rubber tire roller, Vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Hoists, Conveyors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, MCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant, 3 or more 10KW Light Plants, 30 KW or more Generators.

CLASS V - Compressor (315 cu. ft. to 900 cu. ft., 1 or 2), Pumps-4" to 16" total discharge.

CLASS VI - Compressor (up to 315 cu. ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Grease Trucks, Power Heaters, Welding Machines (when 3 or more welding machines are used, Classification 4 rate shall be paid), A-Frame Trucks, Forklifts--up to 7 ft. lift and up to 3 ton capacity, Hydro Boom, Power Safety Boat.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

TRUCK DRIVERS

CLASS I - Station Wagons, Panel Trucks and Pickup Trucks

CLASS II - Two axle Equipment; Helpers on Low Bed When Assigned at the Discretion of the Employer, Warehousemen, Forklift Operators

CLASS III _ Three Axle Equipment and Tiremen

CLASS IV - Four and Five Axle Equipment

CLASS V - Specialized Earth Moving Equipment under 35 tons other than Convential type trucks, Low Bed, Vachual, Mechanics, Paving Restoration Equipment, Mechanic

CLASS VI - Specialized Earth Moving Equipment over 35 Tons

CLASS II - Trailers for Earth Moving Equipment (Double Hookup)

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN83-3028
Supersedes Decision No. MN81-3029, dated June 19, 1981 in 46 FR 32192
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES: *See Below
DATE: Date of Publication

*Cottonwood, Lincoln, Lyon, Murray, Pipestone, Redwood, & Yellow Medicine

	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.37			
CEMENT MASONS:				
Cottonwood, Murray, & Pipestone Cos.	11.70	3.50		
Lincoln, Lyon, Redwood, & Yellow Medicine Cos.	11.95	.25		
ELECTRICIANS	8.10			
PLUMBERS; Pipefitters	13.85	2.45		
LABORERS:				
Unskilled	6.98			
Asphalt Raker	6.91	.75		
POWER EQUIPMENT OPERATORS:				
Asphalt Distributor Spreader	9.10	.75		
Asphalt Plant	7.00			
Backhoe	8.93			
Boring Machine	7.60	1.03		
Bulldozer	9.91			
Concrete Saw	8.43			
Cranes, Derricks & Draglines	10.00			
Curb Setter	8.85	.45		
Fireman	7.94	.75		
Front End Loader	9.10	.75		
Grader	8.50			
Mechanic	9.98			
Motor Patrol	9.70			
Pugmill Operator	9.10	.75		
Roller, Self-propelled	8.32	.75		
Roller, Finish	8.82	.75		
Screedman	8.80	.75		
Turnapull	9.91			
TRUCK DRIVERS:				
Bituminous Distributor Driver	8.34	.75		
Tandem Axle	8.17	.75		
Five Axle	8.57	.75		
Lowboy	9.13	1.03		
Over 16 Cu. Yds.	9.72	1.30		
WELDERS - Rate for Craft				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI COUNTY: HINDS
DECISION NUMBER: MS83-1015 DATE: DATE OF PUBLICATION
Supersedes Decision No.: MS82-1068 dated October 15, 1982 in 47 FR 46233.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION Projects (does not include residential construction consisting of single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 14.29	1.61
BOILERMAKERS	14.50	2.92
BRICKLAYERS:		
Bricklayers	12.75	.80
Stone,Block, & Marble Masons	12.75	.80
Caulkers,Pointers, & Cleaners	12.75	.80
Tile & Terrazzo Setters	12.60	.80
CARPENTERS:		
Carpenters	12.00	1.00
Power Saw Operators (1 hp or over)	12.25	1.00
Fiber Glass Insulation Application	12.15	1.00
Millwrights	12.60	1.00
Piledrivermen	12.35	1.00
CEMENT MASONS:		
Cement Masons	10.90	.80
Float Machine Operator	11.15	.80
ELECTRICIANS:		
Electricians	14.05	32+1.39
Cable Splicers	14.30	32+1.39
ELEVATOR CONSTRUCTORS	12.08	2.69+a+b
GLAZIERS	11.37	.50
IRONWORKERS	13.50	1.39
LABORERS:		
Laborers	6.65	.50
Wrecking & Demolition	6.65	.50
Mason Tenders	6.80	.50
Plasterers Tenders	6.80	.50
Pipelayers	6.80	.50
Mortar Mixers	6.90	.50
Mechanical Tools,Motorized (GA) Buggy Operators	6.90	.50
LATHERS	8.65	.01
LINE CONSTRUCTION:		
Linemen	$ 13.43	5%I+c+.65
Cable Splicers	13.73	5%I+c+.65
Groundmen	8.13	5%I+c+.65
PAINTERS:		
Brush & Roller	8.50	.60
Spray	9.00	.60
Sandblast	9.50	.60
PLASTERERS	10.35	1.10
PLUMBERS,STEAMFITTERS, & PIPEFITTERS	12.50	2.05
ROOFERS:		
Roofers	11.70	.50
Kettlemen	8.85	.50
Paper Roller	8.85	.50
SHEET METAL WORKERS	14.05	1.05
SPRINKLER FITTERS	14.57	2.83
POWER EQUIPMENT OPERATORS:		
Group I	13.43	.95
Group II	12.55	.95
Group III	12.28	.95
Group IV	11.46	.95
Group V	9.35	.95

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

BOOM INCLUDING JIB:
$ .50 above regular rate-100ft to 200ft.
$1.00 above regular rate-201ft to 300ft.
$2.00 above regular rate-301ft to 400ft.
$3.00 above regular rate-401ft to 500ft.
$3.25 above regular rate-501 ft & above.

FOOTNOTES:
a. Paid holidays: New Year's Day;Memorial Day;Independence Day;Labor Day;Thanksgiving Day; Christmas Day.

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee with more than 5 years service; 6% for employees with less than 5 years service.

c. One week vacation after one year's service.

Power Equipment Operators-Classification Definitions:

Group I - Engineer operating under air pressure.

Group II - Mechanic

Group III - Asphalt Plant,Backhoe,Blacksmith,Boom Tractor,Bulldozer,Central Mixing Plant, Cherry Picker,Clamshell,Crane,Derrick Car,Derrick,Derrick Boat,Dragline,Dredge,Elevating Grader,End Loader, Excavator(power belt),Fork lift(5 tons & over),Hoists(2 drums in active use),Locomotive Engineer,Marine Engineer(chief),Master Pilot-Mixer-Mobile,Motor Patrol & similar equipment,Paver (21 c.f. or larger),Piledriver,Recharger,Scoop (skimmer),Scraper, Shovel,Trenching Machine (over 18" bucket line width),Turnapull (DW-10 and similar pull type scrapers),Trackvator & similar Endloaders,Welder,Welding Machines & Pumps(operating 2 to 6 machines,Well Driller,Well Point Pumps).

Group IV - Asphalt Spreader(bituminous distributor),Asphalt Spreader (bituminous mixer), Backfilling Machine,Conveyor,Drill (earth),Finishing machine,Fireman,Forklift (over 2 tons & less than 5 tons),Heating Plant,Hoist (one drum),Marine Engineer's assistant,Mixer Payloader, & similar Endloaders,Pilot,Power Generating Plant,Pump(concrete),Roller, Scoopmobile,Tractor (with power take-off),Trenching Machines(19"or smaller bucket line width),Tugboat,Winch Truck & tractor, Small Rubber Tired with Backhoe attachment.

Group V - Air Compressor, Batch Scale,Deckhand,Forklift(2 tons & under),Form Grader Locomotive Hostler,Motorboat(in or out-board), Oiler, Pump, Roughneck,Scowman,Tractor (with attachments), Welding Machine.

BOOMS INCLUDING JIB:
$ .50 above regular rate - 100 ft to 200ft.
$ .75 above regular rate - 201 ft to 300 ft.
$1.00 above regular rate - over 300 ft.

SUPERSEDEAS DECISION

STATE: Nebraska COUNTY: Lancaster
DECISION NO.: NE83-4025 DATE: Date of Publication
Supersedes Decision No. NE82-4004 dated January 29, 1982 in 47 FR 4468
DESCRIPTION OF WORK: Building Projects, (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
Bricklayers	$10.00	.90
Carpenters	10.94	1.70
Cement Masons	8.96	
Drywall Installer & Finisher	10.00	
Electricians	14.81	3-1/2%+1.87
Glaziers	14.73	2.84
Ironworkers/Steel Erectors	7.96	
Laborers:		
General	6.23	
Fence Installers	6.25	
Form Setters	9.00	
Lathers	10.93	
Overhead Door Installers	7.00	
Painters	8.00	
Plasterers	13.03	
Roofers	11.45	.85
Sheet Metal Workers	11.12	2.27
Sprinkler Fitters	11.63	
Tile Setters	12.70	
Truck Drivers	7.25	
Power Equipment Operators:		
Bobcat	7.50	
Backhoes	7.75	
Front-End-Loader	10.45	
Motor Grader	9.49	
Roller	9.35	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 83-8157 Filed 3-31-83 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
April 1, 1983

Part IV

Department of Education

Family Contribution Schedule for the Guaranteed Student Loan Program for 1983–84 and 1984–85; Final Regulations and Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 682

Family Contribution Schedule for the Guaranteed Student Loan Program for 1983–84

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations for use in determining student eligibility for interest benefits under the Guaranteed Student Loan (GSL) Program. These regulations provide expected family contributions (EFC) for use under the GSL Program in accordance with recent legislation. This family contribution schedule will apply to loans for any period of instruction which begins on or after July 1, 1983, but not later than June 30, 1984.

EFFECTIVE DATES: These regulations that establish the 1983–84 GSL Family Contribution Schedule are expected to take effect April 18, 1983, except § 682.612(b)(6), which contains information collection requirements under review by OMB. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a later date, the Secretary will publish a notice in the **Federal Register** stating the effective date of § 682.612(b)(6) of these regulations.

ADDRESS: Comments should be addressed to Mr. Larry Oxendine, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW., (Room 4310, ROB–3) Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ralph Madden or Larry Oxendine, telephone number (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

Section 428(a) of the Higher Education Act of 1965, as amended, provides that a student may qualify for interest benefits under the GSL program only if the adjusted gross income of the student's family is: (a) less than or equal to $30,000; or (b) greater than $30,000 and the institution the student attends determines that the student has demonstrated financial need for the loan.

Modification of the 1982–83 Family Contribution Schedule for use for 1983–84:

Section 9 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301) requires that the 1983–84 GSL family contribution schedule (for the period July 1, 1983, through June 30, 1984) be the family contribution schedule for the period July 1, 1982, through June 30, 1983 (the 1982–83 family contribution schedule, as published in the **Federal Register** on May 3, 1982, 47 FR 19086). Section 9 of Pub. L. 97–301 stipulates that the 1982–83 family contribution schedule be modified to reflect "the most recent and relevant data" for use as the 1983–84 schedule.

Accordingly, this schedule continues the use of systems of financial need analysis approved by the Secretary for use in the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs (campus-based programs) and a set of tables, added as Appendix B to these regulations. This schedule modifies the 1982–83 family contribution schedule in the following respects:

(1) The 1982–83 schedule applies to loans for periods of instruction beginning on or after July 1, 1982, but not later than June 30, 1983. This schedule applies to loans for periods of instruction beginning on or after July 1, 1983, but not later than June 30, 1984, regardless of when an institution completes its portion of the student's GSL application.

(2) The definition of "independent student" in § 682.301(d) takes into account the student's status in 1982 and 1983, rather than in 1981 and 1982, unless the student is married at the time the determination of adjusted gross family income is made, in which case the student's status in 1983 alone, rather than 1982, is taken into account.

(3) The schedule, in § 682.301(c), requires the educational institution, in determining the adjusted gross income of the student's family, to consider the income reported by each family member on the 1982 Federal income tax return, rather than on the 1981 Federal income tax return.

(4) The schedule is modified to require an educational institution, in determining which of the approved need analysis systems may be used to calculate the student's expected family contribution, to consider whether the student has received financial assistance under the campus-based programs for the 1983–84 award year rather than the 1982–83 award year.

(5) The expected family contribution amounts in Tables A, B, C and D of Appendix B are revised to reflect the 1982 Federal income tax and F.I.C.A. (Social Security) deductions and the Standard Maintenance Allowance derived from the most recent Bureau of Labor Statistics low budget standard.

Procedure for Determining Eligibility for Interest Benefits

In order to determine the adjusted gross income of the student's family for loans for the period July 1, 1983, through June 30, 1984, a postsecondary institution must consider the income reported by each family member on his or her 1982 Federal income tax return. The adjusted gross family income for the dependent student means the adjusted gross income of (1) the student, (2) the student's spouse, if any, and (3) the student's mother and father; for the independent student, only the income of the student and his or her spouse is considered. The institution determines the adjusted gross income of the student's family based upon data provided, and certified to, by each person whose income must be considered. The school then determines the student's EFC using the tables appended here or an approved need analysis system. For all information required in this calculation (e.g., total number of family members and number of family members enrolled in postsecondary institutions), the institution relies on statements made, and certified to, by the student. Those contributions differ for dependent and independent students. For purposes of these regulations a dependent student is a student who does not qualify as an independent student.

The expected family contribution coupled with the student's estimated financial assistance is subtracted from the student's estimated cost of attendance to determine financial need and eligibility for interest benefits under the GSL Program.

Methods of Determining Expected Family Contribution

As in the 1981–82 and 1982–83 GSL family contribution schedules, the 1983–84 schedule authorizes two methods for institutions to use in determining a student's EFC. The first is that found in the tables published here as Appendix B to these regulations; the second, the systems used for computing financial need under the campus-based programs.

An institution may always use a system of need analysis approved for the campus-based programs to calculate an expected family contribution to determine eligibility for interest benefits. It must use the same EFC it determined according to a need analysis system approved for the campus-based programs if the student has been awarded aid under a campus-based program. All but two of the systems approved for campus-based programs

are based on the concept of Uniform Methodology (UM). The Secretary has approved the use of systems based on UM for the campus-based and GSL Programs because, as will be discussed here, he considers it a consistent and responsible approach to measuring a family's ability to contribute toward the student's cost of education.

UM is a model of need analysis developed in 1975 by the National Task Force on Student Aid Problems (Keppel Task Force), after consultation with financial aid administrators, educational associations, students, Federal and State governments, and national need servicers. The standard or model thus developed rests on the following principles: to the extent that they are able, parents have the primary responsibility to pay for their children's education; parents will, as they are able, contribute funds for their sons' and daughters' education; students, as well as their parents, have a responsibility to help pay for their education; the family should be accepted in its present financial condition; and a need analysis system must evaluate families in a consistent and equitable manner, which recognizes that special circumstances can and do alter a family's ability to contribute.

Under UM the expected family contribution for a dependent student comprises a progressively increasing contribution from parental disposable income, a contribution from parental assets, and a contribution from the student's resources, which include expected earnings, assets, and non-taxable income and benefits. The independent student's expected family contribution comprises all the disposable income of both the student and his or her spouse, and a portion of their assets.

In the GSL tables found in Appendix B to these regulations, the Secretary has adopted, as in past years, a system of need measurement based on several aspects of the UM model. Under these tables, students are classified as dependent or independent, and each class is assigned different expected family contribution rates. Unlike UM, the need system used here has no requirement that families contribute any portion of family assets to educational costs. Like UM, the GSL system does require the family of the independent student to contribute all disposable income to the student's cost of education, but only requires contribution of a portion of the disposable income of the family of the dependent student.

The assignment of different assessment rates to the family incomes of dependent and independent students is both reasonable and generally accepted in the higher education community. The rates differ for two reasons. First, independent student borrowers acquire, either directly under community property statutes, or indirectly through their right to support, a claim on their spouses' future earnings, enhanced because of the education paid for with the student loan. Dependent student borrowers have a legal claim on their parents for support only until they marry or attain the age of majority. Traditionally, they have no legal duty to share any future earnings with their parents. Because spouses of independent students have such a claim to their future earnings, the spouses stand to recoup, over time, funds contributed to the borrowers' educational costs. The parents of dependent students, who ordinarily have no legal claim to the earnings of emancipated children, never recoup the funds spent on the dependent borrowers' cost of education. For the former, the contribution is an investment; for the latter, purely an expense. Different assessment rates on their respective family incomes are essential to respect this difference and treat both groups fairly. Second, the financial responsibilities of the two classes are so different that different rates should be applied to treat both equitably. The reponsibilities of parents of dependent students, such as accrued debts, past and future educational expenses for siblings of the borrower, unusual medical expenses, and provisions for retirement, are both different from, and greater than, such needs are for independent students. Furthermore, because of the age of the parents, those needs are less susceptible to deferral than they are for independent students. Independent students, as a group, are not only younger but also likely to have fewer dependents than parents of dependent students, and are therefore better able in the long run to handle financial responsibilities deferred during schooling than the parents of dependent students.

In addition to distinguishing between families of dependent and independent students, the GSL tables also divide borrowers into those with families headed by single persons and those headed by married couples. The tables appear to impose different financial contribution requirements on families headed by single persons and those headed by married couples. The Federal tax rates differ for the two groups; therefore, the disposable incomes differ. The tables require both groups to contribute the same proportion of their disposable income after satisfying Federal taxes and other expenses.

Verification of Student Aid Applicant Information

As a means of strengthening the effort to control abuse of student financial aid programs, the Secretary gives notice that procedures are being developed to verify information needed to determine the student's adjusted gross family income and the student's expected family contribution. Since the student's eligibility for interest benefits is determined solely on the basis of information supplied by the student, the student's spouse, and parents of dependent students, it is imperative that the data be accurate. The Secretary will issue regulations for the GSL Program which will describe the responsibilities of the Secretary, the institution and the student in verifying this information.

The regulations and procedures for the proposed verification process are being developed in consultation with the student financial aid community and are expected to take effect in the 1983–84 school year. It should be noted that the Secretary does not intend to discourage the continuation of established institutional verification procedures now in place.

Proposed Family Contribution Schedule for Use for 1984–85

Because section 9 of Pub. L. 97–301 dictated the content of the regulations for the 1983–84 family contribution schedule, the Secretary did not request public comment. The Secretary is concurrently publishing with these regulations a notice of proposed rulemaking for the 1984–85 GSL family contribution schedule. The Secretary proposes to use the regulations for the 1983–84 GSL family contribution schedule for the 1984–85 GSL family contribution schedule after making minor revisions. The development of the final rules for the 1984–85 family contribution schedule will take into consideration public comment received.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping provisions that are included in these regulations have been or will be submitted for approval to the Office of Management and Budget (OMB). These provisions (§ 682.612(b)(6)) are not effective until OMB approval has been obtained and the public notified to that effect through a notice published in the **Federal Register**.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations and may be submitted to the address listed in this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations establish the formula for determining student eligibility for interest benefits under the Guaranteed Student Loan Program. The regulations, therefore, do not have an impact on small entities.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program)

Dated: March 29, 1983.

T. H. Bell,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN PROGRAM

§ 682.205 [Amended]

1. In § 682.205, paragraph (c) is amended by changing section number "§ 682.301" to read "§ 682.302."

Subpart C [Amended]

2. In the table of contents, Subpart C is amended by redesignating §§ 682.301 through 682.303 as §§ 682.302 through 682.304, respectively, and by adding both a new § 682.301 entitled, "Eligibility for interest benefits," and a new appendix entitled, "Appendix B to Part 682, Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution."

§ 682.300 [Amended]

3. Section 682.300 is amended by removing paragraph (b) and by redesignating paragraphs (c) through (f) as paragraphs (b) through (e), respectively.

§§ 682.302 through 682.304 [Redesignated from §§ 682.301 through 682.303]

4. Sections 682.301 through 682.303 are redesignated as §§ 682.302 through 682.304, respectively.

5. A new § 682.301 is added to read as follows:

§ 682.301 Eligibility for interest benefits.

(a)(1) *General* (i) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her loan.

(ii) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrated financial need for the loan.

(2)(i) If the student demonstrates financial need for a loan of $1,000 or more, the student qualifies for interest benefits for the amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1,000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender with his or her loan application a statement from the student's institution that certifies—

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended;

(2) The estimated financial assistance for the student for the academic period for which the loan is intended;

(3) The adjusted gross family income of the student's family; and

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000.

(c) *Adjusted gross family income.* The institution determines the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(1) The adjusted gross family income of the student's family means the adjusted gross income, as reported on the 1982 Federal income tax return(s), of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father if the student, at the time he or she applies, is determined to be a "dependent student" rather than an "independent student;"

(2) A student whose parents are divorced or separated follows these procedures for reporting a parents adjusted gross income to determine the adjusted gross family income—

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(iii) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support for the period commencing January 1, 1982 and ending 12 months prior to the date of application.

(3) If either of the parents has died, the student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(4) The following rule applies if either a parent whose income is taken into account under paragraph (c)(2) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(3) of this section, has remarried. The income of that parent's spouse shall be included in determining the adjusted gross family income if, in 1982 or 1983, the student—

(i) Has received or will receive financial assistance of more than $750 from that spouse, or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(5) For a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be included in determining the adjusted gross family income.

(d) "Independent student" means:

(1) A single student who for 1982 and 1983—

(i) Has not lived and will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to paragraph (c);

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to paragraph (c); and

(iii) Has not received and will not receive financial assistance of more than $750 from the parent(s) for whom income must be reported according to paragraph (c) or

(2) A married student who for 1983—

(i) Has not lived and will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to paragraph (c); or

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to paragraph (c); and

(iii) Has not received and will not receive financial assistance of more than $750 from the parent(s) for whom income must be reported according to paragraph (c).

(3) However, if both parents have died, or the student has been declared a ward of the court, the student is independent.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000 the institution shall determine the student's need for a loan by subtracting from the student's estimated cost of attendance his or her—

(i) Estimated financial assistance; and

(ii) Expected family contribution.

(2) The student shall certify to the accuracy of any information he or she provides to the institution which is necessary to determine need.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1983, but not later than June 30, 1984, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1983–84 (July 1, 1983–June 30, 1984) under the Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), or National Direct Student Loan (NDSL) program, at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the SEOG, CWS or NDSL program.

(2) If the student has not been awarded financial assistance under the SEOG, CWS, or NDSL program for the 1983–84 award year at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is determined under either—

(i) Any need analysis system which has been approved by the Secretary for the SEOG, CWS, or NDSL program; or

(ii) The tables found in Appendix B if the student's adjusted gross family income does not exceed $75,000.

(20 U.S.C. 1078, 1082)

6. Section 682.612 is amended by redesignating paragraphs (b)(6) through (b)(12) as paragraphs (b)(7) through (b)(13), and by adding a new paragraph (b)(6) to read as follows:

§ 682.612 Records, reports, and inspection requirements for participating schools.

* * * * *

(b) * * *

(6) The data and certifications used to determine the student's adjusted gross family income and the student's expected family contribution.

(20 U.S.C. 1078, 1082)

* * * * *

7. An Appendix B to Part 682 is added to read as follows:

Appendix B to Part 682—Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution

An institution may use the following tables to determine a student's expected family contribution under § 682.301.

For purposes of the four tables,

"Dependent student" means a student who does not qualify as an independent student;

"Independent student" is defined in § 682.301(d); and

"Adjusted gross income" is the adjusted gross family income as determined in § 682.301(c).

BILLING CODE 4000-01-M

Table A - EXPECTED FAMILY CONTRIBUTION FOR A DEPENDENT STUDENT FROM A TWO-PARENT FAMILY

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "Family members" include the student, the student's spouse and their dependents,and the student's mother and father and their dependents. If the family includes a step-parent whose income is included in the adjusted gross family income, family members also include the step-parent and the dependents of the step-parent.

Table A is based on the following assumptions:

* One of the two parents is employed,
* No assets are considered, and
* All of the family income was earned by the employed parent.

The conversion of adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

--Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns,

--F.I.C.A. (Social Security) for one wage earner,

--Average State and other taxes (8%), and

--A Standard Maintenance Allowance, based on the average non-discretionary living expenses for families derived from the Bureau of Labor Statistics low budget standard, as adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for living expenses of the dependent student for the 9 months of school because those living expenses are included in the student's cost of education.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
LESS THAN 30001	AUTOMATICALLY ELIGIBLE									
030001 -030124	2950	2310	1810	1330	1000	660	330	0	0	0
030125-030374	3010	2360	1850	1360	1030	700	370	30	0	0
030375-030624	3060	2410	1890	1400	1060	730	400	70	0	0
030625-030874	3120	2450	1930	1430	1100	760	430	100	0	0
030875-031124	3180	2500	1970	1460	1130	800	460	130	0	0
031125-031374	3230	2550	2010	1500	1160	830	500	170	0	0
031375-031624	3290	2600	2050	1530	1200	860	530	200	0	0
031625-031874	3350	2650	2090	1570	1230	900	560	230	0	0
031875-032124	3400	2690	2130	1600	1260	930	600	270	0	0
032125-032374	3460	2740	2170	1640	1290	960	630	300	0	0
032375-032624	3520	2790	2220	1670	1320	1000	670	330	0	0
032625-032874	3580	2850	2260	1710	1360	1030	700	370	40	0
032875-033124	3660	2900	2310	1750	1390	1070	740	410	70	0
033125-033374	3720	2960	2360	1790	1430	1100	780	440	110	0
033375-033624	3790	3020	2410	1830	1460	1140	810	480	150	0
033625-033874	3860	3090	2460	1870	1500	1170	850	520	190	0
033875-034124	3930	3150	2520	1920	1540	1210	880	550	220	0
034125-034374	4000	3210	2570	1960	1580	1240	920	590	260	0
034375-034624	4070	3270	2630	2010	1620	1280	950	630	300	0
034625-034874	4140	3330	2680	2050	1660	1310	990	660	330	0
034875-035124	4210	3390	2730	2100	1700	1350	1020	700	370	40
035125-035374	4280	3440	2780	2150	1740	1380	1060	730	410	70
035375-035624	4350	3500	2830	2190	1780	1410	1090	770	440	110
035625-035874	4420	3560	2880	2240	1820	1450	1130	800	480	150
035875-036124	4490	3630	2940	2280	1860	1490	1160	840	510	180
036125-036374	4560	3700	3000	2320	1900	1530	1200	870	550	220
036375-036624	4630	3770	3060	2370	1950	1570	1230	910	580	260
036625-036874	4700	3840	3110	2420	1990	1610	1260	940	620	290
036875-037124	4760	3910	3170	2470	2040	1650	1300	980	650	330
037125-037374	4830	3980	3230	2520	2080	1690	1330	1010	690	360
037375-037624	4900	4050	3290	2570	2120	1730	1370	1040	720	400
037625-037874	4970	4120	3350	2620	2170	1760	1400	1080	760	430
037875-038124	5040	4190	3410	2670	2210	1800	1440	1110	790	470
038125-038374	5110	4260	3470	2720	2250	1840	1480	1150	830	500
038375-038624	5170	4330	3530	2770	2290	1880	1520	1180	860	540
038625-038874	5230	4390	3590	2820	2340	1920	1550	1220	890	570
038875-039124	5300	4460	3660	2870	2390	1970	1590	1250	930	610
039125-039374	5360	4530	3730	2930	2440	2010	1630	1290	960	640
039375-039624	5420	4590	3800	2990	2490	2050	1670	1320	1000	680
039625-039874	5480	4660	3870	3050	2540	2090	1700	1360	1030	710

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
039875-040124	5550	4720	3940	3110	2590	2140	1740	1390	1070	740
040125-040374	5610	4780	4010	3160	2640	2180	1780	1420	1100	780
040375-040624	5670	4840	4070	3220	2690	2220	1810	1460	1140	810
040625-040874	5730	4910	4130	3280	2740	2260	1850	1490	1170	850
040875-041124	5790	4970	4190	3340	2790	2310	1890	1530	1210	880
041125-041374	5860	5030	4250	3400	2840	2350	1940	1570	1240	920
041375-041624	5920	5090	4320	3450	2890	2400	1980	1600	1270	950
041625-041874	5980	5150	4380	3510	2950	2450	2020	1640	1300	990
041875-042124	6040	5220	4440	3560	3010	2500	2060	1680	1340	1020
042125-042374	6110	5280	4500	3620	3060	2550	2110	1710	1370	1050
042375-042624	6170	5340	4570	3680	3120	2600	2150	1750	1400	1090
042625-042874	6230	5400	4630	3740	3170	2650	2190	1790	1430	1120
042875-043124	6290	5470	4690	3810	3220	2700	2230	1830	1470	1150
043125-043374	6360	5530	4750	3870	3280	2750	2280	1860	1500	1180
043375-043624	6420	5590	4810	3930	3330	2800	2320	1910	1540	1220
043625-043874	6480	5650	4880	3990	3380	2840	2370	1950	1580	1250
043875-044124	6540	5710	4940	4060	3430	2890	2420	1990	1620	1280
044125-044374	6600	5780	5000	4120	3490	2940	2470	2030	1650	1310
044375-044624	6670	5840	5060	4180	3540	2990	2510	2080	1690	1350
044625-044874	6730	5900	5130	4240	3600	3050	2560	2120	1730	1380
044875-045124	6790	5960	5190	4300	3660	3100	2600	2160	1760	1410
045125-045374	6850	6030	5250	4370	3720	3150	2650	2200	1800	1440
045375-045624	6920	6090	5310	4430	3790	3200	2690	2240	1840	1480
045625-045874	6980	6150	5380	4490	3850	3260	2740	2280	1880	1520
045875-046124	7040	6210	5440	4550	3910	3310	2780	2320	1920	1550
046125-046374	7100	6280	5500	4620	3970	3360	2830	2360	1960	1590
046375-046624	7160	6340	5560	4680	4030	3420	2870	2410	2000	1630
046625-046874	7230	6400	5620	4740	4100	3470	2920	2450	2040	1660
046875-047124	7290	6460	5690	4800	4160	3520	2970	2500	2080	1700
047125-047374	7350	6520	5750	4870	4220	3580	3030	2540	2110	1740
047375-047624	7410	6590	5810	4930	4280	3640	3080	2590	2150	1770
047625-047874	7480	6650	5870	4990	4350	3700	3130	2630	2190	1800
047875-048124	7540	6710	5940	5050	4410	3760	3190	2680	2230	1840
048125-048374	7600	6770	6000	5110	4470	3830	3240	2720	2270	1870
048375-048624	7660	6840	6060	5180	4530	3890	3290	2770	2310	1910
048625-048874	7730	6900	6120	5240	4600	3950	3350	2810	2350	1950
048875-049124	7780	6960	6180	5300	4660	4010	3400	2860	2390	1990
049125-049374	7840	7020	6250	5360	4720	4080	3450	2900	2440	2020
049375-049624	7900	7090	6310	5430	4780	4140	3500	2960	2480	2060
049625-049874	7950	7150	6370	5490	4840	4200	3560	3010	2530	2100

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
049875-050124	8010	7200	6430	5550	4910	4260	3620	3060	2570	2140
050125-050374	8060	7260	6500	5610	4970	4330	3680	3120	2620	2190
050375-050624	8120	7320	6560	5660	5030	4390	3740	3170	2660	2220
050625-050874	8180	7370	6620	5740	5090	4450	3810	3220	2710	2260
050875-051124	8230	7430	6680	5800	5160	4510	3870	3270	2750	2290
051125-051374	8290	7490	6730	5860	5220	4570	3930	3330	2800	2330
051375-051624	8350	7540	6790	5920	5280	4640	3990	3380	2840	2380
051625-051874	8400	7600	6850	5990	5340	4700	4050	3430	2890	2420
051875-052124	8460	7660	6900	6040	5400	4760	4120	3490	2940	2470
052125-052374	8520	7710	6960	6100	5470	4820	4180	3540	2990	2510
052375-052624	8570	7770	7020	6160	5530	4890	4240	3600	3040	2560
052625-052874	8630	7830	7070	6210	5590	4950	4300	3660	3100	2600
052875-053124	8690	7880	7130	6270	5650	5010	4370	3720	3150	2650
053125-053374	8740	7940	7190	6330	5710	5070	4430	3780	3200	2690
053375-053624	8800	7990	7240	6380	5760	5130	4490	3850	3260	2740
053625-053874	8850	8050	7300	6440	5820	5200	4550	3910	3310	2780
053875-054124	8910	8110	7360	6500	5870	5250	4620	3970	3360	2830
054125-054374	8970	8160	7410	6550	5930	5310	4680	4030	3420	2870
054375-054624	9020	8220	7470	6610	5990	5370	4740	4100	3470	2920
054625-054874	9080	8280	7520	6660	6040	5420	4800	4160	3520	2970
054875-055124	9140	8330	7580	6720	6100	5480	4860	4220	3580	3030
055125-055374	9190	8390	7640	6780	6160	5540	4920	4280	3640	3080
055375-055624	9250	8450	7690	6830	6210	5590	4970	4340	3700	3130
055625-055874	9310	8500	7750	6890	6270	5650	5030	4410	3760	3190
055875-056124	9360	8560	7810	6950	6330	5710	5090	4460	3830	3240
056125-056374	9420	8610	7860	7000	6380	5760	5140	4520	3890	3290
056375-056624	9470	8670	7920	7060	6440	5820	5200	4580	3950	3340
056625-056874	9530	8730	7980	7120	6500	5870	5250	4630	4010	3400
056875-057124	9590	8780	8030	7170	6550	5930	5310	4690	4070	3450
057125-057374	9640	8840	8090	7230	6610	5990	5370	4750	4130	3500
057375-057624	9700	8900	8140	7280	6660	6040	5420	4800	4180	3560
057625-057874	9760	8950	8200	7340	6720	6100	5480	4860	4240	3620
057875-058124	9810	9010	8260	7400	6780	6160	5540	4920	4300	3660
058125-058374	9870	9070	8310	7450	6830	6210	5590	4970	4350	3730
058375-058624	9930	9120	8370	7510	6890	6270	5650	5030	4410	3790
058625-058874	9980	9180	8430	7570	6950	6330	5710	5090	4460	3840
058875-059124	10040	9240	8480	7620	7000	6380	5760	5140	4520	3900
059125-059374	10100	9290	8540	7680	7060	6440	5820	5200	4580	3960
059375-059624	10150	9350	8600	7740	7120	6500	5870	5250	4630	4010
059625-059874	10210	9400	8650	7790	7170	6550	5930	5310	4690	4070

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 3	4	5	6	7	8	9	10	11	12
059875-060124	10260	9460	8710	7650	7230	6610	5990	5370	4750	4130
060125-060374	10320	9520	8770	7910	7280	6660	6040	5420	4800	4180
060375-060624	10380	9570	8820	7960	7340	6720	6100	5480	4860	4240
060625-060874	10430	9630	8880	8020	7400	6780	6160	5540	4920	4300
060875-061124	10490	9690	8930	8070	7450	6830	6210	5590	4970	4350
061125-061374	10550	9740	8990	8130	7510	6890	6270	5650	5030	4410
061375-061624	10600	9800	9050	8190	7570	6950	6330	5710	5090	4460
061625-061874	10660	9860	9100	8240	7620	7000	6380	5760	5140	4520
061875-062124	10720	9910	9160	8300	7680	7060	6440	5820	5200	4580
062125-062374	10770	9970	9220	8360	7740	7120	6500	5870	5250	4630
062375-062624	10830	10020	9270	8410	7790	7170	6550	5930	5310	4690
062625-062874	10880	10080	9330	8470	7850	7230	6610	5990	5370	4750
062875-063124	10940	10140	9390	8530	7910	7280	6660	6040	5420	4800
063125-063374	10990	10190	9440	8580	7960	7340	6720	6100	5480	4860
063375-063624	11040	10250	9500	8640	8020	7400	6780	6160	5540	4920
063625-063874	11090	10310	9550	8690	8070	7450	6830	6210	5590	4970
063875-064124	11140	10360	9610	8750	8130	7510	6890	6270	5650	5030
064125-064374	11190	10410	9670	8810	8190	7570	6950	6330	5710	5090
064375-064624	11240	10460	9720	8860	8240	7620	7000	6380	5760	5140
064625-064874	11300	10520	9780	8920	8300	7680	7060	6440	5820	5200
064875-065124	11350	10570	9840	8980	8360	7740	7120	6500	5870	5250
065125-065374	11400	10620	9890	9030	8410	7790	7170	6550	5930	5310
065375-065624	11450	10670	9940	9090	8470	7850	7230	6610	5990	5370
065625-065874	11500	10720	9990	9150	8530	7910	7280	6660	6040	5420
065875-066124	11550	10770	10040	9200	8580	7960	7340	6720	6100	5480
066125-066374	11600	10820	10090	9250	8640	8020	7400	6780	6160	5540
066375-066624	11650	10870	10140	9300	8690	8070	7450	6830	6210	5590
066625-066874	11700	10920	10190	9350	8750	8130	7510	6890	6270	5650
066875-067124	11750	10970	10240	9400	8810	8190	7570	6950	6330	5710
067125-067374	11800	11020	10290	9460	8860	8240	7620	7000	6380	5760
067375-067624	11850	11070	10340	9510	8910	8300	7680	7060	6440	5820
067625-067874	11900	11120	10390	9560	8960	8360	7740	7120	6500	5870
067875-068124	11950	11170	10440	9610	9010	8410	7790	7170	6550	5930
068125-068374	12000	11220	10490	9660	9060	8460	7850	7230	6610	5990
068375-068624	12050	11270	10540	9710	9110	8510	7910	7280	6660	6040
068625-068874	12100	11320	10590	9760	9160	8560	7960	7340	6720	6100
068875-069124	12150	11370	10650	9810	9210	8610	8020	7400	6780	6160
069125-069374	12200	11420	10700	9860	9260	8670	8070	7450	6830	6210
069375-069624	12260	11470	10750	9910	9310	8720	8120	7510	6890	6270
069625-069874	12310	11530	10800	9960	9360	8770	8170	7570	6950	6330

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 3	4	5	6	7	8	9	10	11	12
069875-070124	12360	11560	10850	10010	9410	8820	8220	7620	7000	6380
070125-070374	12410	11630	10900	10060	9460	8870	8270	7670	7060	6440
070375-070624	12460	11680	10950	10110	9510	8920	8320	7720	7120	6500
070625-070874	12510	11730	11000	10160	9570	8970	8370	7770	7170	6550
070875-071124	12560	11780	11050	10210	9620	9020	8420	7830	7230	6610
071125-071374	12610	11830	11100	10260	9670	9070	8470	7880	7280	6660
071375-071624	12660	11880	11150	10310	9720	9120	8520	7930	7330	6720
071625-071874	12710	11930	11200	10360	9770	9170	8570	7980	7380	6780
071875-072124	12760	11980	11250	10410	9820	9220	8620	8030	7430	6830
072125-072374	12810	12030	11300	10470	9870	9270	8680	8080	7480	6880
072375-072624	12860	12080	11350	10520	9920	9320	8730	8130	7530	6930
072625-072874	12910	12130	11400	10570	9970	9370	8780	8180	7580	6990
072875-073124	12960	12180	11450	10620	10020	9420	8830	8230	7630	7040
073125-073374	13010	12230	11500	10670	10070	9470	8880	8280	7680	7090
073375-073624	13060	12280	11550	10720	10120	9520	8930	8330	7730	7140
073625-073874	13110	12330	11610	10770	10170	9580	8980	8380	7780	7190
073875-074124	13160	12380	11660	10820	10220	9630	9030	8430	7830	7240
074125-074374	13220	12440	11710	10870	10270	9680	9080	8480	7890	7290
074375-074624	13270	12490	11760	10920	10320	9730	9130	8530	7940	7340
074625-074874	13320	12540	11810	10970	10370	9780	9180	8580	7990	7390
074875-075000	13370	12590	11860	11020	10420	9830	9230	8630	8040	7440

Table B - EXPECTED FAMILY CONTRIBUTION FOR A DEPENDENT STUDENT FROM A ONE-PARENT FAMILY

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table B, "Family members" include the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following assumptions:

* The parent is employed,
* No assets are considered, and
* All of the family income was earned by the parent.

The conversion of adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income, the following:

--Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households,

--F.I.C.A. (Social Security) for one wage earner,

--Average State and other taxes (8%),

--An employment allowance of 30% of income, to a maximum of $1,900, and

--A Standard Maintenance Allowance, based on the average non-discretionary living expenses for families and derived from the Bureau of Labor Statistics low budget standard, as adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for living expenses of the dependent student for the 9 months of school because those living expenses are included in the student's cost of education.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of education.

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
- LESS THAN 30001	AUTOMATICALLY ELIGIBLE										
030001-030124	2530	2060	1580	1180	750	430	110	0	0	0	0
030125-030374	2570	2100	1610	1210	780	460	140	0	0	0	0
030375-030624	2620	2140	1640	1240	810	500	170	0	0	0	0
030625-030874	2660	2180	1680	1270	840	520	200	0	0	0	0
030875-031124	2700	2220	1710	1300	870	550	230	0	0	0	0
031125-031374	2740	2260	1740	1330	900	580	260	0	0	0	0
031375-031624	2780	2290	1780	1360	930	610	300	0	0	0	0
031625-031874	2820	2330	1810	1390	960	640	330	0	0	0	0
031875-032124	2860	2370	1840	1420	990	670	350	30	0	0	0
032125-032374	2900	2410	1880	1450	1020	700	380	60	0	0	0
032375-032624	2950	2460	1920	1480	1050	730	410	100	0	0	0
032625-032874	3010	2500	1960	1520	1080	760	450	130	0	0	0
032875-033124	3060	2550	2000	1560	1110	800	480	160	0	0	0
033125-033374	3120	2590	2040	1590	1150	830	510	200	0	0	0
033375-033624	3170	2640	2080	1630	1180	860	550	230	0	0	0
033625-033874	3220	2690	2120	1670	1210	900	580	260	0	0	0
033875-034124	3280	2730	2160	1700	1250	930	610	300	0	0	0
034125-034374	3330	2780	2200	1740	1280	960	650	330	10	0	0
034375-034624	3390	2820	2240	1770	1310	1000	680	360	50	0	0
034625-034874	3440	2870	2280	1800	1350	1030	710	390	80	0	0
034875-035124	3490	2920	2320	1840	1380	1060	740	430	110	0	0
035125-035374	3550	2970	2360	1870	1410	1090	780	460	140	0	0
035375-035624	3610	3030	2410	1910	1440	1130	810	490	180	0	0
035625-035874	3670	3080	2450	1950	1470	1160	840	530	210	0	0
035875-036124	3740	3130	2500	1990	1500	1190	880	560	240	0	0
036125-036374	3800	3190	2540	2030	1530	1220	910	590	280	0	0
036375-036624	3860	3240	2590	2070	1570	1250	940	630	310	0	0
036625-036874	3920	3300	2640	2110	1600	1280	980	660	340	30	0
036875-037124	3980	3350	2680	2150	1640	1310	1010	690	380	60	0
037125-037374	4040	3400	2730	2190	1670	1340	1040	720	410	90	0
037375-037624	4100	3450	2770	2230	1700	1370	1070	760	440	120	0
037625-037874	4160	3500	2820	2270	1740	1400	1100	790	470	160	0
037875-038124	4220	3560	2860	2310	1770	1430	1120	820	510	190	0
038125-038374	4280	3610	2910	2350	1800	1460	1150	850	540	220	0
038375-038624	4340	3670	2960	2390	1840	1490	1180	880	570	260	0
038625-038874	4400	3730	3010	2440	1870	1530	1210	910	610	290	0
038875-039124	4460	3790	3060	2480	1910	1560	1240	940	640	320	10
039125-039374	4520	3850	3110	2530	1950	1590	1270	970	670	360	40
039375-039624	4580	3910	3170	2570	1990	1630	1300	1000	700	390	70
039625-039874	4640	3970	3220	2620	2030	1660	1330	1030	730	420	100

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
039875-040124	4700	4030	3270	2660	2070	1700	1360	1060	760	450	140
040125-040374	4760	4090	3320	2700	2110	1730	1390	1090	790	480	170
040375-040624	4820	4150	3370	2740	2150	1760	1420	1120	810	510	200
040625-040874	4880	4210	3420	2790	2180	1800	1450	1150	840	540	240
040875-041124	4940	4270	3470	2830	2220	1830	1490	1180	870	570	270
041125-041374	5000	4330	3520	2880	2260	1860	1520	1210	900	600	300
041375-041624	5060	4390	3580	2920	2290	1900	1550	1240	930	630	330
041625-041874	5120	4450	3640	2970	2330	1940	1590	1270	960	660	360
041875-042124	5180	4510	3700	3020	2370	1980	1620	1300	990	690	390
042125-042374	5240	4570	3760	3070	2420	2010	1650	1330	1020	720	420
042375-042624	5300	4630	3820	3130	2460	2050	1690	1360	1050	750	450
042625-042874	5360	4690	3880	3180	2500	2090	1720	1390	1080	780	470
042875-043124	5420	4750	3940	3230	2550	2120	1750	1420	1110	810	500
043125-043374	5480	4810	4000	3280	2590	2160	1780	1440	1140	840	530
043375-043624	5540	4870	4060	3330	2630	2200	1810	1480	1170	870	560
043625-043874	5600	4930	4120	3380	2680	2230	1850	1510	1200	900	590
043875-044124	5660	4990	4180	3430	2720	2270	1880	1540	1230	930	620
044125-044374	5720	5050	4240	3480	2760	2310	1920	1570	1260	960	650
044375-044624	5780	5110	4300	3530	2810	2350	1950	1600	1290	990	680
044625-044874	5840	5170	4360	3590	2850	2390	1990	1640	1320	1020	710
044875-045124	5900	5230	4410	3650	2890	2430	2030	1670	1340	1050	740
045125-045374	5960	5290	4480	3710	2940	2480	2070	1700	1370	1070	770
045375-045624	6020	5350	4530	3770	2990	2520	2100	1730	1400	1100	800
045625-045874	6080	5410	4590	3830	3040	2560	2140	1760	1430	1130	830
045875-046124	6140	5470	4650	3890	3100	2610	2180	1790	1460	1160	860
046125-046374	6200	5530	4710	3950	3150	2650	2210	1830	1490	1190	890
046375-046624	6250	5590	4770	4010	3200	2690	2250	1860	1520	1210	920
046625-046874	6310	5650	4830	4070	3250	2740	2290	1900	1550	1240	950
046875-047124	6360	5710	4890	4130	3300	2780	2320	1930	1580	1270	970
047125-047374	6410	5770	4950	4190	3350	2820	2370	1970	1620	1300	1000
047375-047624	6460	5830	5010	4250	3400	2870	2410	2010	1650	1330	1030
047625-047874	6520	5890	5070	4310	3450	2910	2450	2040	1680	1360	1060
047875-048124	6570	5940	5130	4370	3500	2960	2500	2080	1710	1380	1090
048125-048374	6620	5990	5190	4430	3550	3010	2540	2120	1740	1410	1110
048375-048624	6670	6040	5250	4490	3610	3070	2580	2150	1780	1440	1140
048625-048874	6720	6090	5310	4550	3670	3120	2630	2190	1810	1470	1170
048875-049124	6770	6140	5360	4610	3730	3170	2670	2230	1840	1500	1200
049125-049374	6820	6190	5410	4670	3790	3220	2710	2270	1870	1530	1230
049375-049624	6870	6240	5460	4730	3850	3270	2760	2300	1910	1570	1250
049625-049874	6920	6290	5510	4790	3910	3320	2800	2340	1950	1600	1280

Table B – Expected Family Contribution for a Dependent Student From a One-Parent Family — 1983–84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
049875–050124	6970	6340	5560	4840	3970	3370	2840	2360	1980	1630	1310
050125–050374	7020	6400	5620	4890	4030	3420	2890	2430	2020	1660	1340
050375–050624	7070	6450	5670	4940	4090	3470	2930	2470	2060	1690	1370
050625–050874	7120	6500	5720	4990	4150	3520	2980	2510	2100	1730	1390
050875–051124	7170	6550	5770	5040	4200	3580	3040	2560	2130	1760	1420
051125–051374	7220	6600	5820	5090	4250	3640	3090	2600	2170	1790	1450
051375–051624	7270	6650	5870	5140	4300	3700	3140	2640	2210	1820	1480
051625–051874	7320	6700	5920	5190	4350	3760	3190	2690	2240	1850	1520
051875–052124	7370	6750	5970	5240	4400	3810	3240	2730	2280	1890	1550
052125–052374	7420	6800	6020	5290	4450	3860	3290	2770	2320	1930	1580
052375–052624	7480	6850	6070	5340	4500	3910	3340	2820	2360	1960	1610
052625–052874	7530	6900	6120	5390	4560	3960	3390	2860	2400	2000	1640
052875–053124	7580	6950	6170	5440	4610	4010	3430	2900	2440	2040	1670
053125–053374	7630	7000	6220	5490	4660	4060	3480	2950	2490	2070	1710
053375–053624	7680	7050	6270	5540	4710	4110	3520	3010	2530	2110	1740
053625–053874	7730	7100	6320	5590	4760	4160	3560	3060	2570	2150	1770
053875–054124	7780	7150	6370	5640	4810	4210	3610	3100	2620	2180	1800
054125–054374	7830	7200	6420	5700	4860	4260	3660	3140	2660	2220	1830
054375–054624	7880	7250	6470	5750	4910	4310	3720	3180	2700	2260	1870
054625–054874	7930	7300	6520	5800	4960	4360	3770	3230	2750	2300	1900
054875–055124	7980	7360	6580	5850	5010	4410	3820	3270	2780	2330	1940
055125–055374	8030	7410	6630	5900	5060	4460	3870	3310	2820	2360	1980
055375–055624	8080	7460	6680	5950	5110	4510	3920	3360	2860	2420	2010
055625–055874	8130	7510	6730	6000	5160	4560	3970	3400	2890	2460	2050
055875–056124	8180	7560	6780	6050	5210	4620	4020	3440	2930	2500	2090
056125–056374	8230	7610	6830	6100	5260	4670	4070	3490	2980	2530	2130
056375–056624	8280	7660	6880	6150	5310	4720	4120	3530	3020	2570	2160
056625–056874	8330	7710	6930	6200	5360	4770	4170	3570	3060	2610	2200
056875–057124	8380	7760	6980	6250	5410	4820	4220	3620	3110	2640	2230
057125–057374	8440	7810	7030	6300	5460	4870	4270	3670	3150	2680	2260
057375–057624	8490	7860	7080	6350	5520	4920	4320	3720	3190	2720	2290
057625–057874	8540	7910	7130	6400	5570	4970	4370	3780	3240	2750	2320
057875–058124	8590	7960	7180	6450	5620	5020	4420	3830	3280	2790	2360
058125–058374	8640	8010	7230	6500	5670	5070	4470	3880	3320	2830	2390
058375–058624	8690	8060	7280	6550	5720	5120	4520	3930	3360	2860	2430
058625–058874	8740	8110	7330	6600	5770	5170	4570	3980	3410	2900	2470
058875–059124	8790	8160	7380	6650	5820	5220	4620	4030	3450	2940	2500
059125–059374	8840	8210	7430	6710	5870	5270	4680	4080	3490	2990	2540
059375–059624	8890	8260	7480	6760	5920	5320	4730	4130	3540	3030	2580
059625–059874	8940	8320	7540	6810	5970	5370	4780	4180	3580	3070	2610

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
059875-060124	8990	8370	7590	6860	6020	5420	4830	4230	3630	3110	2650
060125-060374	9040	8420	7640	6910	6070	5470	4880	4280	3680	3160	2690
060375-060624	9090	8470	7690	6960	6120	5520	4930	4330	3730	3200	2720
060625-060874	9140	8520	7740	7010	6170	5580	4980	4380	3780	3240	2760
060875-061124	9190	8570	7790	7060	6220	5630	5030	4430	3830	3290	2800
061125-061374	9240	8620	7840	7110	6270	5680	5080	4480	3890	3330	2830
061375-061624	9290	8670	7890	7160	6320	5730	5130	4530	3940	3370	2870
061625-061874	9340	8720	7940	7210	6370	5780	5180	4580	3990	3420	2910
061875-062124	9400	8770	7990	7260	6420	5830	5230	4630	4040	3460	2950
062125-062374	9450	8820	8040	7310	6480	5880	5280	4680	4090	3500	2990
062375-062624	9500	8870	8090	7360	6530	5930	5330	4740	4140	3540	3040
062625-062874	9550	8920	8140	7410	6580	5980	5380	4790	4190	3590	3080
062875-063124	9600	8970	8190	7460	6630	6030	5430	4840	4240	3640	3120
063125-063374	9640	9020	8240	7510	6680	6080	5480	4890	4290	3690	3170
063375-063624	9690	9070	8290	7560	6730	6130	5530	4940	4340	3740	3210
063625-063874	9740	9120	8340	7620	6780	6180	5580	4990	4390	3790	3250
063875-064124	9790	9170	8390	7670	6830	6230	5640	5040	4440	3840	3290
064125-064374	9840	9220	8440	7720	6880	6280	5690	5090	4490	3900	3340
064375-064624	9890	9270	8500	7770	6930	6330	5740	5140	4540	3950	3380
064625-064874	9940	9320	8540	7820	6980	6380	5790	5190	4590	4000	3420
064875-065124	9990	9370	8590	7870	7030	6430	5840	5240	4640	4050	3470
065125-065374	10040	9420	8640	7920	7080	6480	5890	5290	4690	4100	3510
065375-065624	10090	9470	8690	7970	7130	6540	5940	5340	4740	4150	3550
065625-065874	10140	9520	8740	8020	7180	6590	5990	5390	4800	4200	3600
065875-066124	10190	9570	8790	8070	7230	6640	6040	5440	4850	4250	3650
066125-066374	10240	9620	8840	8120	7280	6690	6090	5490	4900	4300	3700
066375-066624	10290	9670	8890	8170	7330	6740	6140	5540	4950	4350	3750
066625-066874	10340	9720	8940	8220	7380	6790	6190	5590	5000	4400	3800
066875-067124	10380	9760	8990	8270	7430	6840	6240	5640	5050	4450	3850
067125-067374	10430	9810	9040	8310	7480	6890	6290	5700	5100	4500	3900
067375-067624	10480	9860	9090	8360	7530	6940	6340	5750	5150	4550	3950
067625-067874	10530	9910	9140	8410	7580	6990	6390	5800	5200	4600	4010
067875-068124	10580	9960	9190	8460	7630	7040	6440	5850	5250	4650	4060
068125-068374	10630	10010	9240	8510	7680	7090	6490	5900	5300	4700	4110
068375-068624	10680	10060	9290	8560	7730	7140	6540	5950	5350	4750	4160
068625-068874	10730	10110	9330	8610	7780	7190	6590	6000	5400	4800	4210
068875-069124	10780	10160	9380	8660	7830	7240	6640	6050	5450	4850	4260
069125-069374	10830	10210	9430	8710	7880	7290	6690	6100	5500	4910	4310
069375-069624	10880	10260	9480	8760	7930	7330	6740	6150	5550	4960	4360
069625-069874	10930	10310	9530	8810	7980	7380	6790	6200	5600	5010	4410

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
069875-070124	10980	10360	9580	8860	8030	7430	6840	6250	5650	5060	4460
070125-070374	11030	10410	9630	8910	8070	7480	6890	6300	5700	5110	4510
070375-070624	11080	10460	9680	8960	8120	7530	6940	6350	5750	5160	4560
070625-070874	11130	10500	9730	9010	8170	7580	6990	6400	5800	5210	4610
070875-071124	11170	10550	9780	9050	8220	7630	7040	6450	5850	5260	4660
071125-071374	11220	10600	9830	9100	8270	7680	7090	6500	5900	5310	4710
071375-071624	11270	10650	9880	9150	8320	7730	7140	6540	5950	5360	4760
071625-071874	11320	10700	9930	9200	8370	7780	7190	6590	6000	5410	4810
071875-072124	11370	10750	9980	9250	8420	7830	7240	6640	6050	5460	4860
072125-072374	11420	10800	10030	9300	8470	7880	7290	6690	6100	5510	4920
072375-072624	11470	10850	10070	9350	8520	7930	7330	6740	6150	5560	4970
072625-072874	11520	10900	10120	9400	8570	7980	7380	6790	6200	5610	5020
072875-073124	11570	10950	10170	9450	8620	8030	7430	6840	6250	5660	5060
073125-073374	11620	11000	10220	9500	8670	8070	7480	6890	6300	5710	5110
073375-073624	11670	11050	10270	9550	8720	8120	7530	6940	6350	5760	5160
073625-073874	11720	11100	10320	9600	8770	8170	7580	6990	6400	5800	5210
073875-074124	11770	11150	10370	9650	8820	8220	7630	7040	6450	5850	5260
074125-074374	11820	11200	10420	9700	8860	8270	7680	7090	6500	5900	5310
074375-074624	11870	11240	10470	9750	8910	8320	7730	7140	6540	5950	5360
074625-074874	11910	11290	10520	9800	8960	8370	7780	7190	6590	6000	5410
074875-075000	11960	11340	10570	9840	9010	8420	7830	7240	6640	6050	5460

Table C - EXPECTED FAMILY CONTRIBUTION FOR A MARRIED INDEPENDENT STUDENT

For a married independent student, the educational institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" include the student, the student's spouse and their dependents.

The conversion of adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income, the following:

--Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns,

--F.I.C.A. (Social Security) for one wage earner, and

--Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of education.

Table C - Expected Family Contribution for a Married Independent Student -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
LESS THAN 30001	AUTOMATICALLY ELIGIBLE										
030001 -030124	21760	22050	22340	22630	22900	23150	23400	23650	23890	24110	24330
030125-030374	21910	22200	22490	22780	23060	23310	23560	23810	24060	24280	24500
030375-030624	22060	22350	22640	22930	23220	23470	23720	23970	24220	24450	24670
030625-030874	22220	22510	22800	23090	23380	23630	23880	24130	24380	24620	24840
030875-031124	22370	22660	22950	23240	23530	23790	24040	24290	24540	24790	25010
031125-031374	22520	22810	23100	23390	23680	23950	24200	24450	24700	24950	25170
031375-031624	22670	22960	23250	23540	23830	24110	24360	24610	24860	25110	25340
031625-031874	22820	23110	23400	23690	23980	24270	24520	24770	25020	25270	25510
031875-032124	22960	23260	23550	23840	24130	24420	24690	24930	25180	25430	25680
032125-032374	23110	23410	23700	23990	24280	24570	24850	25100	25350	25600	25850
032375-032624	23250	23570	23860	24150	24440	24730	25010	25260	25510	25760	26010
032625-032874	23410	23740	24030	24320	24610	24900	25190	25440	25690	25940	26190
032875-033124	23570	23900	24190	24480	24770	25060	25350	25620	25870	26120	26370
033125-033374	23730	24060	24360	24650	24940	25230	25520	25800	26050	26300	26550
033375-033624	23860	24210	24530	24820	25110	25400	25690	25970	26220	26470	26720
033625-033874	24040	24370	24700	24990	25280	25570	25860	26150	26400	26650	26900
033875-034124	24200	24530	24860	25150	25440	25730	26020	26310	26580	26830	27080
034125-034374	24360	24690	25020	25320	25610	25900	26190	26480	26760	27010	27260
034375-034624	24510	24840	25170	25490	25780	26070	26360	26650	26930	27180	27430
034625-034874	24670	25000	25330	25660	25950	26240	26530	26820	27110	27360	27610
034875-035124	24830	25160	25490	25820	26110	26400	26690	26980	27270	27540	27790
035125-035374	24990	25320	25650	25980	26280	26570	26860	27150	27440	27720	27970
035375-035624	25140	25470	25800	26130	26450	26740	27030	27320	27610	27890	28140
035625-035874	25300	25630	25960	26290	26620	26910	27200	27490	27780	28070	28320
035875-036124	25460	25790	26120	26450	26780	27070	27360	27650	27940	28230	28500
036125-036374	25620	25950	26280	26610	26940	27240	27530	27820	28110	28400	28660
036375-036624	25770	26100	26430	26760	27090	27410	27700	27990	28280	28570	28850
036625-036874	25930	26260	26590	26920	27250	27580	27870	28160	28450	28740	29030
036875-037124	26090	26420	26750	27080	27410	27740	28030	28320	28610	28900	29190
037125-037374	26240	26580	26910	27240	27570	27900	28200	28490	28780	29070	29360
037375-037624	26390	26730	27060	27390	27720	28050	28370	28660	28950	29240	29530
037625-037874	26530	26890	27220	27550	27880	28210	28540	28830	29120	29410	29700
037875-038124	26670	27050	27380	27710	28040	28370	28700	28990	29280	29570	29860
038125-038374	26810	27200	27540	27870	28200	28530	28860	29160	29450	29740	30030
038375-038624	26960	27350	27690	28020	28350	28680	29010	29330	29620	29910	30200
038625-038874	27100	27490	27850	28180	28510	28840	29170	29500	29790	30080	30370
038875-039124	27240	27630	28010	28340	28670	29000	29330	29660	29950	30240	30530
039125-039374	27380	27770	28160	28500	28830	29160	29490	29820	30120	30410	30700
039375-039624	27530	27920	28310	28650	28980	29310	29640	29970	30290	30580	30870
039625-039874	27670	28060	28450	28810	29140	29470	29800	30130	30460	30750	31040

Table C - Expected Family Contribution for a Married Independent Student — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
039875-040124	27810	28200	28590	28970	29300	29630	29960	30290	30620	30910	31200
040125-040374	27950	28340	28730	29120	29460	29790	30120	30450	30780	31080	31370
040375-040624	28100	28490	28880	29270	29610	29940	30270	30600	30930	31250	31540
040625-040874	28240	28630	29020	29410	29770	30100	30430	30760	31090	31420	31710
040875-041124	28380	28770	29160	29550	29930	30260	30590	30920	31250	31580	31870
041125-041374	28520	28910	29300	29690	30080	30420	30750	31080	31410	31740	32040
041375-041624	28670	29060	29450	29840	30230	30570	30900	31230	31560	31890	32210
041625-041874	28810	29200	29590	29980	30370	30730	31060	31390	31720	32050	32380
041875-042124	28950	29340	29730	30120	30510	30890	31220	31550	31880	32210	32540
042125-042374	29090	29480	29870	30260	30650	31040	31380	31710	32040	32370	32700
042375-042624	29240	29630	30020	30410	30800	31190	31530	31860	32190	32520	32850
042625-042874	29380	29770	30160	30550	30940	31330	31690	32020	32350	32680	33010
042875-043124	29520	29910	30300	30690	31080	31470	31850	32180	32510	32840	33170
043125-043374	29660	30050	30440	30830	31220	31610	32000	32340	32670	33000	33330
043375-043624	29810	30200	30590	30980	31370	31760	32150	32490	32820	33150	33480
043625-043874	29950	30340	30730	31120	31510	31900	32290	32650	32980	33310	33640
043875-044124	30090	30480	30870	31260	31650	32040	32430	32810	33140	33470	33800
044125-044374	30230	30620	31010	31400	31790	32180	32570	32960	33300	33630	33960
044375-044624	30380	30770	31160	31550	31940	32330	32720	33110	33450	33780	34110
044625-044874	30520	30910	31300	31690	32080	32470	32860	33250	33610	33940	34270
044875-045124	30660	31050	31440	31830	32220	32610	33000	33390	33770	34100	34430
045125-045374	30800	31190	31580	31970	32360	32750	33140	33530	33920	34260	34590
045375-045624	30950	31340	31730	32120	32510	32900	33290	33680	34070	34410	34740
045625-045874	31090	31480	31870	32260	32650	33040	33430	33820	34210	34570	34900
045875-046124	31230	31620	32010	32400	32790	33180	33570	33960	34350	34730	35060
046125-046374	31370	31760	32150	32540	32930	33320	33710	34100	34490	34880	35220
046375-046624	31520	31910	32300	32690	33080	33470	33860	34250	34640	35030	35370
046625-046874	31660	32050	32440	32830	33220	33610	34000	34390	34780	35170	35530
046875-047124	31800	32190	32580	32970	33360	33750	34140	34530	34920	35310	35690
047125-047374	31940	32330	32720	33110	33500	33890	34280	34670	35060	35450	35840
047375-047624	32090	32480	32870	33260	33650	34040	34430	34820	35210	35600	35990
047625-047874	32230	32620	33010	33400	33790	34180	34570	34960	35350	35740	36130
047875-048124	32360	32760	33150	33540	33930	34320	34710	35100	35490	35880	36270
048125-048374	32490	32900	33290	33680	34070	34460	34850	35240	35630	36020	36410
048375-048624	32620	33050	33440	33830	34220	34610	35000	35390	35780	36170	36560
048625-048874	32750	33190	33580	33970	34360	34750	35140	35530	35920	36310	36700
048875-049124	32880	33320	33720	34110	34500	34890	35280	35670	36060	36450	36840
049125-049374	33010	33450	33860	34250	34640	35030	35420	35810	36200	36590	36980
049375-049624	33140	33580	34010	34400	34790	35180	35570	35960	36350	36740	37130
049625-049874	33270	33710	34150	34540	34930	35320	35710	36100	36490	36880	37270

Table C - Expected Family Contribution for a Married Independent Student -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
049875-050124	33400	33840	34280	34680	35070	35460	35850	36240	36630	37020	37410
050125-050374	33530	33970	34410	34820	35210	35600	35990	36380	36770	37160	37550
050375-050624	33660	34100	34540	34970	35360	35750	36140	36530	36920	37310	37700
050625-050874	33790	34230	34670	35110	35500	35890	36280	36670	37060	37450	37840
050875-051124	33920	34360	34800	35240	35640	36030	36420	36810	37200	37590	37980
051125-051374	34050	34490	34930	35370	35780	36170	36560	36950	37340	37730	38120
051375-051624	34180	34620	35060	35500	35930	36320	36710	37100	37490	37880	38270
051625-051874	34310	34750	35190	35630	36070	36460	36850	37240	37630	38020	38410
051875-052124	34440	34880	35320	35760	36200	36600	36990	37380	37770	38160	38550
052125-052374	34570	35010	35450	35890	36330	36740	37130	37520	37910	38300	38690
052375-052624	34700	35140	35580	36020	36460	36890	37280	37670	38060	38450	38840
052625-052874	34830	35270	35710	36150	36590	37030	37420	37810	38200	38590	38980
052875-053124	34960	35400	35840	36280	36720	37160	37560	37950	38340	38730	39120
053125-053374	35090	35530	35970	36410	36850	37290	37700	38090	38480	38870	39260
053375-053624	35220	35660	36100	36540	36980	37420	37850	38240	38630	39020	39410
053625-053874	35350	35790	36230	36670	37110	37550	37990	38380	38770	39160	39550
053875-054124	35480	35920	36360	36800	37240	37680	38120	38520	38910	39300	39690
054125-054374	35610	36050	36490	36930	37370	37810	38250	38660	39050	39440	39830
054375-054624	35740	36180	36620	37060	37500	37940	38380	38810	39200	39590	39980
054625-054874	35870	36310	36750	37190	37630	38070	38510	38950	39340	39730	40120
054875-055124	36000	36440	36880	37320	37760	38200	38640	39080	39480	39870	40260
055125-055374	36130	36570	37010	37450	37890	38330	38770	39210	39620	40010	40400
055375-055624	36260	36700	37140	37580	38020	38460	38900	39340	39770	40160	40550
055625-055874	36390	36830	37270	37710	38150	38590	39030	39470	39910	40300	40690
055875-056124	36520	36960	37400	37840	38280	38720	39160	39600	40040	40440	40830
056125-056374	36650	37090	37530	37970	38410	38850	39290	39730	40170	40580	40970
056375-056624	36780	37220	37660	38100	38540	38980	39420	39860	40300	40730	41120
056625-056874	36910	37350	37790	38230	38670	39110	39550	39990	40430	40870	41260
056875-057124	37040	37480	37920	38360	38800	39240	39680	40120	40560	41000	41400
057125-057374	37170	37610	38050	38490	38930	39370	39810	40250	40690	41130	41540
057375-057624	37300	37740	38180	38620	39060	39500	39940	40380	40820	41260	41690
057625-057874	37430	37870	38310	38750	39190	39630	40070	40510	40950	41390	41830
057875-058124	37560	38000	38440	38880	39320	39760	40200	40640	41080	41520	41960
058125-058374	37690	38130	38570	39010	39450	39890	40330	40770	41210	41650	42090
058375-058624	37820	38260	38700	39140	39580	40020	40460	40900	41340	41780	42220
058625-058874	37950	38390	38830	39270	39710	40150	40590	41030	41470	41910	42350
058875-059124	38080	38520	38960	39400	39840	40280	40720	41160	41600	42040	42480
059125-059374	38210	38650	39090	39530	39970	40410	40850	41290	41730	42170	42610
059375-059624	38340	38780	39220	39660	40100	40540	40980	41420	41860	42300	42740
059625-059874	38470	38910	39350	39790	40230	40670	41110	41550	41990	42430	42870

Table C - Expected Family Contribution for a Married Independent Student — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
059875-060124	38600	39040	39480	39920	40360	40800	41240	41680	42120	42560	43000
060125-060374	38730	39170	39610	40050	40490	40930	41370	41810	42250	42690	43130
060375-060624	38860	39300	39740	40180	40620	41060	41500	41940	42380	42820	43260
060625-060874	38990	39430	39870	40310	40750	41190	41630	42070	42510	42950	43390
060875-061124	39120	39560	40000	40440	40880	41320	41760	42200	42640	43080	43520
061125-061374	39250	39690	40130	40570	41010	41450	41890	42330	42770	43210	43650
061375-061624	39380	39820	40260	40700	41140	41580	42020	42460	42900	43340	43780
061625-061874	39510	39950	40390	40830	41270	41710	42150	42590	43030	43470	43910
061875-062124	39640	40080	40520	40960	41400	41840	42280	42720	43160	43600	44040
062125-062374	39760	40210	40650	41090	41530	41970	42410	42850	43290	43730	44170
062375-062624	39880	40340	40780	41220	41660	42100	42540	42980	43420	43860	44300
062625-062874	39990	40470	40910	41350	41790	42230	42670	43110	43550	43990	44430
062875-063124	40110	40600	41040	41480	41920	42360	42800	43240	43680	44120	44560
063125-063374	40230	40720	41170	41610	42050	42490	42930	43370	43810	44250	44690
063375-063624	40350	40840	41300	41740	42180	42620	43060	43500	43940	44380	44820
063625-063874	40460	40950	41430	41870	42310	42750	43190	43630	44070	44510	44950
063875-064124	40580	41070	41560	42000	42440	42880	43320	43760	44200	44640	45080
064125-064374	40700	41190	41680	42130	42570	43010	43450	43890	44330	44770	45210
064375-064624	40820	41310	41800	42260	42700	43140	43580	44020	44460	44900	45340
064625-064874	40930	41420	41910	42390	42830	43270	43710	44150	44590	45030	45470
064875-065124	41050	41540	42030	42520	42960	43400	43840	44280	44720	45160	45600
065125-065374	41170	41660	42150	42640	43090	43530	43970	44410	44850	45290	45730
065375-065624	41290	41780	42270	42760	43220	43660	44100	44540	44980	45420	45860
065625-065874	41400	41890	42380	42870	43350	43790	44230	44670	45110	45550	45990
065875-066124	41520	42010	42500	42990	43480	43920	44360	44800	45240	45680	46120
066125-066374	41640	42130	42620	43110	43600	44050	44490	44930	45370	45810	46250
066375-066624	41760	42250	42740	43230	43720	44180	44620	45060	45500	45940	46380
066625-066874	41870	42360	42850	43340	43830	44310	44750	45190	45630	46070	46510
066875-067124	41990	42480	42970	43460	43950	44440	44880	45320	45760	46200	46640
067125-067374	42110	42600	43090	43580	44070	44560	45010	45450	45890	46330	46770
067375-067624	42230	42720	43210	43700	44190	44680	45140	45580	46020	46460	46900
067625-067874	42340	42830	43320	43810	44300	44790	45270	45710	46150	46590	47030
067875-068124	42460	42950	43440	43930	44420	44910	45400	45840	46280	46720	47160
068125-068374	42580	43070	43560	44050	44540	45030	45520	45970	46410	46850	47290
068375-068624	42700	43190	43680	44170	44660	45150	45640	46100	46540	46980	47420
068625-068874	42810	43300	43790	44280	44770	45260	45750	46230	46670	47110	47550
068875-069124	42930	43420	43910	44400	44890	45380	45870	46360	46800	47240	47680
069125-069374	43050	43540	44030	44520	45010	45500	45990	46480	46930	47370	47810
069375-069624	43170	43660	44150	44640	45130	45620	46110	46600	47060	47500	47940
069625-069874	43280	43770	44260	44750	45240	45730	46220	46710	47190	47630	48070

Table C - Expected Family Contribution for a Married Independent Student -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
069875-070124	43400	43650	44380	44870	45360	45850	46340	46830	47320	47760	48200
070125-070374	43520	44010	44500	44990	45480	45970	46460	46950	47440	47890	48330
070375-070624	43640	44130	44620	45110	45600	46090	46580	47070	47560	48020	48460
070625-070874	43750	44240	44730	45220	45710	46200	46690	47180	47670	48150	48590
070875-071124	43870	44360	44850	45340	45830	46320	46810	47300	47790	48280	48720
071125-071374	43990	44480	44970	45460	45950	46440	46930	47420	47910	48400	48850
071375-071624	44110	44600	45090	45580	46070	46560	47050	47540	48030	48520	48980
071625-071874	44220	44710	45200	45690	46180	46670	47160	47650	48140	48630	49110
071875-072124	44340	44830	45320	45810	46300	46790	47280	47770	48260	48750	49240
072125-072374	44460	44950	45440	45930	46420	46910	47400	47890	48380	48870	49360
072375-072624	44580	45070	45560	46050	46540	47030	47520	48010	48500	48990	49480
072625-072874	44690	45180	45670	46160	46650	47140	47630	48120	48610	49100	49590
072875-073124	44810	45300	45790	46280	46770	47260	47750	48240	48730	49220	49710
073125-073374	44930	45420	45910	46400	46890	47380	47870	48360	48850	49340	49830
073375-073624	45050	45540	46030	46520	47010	47500	47990	48480	48970	49460	49950
073625-073874	45160	45650	46140	46630	47120	47610	48100	48590	49080	49570	50060
073875-074124	45280	45770	46260	46750	47240	47730	48220	48710	49200	49690	50180
074125-074374	45400	45890	46380	46870	47360	47850	48340	48830	49320	49810	50300
074375-074624	45520	46010	46500	46990	47480	47970	48460	48950	49440	49930	50420
074625-074874	45630	46120	46610	47100	47590	48080	48570	49060	49550	50040	50530
074875- 075000	45750	46240	46730	47220	47710	48200	48690	49180	49670	50160	50650

Table D -- EXPECTED FAMILY CONTRIBUTION FOR A SINGLE INDEPENDENT STUDENT

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" include the student and the student's dependents.

The conversion of adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income, the following:

--Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households,

--F.I.C.A. (Social Security) for one wage earner, and

--Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of education.

Table D – Expected Family Contribution for a Single Independent Student — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
LESS THAN 30001	AUTOMATICALLY ELIGIBLE											
030001 –030124	20570	20900	21220	21540	21860	22180	22480	22760	23040	23320	23600	23870
030125–030374	20700	21050	21370	21690	22010	22330	22640	22920	23200	23480	23760	24040
030375–030624	20830	21190	21510	21830	22150	22470	22790	23070	23350	23630	23910	24190
030625–030874	20960	21330	21650	21970	22290	22610	22930	23220	23500	23780	24060	24340
030875–031124	21080	21460	21800	22120	22440	22760	23080	23380	23660	23940	24220	24500
031125–031374	21210	21590	21940	22260	22580	22900	23220	23530	23810	24090	24370	24650
031375–031624	21340	21720	22080	22400	22720	23040	23360	23680	23960	24240	24520	24800
031625–031874	21470	21850	22230	22550	22870	23190	23510	23830	24120	24400	24680	24960
031875–032124	21600	21980	22360	22690	23010	23330	23650	23970	24270	24550	24830	25110
032125–032374	21730	22110	22490	22830	23150	23470	23790	24110	24420	24700	24980	25260
032375–032624	21860	22240	22620	22980	23300	23620	23940	24260	24580	24860	25140	25420
032625–032874	22010	22390	22770	23140	23460	23780	24100	24420	24740	25030	25310	25590
032875–033124	22150	22530	22910	23290	23620	23940	24260	24580	24900	25200	25480	25760
033125–033374	22300	22680	23060	23440	23780	24100	24420	24740	25060	25370	25650	25930
033375–033624	22440	22820	23200	23580	23940	24260	24580	24900	25220	25540	25820	26100
033625–033874	22590	22970	23350	23730	24100	24420	24740	25060	25380	25700	25990	26270
033875–034124	22730	23110	23490	23870	24250	24580	24900	25220	25540	25860	26160	26440
034125–034374	22880	23260	23640	24020	24400	24740	25060	25380	25700	26020	26330	26610
034375–034624	23020	23400	23780	24160	24540	24900	25220	25540	25860	26180	26500	26780
034625–034874	23170	23550	23930	24310	24690	25060	25380	25700	26020	26340	26660	26950
034875–035124	23310	23690	24070	24450	24830	25210	25540	25860	26180	26500	26820	27120
035125–035374	23450	23840	24220	24600	24980	25360	25700	26020	26340	26660	26980	27290
035375–035624	23590	23980	24360	24740	25120	25500	25860	26180	26500	26820	27140	27460
035625–035874	23730	24130	24510	24890	25270	25650	26020	26340	26660	26980	27300	27620
035875–036124	23860	24270	24650	25030	25410	25790	26170	26500	26820	27140	27460	27780
036125–036374	24000	24410	24800	25180	25560	25940	26320	26660	26980	27300	27620	27940
036375–036624	24140	24550	24940	25320	25700	26080	26460	26820	27140	27460	27780	28100
036625–036874	24280	24690	25090	25470	25850	26230	26610	26980	27300	27620	27940	28260
036875–037124	24410	24820	25230	25610	25990	26370	26750	27130	27460	27780	28100	28420
037125–037374	24550	24960	25370	25760	26140	26520	26900	27280	27620	27940	28260	28580
037375–037624	24690	25100	25510	25900	26280	26660	27040	27420	27780	28100	28420	28740
037625–037874	24830	25240	25650	26050	26430	26810	27190	27570	27940	28260	28580	28900
037875–038124	24960	25370	25780	26190	26570	26950	27330	27710	28090	28420	28740	29060
038125–038374	25100	25510	25920	26330	26720	27100	27480	27860	28240	28580	28900	29220
038375–038624	25240	25650	26060	26470	26860	27240	27620	28000	28380	28740	29060	29380
038625–038874	25380	25790	26200	26610	27010	27390	27770	28150	28530	28900	29220	29540
038875–039124	25510	25920	26330	26740	27150	27530	27910	28290	28670	29050	29380	29700
039125–039374	25650	26060	26470	26880	27290	27680	28060	28440	28820	29200	29540	29860
039375–039624	25790	26200	26610	27020	27430	27820	28200	28580	28960	29340	29700	30020
039625–039874	25930	26340	26750	27160	27570	27970	28350	28730	29110	29490	29860	30180

Table D - Expected Family Contribution for a Single Independent Student -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 1	2	3	4	5	6	7	8	9	10	11	12
039875-040124	26060	26470	26880	27290	27700	28110	28490	28870	29250	29630	30010	30340
040125-040374	26200	26610	27020	27430	27840	28250	28640	29020	29400	29780	30160	30500
040375-040624	26340	26750	27160	27570	27980	28390	28780	29160	29540	29920	30300	30660
040625-040874	26480	26890	27300	27710	28120	28530	28930	29310	29690	30070	30450	30820
040875-041124	26610	27020	27430	27840	28250	28660	29070	29450	29830	30210	30590	30970
041125-041374	26750	27160	27570	27980	28390	28800	29210	29600	29980	30360	30740	31120
041375-041624	26890	27300	27710	28120	28530	28940	29350	29740	30120	30500	30880	31260
041625-041874	27030	27440	27850	28260	28670	29080	29490	29890	30270	30650	31030	31410
041875-042124	27160	27570	27980	28390	28800	29210	29620	30030	30410	30790	31170	31550
042125-042374	27300	27710	28120	28530	28940	29350	29760	30170	30560	30940	31320	31700
042375-042624	27440	27850	28260	28670	29080	29490	29900	30310	30700	31080	31460	31840
042625-042874	27580	27990	28400	28810	29220	29630	30040	30450	30850	31230	31610	31990
042875-043124	27710	28120	28530	28940	29350	29760	30170	30580	30990	31370	31750	32130
043125-043374	27850	28260	28670	29080	29490	29900	30310	30720	31130	31520	31900	32280
043375-043624	27990	28400	28810	29220	29630	30040	30450	30860	31270	31660	32040	32420
043625-043874	28130	28540	28950	29360	29770	30180	30590	31000	31410	31810	32190	32570
043875-044124	28260	28670	29080	29490	29900	30310	30720	31130	31540	31950	32330	32710
044125-044374	28400	28810	29220	29630	30040	30450	30860	31270	31680	32090	32480	32860
044375-044624	28540	28950	29360	29770	30180	30590	31000	31410	31820	32230	32620	33000
044625-044874	28680	29090	29500	29910	30320	30730	31140	31550	31960	32370	32770	33150
044875-045124	28810	29220	29630	30040	30450	30860	31270	31680	32090	32500	32910	33290
045125-045374	28950	29360	29770	30180	30590	31000	31410	31820	32230	32640	33050	33440
045375-045624	29090	29500	29910	30320	30730	31140	31550	31960	32370	32780	33190	33580
045625-045874	29220	29640	30050	30460	30870	31280	31690	32100	32510	32920	33330	33730
045875-046124	29340	29770	30180	30590	31000	31410	31820	32230	32640	33050	33460	33870
046125-046374	29460	29910	30320	30730	31140	31550	31960	32370	32780	33190	33600	34010
046375-046624	29580	30050	30460	30870	31280	31690	32100	32510	32920	33330	33740	34150
046625-046874	29690	30180	30600	31010	31420	31830	32240	32650	33060	33470	33880	34290
046875-047124	29810	30300	30730	31140	31550	31960	32370	32780	33190	33600	34010	34420
047125-047374	29930	30420	30870	31280	31690	32100	32510	32920	33330	33740	34150	34560
047375-047624	30050	30540	31010	31420	31830	32240	32650	33060	33470	33880	34290	34700
047625-047874	30160	30650	31140	31560	31970	32380	32790	33200	33610	34020	34430	34840
047875-048124	30280	30770	31260	31690	32100	32510	32920	33330	33740	34150	34560	34970
048125-048374	30400	30890	31380	31830	32240	32650	33060	33470	33880	34290	34700	35110
048375-048624	30520	31010	31500	31970	32380	32790	33200	33610	34020	34430	34840	35250
048625-048874	30630	31120	31610	32100	32520	32930	33340	33750	34160	34570	34980	35390
048875-049124	30750	31240	31730	32220	32650	33060	33470	33880	34290	34700	35110	35520
049125-049374	30870	31360	31850	32340	32790	33200	33610	34020	34430	34840	35250	35660
049375-049624	30990	31480	31970	32460	32930	33340	33750	34160	34570	34980	35390	35800
049625-049874	31100	31590	32080	32570	33060	33480	33890	34300	34710	35120	35530	35940

Table D - Expected Family Contribution for a Single Independent Student — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 1	2	3	4	5	6	7	8	9	10	11	12
049875-050124	31220	31710	32200	32690	33180	33610	34020	34430	34840	35250	35660	36070
050125-050374	31340	31830	32320	32810	33300	33750	34160	34570	34980	35390	35800	36210
050375-050624	31460	31950	32440	32930	33420	33890	34300	34710	35120	35530	35940	36350
050625-050874	31570	32060	32550	33040	33530	34020	34440	34850	35260	35670	36080	36490
050875-051124	31690	32180	32670	33160	33650	34140	34570	34980	35390	35800	36210	36620
051125-051374	31810	32300	32790	33280	33770	34260	34710	35120	35530	35940	36350	36760
051375-051624	31930	32420	32910	33400	33890	34380	34850	35260	35670	36080	36490	36900
051625-051874	32040	32530	33020	33510	34000	34490	34980	35400	35810	36220	36630	37040
051875-052124	32160	32650	33140	33630	34120	34610	35100	35530	35940	36350	36760	37170
052125-052374	32280	32770	33260	33750	34240	34730	35220	35670	36080	36490	36900	37310
052375-052624	32400	32890	33380	33870	34360	34850	35340	35810	36220	36630	37040	37450
052625-052874	32510	33000	33490	33980	34470	34960	35450	35940	36360	36770	37180	37590
052875-053124	32630	33120	33610	34100	34590	35080	35570	36060	36490	36900	37310	37720
053125-053374	32750	33240	33730	34220	34710	35200	35690	36180	36630	37040	37450	37860
053375-053624	32870	33360	33850	34340	34830	35320	35810	36300	36770	37180	37590	38000
053625-053874	32980	33470	33960	34450	34940	35430	35920	36410	36900	37320	37730	38140
053875-054124	33100	33590	34080	34570	35060	35550	36040	36530	37020	37450	37860	38270
054125-054374	33220	33710	34200	34690	35180	35670	36160	36650	37140	37590	38000	38410
054375-054624	33340	33830	34320	34810	35300	35790	36280	36770	37260	37730	38140	38550
054625-054874	33450	33940	34430	34920	35410	35900	36390	36880	37370	37860	38280	38690
054875-055124	33570	34060	34550	35040	35530	36020	36510	37000	37490	37980	38410	38820
055125-055374	33690	34180	34670	35160	35650	36140	36630	37120	37610	38100	38550	38960
055375-055624	33810	34300	34790	35280	35770	36260	36750	37240	37730	38220	38690	39100
055625-055874	33920	34410	34900	35390	35880	36370	36860	37350	37840	38330	38820	39240
055875-056124	34040	34530	35020	35510	36000	36490	36980	37470	37960	38450	38940	39370
056125-056374	34160	34650	35140	35630	36120	36610	37100	37590	38080	38570	39060	39510
056375-056624	34280	34770	35260	35750	36240	36730	37220	37710	38200	38690	39180	39650
056625-056874	34390	34880	35370	35860	36350	36840	37330	37820	38310	38800	39290	39780
056875-057124	34510	35000	35490	35980	36470	36960	37450	37940	38430	38920	39410	39900
057125-057374	34630	35120	35610	36100	36590	37080	37570	38060	38550	39040	39530	40020
057375-057624	34750	35240	35730	36220	36710	37200	37690	38180	38670	39160	39650	40140
057625-057874	34860	35350	35840	36330	36820	37310	37800	38290	38780	39270	39760	40250
057875-058124	34980	35470	35960	36450	36940	37430	37920	38410	38900	39390	39880	40370
058125-058374	35100	35590	36080	36570	37060	37550	38040	38530	39020	39510	40000	40490
058375-058624	35220	35710	36200	36690	37180	37670	38160	38650	39140	39630	40120	40610
058625-058874	35330	35820	36310	36800	37290	37780	38270	38760	39250	39740	40230	40720
058875-059124	35450	35940	36430	36920	37410	37900	38390	38880	39370	39860	40350	40840
059125-059374	35570	36060	36550	37040	37530	38020	38510	39000	39490	39980	40470	40960
059375-059624	35690	36180	36670	37160	37650	38140	38630	39120	39610	40100	40590	41080
059625-059874	35800	36290	36780	37270	37760	38250	38740	39230	39720	40210	40700	41190

Table D - Expected Family Contribution for a Single Independent Student — 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
059875-060124	35920	36410	36900	37390	37880	38370	38860	39350	39840	40330	40820	41310
060125-060374	36040	36530	37020	37510	38000	38490	38980	39470	39960	40450	40940	41430
060375-060624	36160	36650	37140	37630	38120	38610	39100	39590	40080	40570	41060	41550
060625-060874	36270	36760	37250	37740	38230	38720	39210	39700	40190	40680	41170	41660
060875-061124	36390	36880	37370	37860	38350	38840	39330	39820	40310	40800	41290	41780
061125-061374	36510	37000	37490	37980	38470	38960	39450	39940	40430	40920	41410	41900
061375-061624	36630	37120	37610	38100	38590	39080	39570	40060	40550	41040	41530	42020
061625-061874	36740	37230	37720	38210	38700	39190	39680	40170	40660	41150	41640	42130
061875-062124	36860	37350	37840	38330	38820	39310	39800	40290	40780	41270	41760	42250
062125-062374	36970	37470	37960	38450	38940	39430	39920	40410	40900	41390	41880	42370
062375-062624	37090	37590	38080	38570	39060	39550	40040	40530	41020	41510	42000	42490
062625-062874	37200	37700	38190	38680	39170	39660	40150	40640	41130	41620	42110	42600
062875-063124	37320	37820	38310	38800	39290	39780	40270	40760	41250	41740	42230	42720
063125-063374	37430	37930	38430	38920	39410	39900	40390	40880	41370	41860	42350	42840
063375-063624	37550	38050	38550	39040	39530	40020	40510	41000	41490	41980	42470	42960
063625-063874	37660	38160	38660	39150	39640	40130	40620	41110	41600	42090	42580	43070
063875-064124	37780	38280	38780	39270	39760	40250	40740	41230	41720	42210	42700	43190
064125-064374	37890	38390	38890	39390	39880	40370	40860	41350	41840	42330	42820	43310
064375-064624	38010	38510	39010	39510	40000	40490	40980	41470	41960	42450	42940	43430
064625-064874	38120	38620	39120	39620	40110	40600	41090	41580	42070	42560	43050	43540
064875-065124	38240	38740	39240	39740	40230	40720	41210	41700	42190	42680	43170	43660
065125-065374	38350	38850	39350	39850	40350	40840	41330	41820	42310	42800	43290	43780
065375-065624	38470	38970	39470	39970	40470	40960	41450	41940	42430	42920	43410	43900
065625-065874	38580	39080	39580	40080	40580	41070	41560	42050	42540	43030	43520	44010
065875-066124	38700	39200	39700	40200	40700	41190	41680	42170	42660	43150	43640	44130
066125-066374	38810	39310	39810	40310	40810	41310	41800	42290	42780	43270	43760	44250
066375-066624	38930	39430	39930	40430	40930	41430	41920	42410	42900	43390	43880	44370
066625-066874	39040	39540	40040	40540	41040	41540	42030	42520	43010	43500	43990	44480
066875-067124	39160	39660	40160	40660	41160	41660	42150	42640	43130	43620	44110	44600
067125-067374	39270	39770	40270	40770	41270	41770	42270	42760	43250	43740	44230	44720
067375-067624	39390	39890	40390	40890	41390	41890	42390	42880	43370	43860	44350	44840
067625-067874	39500	40000	40500	41000	41500	42000	42500	42990	43480	43970	44460	44950
067875-068124	39620	40120	40620	41120	41620	42120	42620	43110	43600	44090	44580	45070
068125-068374	39730	40230	40730	41230	41730	42230	42730	43230	43720	44210	44700	45190
068375-068624	39850	40350	40850	41350	41850	42350	42850	43350	43840	44330	44820	45310
068625-068874	39960	40460	40960	41460	41960	42460	42960	43460	43950	44440	44930	45420
068875-069124	40080	40580	41080	41580	42080	42580	43080	43580	44070	44560	45050	45540
069125-069374	40190	40690	41190	41690	42190	42690	43190	43690	44190	44680	45170	45660
069375-069624	40310	40810	41310	41810	42310	42810	43310	43810	44310	44800	45290	45780
069625-069874	40420	40920	41420	41920	42420	42920	43420	43920	44420	44910	45400	45890

Table D - Expected Family Contribution for a Single Independent Student -- 1983-84

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
069675-070124	40540	41040	41540	42040	42540	43040	43540	44040	44540	45030	45520	46010
070125-070374	40650	41150	41650	42150	42650	43150	43650	44150	44650	45150	45640	46130
070375-070624	40770	41270	41770	42270	42770	43270	43770	44270	44770	45270	45760	46250
070625-070874	40880	41360	41880	42380	42880	43380	43880	44380	44880	45380	45870	46360
070875-071124	41000	41500	42000	42500	43000	43500	44000	44500	45000	45500	45990	46480
071125-071374	41110	41610	42110	42610	43110	43610	44110	44610	45110	45610	46110	46600
071375-071624	41230	41730	42230	42730	43230	43730	44230	44730	45230	45730	46230	46720
071625-071874	41340	41840	42340	42840	43340	43840	44340	44840	45340	45840	46340	46830
071875-072124	41460	41960	42460	42960	43460	43960	44460	44960	45460	45960	46460	46950
072125-072374	41570	42070	42570	43070	43570	44070	44570	45070	45570	46070	46570	47070
072375-072624	41690	42190	42690	43190	43690	44190	44690	45190	45690	46190	46690	47190
072625-072874	41800	42300	42800	43300	43800	44300	44800	45300	45800	46300	46800	47300
072875-073124	41920	42420	42920	43420	43920	44420	44920	45420	45920	46420	46920	47420
073125-073374	42030	42530	43030	43530	44030	44530	45030	45530	46030	46530	47030	47530
073375-073624	42150	42650	43150	43650	44150	44650	45150	45650	46150	46650	47150	47650
073625-073874	42260	42760	43260	43760	44260	44760	45260	45760	46260	46760	47260	47760
073875-074124	42380	42880	43380	43880	44380	44880	45380	45880	46380	46880	47380	47880
074125-074374	42490	42990	43490	43990	44490	44990	45490	45990	46490	46990	47490	47990
074375-074624	42610	43110	43610	44110	44610	45110	45610	46110	46610	47110	47610	48110
074625-074874	42720	43220	43720	44220	44720	45220	45720	46220	46720	47220	47720	48220
074875- 075000	42840	43340	43840	44340	44840	45340	45840	46340	46840	47340	47840	48340

[FR Doc. 83-8490 Filed 3-31-83; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF EDUCATION

34 CFR Part 682

Family Contribution Schedule for the Guaranteed Student Loan Program for 1984–85

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Federal Register issue, the Secretary has promulgated final rules for the 1983–84 Guaranteed Student Loan Program (GSLP) family contribution schedule. The Secretary proposes to adapt these regulations, with appropriate revisions, for use in determining student eligibility for interest benefits under GSLP for any period of instruction which begins on or after July 1, 1984, but no later than June 30, 1985.

DATES: Comments must be received on or before May 2, 1983.

ADDRESS: Comments should be addressed to Mr. Larry Oxendine, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, S.W. (Room 4310, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ralph Madden or Larry Oxendine, telephone number (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

Consistent with the Congressional direction under the Postsecondary Student Assistance Amendments Act of 1981, Title V of Pub. L. 97–35, to develop a simplified method of measuring the ability of families to contribute to the costs of the student's education, the Secretary proposes to adopt a 1984–85 family contribution schedule that is similar in format and rationale to that published in this issue of the Federal Register as the final schedule of expected family contributions for 1983–84. The Secretary proposes these final regulations as a basis for the 1984–85 schedule of expected family contributions and proposes several alternative modifications, as discussed here, for public comment.

The final regulations that would result from this notice of proposed rulemaking will be in effect for Guaranteed Student Loans for any period of instruction which begins on or after July 1, 1984, but not later than June 30, 1985.

Modification of the 1983–84 Family Contribution Schedule for Use for 1984–85

This proposed schedule would continue the use of systems of financial need analysis approved by the Secretary for use in the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs (campus-based programs) and a set of tables (Appendix B to the GSL regulations) for determining an expected family contribution (EFC). The Secretary will update the 1983–84 family contribution schedule for use in 1984–85 in the following respects:

(1) The expected family contribution amounts in Tables A, B, C, and D of Appendix B will be revised to reflect the 1983 Federal income tax and F.I.C.A. (Social Security) deductions and the Standard Maintenance Allowance (SMA) derived from the most recent Bureau of Labor Statistics low budget standard. It is anticipated that the SMA will be updated to acount for an expected inflation rate of six percent.

(2) The 1983–84 schedule, § 682.301(f), applies to loans for periods of instruction beginning on or after July 1, 1983, but not later than June 30, 1984. This proposed schedule applies to loans for periods of instruction beginning on or after July 1, 1984, but not later than June 30, 1985, regardless of when an institution completes its portion of the student's GSL application.

(3) For 1984–85 the definition of "independent student" in § 682.301(d) would take into account the student's status in 1983 and 1984, rather than in 1982 and 1983, unless the student is married at the time the determination of adjusted gross family income is made, in which case the student's status in 1984 alone, rather than 1983, would be taken into account. The Secretary will also publish, in the near future, further changes to the definition of "independent student" for all title IV student assistance programs. These changes will affect the family contribution schedule for the 1984–85 award year.

(4) This proposed schedule would require the educational institution, in determining the adjusted gross income of the student's family in § 682.301(c), to consider the income reported by each family member on the 1983 Federal income tax return, rather than on the 1982 Federal income tax return. Other references in § 682.301(c) to the years 1982 and 1983 will be revised to refer to the years 1983 and 1984, respectively.

(5) This proposed schedule would require an educational institution, in determining which of the approved need analysis systems may be used to calculate the student's expected family contribution, to consider whether the student has received financial assistance under the campus-based programs for the 1984–85 award year rather than the 1983–84 award year.

The Secretary also proposes to modify the standard used to measure family resources under the tables in this schedule to include untaxed income such as standard investment income, welfare benefits, and child support payments. The Secretary further proposes to consider a portion of family assets as resources available for educational costs. This expanded measurement of family resources would be used in conjunction with the tables to determine the EFC of that family.

Procedure for Determining Eligibility for Interest Benefits

The following is an explanation of the method that is used for determining expected family contributions. In order to determine the adjusted gross income of the student's family for loans for the period July 1, 1984, through June 30, 1985, a postsecondary institution must first consider the income reported by each family member on his or her 1983 Federal income tax return. The adjusted gross family income for the dependent student means the adjusted gross income of (1) the student, (2) the student's spouse, if any, and (3) the student's mother and father; for the independent student, only the income of the student and his or her spouse is considered. The institution determines the adjusted gross income of the student's family based upon data provided and certified to, by each person whose income must be considered.

The school would then add untaxed income and resources received by those same family members, and add that amount to the adjusted gross family income.

Finally, the school would consider the assets of those same members of the student's family, and would regard a portion of those assets as available for meeting the student's cost of education. Consistent with the norms suggested in the legislation history of Pub. L. 97–35, the school shall exclude from this consideration:

(1) All equity in a single principal place of residence;

(2) $100,000 from any farm or business assets; and

(3) $25,000 from the net value of all other assets *See* H.R. Rep. No. 97–208 97th Congress, 1st Sess. (1981) p. 745.

The school would consider a specific portion of those assets remaining after these exclusions as family resources available for educational costs. That portion will be determined by an assessment rate which, it is anticipated, shall be no less than the five percent figure now used in the Pell Grant Program for 1983–84, 34 CFR 690.35(d)(1), published in the Federal Register on October 28, 1982 (47 FR 47849), and no more than the 12 percent assessment rate used currently under the Uniform Methodology.

The school would then combine the adjusted gross income of the student's family, and their nontaxed income, and determine the student's contribution from family income using this figure and the tables found in Appendix B of the final regulations published concurrently with this notice of proposed rulemaking. The contribution from family assets would be added to arrive at the student's EFC.

Alternatively, the school may also use a need analysis system approved for use under the Campus-based programs. A discussion of these two methods of determining expected family contributions is found in the preamble of the 1983–84 schedule. For all information required in this calculation, e.g., total number of family members and number of family members enrolled in postsecondary institutions, the institution relies on statements made, and certified to, by the student.

The expected family contribution coupled with the student's estimated financial assistance is substracted from the student's estimated cost of attendance to determine financial need and eligibility for interest benefits under the GSL Program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations establish the formula for determining student eligibility for interest benefits under the Guaranteed Student Loan Program. The regulations, therefore, do not have an impact on small entities.

Invitation to comment

The Secretary invites interested persons to comment and make recommendations on these proposed regulations, in order to assist in the development of the final 1984–85 GSL family contribution schedule. More specifically comments are invited on the following:

• Inclusion of nontaxable income in determining of effective annual income for the purpose of calculating the expected family contribution.

The Secretary proposes to include nontaxable income, such as investment income on nontaxable bonds, as well as child-support payments and welfare payments, in determining effective annual income.

• Inclusion of family assets in determining of effective annual income for the purpose of calculating the expected family contribution.

The Secretary proposes to include a portion of the assets of the family of the student in the determination of family resources available for educational purposes. The Secretary proposes to calculate the portion available as follows:

(1) All equity in a single principal residence shall be excluded;

(2) $100,000 worth of farm and business assets shall be excluded;

(3) $25,000 of other assets shall be excluded.

The Secretary anticipates that an assessment rate of between 5 and 12 percent will be applied to the remainder, and that assessed portion of the family assets added to the family contribution from taxable and nontaxable income to calculate a family's EFC.

• Parental refusal to certify income and assets

In determining the adjusted gross income of the student and the student's parents, the regulations state that the information which the school uses to determine the adjusted gross family income must be certified by each person whose income must be included. Similar certifications would be appropriate for nontaxable income and family assets. The Secretary invites comments as to the criteria that should be established in a case where a student's parent(s) refuses to make such certification.

• Use of award letter for campus-based aid in determining EFC

The regulations state that if a student has been awarded campus-based aid, the EFC for the GSL program must be the same as that calculated for use in the campus-based programs. The Secretary considers the student to have been awarded aid if he or she has received, through issuance of an award letter, an offer of campus-based aid. The Secretary invites comments as to whether this is an appropriate point at which to mandate use of a campus-based approved need analysis system rather than the tables in Appendix B.

• Provision of Federal income tax return

The Secretary expects top issue regulations regarding the verification of information provided by the student and the student's family. The Secretary specifically invites comments on the proposal to require the student to submit a copy of the Federal income tax returns with the GSL application to support the determination by the school of the adjusted gross income of the student and the student's family.

• Definition of "independent student"

Whether a student is considered independent of his or her family is critical for determining need for student assistance, and this issue has evoked considerable comment in the higher education community in recent years. Based on a substantial number of comments received from financial aid administrators and the Department's own experience with the title IV student assistance programs, the Secretary will publish, in the near future, a proposed definition of "independent student." The new definition will be added to 34 CFR Part 668, the Student Assistance General Provisions Regulations, and will apply to all title IV student assistance programs. The Secretary considers the present dependent/independent classification inadequate to address the different financial needs of students of different ages, martial status, years of independent living, and numbers of dependents, and will propose redefining "independent student" to reflect those varying equities. Public comment will be invited on this forthcoming proposal, and considered with comments received on this aspect of the proposed GSL family contribution schedule for 1984–85.

• Modification of currently approved system of need analysis

The Secretary also invites comments regarding the use of the current need analysis systems to determine the expected family contribution and financial need, and more specifically, comments are invited concerning entirely eliminating the tables found in Appendix B as an approved need analysis system for the GSL Program.

Written comments and recommendations may be sent to the address given at the beginning of this document.

All comments submitted in resonse to these regulations will be available for public inspection, during and after the

comment period, in Room 4310 ROB–3, 7th and D Street, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m. (Eastern Standard Time), Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program)

Dated: March 29, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-8489 Filed 3-31-83; 8:45 am]

BILLING CODE 4000-01-M

Reader Aids

Federal Register
Vol. 48, No. 64
Friday, April 1, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13921-14346 1

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	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1983

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
April 1	April 18	May 2	May 16	May 31	June 30
April 4	April 19	May 4	May 19	June 3	July 5
April 5	April 20	May 5	May 20	June 6	July 5
April 6	April 21	May 6	May 23	June 6	July 5
April 7	April 22	May 9	May 23	June 6	July 6
April 8	April 25	May 9	May 23	June 7	July 7
April 11	April 26	May 11	May 26	June 10	July 11
April 12	April 27	May 12	May 27	June 13	July 11
April 13	April 28	May 13	May 31	June 13	July 12
April 14	April 29	May 16	May 31	June 13	July 13
April 15	May 2	May 16	May 31	June 14	July 14
April 18	May 3	May 18	June 2	June 17	July 18
April 19	May 4	May 19	June 3	June 20	July 18
April 20	May 5	May 20	June 6	June 20	July 19
April 21	May 6	May 23	June 6	June 20	July 20
April 22	May 9	May 23	June 6	June 21	July 21
April 25	May 10	May 25	June 9	June 24	July 25
April 26	May 11	May 26	June 10	June 27	July 25
April 27	May 12	May 27	June 13	June 27	July 26
April 28	May 13	May 31	June 13	June 27	July 27
April 29	May 16	May 31	June 13	June 28	July 28

CFR CHECKLIST; 1982/83 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1982/83. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1983):

Title	Price
4	$7.50
5 Parts:	
1-1199	8.50
1200-end	6.00
7 Parts:	
46-51	7.50
1500-1899	6.50
14 Parts:	
1200-end	6.50
16 Parts:	
0-149	7.00

CFR Unit (Rev. as of Apr. 1, 1982):

17 Parts:	
0-239	8.50
240-end	8.00
18 Parts:	
1-149	8.00
150-399	8.50
400-end	7.50
19	9.50
20 Parts:	
1-399	6.50
400-499	8.00
500-end	8.50
21 Parts:	
1-99	7.00
100-169	7.50
170-199	7.50
200-299	5.50
300-499	8.50
500-599	8.00
600-799	6.00
800-1299	7.00
1300-end	5.50
22	9.00
23	7.50
24 Parts:	
0-199	7.00
200-499	8.50
500-799	7.00
800-1699	7.50
1700-end	7.00
25	8.50
26 Parts:	
1 (§§ 1.0-1.169)	9.00
1 (§§ 1.170-1.300)	7.50
1 (§§ 1.301-1.400)	7.00
1 (§§ 1.401-1.500)	7.50
1 (§§ 1.501-1.640)	7.50
1 (§§ 1.641-1.850)	7.50
1 (§§ 1.851-1.1200)	8.50
1 (§§ 1.1201-end)	9.00
2-29	7.50
30-39	7.00
40-299	8.50
300-499	7.00
600-end	5.50
27 Parts:	
1-199	7.50
200-end	7.50

CFR Unit (Rev. as of July 1, 1982):

28	8.00
29 Parts:	
0-99	9.00
100-499	6.00
500-899	8.50
900-1899	6.50
1900-1910	9.00
1911-1919	5.50
1920-end	8.50
30 Parts	
0-199	8.00
200-end	10.00
31 Parts:	
0-199	7.00
200-end	9.00
32 Parts:	
1-39, Vol. I (rev. 9/1/82)	9.00
1-39, Vol. II (rev. 9/1/82)	11.00
1-39, Vol. III (rev. 9/1/82)	10.00
40-399	13.00
400-699	10.00
700-799	8.50
800-999	8.00
1000-end	7.00
33 Parts:	
1-199	9.00
200-end	8.00
34 Parts:	
1-399	13.00
400-end	8.50
35	6.50
36 Parts:	
1-199	7.00
200-end	7.50
37	7.00
38 Parts:	
0-17	8.00
18-end	7.00
39	7.00
40 Parts:	
0-51	8.50
52	9.00
53-80	8.50
81-99	8.50
100-149	7.50
150-189	7.50
190-399	7.50
400-424	8.00
425-end	7.50
41 Chapters:	
1 (1-1 to 1-10)	8.50
(1-11 to App.)-2	7.50
3-6	8.50
7	5.50
8	5.50
9	8.00
10-17	7.50
19-100	8.00
101	9.00
102-end	7.00

CFR Unit (Rev. as of Oct. 1, 1982):

42 Parts:	
1-60	7.50
61-399	7.00
400-end	9.50
43 Parts:	
1-999	7.00
1000-3999	8.50
4000-end	7.00
44	7.50
45 Parts:	
1-199	7.00
200-499	6.00
500-1199	7.50
1200-end	7.50
46 Parts:	
1-29	6.00
30-40	5.50
41-69	7.50
70-89	6.00
90-109	6.50
110-139	6.00
140-155	7.00
156-165	7.50
166-199	7.00
200-399	8.50
400-end	7.00
47 Parts:	
0-19	8.50
70-79	8.00
49 Parts:	
1-99	6.50
100-177	9.00
178-199	8.00
200-399	7.50
400-999	8.00
1200-1299	7.50
1300-end	7.50
50 Parts:	
1-199	7.00
200-end	8.00

MICROFICHE EDITION OF THE CFR:

The CFR is now available on microfiche from the Superintendent of documents, Government Printing Office, Washington, D.C. 20402, at the following prices:

1981

Complete set (one-time mailing):
$155.00 (domestic).
Individual copies—$2.00 each (domestic).

1982

Subscription (mailed as issued):
$250.00 (domestic).
Individual copies—$2.25 each (domestic).

CFR ISSUANCES 1983

January 1983 Editions and Projected April 1983 Editions

This list restates the complete publication plans for the **January quarter** and projects the publication plans for the **April**, 1983 quarter. A projected schedule that will include the **July**, 1983 quarter will appear in the first **Federal Register** issue of **July**, 1983, immediately after the CFR checklist.

For pricing information on available 1983 volumes consult the CFR checklist in this **Federal Register.**

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The monthly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1983:

Title
CFR Index
1–2
3 (Compilation)
4
5 Parts:
1–1199
1200–end
6 [Reserved]
7 Parts:
0–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–end
8
9 Parts:
1–199
200–end
10 Parts:
0–199
200–399
400–499
500–end
11 (Revised as of July 1, 1983)
12 Parts:
1–199
200–299
300–499
500–end
13
14 Parts:
1–59
60–139
140–199
200–1199
1200–end
15 Parts:
0–299
300–399
400–end
16 Parts:
0–149
150–999
1000–end

Projected April 1, 1983 editions:

Title
17 Parts:
1–239
240–end
18 Parts:
1–149
150–399
400–end
19
20 Parts:
1–399
400–499
500–end
21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–end
22
23
24 Parts:
0–199
200–499
500–799
800–1699
1700–end
25
26 Parts:
1(§§ 1.0–1–1.169)
1(§§ 1.170–1.300)
1(§§ 1.301–1.400)
1(§§ 1.401–1.500)
1(§§ 1.501–1.640)
1(§§ 1.641–1.850)
1(§§ 1.851–1.1200)
1(§§ 1.1201–end)
2–29
30–39
40–299
300–499
500–599 (Cover only)
600–end
27 Parts:
1–199
200–end

List of Public Laws

Last Listing March 31, 1983

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 (telephone 202–275–3030).

H.R. 2112/Pub. L. 98–12 To extend by six months the expiration date of the Defense Production Act of 1950. (Mar. 29, 1983; 97 Stat. 53) Price: $1.75

H.R. 2369/Pub. L. 98–13 To prevent the temporary termination of the Federal Supplemental Compensation Act of 1982. (Mar. 29, 1983; 97 Stat. 54) Price: $1.75

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 180 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.



Subscription Prices:

Federal Register:

One year: $175 domestic; $218.75 foreign
Six months: $87.50 domestic; $109.40 foreign

Code of Federal Regulations:

Current year (as issued): $250 domestic; $312.50 foreign
Previous year's full set (single shipment): $155 domestic; $193.75 foreign

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me _____ **Federal Register:** One year as issued: $175 domestic; $218.75 foreign
Six months: $87.50 domestic; $109.40 foreign

_____ **Code of Federal Regulations:** Current year: $250 domestic; $312.50 foreign
Previous year's full set (single shipment): $155 domestic; $193.75 foreign

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity Charges

_____ Publications _____
_____ Subscription _____
Special Shipping Charges _____
International Handling _____
Special Charges _____
OPNR _____

_____ UPNS
_____ Balance Due
_____ Discount
_____ Refund

882