11-29-85
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federal register

Friday
November 29, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA, see announcement on the inside cover of this issue.

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Environmental Protection Agency

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Customs Service

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Selected Subjects

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 Administration, Washington, DC 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, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 2962S]

General Amendment; Claim for Indemnity; Interest Payments

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking on the General Amendment; Claim for Indemnity; Interest Payments document, published in the **Federal Register** on Wednesday, February 27, 1985 (50 FR 7906), contained several errors in the citations referencing amended crop insurance regulations. This notice is being published to correct those errors.

EFFECTIVE DATE: November 29, 1985.

ADDRESS: Any suggestions or inquiries on this notice should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Wednesday, February 27, 1985, FCIC published a final rule amending all crop insurance regulations (7 CFR Part 400 *et seq.*), effective for the 1985 and succeeding crop years, to incorporate a provision for the payment of interest on indemnity payments not made within a specified time. The intended effect of the rule was to amend the Claim for Indemnity section of all FCIC crop insurance regulations simultaneously to prescribe procedures for such interest payments.

The correction, beginning with the Final Rule words of issuance in the right hand column of page 7907, is as follows:

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the crop insurance regulations contained in 7 CFR Part 400 *et seq.*, effective with the 1985 and succeeding crop years, in the following instances:

1. The Authority Citation for 7 CFR 402.7(d)(9)(n), 403.7(d)(9)(h), 404.7(d)(9)(h), 408.7(d)(9)(h), 409.7(d)(9)(i), 410.7(d)(9)(o), 411.7(d)(9)(h), 413.7(d)(9)(h), 414.7(d)(9)(k), 415.7(d)(9)(h), 416.7(d)(9)(h), 417.7(d)(9)(h), 418.7(d)(9)(h), 419.7(d)(9)(h), 420.7(d)(9)(i), 421.7(d)(9)(h), 422.7(d)(9)(h), 423.7(d)(9)(h), 424.7(d)(9)(i), 425.7(d)(9)(j), 427.7(d)(9)(i), 428.7(d)(9)(j), 429.7(d)(9)(h), 430.7(d)(9)(j), 431.7(d)(9)(i), 432.7(d)(9)(j), 433.7(d)(9)(k), 434.7(d)(9)(h), 435.7(d)(9)(g), 436.7(d)(9)(h), 437.7(d)(9)(h), 438.7(d)(9)(h), 439.7(d)(9)(h), 440.7(d)(9)(j), 441.7(d)(9)(h), 442.7(d)(9)(g), 443.7(d)(9)(h), 444.7(d)(9)(k), 445.7(d)(9)(l), 446.7(d)(9)(h), and 447.7(d)(9)(i), continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 402.7(d)(9)(n), 403.7(d)(9)(h), 404.7(d)(9)(h), 408.7(d)(9)(h), 409.7(d)(9)(i), 410.7(d)(9)(o), 411.7(d)(9)(h), 413.7(d)(9)(h), 414.7(d)(9)(k), 415.7(d)(9)(h), 416.7(d)(9)(h), 417.7(d)(9)(h), 418.7(d)(9)(h), 419.7(d)(9)(h), 420.7(d)(9)(i), 421.7(d)(9)(h), 422.7(d)(9)(h), 423.7(d)(9)(h), 424.7(d)(9)(i), 425.7(d)(9)(j), 427.7(d)(9)(i), 428.7(d)(9)(j), 429.7(d)(9)(h), 430.7(d)(9)(j), 431.7(d)(9)(i), 432.7(d)(9)(j), 433.7(d)(9)(k), 434.7(d)(9)(h), 435.7(d)(9)(g), 436.7(d)(9)(h), 437.7(d)(9)(h), 438.7(d)(9)(h), 439.7(d)(9)(h), 440.7(d)(9)(j), 441.7(d)(9)(h), 442.7(d)(9)(g), 443.7(d)(9)(h), 444.7(d)(9)(k), 445.7(d)(9)(l), 446.7(d)(9)(h), and 447.7(d)(9)(i) are revised to read as follows:

We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim form indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with all claims for payment of indemnity initially filed on or after March 1, 1985.

Done in Washington, DC, on November 20, 1985.

Merritt W. Sprague,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28364 Filed 11-27-85; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 442

[Docket No. 2968S; Amdt. 3]

Prevented Planting Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking on Prevented Planting Crop Insurance Regulations, published in the **Federal Register** on Tuesday, November 5, 1985 (50 FR 45903), contained an error in listing the revised subsection as being 7 CFR 442.7(d). This citation should have read 7 CFR 442.7(c). This notice is published to correct that error.

EFFECTIVE DATE: November 29, 1985.

ADDRESS: Any suggestions or inquiries on this notice should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Tuesday, November 5, 1985, FCIC published a final rule amending the Prevented Planting Crop Insurance Regulations (7 CFR Part 442), effective for the 1986 and succeeding crop years.

In the left column of page 45904, the citation being revised reads 7 CFR 422.7(d) and should have read 7 CFR 422.7(c). This is corrected as set forth below:

Item number 2 in the first column of page 45904, November 5, 1985 is corrected as follows:

§ 442.7 [Corrected]

1. The amendatory language is corrected to read: "2. 7 CFR 442.7(c) is revised to read as follows:"

2. The text in § 442.7 is correctly designated as paragraph (c) instead of paragraph (d).

Done in Washington, DC, on November 20, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 85–28357 Filed 11–27–85; 8:45 am]

BILLING CODE 3410–08–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–108]

Specifically Approved States Authorized to Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document adds Wisconsin to the lists of approved States authorized to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). This action is taken because the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, has determined that Wisconsin has laws or regulations in effect to require the additional inspection, treatment, and testing of such horses to further ensure their freedom from CEM as required by the regulations. This action is necessary in order to avoid the imposition of unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: Effective date is November 29, 1985. Written comments must be received on or before January 28, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85–108. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

Section 92.2(i) of the regulations in 9 CFR Part 92, among other things, authorizes the importation of certain horses (mares and stallions over 731 days of age) into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into approved States for further inspection, treatment, and testing.

Mares and stallions over 731 days of age must be consigned to States which have been approved by the Deputy Administrator, Veterinary Services, as having met the minimum standards necessary to ensure that such mares and stallions being imported into the United States are free of the contagion of CEM. These minimum standards, which concern treatment, testing, and handling of the horses, are set forth in § 92.4(a)(6) of the regulations for stallions and in § 92.4(a)(9) of the regulations for mares.

It has been determined that Wisconsin meets the requirements of both §§ 92.4(a)(6) and 92.4(a)(9). Therefore, Wisconsin is added to the lists of those States approved to receive certain mares and stallions over 731 days of age imported into the United States from countries affected with CEM.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued 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 rule will not have a significant effect on the economy; 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 have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that fewer than 20 mares and stallions from countries affected with CEM will be imported into the State of Wisconsin annually. This compares with approximately 3,340 such animals imported into the entire United States during Fiscal Year 1984 and with approximately 36,000 horses of all classes imported into the United States during that same period.

Under these circumstances, the 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.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator for Veterinary Services, has determined that an emergency situation exists that warrants publication without prior opportunity for a public comment period. These amendments relieve unnecessary restrictions that have been imposed on mares and stallions over 731 days of age from countries affected with CEM and bound for Wisconsin, and should be made effective immediately in order to allow affected persons to move these horses into Wisconsin. Otherwise, these horses would be allowed to be imported only to other States which have been approved to receive horses from countries affected with CEM. Allowing horses destined for Wisconsin to move directly from the U.S. port of entry to Wisconsin should result in a decrease of costs for importing such horses.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause

that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule 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 a document discussing comments received and any changes required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL 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 as follows:

1. The authority citation for Part 92 continues to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, paragraphs (a)(5)(ii) and (a)(8)(ii) are revised to read:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(5) * * *

(ii) The following States have been approved to receive stallions over 731 days of age pursuant to § 92.2(i)(2)(iv):

The State of California.
The State of Colorado.
The State of Kentucky.
The State of Louisiana.
The State of Maryland.
The State of New York.
The State of North Carolina.
The State of Ohio.
The State of South Carolina.
The State of Tennessee.
The State of Virginia.
The State of Wisconsin.

* * * * *

(8) * * *

(ii) The following States have been approved to receive mares over 731 days of age pursuant to § 92.2(i)(2)(v):

The State of California.
The State of Colorado.
The State of Kentucky.
The State of Louisiana.
The State of New York.
The State of South Carolina.
The State of Tennessee.
The State of Virginia.
The State of Wisconsin.

* * * * *

Done at Washington, DC, this 22nd day of November 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-28460 Filed 11-27-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-50-AD; Amdt. 39-5176]

Airworthiness Directives; Boeing Models 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: .This amendment amends an existing airworthiness directive (AD) which requires replacement of the Fuel Quantity Indicating System (FQIS) with specific part number processor units. This amendment allows installation of later improved processor units as they are certificated.

EFFECTIVE DATE: January 6, 1986.

ADDRESSES: Applicable service information for this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to allow installation of later improved FQIS processor units as they are certificated was published in the **Federal Register** on August 20, 1985 (50 FR 33549). The comment period for the proposal closed on October 15, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Two comments were received. The first, from the Air Transport Association of America (ATA) stated that ATA members affected by the proposed rule support the change.

The second comment requested that the AD be revised to require new processor units because there have been several incidents of "gauge blanking" with the current units. The FAA does not concur with this request. Airworthiness Directive 83-15-05 was issued because of an FQIS failure mode which could indicate that the tanks contained more fuel than was actually present. Blank gauges are not considered to be a hazard in this situation, since the fact that they are blank immediately warns the crew that there is a gauge problem and backup fuel quantity information is available.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule as proposed.

Since this amendment merely relieves a restriction, it will not impose any regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model 757 and 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By further amending AD 83-15-05, Amendment 39-4696 (48 FR 34731; August 1, 1983) as revised by Amendment 39-4967 (49 FR 49434; December 20, 1984), by adding a new paragraph F. to read as follows:

F. Subsequent FAA-approved FQIS processors may be installed in place of part numbers S345T002-42 and S345T002-350 required by paragraphs C. or D., above.

All persons affected by this directive who have not already received appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P. O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective January 6, 1985.

Issued in Seattle, Washington, on November 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-28347 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-33]

Alteration of Control Zone; Oxnard, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will extend the existing control zone at Oxnard, California. The extension of the control zone is required to contain the Standard Instrument Approach Procedures (SIAP) proposed for Camarillo Airport, Camarillo, California. This amendment will change the published title of the control zone from Oxnard Ventura County Airport, California, to Oxnard, California.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1655.

SUPPLEMENTARY INFORMATION:

History

On September 25, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend the existing control zone at Oxnard, California (50 FR 38855). This change to the control zone is necessary to contain Instrument Flight Rules (IFR) operations at Camarillo Airport, Camarillo, California, within controlled airspace. This action would also change the title of the control zone to reflect the name of the associated community. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to provide additional controlled airspace to ensure that aircraft conducting VOR Runway 26 IFR operations at Camarillo Airport are separated from aircraft conducting Visual Flight Rules (VFR) operations when the visibility is less than 3 miles; thereby enhancing the safety of such operations. The current control zone is titled Oxnard Ventura County Airport, California, and the control zone serves more than one airport. This amendment will change the title to read Oxnard, California. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Oxnard, CA—[Revised]

"Within a 5-mile radius of Oxnard Ventura County Airport (lat. 34°12'02" N., long. 119°12'10" W.); beginning at lat. 34°07'40" N., long. 119°12'35" W.; to lat. 34°14'30" N., long. 119°07'40" W.; then extending beyond the 5-mile radius circle to lat. 34°14'30" N., long. 118°59'30" W.; to lat. 34°10'30" N., long. 118°59'30" W.; to lat. 34°10'30" N., long. 119°04'00" W.; then counter clockwise via the 5-mile radius circle of NAS Point Mugu (lat. 34°07'05" N., long. 119°07'20" W.); to the point of beginning. This control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the *Airport/Facility Directory.*"

Issued in Los Angeles, California, on November 20, 1985.

Alex Hammond,

Acting Director Western-Pacific Region.

[FR Doc. 85-28345 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-25]

Alteration and Establishment of VOR Federal Airways; California

Correction

In FR Doc. 85-27034 beginning on page 47044 in the issue of Thursday, November 14, 1985, make the following corrections:

On page 47045, in the first column, in the paragraph under the heading **V-21 [Amended]**, in the first line, "NW" should read "NV". In the following line, "266"" should read "226"".

BILLING CODE 1505-01-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-2]

Alteration of VOR Federal Airways; Charlotte, NC

Correction

In FR Doc. 85-27038 beginning on page 47046 in the issue of Thursday, November 14, 1985, make the following

correction: On page 47047, in the first column, in the second line of the paragraph under the heading **V–409 [Revised]**, "224"" should read "244"".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 284

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Battle Creek Gas Co.

November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Petition for Clarification.

SUMMARY: The Federal Energy Regulatory Commission is denying a petition for clarification for § 284.223(g)(1) of its regulations. Petitioner states the transportation which commenced in 1984 was "mischaracterized" as § 157.209(e) transportation when it actually qualified under § 157.209(a). The petition is denied because the § 157.209(a) transportation was not commenced and authorized under § 157.209(a) on or before October 9, 1985, as required by § 284.223(g)(1).

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Certification Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8569.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 4, 1985, Battle Creek Gas Company filed an emergency request for clarification of Order No. 436.[1] Battle Creek requests clarification that Panhandle Eastern Pipe Line Company and Michigan Gas Storage Company may transport gas for Kellogg Company under § 284.223(g)(1) as promulgated by Order No. 436. On November 7, 1985, Kellogg also filed a statement with the Commission requesting clarification that its transportation service qualifies under that section.

Specifically, Battle Creek states that under agreements dated September 17, 1984, and September 21, 1984, Panhandle and Michigan Gas began transporting gas on October 23, 1984 to Battle Creek for redelivery to Kellogg. In order to continue transportation to Kellogg, both Panhandle and Michigan Gas filed in December 1984, requests for proposed transportation under the notice and protest procedures in § 157.205 of the Commission's Rules pertaining to transportation under § 157.209(e) of the Rules. On June 6, 1985, Battle Creek advised Panhandle by letter that the transportation service qualified as high priority service under § 157.209(a) of the Commission's regulations, since the end use of the gas qualified as an essential agricultural use. On October 30, 1985, and October 31, 1985, Panhandle and Michigan Gas, respectively, filed subsequent reports stating that the gas is being transported pursuant to § 157.209(a)(1). On October 31, 1985, Panhandle informed Battle Creek and Kellogg that the transportation service would be terminated due to the earlier "mischaracterizations" of the end use as low priority and because of Pandhandle's concern over the effects of non-discriminatory transportation provisions of Order No. 436.

Battle Creek contends that the transportation which commenced on October 23, 1984, was for an essential agricultural user, and was automatically authorized under § 157.209(a)(1)(i)(A) and that the initial failure to characterize it as high priority cannot defeat this authorization. However, even if the transportation was initially authorized under § 157.209(e), Battle Creek contends this was changed when Panhandle was notified on June 6, 1985, that the gas was used for an essential agricultural use. Battle Creek further contends its situation is distinguishable from *Midwest Solvents Company*[2] in which the Commission denied a request to continue transporting gas under the transitional provisions of § 284.223(g)(1), despite Midwest's contention that Panhandle incorrectly applied for transportation authorization under § 157.209(e). Unlike *Midwest*, Battle Creek contends that the erroneous characterization as § 157.209(e) transportation was corrected with Kellogg's June 6, 1985, letter to Panhandle.

We disagree. Transportation by Panhandle and Michigan Gas was initially authorized under § 157.209(e)(1) and subsequently authorized under § 157.209(e)(2) when the parties filed under the prior notice procedures of § 157.205. No such procedures apply to transportation order § 157.209(a).

Michigan Gas and Panhandle did not attempt to notify the Commission that they planned to rely on § 157.209(a) until well after the October 9, 1985 issue date of Order No. 436. Thus the transportation was not authorized and commenced under § 157.209(a) on or before October 9, 1985, as § 284.223(g)(1) requires.

In view of the above, Battle Creek's petition for clarification is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28397 Filed 11–27–85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 260

[Docket No. RM85–13–000; Order No. 438]

Revisions to FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements"

Issued November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its Form No. 8, "Underground Gas Storage Report," and Form No. 16, "Report of Gas Supply and Requirements." Form No. 8 is filed by companies that operate underground natural gas storage fields. The information collected is used to assess the total amount of storage gas in the United States. Form No. 16 is filed by all interstate pipeline companies. The data collected by Form No. 16 are used by the Commission to assess the adequacy of interstate natural gas pipelines' current and projected supplies to satisfy their customers' requirements. In addition, these data are used by the Commission in rate cases, and in reviewing certificate applications.

The Commission proposed to revise Form No. 8 and Form No. 16 after reviewing these forms in the course of its ongoing program to reduce unnecessary reporting burdens. The Commission is adopting its proposal to reduce the number of filings of Form No. 8 required each year and to provide more time between the closing date of each reporting period and the date by which Form No. 8 must be filed.

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwest Solvents Company), Order Denying Request for Clarification, 33 FERC Reports ¶ 61,157 (1985).

The Commission is also revising Form No. 16 and its instructions to eliminate several line items and required attachments that call for information in more detail than the Commission currently needs. In addition, the number of copies of completed Form No. 16 that respondents are required to file is reduced. The Commission is also making corresponding changes to the regulations at 18 CFR 260.11 and 260.12 that prescribe Form No. 8 and Form No. 16, respectively.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Riley, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, (202) 357–8565.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements," the instructions thereto, and the regulations at 18 CFR 260.11 and 260.12 that prescribe those forms, respectively.[1] The revisions eliminate the reporting of certain information that is not needed by the Commission for decision making purposes.

II. Background

Interstate natural gas companies that operate underground natural gas storage fields must file Form No. 8 The information collected is used to assess the total amount of storage gas in the United States. Specifically, these companies provide information regarding injections and withdrawals of: (1) Gas belonging to the respondents or other companies into and from reservoirs operated by the respondents, and (2) gas belonging to the respondents into and from reservoirs operated by others.

Form No. 16 is filed by interstate pipeline companies. A pipeline files Form No. 16 twice each year and reports its actual gas supply sources and its customers' requirements for the past year and its projected gas supply sources and customer requirements for the coming year. The collected data are also used by Commission staff to analyze certificate applications and rate cases and to develop programs to address supply surpluses as well as shortages.

III. Description of Changes and Comment Analysis

A. Overview

This rulemaking continues the Commission's on-going program to review its filing requirements, and eliminate unnecessary reporting burdens. The Notice of Proposed Rulemaking (NOPR)[2] proposed to revise Forms No. 8 and No. 16. Comments were filed by eight interstate natural gas pipelines.[3] In general, the commenters support the proposals. For reasons discussed below, the Commission adopts its proposal with minor changes that reflect commenters' suggested revisions.

Based on its reevaluation of Form No. 8 and the comments, the Commission reduces the number of Form No. 8 filings required to be made during each year and provides additional time to prepare Form No. 8 before it must be filed. Reducing the number of filings required should reduce the burden on most companies that must file Form No. 8 by approximately 25 percent. Similarly, the Commission amends Form No. 16 to eliminate several line items and attachments that sought information in more detail than the Commission currently needs. It also reduces the number of copies that must be filed. The changes to Form No. 16 should decrease filing burdens by providing approximately a 38 percent reduction in the data required to be filed.

In addition, the Commission makes corresponding changes to the regulations, at 18 CFR 260.11 and 260.12, that prescribe Form No. 8 and Form No. 16, respectively.

B. Form No. 8

Respondents were previously required to file Form No. 8 a total of 16 times each year. Specifically, respondents file Form No. 8 on the fifth and twentieth days of the months of December through March and on the fifth day of the months of April through November.

(1) Amendments to Form No. 8

The Commission is changing the title of FPC Form No. 8 to FERC Form No. 8. it is also amending the instructions to Form No. 8 and § 260.11 of the regulations to reduce the number of filings each year to twelve, one per month, by eliminating the mid-month filings for the months December through March. This revision is based on the Commission's conclusion that once-a-month reporting under Form No. 8 during the winter heating season is sufficient at the present to enable the Commission to fulfill its regulatory responsibilities. The Commission also believes that the length of time allowed following the close of each reporting period (i.e., the last day of each month) for the filing of Form. No. 8 should be extended from 5 to 10 days. The Commission believes that establishing the tenth day of each month as the deadline for filing reports on the previous month will ensure, in more instances, that the information included in Form No. 8 reflects actual rather than estimated volumes while still providing timely data for Commission purposes.

(2) General Comments Regarding Form No. 8

Every commenter favors the proposed changes to the Form No. 8 filing requirements. They state that the midmonth reports during the winter heating season are unnecessary, and that this proposal is an encouraging development in the streamlining of the regulatory process. Texas Gas Transmission Corporation (Texas Gas) further states that the changes will result in a more efficient information collection process, thereby benefiting the industry, consumers and the Commission.

Northern Natural Gas Company (Northern) suggests that the Commission allow those companies that operate on a fiscal month basis to submit Form No. 8 on a fiscal rather than a calendar month basis. While the Commission would like to permit this convenience, the use of a fiscal period for reporting purposes is not appropriate, since comparative analysis would be difficult if some companies reported on a fiscal month basis while others reported on a calendar month basis.

Natural Gas Pipeline Company of America (Natural) suggests that the Commission revise Form No. 8 to eliminate the reporting of information relating to storage capacity which is also reported in Form No. 16. The Commission recognizes the partial overlap of Form No. 8 and Form No. 16.

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[1] The amended Form No. 8 and Form No. 16 (Appendices A and B, respectively) are not being printed in the **Federal Register** or the *Code of Federal Regulations*. A copy of each form, including all instructions to these forms, are available for review at the Public Reference Section, Room 1000, 825 North Capitol Street, Washington, DC 20426, (202) 357–8118.

[2] 50 FR 20109 (May 14, 1985) (issued May 10, 1985).

[3] ANR Pipeline Company; Michigan Consolidated Gas Company; Natural Gas Pipeline Company of America; Northern Natural Gas Company; Northern States Power Company; Phillips Petroleum Company; Tennessee Gas Pipeling Company; Texas Gas Transmission Corporation.

The monthly data supplied by Form No. 8 separately identifies gas volumes stored by the respondent and by other companies for the respondent. This enables the Commission to determine storage capability at any given time and to take, in a timely manner, any steps necessary to ensure reliable and economic gas service in all locals. In contrast, information on Form No. 16 is supplied only on a bi-annual basis and pertains only to past operations and estimated projections. In addition, while the Form No. 16 data on storage injections and withdrawals are useful in determining concise gas balances for the purpose of analyzing certificate applications, the Form No. 16 data on storage gas are not readily available, since the data are combined with information on other sources of supply.

Natural also suggests that the Commission waive entirely the requirement that Form No. 8 be filed until such time as the need for the data collected by Form No. 8 again arises. Natural believes that, in view of current conditions, data adequate for present purposes are already being supplied in rate and certificate filings. In the alternative, Natural recommends that the monthly filing requirement be changed to require that Form No. 8 be filed only in the months December through March.

The Commission is not adopting either of these recommendations. The data available in rate and certificate filings is neither uniform nor complete, nor well suited for assessing localized shortages.

The monthly submission of the information required by Form No. 8 is necessary to permit an accurate and current assessment of the gas in storage in different regions. This information may be necessary at any time, even during a period of general surplus, to aid the Commission in responding to localized shortages.

Phillips Petroleum Company (Phillips) points out that the Commission's proposed regulations would require "each person found by the Commission to be a natural gas company, as defined by the Natural Gas Act, as amended, including any jurisdictional affiliate" to file the Form No. 8 report. Phillips requests the Commission to clarify that it does not intend to require independent producers to include in Form No. 8 reports information with respect to any non-jurisdictional storage operations, and that the reports are required only of (1) interstate pipeline companies and (2) those performing jurisdictional gas storage services for interstate pipelines as to such services. By requesting this clarification, Phillips is seeking confirmation that its jurisdictional gas storage operation does not have to include in its Form No. 8 reports any information with respect to its own or its affiliates' non-jurisdictional storage services. Further, Phillips is seeking confirmation that since the affiliates engage only in non-jurisdiction storage services, they are not required to file Form No. 8 in any event. Both of Phillips' conclusions are correct, assuming, as indicated by Phillips, that Phillips or its affiliates do not provide any jurisdictional storage services. Section § 260.11(b) of the regulations (18 CFR 260.11(b)) requires only those persons that are natural gas companies for purposes of the Natural Gas Act [4] and their *jurisdictional* affiliates to file Form No. 8. Reports are required by independent producers, or their affiliates, only to the extent that the storage facilities are incidental to the transportation or sale of natural gas in interstate commerce.

C. Form No. 16

(1) The Commission adopts its proposal by eliminating several attachments to Form No. 16 so as to require only information that is necessary to ensure fulfillment of its regulatory responsibilities. The Commission also revises Schedules I and V of Form No. 16, as proposed, so that respondents are no longer required to report various subtotals of gas deliveries used to arrive at total volumes of gas delivered in the past year and projected to be delivered in the next year from sources other than system supply. To further reduce respondents' burdens, the Commission is amending the instructions to Form No. 16 and § 260.12 of the regulations to reduce from 6 to 4 the number of signed copies of Form No. 16 required to be submitted. Certain non-substantive revisions are being made to clarify the instructions to Form No. 16 and reflect changes made elsewhere therein. [5]

The changes to Form No. 16 are indicated in the following table.

[4] Section 2 of the Natural Gas Act, 15 U.S.C. 717a, states: "(5) Natural-gas company means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

[5] Except where indicated, these revisions and all other proposed changes were reflected on the revised copies of Forms No. 16 and No. 8 that are available for public inspection in the Public Reference Section, Room 1000, 825 North Capitol Street, Washington, DC 20426 (202) 357-8118.

FERC Form No. 16.—Report of Gas Supply and Requirements

Schedule	Changes
Schedule I, Summary of Actual Supply, Requirements and Net Deficiency or Surplus.	Clarification of Specific Instruction for completing line 02 to indicate that Attachment I is to be utilized only in conjunction with Schedule V. Elimination of separate reporting of totals for projected deliveries to customers of gas from sources other than system supply by deleting line 13 ("other purchases"); line 14 ("fuel oil displacement gas"); and line 15 ("other gas"). Insertion of new line 13 for reporting one total volume of actual deliveries to customers of gas from sources other than system supply. Revision of Specific Instruction for completing line 13 to clarify that a respondent must include in reported volumes gas it transported to sales customers which did not purchase the gas from the respondent. Elimination of Attachment II: "Other Purchases for System Supply" (requires identification of sellers for previous year in exempted and self-implemented purchases). Elimination of Attachment III: "Distributor or Customer Self-Help Gas" (requires identification of other firms' sales to respondent's customers in previous year).
Schedule II, Actual Sources of Supply Adjusted for Losses.	Revision of Specific Instruction for completing line 01 to reflect deletion of Attachment I and to clarify that respondents should provide the total volume of gas that was available from all producing areas, including onshore and offshore areas, not just actual purchases made from those areas. Elimination of Attachment I: "Producing Areas" (requires identification of supplies available from each producing area in each month of previous year).
Schedule III, Actual Storage Operations.	Elimination of Attachment I: "Field Names" (requires identification of supplies in each storage field in each month of previous year). Elimination of Attachment II: "Adjustments or Changes to Storage Volumes" (requires identification of types and volumes of adjustments each month in previous year).
Schedule IV, Actual Deliveries, Requirements and Net Deficiency or Surplus by Customer.	Non-substantive change to title of Schedule IV by insertion of words "or Surplus" between the word "Deficiency" and the words "by Customer." (This amendment to Form No. 16 was not described in the Notice.)

FERC FORM NO. 16.—REPORT OF GAS SUPPLY AND REQUIREMENTS—Continued

Schedule	Changes
Schedule V, Summary of Projected Supply, Requirements and Net Deficiency or Surplus.	Elimination of separate reporting of totals for projected deliveries to customers of gas from sources other than system supply by deleting line 13 ("other purchases"); line 14 ("fuel oil displacement gas"); and line 15 ("other gas"). Insertion of new line 13 for reporting one total volume of projected deliveries to customers of gas from sources other than system supply. Revision of Specific Instruction for completing line 13 to clarify that a respondent must include volumes transported to sales customers which did not purchase the gas from respondent. Elimination of Attachment II: "Other Purchases for System Supply" (requires identification of sellers in projected exempted and self-implemented purchases during upcoming year). Elimination of Attachment III: "Distributor or Customer Self-Help Gas" (requires identification of other firms' projected sales to respondents customers in upcoming year).
Schedule VI, Projected Sources of Supply Adjusted for Losses.	Revision of Specific Instruction for completing line 01 to reflect deletion of Attachment I and to clarify that respondent should provide the total volume of gas projected to be available from all producing areas, including onshore and offshore areas, not just projected purchases. Elimination of Attachment I: "Producing Areas" (requires reporting of supplies projected to be available from each producing area in each month of upcoming year).
Schedule VII Projected Storage Operation	Elimination of Attachment I: "Field Names" (requires reporting of projected supplies in each month of upcoming year). Elimination of Attachment II: "Adjustments or Changes to Storage Volumes" (requires reporting of projected types and volumes of adjustments each month in upcoming year).
Schedule VIII, Projected Deliveries, Requirements and Net Deficiency by Customer.	Non-substantive change to title of Schedule IV by insertion of words "or Surplus" between the word "Deficiency" and the words "by Customer." (This amendment to Form No. 16 was not described in the Notice.)
Schedule IX, Footnote Data	No change.

(2) *Comments Regarding Form No. 16.*

(a) *General Comments.* Although several commenters oppose some of the Commission's proposals, most commenters generally support the reductions in the Form No. 16 reporting requirements. In particular, Natural notes that Form No. 16 was originally implemented to gather information for use by the Commission in assessing the extent of the natural gas shortages during the 1970s. Since shortages do not now exist and are unlikely to occur in the foreseeable future, Natural argues that Form No. 16 should be eliminated.

The Commission does not believe the elimination of Form No. 16 is appropriate. Although Form No. 16 was implemented to assess gas shortage during the 1970's curtailment period, the information collected by Form No. 16 is still necessary to provide information that enables the Commission to give advance notice of, and minimize or prevent, localized shortages. In addition, this information is useful in determining whether applications for certificates to increase existing deliverability and/or serve new customers should be granted in order to avoid shortages in the market areas concerned. Form No. 16 also aids the Commission in identifying supply availability and requirements trends. The Commission utilizes this information in rate cases to project the volume of sales that a supplier can be reasonably expected to make, which is an important factor in establishing the appropriate rates to be charged by the supplier.

Northern suggests eliminating all schedules except Schedule Nos. V and IX. Northern argues that the information provided in the other schedules is also reported in various other required filings. The Commission recognizes that a certain amount of the information collected in Form No. 16 is also frequently collected in certificate, rate, and other proceedings. Form No. 16, however, is the Commission's only uniformly reported and regularly collected source of data on interstate pipelines' supplies and requirements that reflects pipelines' monthly gas balances. In particular, the data available from other filings and proceedings generally are not available in the necessary format and detail or with the reliability provided by Form No. 16.

(b) *Schedules I and V.* Tennessee Gas Pipeline Company (Tennessee) indicated that it was unclear whether the Specific Instruction for completing line 02 is Schedule I means that interstate pipelines must file Attachment I with Schedule I. Since Attachment I is meant to be used only in conjunction with Schedule V, the Commission has reworded the Specific Instruction for completing line 02 in Schedule I to eliminate any suggestion that Attachment I must also be filed with Schedule I. (In the forms sent to respondents for their completion, Attachment I to Schedule I has always been shaded to indicate that it need not be completed in conjunction with Schedule I.)

The notice proposed to eliminate separate reporting in Schedules I and V of total deliveries of "other purchases" (Schedules I and V, line 13), fuel oil displacement gas (Schedules I and V, line 14), and "other gas" (Schedules I and V, line 15). In their place, the Notice proposed to require that respondents only report on a new line 13 in Schedules I and V one combined total volume of gas from these non-system supply sources. The NSP Companies believe the Commission should continue to require separate totals for at least "other purchases" and "other gas" and add a requirement that interstate pipelines include footnotes explaining how the subtotals were derived.

The Commission recognizes that the separate reporting of totals on lines 13–15 of Schedules I and V presented the information in a convenient format. However, the deleted information is available in other public documents [6] and, therefore, may still be readily obtained. Hence, the Commission has decided to reduce the burden on all respondents in lieu of continuing to require this information for the convenience of a few interested parties.

Texas Gas argues that more detailed instructions as to how the total volume of non-system supply gas deliveries included on revised line 13 of Schedules I and V should be calculated. Specifically, Texas Gas recommended that the proposed Specific Instruction for completing new line 13 in Schedules I and V be revised to clarify that the total volume reported on new line 13 must include volumes transported by, but not purchased from, respondent pipelines. The Commission has made the request clarification.

With respect to the Commission's proposal to delete Attachment III to Schedules I and V, Michigan Consolidated Gas Company (Mich Con) argues that Attachment III, which relates to distributor and customer self-help gas, includes information that is essential for the Commission to monitor properly the transportation activities of pipelines on a timely basis. Mich Con also contends that adoption of the expanded transportation opportunities proposed by the Commission in its Notice of Proposed Rulemaking issued in Docket No. RM85–1–000 [7] will make it

[6] *See, e.g.*, 18 CFR 284.106.

[7] Regulation of Natural Gas Pipelines after Partial Wellhead decontrol, 50 FR 24130 (June 7, 1985).

more difficult and more important to monitor closely pipeline transportation activities. The Commission recognizes that its recently adopted Final Rule in Docket No. RM85-1-000 [8] will cause the market to be in transition for a period of time, that greater volumes of self help gas will be moving in the market, and that the tracking of such supplies will be important. However, the pertinent purpose of Form No. 16, in this regard, is to assess the sufficiency of projected gas supplies generally. The reporting requirements necessary to monitor the movement of gas owned by end-users in the market have been provided in the various reporting requirements in Docket No. RM85-1-000.[9] Thus, the information discussed in Mich Con's comments will be made available, although not in Form No. 16.

(c) *Schedules II and VI.* The notice proposed to eliminate Attachment I to Schedules II and VI, which requires the identification of a pipeline's field supplies by producing area. The NSP Companies oppose this proposal because it would eliminate the reporting of where a pipeline obtained its past system supplies and where it plans to obtain its future system supplies. Since similar information is filed by interstate pipelines in Form No. 15, the Commission finds no need for the duplicative filing requirements in Attachment I. Accordingly the Commission is adopting its proposal to eliminate Attachment I in order to remove an unnecessary burden on the respondents.

The notice proposed to revise the Specific Instruction for completing line 01 of Schedules II and VI to reflect the elimination of Attachment I. Tennessee suggests that the Commission clarify that respondents are required to indicate on line 01 of Schedule II the total volume of gas available from all production areas from which gas was purchased during the past year and, on line 01 of Schedule VI, the total volume of gas projected to be available from supply sources in the coming year. Tennessee is correct. In completing line 01 of Schedules II and VI, it has always been the intent that respondents indicate all available volumes, not just purchases. The notice created confusion because, as observed by Tennessee, in revising the language of the Specific Instruction for completing line 01 of Schedules II and VI, the Commission inadvertently spoke in terms of purchased gas instead of available gas. As Tennessee correctly notes, purchases during the past year and projected purchases are already required to be reported on line 7 of Schedules IV and VII, respectively. The Commission is revising the language of the Specific Instruction for completing Line 01 of Schedules II and VI to make the necessary change and clarification.

Natural urges the Commission to eliminate the requirement that Attachment II, "Pipeline suppliers; contract volumes by pipeline," and Attachment III, "Pipeline suppliers; deliveries by pipelines," be prepared for Schedule VI. Natural asserts that a detailed breakdown of pipelines' contract quantity information is not needed by the Commission on a routine basis. The Commission disagrees. The information on pipelines' contractual entitlements from its supplies contained in Attachments II and III to Schedule VI enables the Commission to review many cases (*e.g.*, those involving minimum bills or off-system sales) more efficiently and expeditiously.

(d) *Schedules III and VII.* The notice proposed to eliminate Attachment I "Field Names" to Schedules III and VII. The NSP Companies recommend that the Commission continue to require that Attachment I be prepared for Schedule VII, but that it be submitted by respondents on an annual basis. The Commission agrees with the commenter that the information provided by Attachment I can be useful upon occasion. However, the level of detail required to complete Attachment I proved burdensome for many companies. Since the Commission has not recently needed the information and can determine no pressing need for the information in the foreseeable future, no provision for a mandatory filing of the information will be made at this time.

Natural urged elimination of Attachment III under Schedules III and VII, "Past/projected Storage Service sold or Rendered under Storage Service Schedule". The Commission needs the specific data concerning storage activities contained in Attachment III, especially since storage services are steadily increasing, to assess the sufficiency of projected supplies and to determine the degree of reliance on storage for meeting requirements. Therefore, Attachment III to Schedules III and VII is being retained.

(e) *Schedules IV and VIII.* The Commission did not propose to change Schedule IV ("Actual Deliveries, Requirements and Net Deficiency by Customer) or Schedule VIII ("Projected Sources of Supply Adjusted for Losses"). However, Tennessee suggests that Schedule IV be revised to add the additional requirement that respondent pipelines report, for both past and projected periods, their customers' total contractual entitlements as well as their customers' historical and projected purchases. Although such data might be useful in certain circumstances, the Commission does not believe that the additional burden entailed by this date compilation would justify the limited benefit to individual pipelines or the Commission. Further, gas volumes that a pipeline has contracted to deliver to a specific customer are identified in the pipeline's filings and in its gas tariff.

Natural suggests eliminating the current requirement in Schedules IV and VIII that a pipeline report its gas requirements by state and by customer and the pipeline's net deficiency or surplus of gas to meet those requirements. Natural believes it would be sufficient for the Commission's purposes to require that a pipeline be required to report only the total amount of its customers' requirements and the pipeline's total deficiency or surplus of gas satisfy its cusomer's requirements.

The Commission does not believe that the information currently collected it too detailed or that the current requirement places an unnecessary or undue burden on a significant number of pipelines. Schedules IV and VIII supply the only data on the adequacy of pipelines' supplies that is broken down by state and by customer. Also, it should be noted that a pipeline may group customers with purchases of less than 100,000 Mcf per year and report only one figure reflecting the pipeline's net surplus or deficiency of supply for that group of customers.

IV. Paperwork Reduction Act Statement

The proposed revisions to the information collection provisions set forth in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501-3502 (1982), and OMB's regulations, 5 CFR 1320.13(e) (1985). Interested persons can obtain information on these revised provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Robert F. Riley (202) 357-8049). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer

[8] The Commission's Notice of Proposed Rulemaking in Docket No. RM85-1-000 was finalized by Order No. 436, issued October 9, 1985, 50 FR 42372 (October 18, 1985).

[9] *See, e.g.*, 18 CFR 284.106, which contains the reporting requirements applicable to interstate pipelines that transport natural gas under the revised regulations governing transportation authorized pursuant to section 311 of the NGPA.

for the Federal Energy Regulatory Commission).

IV. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[10] Pursuant to section 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Some of the entities that store gas in underground reservoirs and are therefore currently required to file Form No. 8 are small entities. However, the revisions to Form No. 8, extending the filing deadline and reducing from 16 to 12 the number of filings required each year, reduces the burden in filing that form. In addition, all the companies required to file Form No. 16 are interstate pipelines, none of which are small entities. Furthermore, the rule reduces the burden of filing Form No. 16 due to the elimination of several required attachments and a decrease in the number of required copies.

List of Subjects in 18 CFR Part 260

Reporting and record keeping requirements.

In consideration of the foregoing, the Commission amends Part 260 Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 260—AMENDED

1. The authority citation for Part 260 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978).

2. In § 260.11, paragraph (b) is revised to read as follows:

§ 260.11 Form No. 8, Underground Gas Storage Report.

* * * * *

(b) Each person found by the Commission to be a natural gas company, as defined by the Natural Gas Act, as amended, including any jurisdictional affiliate, as defined in § 157.40(a)(3) of the Commission's regulations, that operates an underground natural gas storage field located in the United States must prepare and file with the Commission by the tenth day of each month an original and four copies of Underground Gas Storage Report, FERC Form No. 8. Parts IV, V, VI and VII (Page Nos. 2 and 3) of FERC Form No. 8 are only required to be completed for the initial filing of FERC Form No. 8, and thereafter whenever any changes or additions of information initially reported are made.

§ 260.12 [Amended]

3. In § 260.12, paragraph (b) is amended by removing the word "six" and inserting, in lieu thereof, the word "four."

[FR Doc. 85–28396 filed 11–27–85; 8:45 am]

BILLING CODE 6717-01-M

[10] Section 3 of the Small Business Act, 15 U.S.C. 632 (1984), defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

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18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued: November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Petitions for Stay.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to petitions filed by United Distribution Companies and Southwest Gas Corporation for a stay of Order No. 436, the Commission issues this order denying the petitions.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Robert O. Foerster, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8317.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On October 9, 1985, we issued Order No. 436[1] in which we promulgated regulations governing the transportation of natural gas, producer abandonments, and optional, expedited certificate procedures. United Distribution Companies (UDC)[2] and Southwest Gas Corporation (Southwest) have petitioned us for a stay of Order No. 436. As discussed below, we will deny the petitions.

The gist of UDC's argument in support of its petition is as follows:

1. The new rules would facilitate immediate bypass of long-established utility service by UDC members under the optional, expedited certificate procedures, but would not afford state legislatures or public utility commissions an adequate opportunity to formulate response to FERC intrusions into their area of responsibility. Moreover, the rules would not afford adequate relief to local distributors through the contract demand reduction option because that option will not be available for practical purposes until the FERC issues new regulations concerning how natural gas costs should be billed.

2. The new rules would enable immediate over-commitment of firm capacity by pipelines for transportation service without any of the safeguards provided by section 7(c) of the Natural Gas Act (NGA) and result in *pro rata* curtailment of existing utility customers' capacity rights.

3. The new rules would facilitate immediate abandonment by producers of reserves dedicated to interstate pipelines and their customers pursuant to standards and procedures that afford little or no protection to exising customers.

Southwest states that the new regulations will cause immediate irreparable harm because pipelines will cease transporting gas on November 1, 1985, except for those services which were grandfathered. Southwest further states that the regulations will prevent the movement of lower-cost spot market gas in the interstate market and will deprive consumers of the benefits of those supplies.

We are not persuaded by these arguments to stay the effectiveness of our regulations. Section 705 of the Administrative Procedure Act authorizes us to postpone the effective date of action taken when we find that justice so requires. We are unable to make that finding here.

In the first place, we do not believe that staying the effectiveness of Order No. 436 is in the public interest. As we

[1] RM85–1–000, 50 FR 42408 (October 18, 1985).

[2] UDC is a group of local distribution companies which provide gas utility service to the general public.

noted in the order, the purpose of the regulations is to assure that commodity and transmission price signals are transmitted between the wellhead and burner-tip in a manner that is clear and accurate and consistent with the NGA requirement that rates and practices be just and reasonable and not unduly discriminatory or preferential. The final rule is designed to secure to consumers the benefits of competition in the natural gas markets consistent with both the NGA and Natural Gas Policy Act of 1978 (NGPA). It is intended to achieve these goals by establishing a framework for setting just and reasonable rates and practices for the sale and transportation of gas in interstate commerce and by reasonably conditioning self-implementing interstate transportation services under the NGA and NGPA.

Second, the petitioners have not demonstrated the implementation of the Order No. 436 regulations will cause imminent irreparable harm within the natural gas industry. With respect to the by-pass issue, we indicated in Order No. 436 that our goal was to ensure that all natural gas markets are sufficiently competitive so that consumers are provided natural gas at the lowest reasonable rates consistent with reliable, long-term service. We will not insulate local-distribution-company (LDC) markets from the competitive incentives that are the foundation of our final rule. All market participants, including LDC's, are accountable for the success or failure of their market participation. Where incentives exist for producers to offer gas at market clearing prices and for pipelines to provide the necessary transportation, LDC's are in a position to compete to make gas available to their customers at the lowest possible cost. Section 157.102(b)(1) requires that applicants for optional, expedited certificates provide LDC's with the prior actual notice necessary to meet such competition. Moreover, if pipelines engage in unfair competitive practices or other circumstances are present that would make it unfair for a pipeline to by-pass an LDC, the distributor may present these issues for consideration at the hearing provided for by § 157.104.

With respect to overbooking of pipeline capacity, we do not expect overbooking to be a significant problem. Section 284.8(d) permits a pipeline to impose a reservation fee as a condition of providing firm transportation service to a shipper. Such fees should make overbooking rare. We also reject UDC's argument that overbooking will result in *pro rata* curtailment of existing utility customers' capacity rights. Self-implementing transportation services must be offered to all shippers, firm and interruptible, on a nondiscriminatory basis to the extent that capacity is available, that is, on a first-come, first-served basis. Customers willing to accept a pipeline's available capacity on an interruptible basis may submit nominations for that capacity. Since that customers' claim to a pipeline's capacity is interruptible, its claim is inferior to that of the firm customers. Therefore, if the pipeline's firm customers demand their firm transportation, they will pre-empt interruptible customers.

As to proposed abandonment of sales by producers to piplines, § 2.77(a) of the regulations sets forth our policy that applications will be reviewed on an expedited basis in cases where the producer is subject to substantially reduced takes without payment or the parties have entered into a take-or-pay buy-out. As a policy statement, this portion of Order No. 436 has no immediate effect without further Commission action on specific cases.

We are also unpersuaded, with respect to Southwest's argument that the new regulations will prevent the movement of lower-cost spot market gas in the interstate market.

In light of the foregoing, we do not find that justice requires postponing the effective date of our Order No. 436 regulations and the petitions for a stay are denied.

By the Commission.

Kenneth F. Plumb.

Secretary.

[FR Doc. 85-28395 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

[T.D. 85-191]

Liquidated Damages Claims Against Bonded Carriers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the liability of bonded carriers for shortages, irregular delivery, or nondelivery of imported merchandise. The purpose of the amendments is to assure uniform assessment of liquidated damages claims against carriers, as well as cartmen, for the shortage, irregular delivery, or nondelivery of bonded merchandise. The amendments will also further the protection of the revenue.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: William Rosoff, Carriers, Drawback, and Bonds Division (202-566-2140). Operational Aspects: Kent Parsell, Inspection and Control Division (202-566-5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION: .

Background

By publication of T.D. 84-213 in the **Federal Register** on October 19, 1984 (49 FR 41152), the Customs Regulations (19 CFR Chapter I), were amended to revise the bond structure by consolidating and reducing the number of bond forms in use, to simplify transactions between Customs and the importing public, and to facilitate establishment of an efficient computerized bond control system.

Recent enforcement operations undertaken by Customs have indicated that the current liquidated damages provisions for failure to deliver in-bond cargo are insufficient to protect the revenue and actually contribute to a disregard to the in-bond regulations and procedures. One important element of the recently amended bond structure is an increase in the amounts chargeable for failure to deliver bonded merchandise, to an amount equal to the value of the cargo (three times the value in the case of restricted merchandise or liquor). The amendment provides that these amounts control unless another amount is authorized elsewhere in the regulations.

Section 18.8, Customs Regulations (19 CFR 18.8), provides specific liability amounts assessable against bonded carriers for shortage, irregular delivery, or nondelivery of bonded merchandise. These amounts are widely variant from those provided in T.D. 84-213 and, due to the stipulation appearing in that amendment concerning amounts otherwise authorized, are the amounts that are assessed in the event of a violation. Section 18.8 applies in the case of a violation by a bonded carrier. However, T.D. 84-213 is also applicable to bonded cartmen (one who transports goods or merchandise within the limits of a port). Thus, even through carriers and cartmen perform the same function, a disparity is created between their respective liabilities.

T.D. 84-213 stated that a complete review of the various regulatory provisions containing lesser liability amounts would be conducted (§ 18.8 among them), and that upon completion

of that review, a proposal to modify any of the provisions would be published for public comment. However, due to an immediate need to ensure protection of the revenue as well as the equal treatment of all concerned parties, it was determined to propose amendments to § 18.8 in advance of completion of the study.

On January 11, 1985, a proposal was published in the **Federal Register** (50 FR 1545) to amend § 18.8(b), Customs Regulations (19 CFR 18.8(b)), by stating that carriers would be liable for the payment of liquidated damages under the carrier bond for any shortage, failure to deliver, or irregular delivery, as provided in the bond. The public was given until March 12, 1985, to submit comments on the proposal.

Discussion of Comments

Nine comments were received in response to the notice, all opposing the proposal. The following is a discussion of the issues raised and the Customs response.

It is stated that an effect of the change will be that the increase in liquidated damages amounts chargeable to the carrier will be too great and that the Congress intended duties on imported merchandise to be collected from the importer rather than from the carrier.

This is not entirely correct. Under section 448, Tariff Act of 1930, as amended (19 U.S.C. 1448(a)), the carrier who brings merchandise into the U.S. is liable for the payment of duties until unladen merchandise is properly released from Customs custody. That is, until the importer enters the merchandise and posts a bond guaranteeing the payment of duty, the carrier is liable. In any event, the commenters incorrectly assume that Customs is interested only in the collection of duties and that liquidated damages are substitute duties. Customs is interested in the collection of the correct duties, in preventing the importation of contraband, and in ensuring that merchandise is not released from our custody until it fully complies with the laws and regulations on admission or the importer had made an agreement, secured by a bond, to bring the merchandise into compliance. If the carrier loses the merchandise or delivers it to the importer before Customs has the opportunity to perform an examination, Customs loses the opportunity to accomplish those goals. The liquidated damages assessed under the bond is the contractual amount which compensates the Government for those lost opportunities.

A commenter stated that the carrier at the destination should bear sole responsibility for compliance with all requirements at the final destination of the merchandise.

The carrier at the ports of entry (the initial bonded carrier) has total control over subsequent transfers. Since 1925, under T.D. 40631, an initial bonded carrier has been allowed to turn over merchandise to a non-bonded carrier. However, the initial carrier would still be liable under the terms of its bond for any shortage or irregularity. If the initial bonded carrier wanted to limit its risk exposure, that carrier may state, on the immediate transportation entry, that it will only move the goods to the port where it is to relinquish possession to another carrier. The subsequent transfer under § 18.4, Customs Regulations (19 CFR 18.4), would effectively limit the carrier's bond liability to the time that the carrier had actual possession. If, to gain business advantages, the carrier informs Customs that it will move the goods to the ultimate destination, Customs has no other choice but to hold that carrier responsible for the entire movement.

Another commenter noted that carriers are not always aware of the contents of shipments and so should not be held responsible for pilferage.

Generally, a carrier is responsible for shipments it transports. However, to the extent that a carrier properly delivers the merchandise to Customs at the post of destination and shows by reasonable evidence, such as maintaining seals on the containers that it did not lose any merchandise, it is unlikely that Customs would find that the carrier breached its bond obligations.

One commenter claimed that the intent of Congress in establishing duties on imported merchandise was to protect a fair market value.

The primary purposes of the Tariff Act of 1930 were to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the U.S., and to protect American labor. The assertion of the commenter is not supported by the statutory language.

It is claimed by one commenter that Customs is adequately protected against misdelivery of merchandise by the carrier's customer.

This claim would have validity if misdelivery were limited to delivery of merchandise to a party other than the ultimate owner or consignee. In this context, misdelivery is direct delivery by the carrier, having by-passed Customs in the process. The bonded carrier's agreement with Customs is that the carrier will notify Customs of the arrival of the merchandise so that Customs has an opportunity to examine and appraise the merchandise before it is delivered to the ultimate owner or consignee. The failure to keep that agreement prevents Customs from fulfilling its mission which is to administer the Tariff Act of 1930, as amended. Primary responsibility rests with Customs to assess and collect duties, taxes and fees on imported merchandise, to enforce and administer the Customs, navigation and related laws. Furthermore, as a major enforcement organization, Customs combats smuggling and frauds on the revenue and enforces the law and regulations of numerous other Federal agencies throughout the country.

It is claimed that the amendment is illegal and will generate windfall revenue.

This contention lacks support. Under section 624, Tariff Act of 1930 (19 U.S.C. 1624), the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of 19 U.S.C. Chapter 4. Chapter 4 contains all of the provisions of the Tariff Act of 1930, as amended, including 19 U.S.C. 1552, 19 U.S.C. 1553, and 19 U.S.C. 1623. Under 19 U.S.C. 1552 and 19 U.S.C. 1553, the Secretary is authorized to make rules and regulations for the transportation of merchandise in bond before appraisement. Under 19 U.S.C. 1623, the Secretary is authorized to require bonds to protect the revenue or assure compliance with any provisions of law which the Secretary may be authorized to enforce.

The claim is made that the payment of a claim for liquidated damages is simply another revenue source.

We disagree. If the carrier complies with its bond agreement, the bond obligation is void. A null and void bond obligation cannot constitute a source of revenue. On the other hand, if the carrier fails to honor its agreement to perform, it has damaged the Government by preventing it from performing the function for which it was established. Liquidated damages compensate the Government (on behalf of the people) for the damages suffered by the carrier's failure to live up to its obligation.

Another commenter states that the amendment will have an adverse, anticompetitive effect on bonded carriers.

There is no showing that the amendment will result in significantly increased bond premiums. Further, during public hearings on the question of removal of sureties, Customs was assured by each party who testified that bond premiums were insignificant or relatively modest. The anticompetitive

effect claimed rests on the unsupported premise that all carriers are equally efficient and for that reason all carriers will breach their bond obligations proportionally. A small carrier who is more efficient and properly carries out its bond obligations will be unaffected by the proposal. There is no reason to assume that all carriers will breach their bonds.

It is alleged that in some cases it is not possible to prove to Customs that merchandise has been exported, so as to relieve liability under a bond.

We disagree with this allegation. It is normally possible to prove that merchandise has been exported. In support of the claim of exportation, the carrier may submit various forms of documentary evidence, such as bills of lading, foreign landing certificates, vessel or vehicle manifests, certificates of lading, or certified notices of exportation.

Furthermore, no carrier is required to accept bonded merchandise. A bonded carrier does so only to gain a business advantage. With each advantage there is an element of risk. The carrier may not enjoy the business advantage without accepting any risk. The bonded carrier could reduce its exposure to risk by not undertaking the obligation to prove that the merchandise was exported. It has no basis for complaint when it fails to carry out the terms of its bond agreement.

Executive Order 12291

This is not a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 301 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 18

Common carriers, Freight forwarders, Motor carriers, Surety bonds.

Amendments to the Regulations

Part 18, Customs Regulations (19 CFR Part 18), is amended as set forth below.

PART 18—TRANSPORTATION IN-BOND AND MERCHANDISE IN-TRANSIT

1. The general authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1551, 1552, 1553, 1624; § 18.8 also issued under 19 U.S.C. 1623.

2. Section 18.8(b) is revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

* * * * *

3. Section 18.8(e)(1), second sentence, is amended by removing the word "computed" and the phrase "paragraphs (b) (1), (2) and (3) of."

Approved: November 12, 1985.

William von Raab,

Commissioner of Customs.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-28433 Filed 11-27-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 40

[Docket No. R-85-1186; FR-1957]

Accessibility Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Tuesday, August 7, 1984 (49 FR 31620), which adopted standards for access to publicly owned residential buildings by physically handicapped people. This action is necessary to correct inadvertent errors in the document, the Uniform Federal Accessibility Standards, which was adopted as Appendix A to Part 40 by that rulemaking. These errors include omission of words, typographical errors, and an incorrect term for measurement of door opening forces.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Housing, Department of Housing and Urban Development, Room 9220, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6454 or (202) 426-6030 for TDD communication. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document makes corrections to several sections of the Uniform Federal Accessibility Standards (UFAS), which were published at page 31528 of the **Federal Register**, and adopted as Appendix A to Part 40—Accessibility Standards for Publicly Owned Residential Structures in a final rule published at page 31620 of the **Federal Register**, on August 7, 1984. Identical corrections are being published by the other three standard-setting agencies which jointly developed and promulgated the UFAS with HUD—General Services Administration, Department of Defense, and United States Postal Service. The General Services Administration is publishing the corrections elsewhere in the **Federal Register** today. The Department of Defense and United States Postal Service each intend to publish a Notice effecting these corrections in the **Federal Register.**

These corrections include removal of certain words inadvertently contained in the document, for example, where the Table of Contents section heading differed from the actual heading in the text; addition of words that were unintentionally omitted; correction of typographical and numbering errors; and addition of asterisks where needed to correct references to the UFAS Appendix. It also substitutes Newtons for kilograms and foot pounds (lbf) for pounds (lb) as the measure of door opening force. These are the appropriate measures for a dynamic force and are consistent with the American National Standards Institute ANSI A117.1 specification on which the UFAS is based.

In addition, corrections are made to certain illustrations to clarify or otherwise improve the drawings or their captions. Figure 34(a) is revised by extending to the wall the dimension line showing the maximum distance between the end of a grab bar and the wall at the head of the bathtub. As originally published, the line was incomplete and did not touch the wall. Figure 35(b) is revised by removing the dimension 15/380 from the drawing. This dimension was incorrectly included on the original drawing, and has no application in this situation.

Other changes to illustrations include a revision to Figure 48(b) to remove the cross hatching denoting a requirement

for reinforcement for grab bars which is shown on the drawing of the wall at the head of the tub. Grab bars are not required in this situation, as indicated by the similar drawing at Figure 34(b). This change makes both figures consistent. A similar change is made to Figure 49(a), where cross hatching incorrectly required reinforcement where none is needed (see the comparable drawing at Figure 37(a)). Revisions also are made to Figure 49(b), where the controls shown on the drawing of the back wall of the shower stall are removed, as well as the dimensions applicable to the placement of controls, and are shown instead on the side wall drawing. This makes Figure 49(b) consistent with the comparable drawing at Figure 37(b). In the UFAS Appendix, a figure number is added to the untitled drawings shown on page 31608 of the **Federal Register.**

Accordingly, the Department is correcting Appendix A to 24 CFR Part 40, promulgated in the **Federal Register** on August 7, 1984, at 49 FR 31528 and 31620, as follows:

PART 40—ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF PUBLICLY OWNED RESIDENTIAL STRUCTURES

Appendix A to Part 40—Accessibility Standards for Publicly Owned Residential Structures

1. In the Table of Contents, the heading for section 2.2 is corrected to read:

2.2 Provisions for Adults

2. The following corrections are made to 4.1.4. Occupancy Classifications: The introductory paragraph of paragraph (9) is amended by revising the phrase "in which people having physical or medical treatment or care" to read "in which people have physical or medical treatment or care"; paragraph (9)(b) is amended by revising "toilet" to read "toilets" each of the four times the word appears; and paragraph (12) is amended by removing the abbreviation "noncom" the two times it appears and adding in its place "noncombustible."

3. In 4.1.5 Accessible Buildings: Additions, the reference to "4.1.6" in paragraph (4) is revised to read "4.1.5."

4. In 4.1.6 Accessible Buildings: Alterations, paragraph (4)(d)(i) is amended by revising the phrase "of the latch side door stop" to read "for the latch side door stop".

5. In 4.5.3 Carpet: The phrase "(*see Fig. 8(f)*)" is removed from where it appears, and is added at the end of the paragraph, before the period to the sentence.

6. Asterisks are added at paragraph designations 4.11*, 4.16.5* and 4.31.3.*

7. In 4.13.6 Maneuvering Clearances at Doors: The phrase "for doors" is removed and the phrase "at doors" is added in its place.

8. In 4.13.11* Door Opening Force: In paragraphs (2)(b) and (2)(c) the references to "lb" are revised to read "lbf" and the references to "2.3kg" are revised to read "22.2N".

9. In 4.13.12* Automatic Doors and Power-Assisted Doors: The reference to "(6.8K)" is revised to read "(66.6N)".

10. In 4.34.4 Consumer Information: The first paragraph (5) is amended by revising "Standard" to read "Standards".

11. In 4.34.5.3 Lavatory, Mirrors, and Medicine Cabinets: Paragraphs (1) and (2) are amended by revising the references to "4.22.7" to read "4.22.6."

12. In 8.4 Card Catalogs: The phrase "with a maximum height of 54 in (1370 mm) preferred" is revised to read "with a height of 48 in (1220 mm) preferred."

13. In 9.3 Self-Service Postal Centers: The word "user" is added following the term "a wheelchair" in the second sentence.

14. In the Appendix to the UFAS, A4.5.1 is amended by revising "cobblestone" to read "cobblestones" in the first paragraph, and by revising "general" to read "generally" in the second paragraph.

15. In the Appendix to the UFAS, A4.6 is amended by adding the following new paragraph inadvertently omitted from the published text:

A4.6.4 SIGNAGE. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

16. In the Appendix to the UFAS, A4.28 is amended by revising the title and numerical designation of paragraph "A4.28.3 VISUAL ALARMS" to "A4.28.4 AUXILIARY ALARMS" and by removing "should" where it appears in the last sentence and adding "should be" between "also" and "equipped"; and by adding the following new paragraph A4.28.3 inadvertently omitted from the published text:

A4.28.3 VISUAL ALARMS. The specifications in this section do not preclude the use of zoned or coded alarm systems. In zoned systems, the emergency exit lights in an area will flash whenever an audible signal rings in the area.

17. In the Appendix to the UFAS, A4.33.3 is amended by adding "area" between "seating" and "are provided."

18. In the Appendix to the UFAS, A4.33.7 is amended by revising "move" to read "moved."

19. In the Appendix to the UFAS, A4.34.5 and A4.34.6 are amended by removing "adaptable" from the titles of both paragraphs.

20. In the Appendix to the UFAS, A4.34.6.1 is amended by revising "moved" to read "removed."

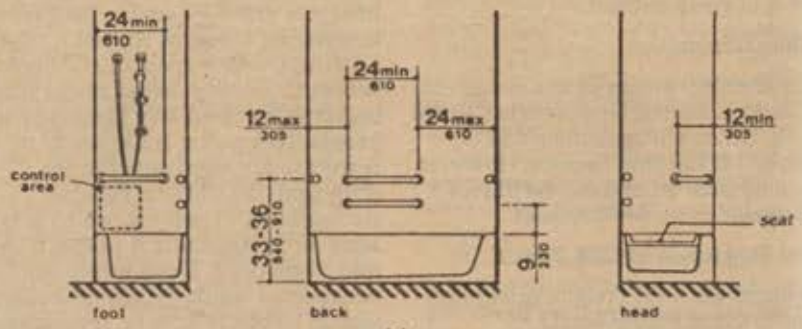
21. In Appendix to the UFAS, A9 is amended by revising the title of "A9.2 GENERAL" to read "A9.2 POST OFFICE LOBBIES."

22. The following note is added to Fig. 19:

X is the 12 in minimum handrail extension required at each top raiser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

23. Fig. 34(a) is revised as shown below:

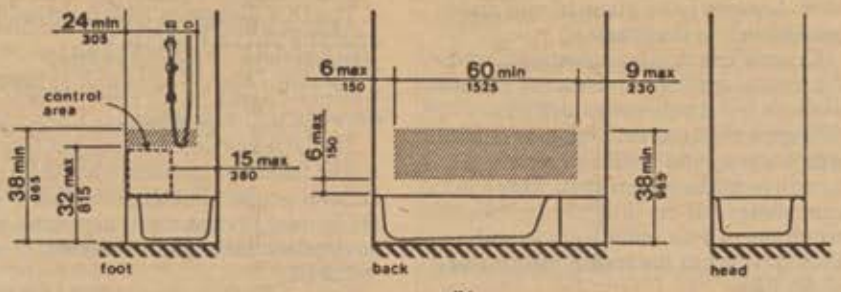


(a)
With Seat in Tub

Fig. 34
Grab Bars at Bathtubs

24. Fig 35(b) is amended by removing the dimensions "15" and "380".

25. Fig. 48(b) is revised as shown below:

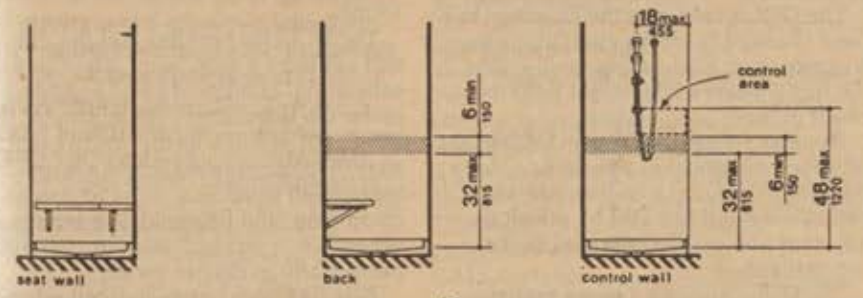


(b)
With Seat at Head of Tub

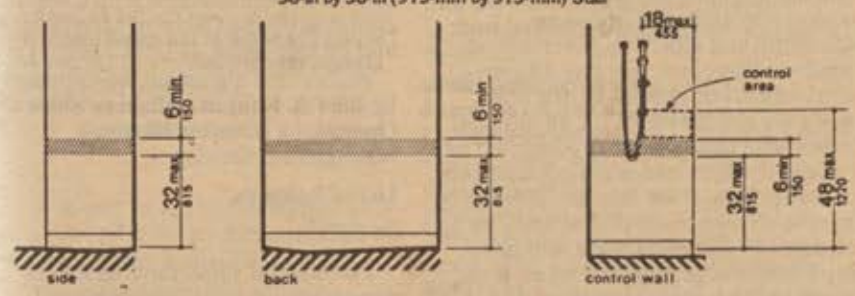
NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 48
Location of Grab Bars and Controls of Adaptable Bathtubs

26. Fig. 49 (a) and (b) are revised as shown below:



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (750-mm by 1525-mm) Stall

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 49
Location of Grab Bars and Controls of Adaptable Showers

27. In the Appendix to the UFAS, the unlabeled figure following and referenced in A4.2.5 & A4.2.6 is amended by adding the designation "Fig. A3(a)."

Dated: November 25, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-28422 Filed 11-27-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management; General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to provide an 8-year primary term for leases in the Outer Continental Shelf (OCS) in water depths of 400 to 900 meters. Lessees would be required to commence an exploratory well within the first 5 years of the term to avoid lease cancellation.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Under section 8(b)(2) of the OCS Lands Act, an oil and gas lease shall "be for an initial period of five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water. . . ." If the term is not adequate because of unusual circumstances, the lessee risks losing a lease through no fault of its own. The law requires diligence by a lessee in exploring and commencing development of a lease, but under certain circumstances, 5 years may not be adequate time in which to explore and commence to develop a lease even while exercising diligence.

Up to this time, decisions on the appropriate water-depth criterion for longer primary lease terms have been made on a sale-by-sale basis. For the last 3 years, sale-specific decisions have resulted in 10-year terms for leases in water depths of 900 meters or more. The 900-meter criterion is based on consideration of current technology and timeframes estimated to be necessary to explore, develop, and produce. In addition, a stipulation was included in several sales that mandatory suspensions would be granted for the time necessary to complete activities delineated in an approved development and production plan for leases in 400 to 900 meters of water that had 5-year

primary terms. This same provision was added to the regulations at 30 CFR 250.12(c) for leases in the Gulf of Mexico effective April 24, 1984 (49 FR 17449). The Department of the Interior (DOI) has continued to examine the issue of longer lease terms and published a rule proposing 8-year terms for leases in 400 to 900 meters of water on June 11, 1985 (50 FR 24546).

The proposal also called for commencement for an exploratory well within the first 5 years in order to avoid lease cancellation.

Comments

A total of 14 timely comments were received in response to the Notice of proposed rulemaking. Thirteen comments were from the regulated industry and one was from an academic institution.

Differences Between Proposed Rule and Final Rule

The only differences between the Proposed Rule and the Final Rule concern language added to clarify the intent of the drilling requirement and that suspensions are available for extending the 5-year period for drilling.

Discussion of Comments

The overwhelming majority of commenters agreed in principle with the extension of the primary term from 5 to 8 years for leases in 400 to 900 meters of water. However, all but one commenter felt that an 8-year term was not enough. There were various recommendations, but the majority suggested 10-year terms at 400 meters. Some commenters suggested 8-year terms for 200 to 400 meters. One suggested 8 years for 300 to 500 meters and 10 years for depths greater than 500 meters, and another suggested 10 years at 300 meters. The factors cited by the commenters as reasons for their position, time needed for more extensive and expensive exploration to delineate economic producibility, shortage of rigs with deepwater-drilling capability, and time needed to test new, innovative production technology, were considered by DOI in arriving at the 8-year term.

Based on analysis of the above criteria and recognition of DOI's statutory mandate to provide for prompt and efficient exploration and development of a lease, DOI is promulgating the Final Rule with the originally proposed 8-year term.

Two commenters recommended that the extended timeframe should be applied to qualifying current leases still within their 5-year primary term as well as future leases.

The DOI disagrees. Current leases were bid on and leased with the knowledge that they must be in production within the 5-year primary term. Lessees have planned and are proceeding on that basis.

Several commenters disagreed with the 5-year drilling requirement. Several of those felt it was necessary as a diligence requirement, and others felt it was onerous and would eliminate the incentive of the longer term. One commenter felt the diligence requirement was not adequate and should be set at the fourth year instead of the fifth.

The DOI disagrees with the above-mentioned comments. The 5-year drilling requirement is necessary to further the statutory goal of diligent exploration. The DOI also considers that 5 years is an adequate term in which to commence drilling.

A number of commenters suggested that the language of the proposal concerning the 5-year drilling requirement could be read as an obligation to drill and not as a criterion for cancelling a lease if drilling is not commenced.

The DOI agrees, and the language has been changed to clarify that failure to commence an exploratory well within the first 5 years of the initial term will result in lease cancellation.

Another commenter suggested that the diligence requirement should be able to be met not only by a well within an exploration unit but also by a well on adjacent and cornering leases that are not unitized.

The DOI disagrees. Leases that are unitized are done so on the basis that exploration activities are more efficiently and effectively carried out together. Therefore, meeting diligence requirements on one lease in a unit meets the requirements for all unitized leases. The unit is basically handled as a single lease. If leases are not unitized, no matter how close they are physically, there is no assurance that activity on an adjacent or cornering lease will have any effect on the principal lease. If the leases are that closely related, they should be unitized.

One commenter pointed out that the Proposed Rule stated that the 5-year drilling requirement could be delayed beyond the fifth year by an approved suspension under 30 CFR 250.12. However, the rules at § 250.12 only act to extend the term of a lease.

The DOI agrees and is revising the rules at 30 CFR 250.12 to include a provision to cover extension of the time to meet the drilling requirement.

The same commenter suggested that unavailability of rigs to drill deepwater wells was a primary reason for needing a suspension and was not covered in the reasons for granting a suspension under 30 CFR 250.12.

The DOI disagrees with the need to amend § 250.12, because rig unavailability is covered under § 250.12(b)(1)(i) to "facilitate proper development of a lease."

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. Industry is expected to bid on and develop certain marginal leases that might not otherwise have been bid upon and developed with 5-year terms because of the time uncertainty, resulting in otherwise unrealized profit to the industry from those leases, potentially higher bonus bids to the Government, and ultimately additional economic benefit to the Nation as a whole.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities, particularly in deeper waters.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: the document was prepared by Jane A. Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting requirements.

30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands/mineral resources, Public lands/rights-of-way,

Reporting and recordkeeping requirements; Surety bonds.

Dated: October 11, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Parts 250 and 256 are amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

2. Section 250.12(d)(1) is revised to read as follows:

§ 250.12 Suspension of operations and lease cancellation.

* * * * *

(d)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to paragraph (a), (b), or (c) of this section, the term of the lease or any initial period in which to commence an exploratory well pursuant to § 256.37(a)(2) shall be extended for a period of time equivalent to the period that the suspension or prohibition is in effect. However, no lease or period shall be extended pursuant to this subsection when the Director's suspension or temporary prohibition is the result of the lessee's or permittee's gross negligence or of a knowing and willful violation of a provision of the Act, of the regulations, or of a lease or permit.

* * * * *

3. Section 250.34–1 is amended by designating (a)(3) as (a)(3)(i) and adding (a)(3)(ii) to read as follows:

§ 250.34–1 Exploration plan.

(a) * * *

(3) * * *

(ii) For leases in 400 to 900 meters of water issued with an initial term of 8 years, no deadline is specified for submittal of an exploration plan; however, to avoid lease cancellation, an exploratory well must be commenced before the end of the fifth year of the initial term.

* * * * *

PART 256—[AMENDED]

4. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

5. Section 256.37 is amended by designating (a) as (a)(1) and adding (a)(2) to read as follows:

§ 256.37 Lease term.

(a) * * *

(2) Oil and gas leases shall be issued for an initial period of 8 years when the leases or any part thereof are in water depths of 400 to 900 meters. Commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation.

* * * * *

[FR Doc. 85–28366 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Savannah Reg. 85–62]

Security Zone Regulations; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a security zone around the vessel ADM. WM. M. CALLAGHAN while it is transiting inbound and outbound on the Savannah River and while moored at Ocean Terminal, Georgia Ports Authority, Savannah, GA. This security zone is needed to safeguard the ADM. WM. M. CALLAGHAN against destruction from sabotage or other subversive acts. Entry into the zone is prohibited unless authorized by the Captain of the Port Savannah.

EFFECTIVE DATES: This regulation becomes effective on or about 11 December 1985 upon the arrival of the vessel ADM. WM. M. CALLAGHAN at the mouth of the Savannah River. It terminates on or about 13 December 1985 upon the departure of the vessel ADM. WM. M. CALLAGHAN, unless sooner terminated by the Captain of the Port Savannah.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. O. DODGE, project officer for the Captain of the Port, P.O. Box 8191, Savannah, Georgia 31412, (912) 944–4347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss or injury to the vessel ADM. WM. M. CALLAGHAN, its personnel and military cargo being handled.

Drafting Information

The drafters of this regulation are LT. R. O. DODGE, project officer for the Captain of the Port Savannah, GA, and LCDR Kenneth E. GRAY, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on December 11, and continue through December 13, 1985. This security zone is necessary to protect the vessel ADM. WM. M. CALLAGHAN while it is participating in a military execise at a commercial port facility. This action will minimize the hazards to the vessel ADM. WM. M. CALLAGHAN, its personnel and cargo from possible damage from any person or persons.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all or part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46, and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T0762 is added to read as follows:

§ 165.T0762 Security Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a security zone: A perimeter of 100 feet in every direction from the vessel ADM. WM. M. CALLAGHAN, official number 511744, call sign KGYE, while it is transiting inbound and outbound on the Savannah River and while moored at Ocean Terminal, Georgia Ports Authority, Savannah, GA.

(b) *Effective date.* This regulation becomes effective on or about December 11, 1985 upon the arrival of the vessel ADM. WM. M. CALLAGHAN at the mouth of the Savannah River. It terminates on December 13, 1985 upon

the departure of the vessel ADM. WM. M. CALLAGHAN, unless sooner terminated by the Captain of the Port Savannah.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Savannah, GA. Section 165.33 also contains other general requirements.

Dated: November 19, 1985.

J.E. Shkor,

Commander, U.S. Coast Guard, Captain of the Port Savannah, Georgia.

[FR Doc. 85-28438 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Savannah Reg. 85-61]

Security Zone Regulations; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: .The Coast Guard is establishing a security zone around the vessel ADM. WM. M. CALLAGHAN while it is transiting inbound and outbound on the Savannah River and while moored at Ocean Terminal, Georgia Ports Authority, Savannah, GA. This security zone is needed to safeguard the ADM. WM. M. CALLAGHAN against destruction from sabotage or other subversive acts. Entry into this zone is prohibited unless authorized by the Captain of the Port Savannah.

EFFECTIVE DATES: This regulation becomes effective on or about 1 December 1985 upon the arrival of the vessel ADM WM. M CALLAGHAN at the mouth of the Savannah River. It terminates on or about 3 December 1985 upon the departure of the vessel ADM. WM. M. CALLAGHAN, unless sooner terminated by the captain of the Port Savannah.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. O. DODGE, project officer for the Captain of the Port, P.O. Box 8191, Savannah, Georgia 31412, (912) 944-4347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss or injury to the vessel ADM. WM. M. CALLAGHAN, its personnel and military cargo being handled.

Drafting Information

The drafters of this regulation are LT R. O. Dodge, project officer for the Captain of the Port Savannah, GA, and LCDR Kenneth E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on 1 December and continue through 3 December 1985. This security zone is necessary to protect the vessel ADM. WM. M. CALLAGHAN while it is participating in a military exercise at a commercial port facility. This action will minimize the hazards to the vessel ADM. WM. M. CALLAGHAN, its personnel and cargo from possible damage from any person or persons.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46, and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T0761 is added to read as follows:

§ 165.T0761 Security Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a security zone: A perimeter of 100 feet in every direction from the vessel ADM. WM. M. CALLAGHAN, official number 511744, call sign KGYE, while it is transiting inbound and outbound on the Savannah River and while moored at Ocean Terminal, Georgia Posts Authority, Savannah, GA.

(b) *Effective date.* This regulation becomes effective on or about 1 December 1985 upon the arrival of the vessel ADM. WM. M. CALLAGHAN at the mouth of the Savannah River. It terminates on 3 December 1985 upon the departure of the vessel ADM. WM. M. CALLAGHAN, unless sooner terminated by the Captain of the Port Savannah.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Savannah, GA. Section 165.33 also contains other general requirements.

Dated: November 19, 1985.

J.E. Shkor,

Commander, U.S. Coast Guard, Captain of the Port Savannah, Georgia.

[FR Doc. 85-28439 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-1-FRL-2929-9]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs); States of Connecticut, Maine, New Hampshire, Rhode Island, and Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce the New Source Performance Standards (NSPS) set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources, and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA hereby notifies the public that it has delegated authority over certain NSPS and NESHAPs to the state air pollution control agencies in Region I. This notice announces the delegations granted since November 1984. In addition, the above listed States' delegation agreements provide that authority over future revisions to previously delegated standards will automatically be redelegated to the state agency. Also, these state delegation agreements provide for automatic delegation of new standards. These delegations do not create any new regulatory requirements affecting the public. The effect of the delegations is to shift primary program responsibility for the affected NSPS and NESHAPs source categories from EPA to state governments. Some states do not have full authority over the programs; limitations are noted where appropriate.

ADDRESSES: Applications and/or reports required under all NSPS/NESHAPs source categories or which EPA has

delegated authority to respective states should be addressed to:

State of Connecticut:
Division of Air Compliance, Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06115
State of Maine:
Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333
State of Massachusetts:
Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, Massachusetts 02108
State of New Hampshire:
New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301
State of Rhode Island:
Rhode Island Department of Environmental Management, 204 Cannon Building, 75 Davis Street, Providence, Rhode Island 02908

FOR FURTHER INFORMATION CONTACT: Thomas A. Elter, EPA Region I, Air Management Division, J.F.K. Federal Building, Boston, MA 02203. Telephone (617) 223-4875.

SUPPLEMENTARY INFORMATION: The States of Connecticut, Maine, Rhode Island and New Hampshire were delegated authority over the General Provisions of the New Source Performance Standards and various source categories in letters from EPA dated September 30, 1982; the Commonwealth of Massachusetts was delegated this authority in a similar letter dated June 24, 1982. These letters detailed the conditions of each delegation, and thereby established a mechanism of automatic delegation of new standards when specifically requested by the States. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted by the Regional Administrator Michael R. Deland.

Delegations for each State are listed below:

State of Connecticut

Limitations: None; full enforcement delegated.
Delegations: NSPS Subparts:
Effective date: March 26, 1985
LL—Metallic Mineral Processing Plants
FFF—Flexible Vinyl Urethane Coating and Printing
GGG—Equipment Leaks of VOC in Petroleum Refineries
HHH—Synthetic Fiber Production Facilities
JJJ—Petroleum Dry Cleaners
NESHAPs Subparts.
J—Standards for Equipment Leaks (Fugitive Emissions Sources) of Benzene
V—Equipment Leaks (Fugitive Emission Sources) (VHAP Service)

State of Maine

Limitations: None; full authority delegated.
Delegations: NSPS Subparts:
Effective date: March 14, 1984
LL—Metallic Mineral Processing Facilities
FFF—Flexible Vinyl Urethane Coating and Printing
GGG—Equipment Leaks of VOC in Petroleum Refineries
HHH—Synthetic Fiber Production Facilities
JJJ—Petroleum Dry Cleaners
NESHAPS Subparts
Effective Date: November 1, 1984
J—Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
V—Equipment Leaks (Fugitive Emission Sources) (VHAP Service)
Effective Date: November 26, 1984
M—Standard for Asbestos: Sections 61.140, 61.141, 61.145, 61.146, 61.152, and 61.156 as they relate to demolition and renovation activities.

State of New Hampshire

Limitations: None; full authority delegated.
Delegations: NSPS Subparts:
Effective Date: March 8, 1985
FFF—Flexible Vinyl Urethane Coating and Printing
JJJ—Petroleum Dry Cleaners

State of Rhode Island

Limitations: Administrative delegation, only.
Delegations: NSPS Subparts:
Effective date: March 15, 1984
FFF—Flexible Vinyl Urethane Coating and Printing
JJJ—Petroleum Dry Cleaners

Commonwealth of Massachusetts

Limitations: None; full authority delegated.
Delegations: NSPS Subpart:
Effective date: May 28, 1985
FFF—Flexible Vinyl Urethane Coating and Printing
HHH—Synthetic Fiber Production Facilities
JJJ—Petroleum Dry Cleaners

Effective immediately, all applications, reports, and other correspondence required under these NSPS and NESHAPs standards should be sent to the above State addresses, and to the EPA.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Wool fiberglass, Non-metallic minerals, Radionuclides.

Authority: Sec. 111(c) and 112(d) of the Clean Air Act, 42 U.S.C. 7411(c) and 7412(d).

Dated: November 1, 1985.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85-28429 Filed 11-27-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-19

Accommodations for the Physically Handicapped

AGENCY: General Services Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Tuesday, August 7, 1984 (49 FR 31625), which adopted standards for access to publicly owned buildings by physically handicapped people. This action is necessary to correct inadvertent errors in the document, the Uniform Federal Accessibility Standards, which was adopted as Appendix A to Subpart 101-19.6 by that rulemaking. These errors include omission of words, typographical errors, and an incorrect term of measurement of door opening forces.

FOR FURTHER INFORMATION CONTACT: Kathleen Fields, Office of Design and Construction, Public Buildings Service, General Services Administration, Room 3046, 18th and F Streets, NW., Washington, DC 20405. (FTS 8-566-0038 or 202-566-0038.

SUPPLEMENTARY INFORMATION: This rule makes corrections to several sections of the Uniform Federal Accessibility Standards (UFAS), which were published at page 31528 of the **Federal Register**, and adopted as Appendix A to Subpart 101-19.6—Accommodations for the Physically Handicapped in a final rule published at page 31625 of the **Federal Register**, on August 7, 1984. Identical corrections are being published by the other three standard-setting agencies which jointly developed and promulgated the UFAS with the General Services Administration—The

Department of Housing and Urban Development (DHUD), Department of Defense (DOD), and United States Postal Service (USPS). The DHUD is publishing the corrections elsewhere in the **Federal Register** today. The DOD and USPS intend to publish a notice effecting the corrections in the **Federal Register.**

These corrections include deletion of certain words inadvertently left in the document, for example, in the Table of Contents where a particular section heading differed from the actual heading in the text; addition of words that were unintentionally omitted; correction of typographical and numbering errors; and addition (or deletion) of asterisks where needed to correct references to the UFAS Appendix. It also substitutes Newtons for kilograms and foot pounds (lbf) for pounds (lb) as the measure of door opening force. These are the appropriate measures for dynamic force and are consistent with the usage in the American National Standards Institute ANSI A117.1 specification on which UFAS is based.

In addition, corrections are made to certain illustrations to clarify or otherwise improve the drawings or their captions. Figures 34(a) is revised by extending to the wall the dimension line showing the maximum distance between the end of the grab bar and the wall at the head of the bathtub. As originally published, the line was incomplete and did not touch the wall. Figure 35(b) is revised by deleting the dimension 15/380 from the drawing. This dimension was incorrectly included on the original drawing, and has no application in this situation.

Other changes to illustrations include a revision to Figure 48(b) to delete the cross hatching denoting a requirement for reinforcement for grab bars which is shown on the drawing of the wall at the head of the tub. Grab bars are not required in this situation, as indicated by the similar drawing at Fig. 34(b). This change makes both figures consistent. A similar change is made to Fig. 49(a), where cross hatching incorrectly required reinforcement where none is needed (see the comparable drawing at Fig. 37(a)). Revisions are also made to Fig. 49(b), where the controls shown on the drawing of the back wall of the shower stall are deleted, as well as the dimensions applicable to the placement of controls, and are shown instead on the side wall drawing. This makes Fig. 49(b) consistent with the comparable drawing at Fig. 37(b). In the UFAS Appendix, a figure number is added to the untitled drawings shown on page 31608.

Accordingly, the General Services Administration is correcting Appendix A to Subpart 101–19.6, published on August 7, 1984, at 49 FR 31528 and 31625 as follows:

PART 101–19 CONSTRUCTION AND ALTERATION OF PUBLIC BUILDINGS

Appendix A to Subpart 101–19.6—Uniform Federal Accessibility Standards

1. In the Table of Contents, the heading for section 2.2 is corrected to read:

2.2 Provisions for Adults

2. The following corrections are made to 4.1.4. Occupancy Classification: The introductory paragraph of paragraph (9) is amended by revising the phrase "in which people having physical or medical treatment or care" to read "in which people have physical or medical treatment or care; paragraph (9)(b) is amended by revising "toilet" to "toilets" each of the four times the word appears: and paragraph (12) is amended by removing the abrreviation "noncom" the two times it appears and inserting in its place "noncombustible".

3. In 4.1.5 Accessible Buildings: Additions, the reference to "4.1.6" in paragraph (4) is revised to read "4.1.5".

4. In 4.1.6 Accessible Buildings: Alterations, paragraph (4)(d)(i) is amended by revising the phrase "of the latch side door stop" to read "for the latch side door stop".

5. In 4.5.3 Carpet: The phrase *"(see Fig. 8(f))"* is removed from where it appears, and is added at the end of the paragraph, before the period to the sentence.

6. Asterisks are added at paragraph designations 4.11*, 4.16.5* and 4.31.3*.

7. In 4.13.6 Maneuvering Clearances at Doors: The phrase "for doors" is removed and the phrase "at doors" is added in its place.

8. In 4.13.11* Door Opening Force: In paragraphs (2)(b) and (2)(c) the reference to "lb" are revised to read "lbf" and the references to "2.3kg" are revised to read "22.2N".

9. In 4.13.12* Automatic Doors and Power-Assisted Doors: The reference to "(6.8K)" is revised to read "(66.6N)".

10. In 4.34.4 Consumer Information: The first paragraph (5) is amended by revising "Standard" to read "Standards".

11. In 4.34.5.3 Lavatory, Mirrors, and Medicine Cabinets: Paragraphs (1) and (2) are amended by revising the references to "4.22.7" to read "4.22.6".

12. In 8.4 Card Catalogs: The phrase "with a maximum height of 54 in (1370 mm) preferred" is revised to read "with a height of 48 in (1220 mm) preferred".

13. In 9.3 Self-Service Postal Centers: The word "user" is added following the term "a wheelchair" in the second sentence.

14. In the Appendix to the UFAS, A4.5.1 is amended by revising "cobblestone" to read "cobblestones" in the first paragraph, and by revising "general" to read "generally" in the second paragraph.

15. In the Appendix to the UFAS, A4.6 is amended by adding the following new paragraph inadvertently omitted from the published text:

A4.6.4 SIGNAGE. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

16. In the Appendix to the UFAS, A4.28 is amended by revising the title and numerical designation of paragraph "A4.28.3 VISUAL ALARMS" to A4.28.4 AUXILIARY ALARMS" and by removing "should" where it appears in the last sentence and adding "should be" between "also" and "equipped"; and by adding the following new paragraph A4.28.3 inadvertently omitted from the published text:

A4.28.3 VISUAL ALARMS. The specifications in this section do not preclude the use of zoned or coded alarms systems. In zoned systems, the emergency exit lights in an area will flash whenever an audible signal rings in the area.

17. In the Appendix to the UFAS, A4.33.3 is amended by adding "area" between "seating" and "are provided."

18. In the Appendix to the UFAS, A4.33.7 is amended by revising "move" to read "moved."

19. In the Appendix to the UFAS, A4.34.5 and A4.34.6 are amended by removing "adaptable" from the titles of both paragraphs.

20. In the Appendix to the UFAS, A4.34.6.1 is amended by revising "moved" to read "removed".

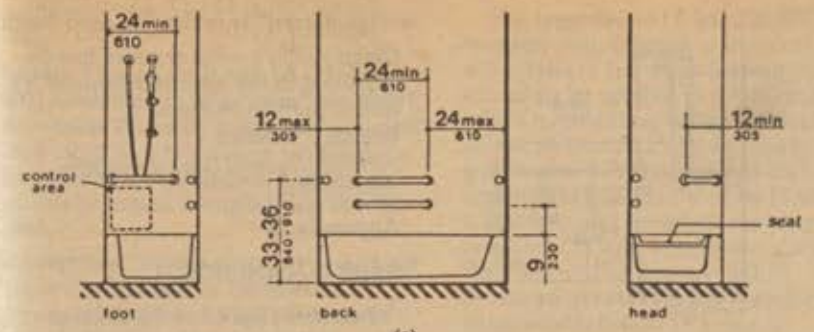
21. In the Appendix to the UFAS, A9.2 is amended by revising the title of paragraph "A9.2 General" to read "A9.2 Post Office Lobbies."

22. The following note is added to Fig. 19:

X is the 12 in minimum handrail extension required at each top riser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

23. Fig. 34(a) is revised as shown below:

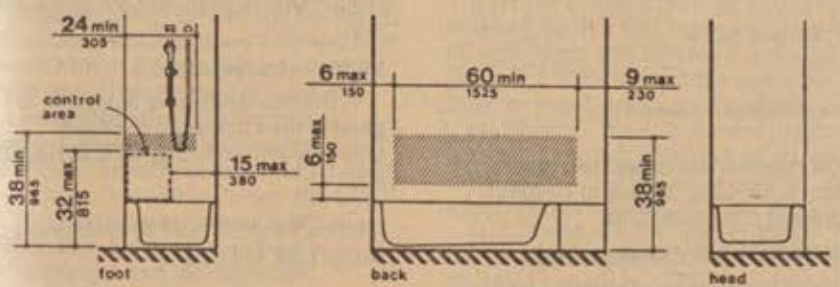


(a)
With Seat in Tub

Fig. 34
Grab Bars at Bathtubs

24. Fig. 35(b) is amended by removing the dimensions "15" and "380".

25. Fig. 48(b) is revised as shown below.

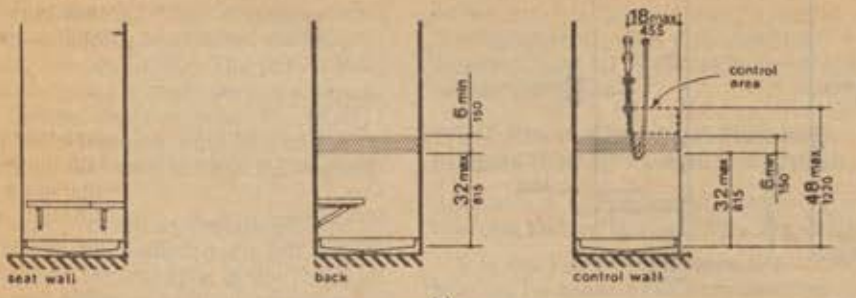


(b)
With Seat at Head of Tub

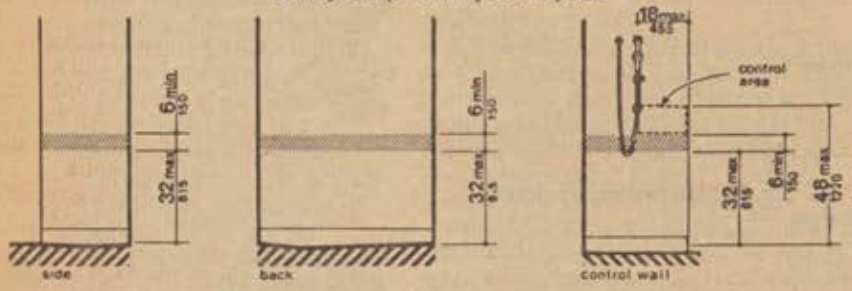
NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 48
Location of Grab Bars and Controls of Adaptable Bathtubs

26. Fig. 49 (a) and (b) are revised as shown below:



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (750-mm by 1525-mm) Stall

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 49
Location of Grab Bars and Controls of Adaptable Showers

27. In the Appendix to the UFAS, the unlabeled figure following and referenced in A4.2.5 & A4.2.6 is amended by adding the designation "Fig. A3(a)".

Dated: November 18, 1985.

William R. Lawson,

Assistant Commissioner for Design and Construction.

[FR Doc. 85-28423 Filed 11-27-85; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Amendment to Delegation of Authority to the Office of General Counsel to Issue Written Determinations Regarding the Interception of Telephone Conversations

AGENCY: Federal Communications Commission.

ACTION: Final rule and correction.

SUMMARY: This action revises citations to General Services Administration regulations cited in two sections of Part 0 of the Commission's rules. It also corrects the GSA regulations cited in a previous Order (FCC 84-553) and in a subsequent Erratum.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph McBride, Office of General Counsel (202) 254-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Administrative practice and procedure.

Order

In the matter of amendment of Part 0 of the Commission's rules and regulations to delegate authority to the Office of General Counsel to issue written determinations regarding the interception of telephone conversations.

Adopted: November 14, 1985.
Released: November 15, 1985.

On December 6, 1984, the Commission published an Order delegating authority to the Office of General Counsel to issue written determinations regarding the interception of telephone conversations, 49 FR 47604. In that document, certain Federal Communications Commission and General Services Administration regulations cites were given. An Erratum was later issued and published on January 2, 1985, 50 FR 85, correcting the GSA cites. However, the corrected cites were also incorrect. Therefore, the citations to the GSA regulations are further corrected by this document as follows:

Paragraph 1: 41 CFR 201-6.202 (c), (d), and (f);

Paragraph 2: 41 CFR 201-6.203(a).

Sections 0.41(n) and 0.251(h) of the Commission's rules are also hereby amended in the attached Appendix to reflect the cite changes.

William J. Tricarico,

Secretary, Federal Communications Commission.

Appendix IX

PART 0—[AMENDED]

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

§ 0.41 [Corrected]

2. Section 0.41(n) is amended to change the citation to the GSA regulations to read: 41 CFR 201-6.202 *et seq.*

§ 0.251 [Corrected]

3. Section 0.251(h) is amended to change the citation to the GSA regulations to read: 41 CFR 201-6.202 *et seq.*

[FR Doc. 85-27772 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155-5175]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice establishing quotas and restrictions to reduce further the levels of fishing in 1985 for sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and allocate the remaining ten percent of the optimum yield (OY) equally between fixed and trawl gear and impose limits on the trawl fishery. The intended effect is to extend the fishery as long as possible

throughout the remainder of the fishing year.

DATES: The trip limit will be effective 0001 hours Pacific Standard Time (PST), November 25, 1985, until 2400 hours PST, December 31, 1985, unless modified, superseded, or rescinded. Comments will be accepted through December 16, 1985.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115, or E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206–526–6150, E.C. Fullerton at 213–548–2575, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: Implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at § 663.27(b)(3) state that when 90 percent of the OY quota for sablefish (*Anoplopoma fimbria*) is reached, the remaining 10 percent will be divided equally between fixed and trawl gear. In addition, a trip limit will be imposed on trawl vessels which equals the average percentage of sablefish in trawl landings that contained that species during the current fishing year.

The best data available on November 15, 1985, indicated that 12,240 metric tons (mt), or 90 percent of the 13,600 mt OY for sablefish, was reached on October 21, 1985, at which point the remaining 1,360 mt is allocated, 680 mt for trawl landings and 680 mt for fixed gear landings. If either 680-mt quota is reached, further landings of sablefish by that gear type will be prohibited until the new season starts January 1, 1986. The best data available indicate that 554 mt (81 percent) of the 680-mt trawl gear quota and 339 mt (50 percent) of the 680-mt fixed gear quota will be taken by November 25, 1985. If landing rates in November and December follow the same patterns as in 1984, the fixed gear quota will not be reached in 1985, but the trawl quota may be reached the first week in December if trawl landings are not slowed further.

The regulation at § 663.27(b)(3) also requires that, when 90 percent of the sablefish OY is reached, a trip limit for sablefish be applied to trawl landings which equals the average percentage of sablefish landed by trawl gear in landings which contained sablefish. This trip limit is intended to slow landings by trawl gear and to reduce the chance of reaching OY and subsequent closure of the fishery. The best available information sets this trip limit for trawl-caught sablefish at 13 percent.

Secretarial Action

Based on the information presented in the preamble, the Secretary therefore establishes quotas and trip limits as specified in the implementing regulations at § 663.27(b)(3) as follows:

(1) If either fixed or trawl gear lands 680 mt of sablefish after October 21, 1985, further landings of sablefish by that gear type will be prohibited until January 1, 1986.

(2) If the 13,600-mt OY for sablefish is reached, further landings of sablefish by all gear types will be prohibited until January 1, 1986, even if the quota for fixed or trawl gear is not reached.

(3) No more than 13 percent (by round weight) of all fish on board taken with trawl gear and retained, or landed, per vessel per fishing trip may be sablefish.

(4) Current regulations published in the **Federal Register** (50 FR 2051, January 15, 1985) remain in effect and place a maximum limit on landings of 5,000 pounds of sablefish smaller than 22 inches (total length) per trip for fish caught north of Point Conception, California (34° 27' N. latitude). Therefore, if more than 5,000 pounds of sablefish is taken and retained or landed, under the 13 percent trip limit for trawl gear, no more than 5,000 pounds may be less than 22 inches total length.

(5) The above restrictions apply to all sablefish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California, regardless of the place of taking, except that no size limit applies to sablefish caught south of Point Conception.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at § 663.28.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of § 663.27(b)(3) and are in compliance with Executive Order 12291. These actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.27(b)(3) of the groundfish regulations states that the Secretary will divide equally the remaining 10 percent of the sablefish OY between fixed and trawl gear, and also will impose a trip limit on trawl landings so that the fishery will continue as long as possible during the fishing year. This is a nondiscretionary action on the part of the Secretary which received extensive comment during the development of the first amendment of the FMP. Further public comment is not required. Also because of the immediate need to slow landings of sablefish and thus forestall closure of the fishery which must occur if OY is reached, NMFS finds that advance notice and additional public comment are impracticable and not in the public interest. The public was advised at the Council's November 13–14, 1985, meeting that these measures were impending. Public comments will be accepted for 15 days after this notice is published in the **Federal Register**. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

List of Subjects in 50 CFR Part 663

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: November 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–28477 Filed 11–25–85; 4:47 p.m.]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 230
Friday, November 29, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposed Rulemaking and Request for Comments.

SUMMARY: In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Hoover Power Plant Act), the Western Area Power Administration (Western) has developed these revised proposed General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These revised proposed General Regulations will supersede the "General Regulations for Lease of Power" dated April 25, 1930, and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), both of which shall terminate on May 31, 1987. These revised proposed General Regulations shall serve as the basis for computation of all charges for the sale of power on and after June 1, 1987, from the Boulder Canyon Project.

These revised proposed General Regulations, promulgated pursuant to section 618g of the Adjustment Act and article 27 of the 1941 General Regulations, are necessary and appropriate for the administration of the Project in accordance with the Project Act and the Adjustment Act, as amended.

Interested parties are invited to submit comments concerning these revised proposed General Regulations to Western. The final General Regulations will be published by the Secretary of Energy, acting by and through the Administrator of Western, upon completion of the comment period. Western will review and consider each comment prior to publishing the final General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project in the **Federal Register.** Also to be included in that **Federal Register** will be responses to all major comments, criticisms, and alternatives offered on the revised proposed General Regulations.

DATES: Written comments concerning the revised proposed General Regulations should be submitted on or before January 6, 1986. An opportunity will be given all interested parties to present written or oral statements at a public comment forum to be held on December 19, 1985, beginning at 10 a.m.

ADDRESSES: The public comment forum will be held at the Plaza Room, Tropicana Hotel, Las Vegas, Nevada, on the date cited above. Written comments concerning the revised proposed General Regulations should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8855

Mr. Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1531

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 617d of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy based upon charges that will provide sufficient revenue that will cover all expenses of operation and maintenance, and repayment with interest of all amounts advanced from the Department of the Treasury for the Boulder Canyon Project.

The Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority the Secretary of the Interior approved and promulgated the 1941 General Regulations. The 1941 General Regulations provide the basis for computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project to Western from the Bureau of Reclamation (Reclamation). The operation, maintenance, and replacement responsibilities of the Project powerplant and appurtenant works remained with Reclamation. The power marketing function includes the responsibilities for promulgating charges for the sale of power. The marketing of power from the Boulder Canyon Project is the responsibility of Western's Boulder City Area Office. The marketing of power from the Boulder Canyon Project beginning June 1, 1987, shall be in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the **Federal Register** on December 28, 1984 (49 FR 50582). That document conforms the Boulder City Area Office marketing criteria to the Hoover Power Plant Act.

The Hoover Power Plant Act amends and is supplemental to the Project Act and the Adjustment Act. The Hoover Power Plant Act also sets forth requirements and guidelines for the marketing and allocation of power from the Boulder Canyon Project for the period beginning June 1, 1987.

Proposed General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project were published in the **Federal Register** on May 17, 1985 (50 FR 20732). The **Federal Register** provided notice that comments on the proposed General Regulations would be

accepted by Western on or before July 15, 1985. A public information forum on the proposed General Regulations was held on June 4, 1985, and a public comment forum was held on July 1, 1985. At the public comment forum, Western announced a 90-day delay in the public process on the proposed General Regulations. The 90-day delay was in response to a request made by the Colorado River Commission of Nevada (CRC) on behalf of the Boulder Canyon Project renewal contractors and proposed Uprating Program allottees. The 90-day delay was granted by Western to allow those involved to resolve their concern regarding Boulder Canyon Project matters. Subsequently, on July 26, 1985, Western published in the **Federal Register** a Notice of a Delay in the Consent Period on the Proposed General Regulations for Charges for the Sale of Power from the Boulder Canyon Project (50 FR 30447). The notice provided that the comment period would be extended until October 1, 1985.

Western received major and oral comments on the proposed General Regulations from two entities, the Department of Water and Power of the City of Los Angeles (LADWP) and the Colorado River Commission of Nevada (CRC). CRC submitted comments on behalf of CRC, Arizona Power Authority, Metropolitan Water District of Southern California, and the cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside. The Irrigation and Electrical Districts Association of Arizona concurred with CRC's comments. LADWP's comments were supported by the Southern California Edison Company.

Upon initial review of the comments received, Western determined that it would be in the best interest of all concerned to publish these revised proposed General Regulations and allow for additional comments.

These revised proposed General Regulations reflect several minor changes that do not affect the original intent of the proposed General Regulations. Substantive changes to the proposed General Regulations are described as follows:

(1) Section 904.4 Definitions: The definitions for "Capacity" and "Uprating Program" have been changed to provide clearer definitions. The definition for "Renewal Contractor" has been deleted as the term is no longer being used in the document.

(2) Section 904.6 Revenue Requirements: The reference to Reclamation has been deleted. Paragraphs (a), (b), and (c)(3) have been rewritten to provide clarity.

(3) Section 904.7 Charge for Capacity and Firm Energy: The title has been changed and reference to § 904.6 has been added.

(4) Section 904.8 Base Charge: This section has been rewritten to more clearly define determination of the Base Charge. The percentage split between capacity and energy has been added. The previously published §§ 904.10 and 904.12 have been merged into this section.

(5) Section 904.9 Lower Basin Development Fund Contribution Charge: This section has been rewritten to define that charge will be on energy only. The previously published § 904.11 has been rewritten and merged into this section.

(6) Previously published § 904.13 Adjustment of Lower Basin Development Fund Contribution Charge: The previously published section has been deleted because the charge has been permanently set under § 904.9.

(7) Section 904.10 Excess Capacity: This section has been added to clarify use of excess capacity, if available.

(8) Section 904.11 Excess Energy: This section has been rewritten to include the allocation methodology of third priority excess energy within California.

(9) Section 904.12 Capacity Reductions: This section has been added to define the methodology to be used to determine each contractor's share of a capacity reduction.

(10) Previously published § 904.15 through § 904.19: These sections have been renumbered to § 904.13 through § 904.17.

(11) Section 904.13 Payments to Contractors: This section has been rewritten to clarify repayment of costs.

(12) Section 904.16 Disputes: All references to Reclamation have been deleted.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a Regulatory Impact Analysis must be made prior to the publication of a major rule. The revised proposed General Regulations are of a technical nature and are considered to be a nonmajor rule within the meaning of the Executive order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of these proposed regulations by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, the Secretary of Energy, acting by and through the Administrator of Western, hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rule for the interested public to participate in the development of the General Regulations. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of the General Regulations supply information about themselves to the Government. It follows that the revised proposed General Regulations are exempt from the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE EA–0204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Part of the original Consolidated Marketing Plan was a reference to the rate formula and application criteria that are now developed and proposed in this notice. At the time of the Criteria EA, the formula and its application were determined to not, either by themselves or cumulatively, have a significant impact. Now that these General Regulations are better defined, Western will make an environmental determination of their possible impacts prior to their final implementation.

List of Subjects in 10 CFR Part 904

Electric power rates.

Issued at Golden, Colorado, November 18, 1985.

William H. Clagett,

Administrator.

It is proposed to amend title 10 of the Code of Federal Regulations by adding a new Part 904 to Subchapter A to read as follows:

PART 904—GENERAL REGULATIONS FOR THE CHARGES FOR THE SALE OF POWER FROM THE BOULDER CANYON PROJECT

Subchapter A—Power Marketing

Sec.

Authority: 43 U.S.C. 617 *et seq.*); 43 U.S.C. 618 *et seq*; 42 U.S.C. 7101 *et seq.*; 43 U.S.C. 620 *et seq*; 43. U.S.C. 1501 *et seq*; 98 Stat. 1333.

§ 904.1 Authorities.

The Secretary of Energy, acting by and through the Administrator, is authorized and directed to promulgate charges for the power generated at the Boulder Canyon Project powerplant, and also to promulgate general regulations as the Secretary finds necessary and appropriate in accordance with the power marketing authorities in The Reclamation Act of 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto, and the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*).

§ 904.2 Purpose.

In acordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), as amended and supplemented (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), as amended and supplemented (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); and the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Hoover Power Plant Act); the Western Area Power Administration (Western) promulgates these General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These General Regulations shall supersede the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations) approved and promulgated on May 20, 1941, and the "General Regulations for Lease of Power" dated April 25, 1930, both of which shall terminate on May 31, 1987. These General Regulations shall serve as the basis for computation of all charges for the sale of power on and after June 1, 1987, from the Boulder Canyon Project.

§ 904.3 Scope.

These General Regulations are effective June 1, 1987, and shall apply to the charges applicable to any sale of power from the Boulder Canyon Project after May 31, 1987. "The General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" dated May 20, 1941, and the "General Regulations for Lease of Power" dated April 25, 1930, are hereby repealed as of June 1, 1987.

§ 904.4 Definitions.

The following terms wherever used herein shall have the following meanings:

"Additions and Betterments" shall mean such additions and betterments constructed or acquired which enhance or improve the Project and do more than restore the Project to a former good operating condition.

"Capacity" shall mean the contingent capacity which is allocated from the Project, subject to water availability for generation or forced or planned outages that affect powerplant capability.

"Central Arizona Project" shall mean those works as described in section 1521(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*).

"Contract" shall mean any contract for the sale of Boulder Canyon Project power after May 31, 1987, between Western and any contractor.

"Contractor" shall mean any entity which has a fully executed contract for the purchase of power.

"Firm Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(A) and section 105(a)(1)(B) of the Hoover Power Plant Act.

"Overruns" shall mean the use of capacity or energy in amounts greater than Western's contract delivery obligation in effect for each type of service provided for in the Contract except with the approval of Western.

"Project" or "Boulder Canyon Project" shall mean all works authorized by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act, to be constructed and owned by the United States, and any future authorized additions, but exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal.

"Replacements" shall mean such replacements as determined by the United States to be necessary to keep the project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the phrase "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe.

"Uprating Program" shall mean the Program authorized by section 101(a) of the Hoover Power Plant Act for increasing the generating capacity of the original Hoover Powerplant, and generally described in the report of the Department of the Interior, Bureau of Reclamation, entitled "Uprating Program, Hoover Power Plant, Special Report," Issued in May 1980 and supplemented on January 9, 1985.

§ 904.5 Power Generation and Marketing Responsibilities.

(a) Power generation and associated operation, maintenance, and replacement of facilities and equipment shall be the responsibility of the Department of the Interior, Bureau of Reclamation (Reclamation).

(b) Power generated for sale from the Project will be marketed by Western under terms of the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Boulder City Area Marketing Criteria) published in the **Federal Register** on December 28, 1984 (49 FR 50582). Western shall allocate the power from the Project in accordance with section 105(a)(1) of the Hoover Power Plant Act.

(c) Procedures for the scheduling and delivery of power shall be provided for in the Contract between the Contractor and Western.

§ 904.6 Revenue requirements.

(a) Western shall collect all electric service revenues from the Project in accordance with statutes and regulations and deposit such revenue

into the Colorado River Dam Fund. The revenue requirements of the Project shall be collected through a charge for power that shall yield sufficient revenues, together with other net revenues from the Project, to recover all costs associated with the Project.

(b) The charge shall provide sufficient revenue to recover the following categories of costs:

(1) Annual operation and maintenance;
(2) Annual interest on unpaid investments in accordance with appropriate statutory authorities;
(3) Investment costs within the period specified in § 904.15;
(4) Replacements;
(5) Additions and betterments; and
(6) Any other financial obligations of the Project imposed in accordance with law.

(c) The charge shall specifically provide revenue for statutory requirements relating to the Boulder Canyon Project as follows:

(1) The payment of $300,000 annually for each of the States of Arizona and Nevada provided for in section 618a(c) of the Adjustment Act and section 1543(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*) (Basin Act), as amended or supplemented.

(2) Repayment of the cost, with interest, of the visitor facilities pursuant to section 106 of the Hoover Power Plant Act.

(3) Repayment of funds, and all reasonable costs incurred in obtaining such funds advanced by non-Federal contractors to the Secretary of the Interior for the Uprating Program.

(4) Repayment to the Treasury, of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a of the Project Act as provided by section 618f of the Adjustment Act. Such deferred advance payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over a 50-year period beginning June 1, 1987.

(5) Repayment to the Treasury, of the advances to the Colorado River Dam Fund for the Project made prior to May 31, 1987, that were deferred because of a deficiency in firm energy generation due to a shortage of available water, as provided for in article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958 (72 Stat. 1726) (Boulder City Act). Such deferred principal payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over the Contract period beginning June 1, 1987, and ending September 30, 2017. The amount of such deferred principal payment to be repaid shall be the amount shown on the books of accounts of Reclamation as of May 31, 1987.

(d) The charge will also provide for surplus revenue for contribution to the Lower Colorado River Basin Development Fund pursuant to section 1543(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act to provide revenue for the purposes of sections 1543(f) and 1543(g) of the Basin Act.

(e) All annual costs will be calculated based on a Federal fiscal year. To accommodate the transition from the pre-1987 operating year of June 1 to May 31, there will be a 4-month transition period beginning June 1, 1987, and ending September 30, 1987.

§ 904.7 Charge for capacity and firm energy.

The charge for Capacity and Firm Energy from the Project shall be composed of two separate charges; a charge to provide revenue for the basic revenue requirements identified in § 904.6, paragraphs (b) and (c), of these regulations (Base Charge) and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution identified in § 904.6, paragraph (d), of these regulations (Lower Basin Development Fund Contribution).

§ 904.8 Base charge.

(a)(1) The Base Charge shall be developed by the Administrator of Western and promulgated in accordance with appropriate Department of Energy regulations. The Base Charge shall be composed of a capacity component and an energy component.

(2) The capacity component of the Base Charge shall be determined by (i) multiplying the revenue requirement developed pursuant to § 904.6 of these regulations by 45 percent and (ii) dividing the results of that multiplication by the total kilowatts allocated.

(3) The energy component of the Base Charge shall be determined by (i) multiplying the revenue requirement developed pursuant to § 904.6 of these regulations by 55 percent and (ii) dividing the results of that multiplication by the total firm kilowatthours allocated.

(b) The capacity component of the Base Charge shall be a dollar per kilowatt amount to be applied to the annual contract rate of delivery to the Contractor. The capacity component shall be applied whether capacity is available or not. The energy component of the Base Charge shall be a mills per kilowatthour amount to be applied to each kilowatthour, either scheduled or metered, as provided for by Contract. Application of the Base Charge to capacity and energy overruns will be provided for by Contract. The capacity component and the energy component of the Base Charge shall be applied on a monthly basis for each Contractor.

(c) The Base Charge shall be reviewed annually. The Base Charge shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenue to effect payment of costs and all other financial obligations associated with the Project. The Administrator of Western will provide all contractors an opportunity to comment on any proposed adjustment to the Base Charge for power pursuant to the Department of Energy's power rate adjustment procedures then in effect.

§ 904.9 Lower Basin Development Fund Contribution Charge.

(a) The Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalency of 4½ mills and 2½ mills per kilowatthour required to be included in the rates charged to purchasers pursuant to section 1543(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, shall be collected from the energy sales of the Project.

(b) The Lower Basin Development Fund Contribution Charge shall be applied to each kilowatthour, either scheduled or metered, as provided for by Contract. A 4½ mill charge shall be applied to each kilowatthour purchased by an Arizona Contractor, and a 2½ mill charge shall be applied to each kilowatthour purchased by a California and Nevada Contractor until the end of repayment period of the Central Arizona Project. After the end of the repayment period of the Central Arizona Project, a 2½ mill charge shall be applied to each kilowatthour purchased by all Contractors. The Lower Basin Development Fund Contribution Charge shall be applied to energy overruns. The Lower Basin Development Fund Contribution Charge shall be applied on a monthly basis.

§ 904.10 Excess capacity.

(a) To the extent that capacity in excess of the amount allocated is available and is not required by Western to integrate the operation of the Federal system or for other Federal Project activities as determined by the United States, such excess capacity shall be offered to the Boulder Canyon Project Contractors on a pro-rata basis based on the ratio of each Contractor's

capacity allocation to the total capacity allocation.

(b) If excess capacity or other facilities or services of the Boulder Canyon Project are used in such a manner as to confer a benefit upon other Federal projects, a charge, equal to the benefit conferred, will be credited to the Boulder Canyon Project. If a benefit is conferred by another Federal Project upon the Boulder Canyon Project, a charge shall be assessed against the Boulder Canyon Project. Such benefits and their value shall be determined by the United States.

§ 904.11 Excess energy.

(a) Excess energy shall be offered to the Boulder Canyon Project contractors when available, as determined by the United States, in accordance with the priority entitlement of section 105(a)(1)(C) of the Hoover Power Plant Act. After the annual first and second priority entitlement to excess energy has been obligated for delivery, Western will offer one-third of the third priority excess energy to Arizona, one-third to Nevada, and one-third to the California Contractors.

(b) Western will offer third priority excess energy to the California Contractors based on the following formula:

One-half times the quantity of A divided by B plus C divided by D[½(A/B+C/D]; where:
A is equal to the Contractor's allocated Capacity;
B is equal to the Total California allocated Capacity;
C is equal to the Contractor's allocated Firm Energy; and
D is equal to the California allocated Firm Energy.

(c) If a California Contractor refuses any third priority excess energy, such excess energy will be offered to the other California Contractors using the formula defined in paragraph (b) of this section except as follows:

B is equal to the total California allocation Capacity reduced by the refusing Contractor's Capacity; and
D is equal to the total California allocated Firm Energy reduced by the refusing Contractor's Firm Energy.

(d) The charge for first and second priority entitlement of excess energy shall be the charge for Boulder Canyon Project Firm Energy existing at the time the excess energy is delivered to the contactor.

(e) The charge for third priority entitlement of excess energy shall be developed by the Administrator of Western in accordance with applicable procedures for short-term power sales.

(f) The charge for all excess energy shall include the Lower Basin Development Fund Contribution Charge.

§ 904.12 Capacity reductions.

(a) Temporary Capacity reductions shall be shared proportionately by all contractors in accordance with the Conformed Marketing Criteria.

(b) Each Contractor's share of the temporarily reduced capacity shall be determined by use of the formula:

CC is equal to A times the quantity rC divided by mC; where:
CC is equal to the Contractor's share of the temporarily reduced capacity;
A is equal to the contractor's allocated capacity as it exists at the time of the temporarily reduced Capacity; the allocated Capacity shall include the allocations made under section 105(a)(1)(A) and the allocations as they may be revised, made under section 105(a)(1)(B) of the Hoover Power Plant Act;
rC is equal to the temporarily reduced Capacity, as determined by the United States; and
mC is equal to the maximum Capacity, as determined by the United States; prior to completion of the Uprating Program, the maximum Capacity shall be deemed to be 1,951 thousand kilowatts; upon subsantial completion of the Uprating Program, as determined by the Secretary of the Interior, or in the event that the Uprating Program will not be completed, as determined by the Secretary of the Interior, the maximum Capacity will be determined by the United States.

§ 904.13 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Uprating Program and costs reasonably incurred by the Contractor in advancing such funds, as approved by the United States, shall be returned to the Contractor advancing the funds during the contract period through credits on that Contractor's monthly power bills. Monthly credits will be developed pursuant to terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a Contractor shall be repaid to such Contractor through credits on power bills, with or without interest, pursuant to terms and conditions agreed by the contract or agreement.

§ 904.14 Payments to States and transfers from the Colorado River Dam Fund.

(a) All receipts from the Project shall be paid into the Colorado River Dam Fund and shall be available for payment of all costs associated with the Project.

(b) Annual payments as provided for in section 618a of the Adjustment Act and section 1523(c)(2) of the Basin Act for the States of Arizona and Nevada shall be made from revenues received in the Colorado River Dam Fund as long as revenues accrue from the operation of the Project.

(c) Transfer will be made to the Lower Colorado River Basin Development Fund established by title IV of the Basin Act of surplus revenues accrued as a result of application of the provisions of section 1543(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, on and after June 1, 1987.

§ 904.15 Repayment periods.

(a) *Investment Prior to June 1, 1937.* The repayment period for advances to the Colorado River Dam Fund for the Project made prior to June 1, 1937, to be paid within the 50-year period ending May 31, 1987, that were deferred pursuant to section 618f of the Adjustment Act, article 14(a) of the 1941 General Regulations, and section 8 of the Boulder City Act shall be as follows:

(1) The repayment period for the payment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a(b) of the Project Act and deferred by section 618(f) of the Adjustment Act shall be the 50-year period beginning June 1, 1987.

(2) The repayment period for the payment to the Treasury of the advances to the Colorado River Dam Fund for the Project payable prior to May 31, 1987, and deferred pursuant to article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act shall be repaid within the power contract period provided in the Hoover Power Plant Act beginning June 1, 1987, and ending September 30, 2017. Such repayment period shall be based on a 50-year repayment period beginning June 1, 1937, adjusted for the period the initial payment was deferred.

(b) *Investment on or After June 1, 1937, and Prior to June 1, 1987.* (1) The repayment period for advances to the Colorado River Dam Fund for the Project made on or after June 1, 1937, and prior to June 1, 1987, shall be the 50-year period beginning June 1, immediately following the year of operation in which the funds were advanced.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for advances made to the Colorado River Dam Fund from funds advanced to the Secretary of the Interior by Non-Federal entities for the Uprating Program and associated work shall be within the period commencing with the first day of the month following completion of each segment of the

Uprating Program and ending September 30, 2017.

(c) *Investment on or After June 1, 1987.* (1) The repayment period for investments made on or after June 1, 1987, shall be a 50-year period beginning with the first day of the fiscal year following the fiscal year the investment goes into service.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act shall be the 50-year period beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

§ 904.16 Disputes.

(a) Any disputes or disagreements as to interpretation or performance of the provisions of these regulations shall first be presented to and decided by the Secretary of Energy acting by and through the Administrator of Western. The decision of the Administrator shall be final and binding unless a written request for arbitration is received by the Administrator within 30 days from the date of receipt of the notice of decision, or the disputing party files a claim in the proper Federal District Court within 1 year of receipt of the notice of decision. The Administrator shall have 90 days from the date of receipt of the request for arbitration to either concur in or deny the request for arbitration in writing. Failure by the Administrator to take any action within the 90 days shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the disputing party's remedy lies with the appropriate Federal District Court.

(b) When a timely request for arbitration is received and the Administrator concurs in writing with the request, the disputing party and the Administrator shall each name one arbitrator to the panel of arbitrators within 30 days who will decide the dispute. In the event there are more than one disputing party in addition to the Administator, the disputing parties shall collectively name one arbitrator to the panel of arbitrators. In addition, the Administrator shall make a request in writing to the appropriate Federal District Court that a third arbitrator be named to the panel of arbitrators by the Chief Judge of the Federal District Court which would have exercised jurisdiction over the dispute but for the mutually agreed to arbitration process. This arbitrator shall act as chairperson of the panel of arbitrators. The panel of arbitrators shall render a final decision in this dispute within 60 days of the date of the naming of the arbitrator by the Chief Judge of the appropriate Federal District Court. A decison by any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute. Pending a final decision by the panel of arbitrators, the Administrator's prior decision shall be binding upon the parties.

§ 904.17 Future regulations.

Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law.

[FR Doc. 85-28348 Filed 11-26-85; 10:20 am]
BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering, Architectural, and Surveying Services

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on proposed rule.

SUMMARY: On September 16, 1985, SBA published in the Federal Register a proposed rule regarding small business size standards for engineering, architectural and survey services [see 50 FR 37539]. That publication provided that comments on the proposed rule would be accepted through November 15, 1985. This notice extends the comment period pertaining to the proposed rule for an additional 31 days in order to provide more time for public comment.

DATE: Comments on the above-referenced proposed rule must be received by December 16, 1985, and should contain the reasons for the commentator's position as well as clearly identify the commentator and any organization that employs him or her.

ADDRESS: Written comments, in duplicate, should be submitted to Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Room 500, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 31 days. The public is encouraged to supply comments in writing to the address indicates above so that a complete record on this proposed rule can be established.

Dated: November 21, 1985.

James C. Sanders,
Administrator.

[FR Doc. 85-28434 Filed 11-27-85; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-94-AD]

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Fairchild Model F27 and FH227 series airplanes, which would require inspection and replacement, if necessary, of the main landing gear drag strut assemblies. Cracks in the tube bores in the vicinity of the lock strut attachments have been reported. These cracks, if allowed to grow undetected, could cause failure of the main landing gear drag strut assemblies and loss of control of the airplane.

DATES: Comments must be received on or before January 20, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information specified in this AD may be obtained from Fairchild Industries, Inc., Fairchild Republic Division, Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway, South, Seattle, Washington, or at the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred A. Maila, ANE-172, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202,

Valley Stream, New York 11581; telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports of main undercarriage drag stay tube failure in the bores of some tubes of Fairchild F27 and FH227 airplanes. Investigation has revealed that the probable cause of the failed tubes was surface break-up generated during the drawing process. Failure of these tubes, if not corrected, could cause failure of the main landing gear drag strut assemblies and consequent loss of control of the airplane.

Dowty Rotol, the manufacturer of the drag strut assembly, has issued Service Bulletins 32-45N (for Model FH227) and 32-81C (for Model F27), both dated October 16, 1981, which provide instructions for inspections and replacement, if necessary, of the main undercarriage drag stay, part numbers (P/N) 200259200, 20259210, 200025926, and 200021804. [Fairchild Industries has issued Service Letters (S/L) FH227-32-60 and F27-665, both dated December 8 1981, which recommend to operators the accomplishment of the Dowty Rotol Service Bulletins.]

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an eddy current or ultrasonic inspection for cracking in the tube bore in the vicinity of the lock strut attachments, and replacement, if necessary, of the main landing gear drag stay assembly of Fairchild F27 and FH227 series airplanes, in accordance with the Dowty Rotol service bulletins previously mentioned. Upon replacement of the assembly, the eddy current or ultrasonic inspections may be terminated.

It is estimated that 57 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated to be $8323 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480,111.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 111034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fairchild Model F27 or FH227 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety; Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fairchild: Applies to all Model F27 and FH227 series airplanes certificated in any category. Compliance required as indicated.

To detect cracks in the FH227 and F27 main landing gear drag strut assemblies due to the bores of some tubes having surface break-up generated during the drawing process, accomplish the following, unless previously accomplished:

A. Within the next 400 hours time-in-service after the effective date of this AD, using eddy current or ultrasonic inspection equipment and procedures, inspect the left and right upper main undercarriage drag stay for flaws, in accordance with the instructions and sketches outlined in Dowty Rotol Service Bulletin 32-45N (for Model FH227 airplanes) or Service Bulletin 32-81C (for Model F27 airplanes), Item ID(1)(a), dated October 16, 1981.

B. Within 800 hours time-in-service after the effective date of this AD, using eddy current or ultrasonic inspection equipment and procedures, inspect the left and right upper main undercarriage drag stay for flaws in accordance with instructions and sketches outlined in Dowty Rotol Service Bulletin 32-45N (for Model FH227 airplanes) or Service Bulletin 32-81C (for Model F27 airplanes), Item 1D(1)(b), dated October 16, 1981.

C. Within 2,000 hours time-in-service after the effective date of this AD, visually inspect the left and right upper main undercarriage stay in accordance with Dowty Rotol Service Bulletin 32-45N (for Model FH227 airplanes) or Service Bulletin 32-81C (for Model F27 airplanes), Item 2B(1)(2)(3)(4), dated October 16, 1981.

D. If, as a result of the inspections referred to in paragraphs A. and B., above, flaws are detected, replace damaged part with a serviceable part prior to next flight.

E. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for the operator.

F. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

G. Alternate means of compliance with provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Fairchild Industries, Inc., Fairchild Republic Division, Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on November 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-28344 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASO-24]

Proposed Alteration of Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the Orlando, Florida, transition area to accommodate changes in an instrument approach procedure which serves Orlando Executive Airport. This alteration will lower the floor of controlled airspace in an area southwest of the airport from 1200 to 700 feet above the surface. In addition, the geographical coordinates of two airports will be revised and an unneeded transition area extension will be revoked.

DATES: Comments must be received on or before: January 28, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the Orlando, Florida, transition area designating additional controlled airspace southwest of Orlando Executive Airport. This airspace is required to support Instrument Flight Rule (IFR) aeronautical activities in the Orlando area. The geographical coordinates of the two Orlando airports are incorrectly listed in the present transition area description and this amendment will correct them. In addition, there is a transition area extension south of Orlando International Airport which is in excess of needs and will be revoked. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, airspace, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Orlando, FL—[Amended]

By removing the words "That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Orlando Executive Airport (lat. 28°32'40" N., long. 81°19'55" W.); within an 8.5-mile radius of Orlando International Airport (lat. 28°25'55" N., long. 81°19'15" W.); within 3 miles each side of Orlando VORTAC 175° radial, extending from the 8.5-mile radius area to 23 miles south of the VORTAC; within 3 miles each side of McCoy ILS localizer south course, extending from the 8.5-mile radius area to 9.5 miles south of the OM;" and replacing them with the words "That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Orlando Executive Airport (lat. 28°32'43" N., long. 81°19'59" W.); within an 8.5-mile radius of Orlando International Airport (lat. 28°25'54" N., long. 81°19'29" W.); within 3 miles each side of Orlando VORTAC 175° radial, extending from the 8.5-mile radius area to 23 miles south of the VORTAC; within 4.5 miles north and 7 miles south of the 247° bearing from the Henry LOM, extending from the 8.5-mile radius area to 12 miles west of the LOM;".

Issued in East Point, Georgia, on November 19, 1985.

William H. Pollard,

Deputy Director, Southern Region.

[FR Doc. 85-28346 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-43]

Proposed Establishment of Jet Route J-190 and VOR Federal Airway V-576; New York

Correction

In FR Doc. 85-27033 beginning on page 47062 in the issue of Thursday, November 14, 1985, make the following correction: On page 47062, in the second column, in the eighth line from the bottom of the page, "86-AWA-43" should read "85-AWA-43".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 832 3259]

Sunbeam Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Pittsburgh, Pa. Marketer of Oster brand air cleaners, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants. Additionally, respondent would be required to have competent and reliable substantiation for all future claims about its products' efficacy.

DATE: Comments must be received on or before January 28, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, Director, Federal Trade Commission, San Francisco Regional Office, Room 12470, Box 36005, 450 Golden Gate Ave., San Francisco, CA 94102, (415) 556-1270.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Indoor air cleaners, Trade practices.

Before Federal Trade Commission

[File No. 832-3259]

In the matter of Sunbeam Corporation, a corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sunbeam Corporation, a corporation (hereinafter sometimes referred to as "Sunbeam" or as proposed respondent), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Sunbeam Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sunbeam Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Sunbeam's business address is 2 Oliver Plaza, Pittsburgh, Pennsylvania 15230.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each

violation of the order after it becomes final.

Order

For purposes of this Order, the following definitions shall apply:

1. The term "indoor air contaminants" includes, but is not limited to, formaldehyde gas; other gases (e.g., sulfides, oxides); acrolein, acetaldehyde, carbon monoxide and other gases from tobacco smoke; and other gases associated with common household odors (e.g., from cooking, paint, or pets).

2. The term "performance characteristic" includes, but is not limited to:

a. the power, strength or capacity of the appliance or equipment, whether expressed in terms of volume of air circulated or in terms of room sizes;

b. the cleaning, filtration, or removal ability, or the speed of operation of the appliance or equipment, whether expressed generally or in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance itself;

c. the speed of operation; or

d. the comparative power, strength, filtration or cleaning capacity, removal ability, or speed of operation.

Part I

It is ordered that respondent Sunbeam Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the ability of any air cleaning appliance or equipment to clean, eliminate or remove any indoor air contaminant.

B. Misrepresenting in any manner, directly or by implication , the ability of any air cleaning appliance or equipment to clean, eliminate or remove any quantity of indoor air contaminants.

C. Representing, directly or by implication, contrary to fact, that respondent's models "402" or "404" air cleaners can effectively help clean, effectively help remove, chemically destroy, or remove or eliminate a substantial amount of, formaldehyde gas, gases from tobacco smoke, or other gases from the air people breathe under household or office conditions.

D. Representing, directly or by implication, any performance characteristic of any air cleaning appliance or equipment unless at the time of making such representation respondent possesses and relies upon a reasonable basis for such representation. A reasonable basis shall consist of competent and reliable evidence which substantiates such representation. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analysis, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

E. Representing, directly or by implication, that any air cleaning appliance or equipment will perform under a set of conditions, including household or office conditions, unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific tests which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;

2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of two (2) years from the date respondent's advertisements, sales materials, promotional materials or post-purchase materials making such claim or representation were last disseminated.

Part III

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, and to each of its agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials relating to any air cleaning appliance or equipment.

Part IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent such as dissolution, assignment or sale, resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this order.

Part V

It is further ordered that respondent shall, within ninety (90) days after the date of service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Before Federal Trade Commission

[File No. 832-3259]

In the matter of Sunbeam Corporation, a corporation.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order to cease and desist from Sunbeam Corporation. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns television, radio and spring advertisements for home air cleaning devices marketed by Sunbeam Corporation's Oster Division. These devices were developed to eliminate air contaminant problems.

The Commission's complaint accompanying the consent order charged Sunbeam Corporation with disseminating advertisements containing false, misleading and

unsubstantiated representations regarding the performance capabilities of Oster's Model "402" and Model "404" air cleaners, in violation of section 5 of the Federal Trade Commission Act. According to the complaint, Sunbeam's advertisements falsely claimed that these air cleaning appliances effectively help remove or "chemically destroy" formaldehyde gas, gases from tobacco smoke, and other gases from the air people breathe under household or office conditions. In fact, the complaint alleges, these appliances do not effectively help remove or "chemically destroy" these pollutants under household or office conditions.

The complaint further alleges that Sunbeam represented to consumers that it had a reasonable basis for the above performance claims, when, in fact, it did not.

The consent order contains provisions designed to remedy the advertising violations charged, as well as to prevent Sunbeam from engaging in similar allegedly illegal acts and practices in the future. The order applies with equal force to the Oster Division.

Part I (A) and (B) of the consent order prohibits Sunbeam from making future performance misrepresentations for *any* air cleaning appliance. Sunbeam, and its successors and assigns, are prohibited from misrepresenting, in any manner, the ability of any air cleaning appliance to clean or remove any indoor air contaminant, or the ability of the appliance to clean or remove any quantity of such indoor air contaminant. For purposes of the order, "indoor air contaminants" is defined broadly, and includes formaldehyde gas, gases from tobacco smoke, and other gases associated with common household odors.

Part I (C) of the consent order prohibits the specific misrepresentations alleged in the complaint. This provision enjoins future claims that the Oster Models "402" and "404", contrary to fact, will effectively help remove or "chemically destroy" formaldehyde gas, gases from tobacco smoke, or other gases from the air people breathe under household or office conditions.

Finally, Part I (D) and (E) of the consent order contains a requirement that future performance claims for any air cleaner that Sunbeam markets be supported by a reasonable basis consisting of competent and reliable evidence substantiating the representation. In connection with future ad claims that an air cleaner will perform under a set of conditions, including household living conditions, Sunbeam is required to possess and rely upon competent and reliable scientific tests which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

In addition, the order contains a two-year recordkeeping provision requiring the retention of materials which support future ad claims, as well as those which contradict or qualify the claims.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-28385 Filed 11-27-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3177]

North American Philips Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a New York City marketer of Norelco Clean Air Machines, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants or the irritation they cause, or the results of smoke chamber demonstrations or other tests, surveys or demonstrations of air cleaning appliances. Additionally, respondent would be required to have competent and reliable substantiation for all future claims about its products' efficacy.

DATE: Comments must be received on or before January 28, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Brinley H. Williams, Washington, DC 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Indoor air cleaners, Trade practices.

Before the Federal Trade Commission

[File No. 842-3177]

Agreement Containing Consent Order To Cease and Desist

In the Matter of North American Philips Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of North American Philips Corporation, and it now appearing that North American Philips Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated;

It is hereby agreed by and between North American Philips Corporation, by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

Proposed respondent North American Philips Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42nd Street, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The

Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. Respondent submits with this Agreement an Initial Compliance Report setting forth the manner it will initially comply with Part IV of the Order. Final acceptance of this Agreement shall constitute acceptance of the Initial Compliance Report and shall also constitute advice under § 2.41(d) of the Rules of Practice that implementation of the Initial Compliance Report will constitute compliance with the applicable portions of the Order until such time as the Commission seeks additional evidence of compliance.

Order

Part I

It is Ordered that respondent North American Philips Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or other air cleaners with similar performance specifications, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, contrary to fact, by the use of the words "cleans," "clears," "removes," "eliminates," or any other words or phrases that the reasonable consumer would interpret as meaning "substantially all," that such appliances, under household living conditions, clean the air of substantially all or remove substantially all tobacco smoke, dust, or pollen from the air that people breathe.

B. Representing, directly or by implication, contrary to fact, by the use of the words "helps clean," "helps clear," "helps remove," "helps eliminate," or any other words or phrases that the reasonable consumer would interpret as meaning effective removal, that any such appliance, under household living conditions, effectively helps clean the air of, or effectively helps remove a substantial portion of tobacco smoke, dust, or pollen from the air that people breathe.

C. Representing, directly or by implication, contrary to fact, that any such appliance, under household living conditions, eliminates the irritation tobacco smoke, dust or pollen can cause.

D. Representing, directly or by implication, contrary to fact, that any smoke chamber demonstration constitutes proof or accurately or visually demonstrates an air cleaning appliance's capability to remove a substantial portion of tobacco smoke, dust or pollen from the air that people breathe under household living conditions.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or other air cleaners with similar performance specifications, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants, including but not limited to tobacco smoke, dust, and pollen.

B. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, including but not limited to tobacco smoke, dust, and pollen.

C. Misrepresenting in any manner, directly or by implication, the conditions of use under any such appliance or equipment will clean or remove indoor air contaminants.

D. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean air or remove indoor air contaminants from enclosures or rooms of any specified size or within any specified period of time.

Part III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or any other consumer appliance which affects the quality of air, which for purposes of this Part shall mean any air cleaner, air freshener, air conditioner, dehumidifier and smokeless ashtray, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising by or through the use of any test, survey, experiment, demonstration, study or report, or the results thereof, or any other information or evidence that appears or purports to confirm or prove any characteristic or the truth of any

representation regarding any such consumer appliance which affects the quality of air, when such advertising does not accurately demonstrate, prove, support or confirm such characteristic or representation.

Part IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, any performance characteristic of any such appliance or equipment unless at the time of making the representation, respondent possesses and relies upon a reasonable basis for such representation. A reasonable basis shall consist of competent and reliable evidence which substantiates such representation. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of the above paragraph only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning appliance or equipment will perform under any set of conditions, including household living conditions, unless at the time of making the representation respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

For purposes of this Part of the Order, the term "performance characteristic" includes, but is not limited to:

a. The power, strength or capacity of the appliance or equipment whether expressed in terms of volume of air circulated or in terms of room sizes or otherwise;

b. The cleaning, filtration, or removal ability of the appliance or equipment whether expressed in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance or equipment itself;

c. The speed of operation; or

d. The comparative power, strength, filtration or cleaning capacity, removal ability, or speed of operation.

Part V

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;

2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

Part VI

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of such advertisements or other such sales materials.

Part VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Part VIII

It is further ordered that respondent, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist from North American Philips Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns television and print advertisements for the Model 0999 and Series 1900 Norelco clean air machines, portable household indoor air cleaning devices developed for air contaminant problems. The complaint attached to the proposed consent order charges North American Philips Corporation with disseminating advertisements containing false, misleading and unsubstantiated representations regarding the performance capabilities of Model 0999 and Series 1900 Norelco clean air machines.

The complaint alleges that the advertisements and the promotional materials for the Norelco clean air machines falsely claimed that the air cleaning appliances remove substantially all or effectively help remove tobacco smoke, dust, pollen and other pollutants and impurities from the air people breathe under household living conditions. In addition to the pollutant removal claims, the complaint also alleges that North American Philips Corporation disseminated deceptive advertisements as to the machine's ability to eliminate substantially all or effectively help eliminate the irriation tobacco smoke, dust, and pollen can cause under household living conditions; their ability to provide a healthy home environment; and the clean air machine's ability to "recirculate" all the air in a 14 foot x 18 foot room every 30-

40 minutes. The complaint further alleges that North American Philips Corporation represented to consumers that it had a reasonable basis for these performance claims, when in fact, it did not.

The consent order contains provisions designed to remedy the advertising violations charged, as well as to prevent respondent from engaging in similar allegedly illegal acts and practices in the future.

Part I of the order prohibits North American Philips Corporation, its successors and assigns, from representing, directly or by implication, that the Model 0999 and Series 1900 Norelco clean air machines or other air cleaners with similar performance specifications, remove substantially all or effectively remove, under household living conditions, tobacco smoke, dust, or pollen from the air people breathe. Part I also prohibits North American Philips Corporation from representing, directly or by implication, that the above mentioned air cleaning appliances, under household living conditions, eliminate the irritation tobacco smoke, dust, or pollen can cause. Lastly, Part I prohibits the representation, directly or by implication, that any smoke chamber demonstration constitutes proof that such appliances are capable of removing a substantial portion of tobacco smoke, dust or pollen from the air people breathe under household living conditions.

Part II of the consent order prohibits future performance misrepresentations in the advertising, sale or promotion of the Model 0999 and Series 1900 Norelco clean air machines or other air cleaners with similar performance specifications. This provision requires that North American Philips Corporation not misrepresent, in any manner, the ability of the above mentioned air cleaning appliances to clean or remove indoor air contaminants, the ability to clean or remove any quantity of indoor air contaminants, the conditions of use under which an appliance will perform, or the ability of any appliance to perform in rooms of specified sizes or within specified periods of time. For purposes of this section of the order, "indoor air contaminants" includes, but is not limited to, tobacco smoke, dust or pollen.

Further, Part III of the consent order states that North American Philips Corporation in connection with the advertising, sale or distribution of the Norelco clean air machines Model 0999 and Series 1900, or any other consumer appliance which affects the quality of air, which for purposes of this Part shall mean any air cleaner, air freshener, air conditioner, dehumidifier and smokless ashtray, shall cease and desist from advertising by or through the use of any test, survey, experiment, demonstration, study or report, or the result thereof, or any other information or evidence that appears or purports to confirm or prove any characteristic or the truth of any representation regarding any such consumer appliance which affects the quality of air, when such advertising does not accurately demonstrate, prove, support or confirm such characteristic or representation.

Part IV of the consent order contains a requirement that future performance characteristic claims for the Norelco clean air machine Model 0999 or Series 1900 and for any other air cleaning appliance or equipment be supported by a reasonable basis consisting of competent and reliable evidence substantiating the representation. In connection with future ad claims that an air cleaning appliance will perform under a set of conditions, including household living conditions, North American Philips Corporation is required to possess and rely upon competent and reliable scientific tests which either relate to those conditions or have been extrapolated by generally accepted procedures to those conditions.

Finally, the order contains a three-year recordkeeping provision requiring the retention of materials which support future ad claims, as well as those which contradict or qualify the claims.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-28384 Filed 11-27-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Dkt. 9181]

Rhode Island Board of Accountancy; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Rhode Island Board of Accountancy, the sole licensing authority for CPAs and PAs in the state, among other things, to cease prohibiting accountants in the state from seeking business by truthful advertisements or other non-deceptive forms of solicitation. Respondent may continue to impose restrictions authorized by the state legislature against dishonest or fraudulent practices and against persons who falsely identify themselves as accountants.

DATE: Comments must be received on or before January 28, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-851, Charles W. Corddry, Washington, DC 20580, (202) 724-1269.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.8(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Accountants, Trade Practices.

Before Federal Trade Commission

[Docket No. 9181]

Agreement Containing Consent Order To Cease and Desist

In the matter of Rhode Island Board of Accountancy.

The Agreement herein, by and between the Rhode Island Board of Accountancy, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is organized, exists, and does business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its office and principal place of business located at 100 North Main Street, Providence, Rhode Island 02903.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Solely for purposes of this agreement and order and any subsequent action pursuant to the Federal Trade Commission Act for a violation of this order, respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has been issued, respondent will be required to file six or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "Board" means the Rhode Island Board of Accountancy, its members, committees, representatives, agents, employees, successors, and assigns.

B. "Person" means any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

C. "Encroachment" means the endeavor of a person to provide services to the client of another person.

D. "Reasonably believes" refers only to that which a reasonable person would believe after having considered all relevant facts and legal precedent.

E. "Accountancy License" means any certificate authority, registration, permit, or license issued by the Board, including, but not limited to,

1. a certificate of certified public accountant,

2. the authority to practice as a public accountant,

3. registration as an accountant licensed by a foreign county.

4. a permit to practice as a certified public accountant or public accountant, and

5. a limited permit to engage in the practice of accounting.

II

It is ordered that the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any device:

A. Prohibiting, restricting, impeding, or discouraging any advertising, solicitation, or encroachment by any person. Such conduct includes, but is not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits, restricts, impedes, or discourages any advertising, solicitation, or encroachment;

2. Taking or threatening to take disciplinary action against any person for advertising , soliciting, or encroaching; and

3. Declaring any practice of advertising, solicitation, or encroachment to be illegal, unethical, unprofessional, or otherwise improper.

B. Inducing, urging, assisting, or encouraging any person to take any action prohibited by this Part.

Provided that, nothing in this order shall prevent the Board from taking any action authorized by Chapter 5-3 of the General Laws of Rhode Island against those advertising, solicitation, or encroachment practices that respondent reasonably believes are dishonest or fraudulent within the meaning of section 5-3-12(b) of those Laws, or that respondent reasonably believes are unlawful under section 5-3-16 of those Laws, as those statutes are limited by the First and Fourteenth Amendments to the United States Constitution.

III

It is further ordered that this order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the profession of accountancy.

IV

It is further ordered that the Board shall:

A. Distribute by first-class mail an announcement in the form shown in Appendix A, and a copy of this order:

1. Within thirty (30) days after this order becomes final, to each person who, at the time this order becomes final, has an Accountancy License;

2. Within thirty (30) days after this order becomes final, to each person who, at the time this order becomes final, has an application for, or a request for reinstatement of, and Accountancy License pending before the Board; and

3. For a period of five (5) years after this order becomes final, to each person who applies for an Accountancy License, within thirty (30) days after he or she applies for such a license;

B. Within ninety (90) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and

form in which the Board has complied and is complying with this order;

C. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order, including any written communications and any summaries of oral communications, and any records of rulemaking and enforcement proceedings, regarding advertising, solicitation, or encroachment;

D. In addition to the report required by Section IV.B. of this order, annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, and at such other times as the Commission may by written notice to the Board require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this order; and

E. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the profession of accountancy that may affect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

As you may be aware, the Rhode Island Board of Accountancy has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit, restrict, impede, or discourage any

(1) Advertising,

(2) Solicitation, or

(3) Endeavor of a person to provide services to the client of another person, a practice also known as "encroachment."

However, the order does not prevent the Board from prohibiting those advertising, solicitation, or encroachment practices that violate statutory prohibitions against dishonesty and fraud.

In particular, this means that as long as you do not engage in dishonesty or fraud, neither the Board nor any member of the Board can prevent or discourage you from engaging in the following practices: (a) In-person solicitation, (b) self-laudatory advertising, (c) comparative advertising, (d) endorsement or testimonial advertising, and (e) advertising that would have violated previously-imposed standards or rules, such as rules requiring that accountant advertising be "dignified" or "professional."

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed.

Chairman,
Rhode Island Board of Accountancy.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Rhode Island Board of Accountancy.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

The Commission issued a complaint against the Rhode Island Board of Accountancy ("Board") on July 10, 1984. The complaint charged the Board with unlawfully prohibiting advertising and solicitation by certified public accountants ("CPAs") and public accountants ("PAs") in Rhode Island in violation of Section 5 of the Federal Trade Commission Act. In addition, the complaint charged the Board with, under certain circumstances, preventing CPAs and PAs from endeavoring to provide services to the clients of other CPAs and PAs—an endeavor termed "encroachment." The Commission appended to its complaint the text of two regulations that the Board had promulgated allegedly in furtherance of the violations charged in the complaint.

The Board is the state regulatory authority for CPAs and PAs in Rhode Island. Three of the five members of the Board are CPAs and one member of the Board is a PA. The complaint alleged that the CPAs and the PA serving on the Board compete with other CPAs and PAs in Rhode Island.

The complaint stated that Rhode Island has no articulated or expressed state policy of restricting truthful advertising or prohibiting soliciation or encroachment by CPAs and PAs.

According to the complaint, the Board's conduct has injured competition and consumers in several ways. First, the conduct has restricted competition in the sale of services of CPAs and PAs. Second, consumers of the services of CPAs and PAs have been deprived of information as to, and free and open competition in, the sale of such services. Finally, CPAs and PAs have been unreasonably restrained in their ability to make their services readily and fully known to consumers requiring such services.

The Proposed Consent Order

The consent order is designed to remedy the violations charged in the Commission's complaint, and to prevent the Board from engaging in similar acts and practices in the future. The proposed order is intended to ensure that the Board ceases all conduct prohibiting or discouraging CPAs and PAs from truthful advertisting, solicitation, or encroachment. It is also intended to ensure that CPAs and PAs in Rhode Island are made aware that they may engage in truthful advertising, solicitation, and encroachment.

Part II of the proposed order prevents the Board from prohibiting, restricting, impeding, or discouraging any advertising, solicitation, or encroachment. A proviso to Part II of the order provides that the Board may impose those restrictions authorized by Chapter 5–3 of the General Laws of Rhode Island on practices that the Board reasonably believes

1. Are dishonest or fraudulent within the meaning of section 5–3–12(b) of those Laws, or

2. Are in violation of section 5–3–16 of those Laws, a statutory provision forbidding persons from falsely identifying themselves as accountants.

Part III of the proposed order provides that nothing in the proposed order prevents the Board from seeking legislation concerning the profession of accountancy.

Part IV of the proposed order requires the Board to distribute a copy of the order and an explanatory announcement to all licensed CPAs and PAs in Rhode Island, and, for a period of five years, to all applicants for accountancy licenses. The text of the required announcement is contained in Appendix A of the proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way its terms.

Emily H. Rock,
Secretary.

[FR Doc. 85–28383 Filed 11–27–85; 8:45 am]
BILLING CODE 6850–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 85N-0502]

Canned Fruit Cocktail; Advance Notice of Proposed Rulemaking on the Possible Amendment of U.S. Standards of Identity, Quality, and Fill of Container

AGENCY: Food and Drug Administration; HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Codex Standard for Canned Fruit Cocktail (Codex Standard 78-1981) developed by the Codex Alimentarius Commission and to comment on the desirability of and need for amending the U.S. standards for this food to achieve consistency with the Codex standard. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need to amend the U.S. standard for canned fruit cocktail, FDA will not propose their amendment.

DATE: Comments by January 28, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0121.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a number of Codex standards, among which is the Codex Standard for Canned Fruit Cocktail (Codex Standard 78-1981).

As a member of the Codex Alimentarius Commission, the United States is obligated to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all or the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to appropriately revise an existing standard to incorporate the provisions within the U.S. standard. At present, the United States has standards of identity, quality, and fill of container for canned fruit cocktail (21 CFR 145.135), which differ in some respects from the Codex standard.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirability of and need for amending the U.S. standards for canned fruit cocktail, (2) the specific provisions of the Codex standard, (3) additional or different requirements that should be in the U.S. standards, and (4) any other pertinent points.

FDA advises that if the comments received do not support the need to amend the U.S. standards for canned fruit cocktail, no amendment will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission of the differences between the Codex and U.S. requirements and that imported foods may move freely in interstate commerce in this country, providing they comply with the applicable U.S. laws and regulations which include the U.S. standards of identity, quality, and fill of container for canned fruit cocktail.

Because of the large number of countries, often with diverse food regulations, that are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 40 of the act; rather, they are dealt with under the authority of other sections of the act.

The Codex standard for canned fruit cocktail specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, it is FDA's policy to employ the methods in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any amendments to the U.S. standards for canned fruit cocktail proposed pursuant to this notice.

For the benefit of interested persons who may wish to submit comments relative to this notice, FDA points out that the following major differences exist between the Codex standard and the U.S. standards for canned fruit cocktail:

(1) *Styles of fruits—Cherries.* The Codex standard in section 1.1(a) provides for cherries, pitted or unpitted. The U.S. standard in § 145.135(a)(2)(v) specifies that cherries must be pitted.

(2) *Forms of pack.* The Codex standard in section 1.2.1 provides for a five fruit mixture (1.2.1.1) and for a four fruit mixture (1.2.1.2) in which either cherries or grapes may be omitted. The U.S. standard in § 145.135(a)(2) (i), (ii), (iii), and (iv) provides for a five fruit mixture but does not provide for a four fruit product.

(3) *Optional sweetening ingredients.* The Codex standard in section 2.1.2 provides for the optional use of one or more of the following sugars: sucrose, invert sugar syrup, dextrose, glucose syrup, dried glucose syrup. The U.S. standard in § 145.135(a)(3)(i) provides for the optional use of one or any combination of two or more safe and suitable nutritive carbohydrate sweetener(s).

(4) *Blemished fruit.* The Codex standard in section 2.4.4(a) does not differentiate between the individual fruits in applying the tolerance for blemished units. Such blemishes may be on a single fruit ingredient or on any combination of two or more fruits. The U.S. standard in § 145.135(b)(1)(vi) includes a separate tolerance of 15 percent for blemished cherries and a tolerance of 20 percent for peaches, pears, or grapes. No provision is made for blemished pineapple ingredient.

(5) *Peel.* The Codex standard in section 2.4.4(b) allows 25 cm^2/kg (4 in^2/2.2 lbs) of peel of the drained fruit, considering only those fruits that are peeled. The U.S. standard in § 145.135(b)(1)(iv) provides for not more than 1.0 square inch of pear peel per 1.0 pound of sample, composed of equal portions of drained pear ingredient and added packing medium. Similarly, the U.S. standard in § 145.135(b)(1)(v) provides for not more than 1.0 square inch of peach peel per 1.0 pound of drained peach ingredient with added packing medium.

(6) *Lot acceptance.* The Codex standard in section 2.4.6 provides that a lot shall be considered as meeting the applicable quality and other requirements for canned fruit cocktail when (1) the number of defectives in a lot, which is not based on sample averages, does not exceed the acceptance number (c) of the appropriate Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42–1969), and (2) the lot is in compliance with requirements of the standard that are based on sample averages. The U.S. standard does not prescribe sampling plans or an acceptance procedure.

(7) *Food additives.* The Codex standard in section 3.3 provides for the use of L-ascorbic acid as an antioxidant within a limit of 500 mg/kg of finished food. The U.S. standard in § 145.135(a)(1)(iv) provides for ascorbic acid in an amount no greater than necessary to preserve color.

(8) *Labeling.* The Codex standard in section 7.1.1 states that the name of the product shall be "fruit cocktail." In section 7.1.2, the Codex standard requires the designation "5 Fruits" or "With Five Fruits," or "4 Fruits" or "With Four Fruits" as part of the name or in close proximity thereto, unless a true pictorial representation of the product accompanied by a complete list of fruits in the ingredient statement would be sufficient to comply with the regulations in the country where the product is to be sold. The U.S. standard in § 145.135(a)(4)(1) provides for the optional names "fruit cocktail," "cocktail fruits," or "fruits for cocktail."

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 145

Food standards, Fruit cocktail, Fruits.

The Codex standard under consideration is as follows:

[Codex Stan. 78–1981.—Codex Standard for Canned Fruit Cocktail [1]

(World-wide Standard)

1. Description

1.1. Produce Definition

Canned Fruit Cocktail is the product:

(a) *prepared* from a mixture of small fruits and small pieces of fruits (as further described in this standard) which may be fresh, frozen or canned.

The fruits shall be of the following kinds and styles:

Peaches—Any firm yellow variety of the species *Prunus persica L.* including clingstone and freestone types but excluding nectarines, peeled, pitted and diced.

Pears—Any variety of the species *Pyrus communis L.* or *Pyrus sinensis L.* , peeled, cored and diced.

Pineapple—Any variety of the species *Ananas Comosus L.*, peeled, cored, in sectors, or diced.

Cherries—Any variety of the species *Prunus carasus L.*, halves or whole, pitted or unpitted, and which may be:

(i) any light, sweet variety; or

(ii) artificially coloured red; or

(iii) artificially coloured red and flavoured, whether natural or artificial.

Grapes—Any seedless variety of the species *Vitis vinifera L.* or *Vitis labrusca L.*, whole.

(b) *packed* with water or other suitable liquid packing medium, and which may contain seasonings or flavourings appropriate for the product; and

(c) *processed* by heat in an appropriate manner before or after being sealed in a container so as to prevent spoilage.

1.2 *Presentation*

1.2.1 Forms of pack

1.2.1.1 5 Fruits—Fruit cocktail

1 mixture of the five fruits of the kinds and syles described in this standard (1.1(a)).

1.2.1.2 4 Fruits—Fruit cocktail

A mixture of four fruits of the kinds and styles described in this standard (1.1(a)) except that:

(a) Cherries may be omitted; or

(b) Grapes may be omitted.

1.2.2 Forms of Packing Media

Canned Fruit Cocktail may be packed in any one of the following packing media with or without sugars and/or optional ingredients:

(a) *Water*—in which water is the sole liquid packing medium.

(b) *Water and Fruit Juice*—in which water and fruit juice(s) from the specified fruits, which may be strained or filtered, is the sole liquid packing medium.

(c) *Fruit Juice*—in which one or more fruit juice(s) from the specified fruits, which may be strained or filtered, is the sole liquid packing medium.

2. *Essential composition and quality Factors*

2.1. *Composition*

2.1.1 Basic Ingedients

—Fruit as defined in 1.1(a);

—Water;

—Fruit juice

2.1.2 Other Ingredients

—One or more of the following sugars: sucrose, invert sugar syrup, dxtrose, glucose syrup, dried glucose syrup;

—Spices;

—Mint

2.2. *Formulation*

2.2. Fruit content

2.2.1.1 Proportions of fruits

The products shall contain fruits in the following proportions, based on the individual drained fruit weights in relation to the total drained weight of all the fruits:

	Fruit cocktail	
	5 fruits	4 fruits
Peaches	30% to 50%	30% to 50%.
Pears	25% to 45%	25% to 45%.
Pineapple	6% to 16%	6% to 25%.
Grapes	6% to 20%	and either 6% to 20%. or
Cherries	2% to 6%	2% to 15%

2.2.1.1 Compliance with fruit content requirements

A lot will be considered as meeting the requirements for Proportions of fruits (2.2.1.1) when:

(a) the average of the individuals fruit proportions from all containers in the sample is within the range require for the individual fruits; and

(b) the number of individual containers which are not within the range for any one or more fruits do not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the Sampling Plans for Prepackaged Foods (Ref. No. CAC/RN 42–1969).

2.2.2 Packing media

2.2.2.1 Classification of packing media when sugars are added

(a) When sugars are added to water or water and one or more fruit juices the liquid media shall be classified on the basis of the cut-out strength as follows:

Basic Syrup Strengths

Light Syrup—Not less than 14 °Brix

Heavy Syrup—Not less than 18 °Brix

Optional Packing Media

When not prohibited in the country of sale, the following packing media may be used:

Water Slightly Sweetened—Not less than 10 °Brix

Slightly Sweetened Water; Extra Light Syrup—but less than 14 °Brix

Extra Heavy Syrup—Not less than 22 °Brix

(b) When sugars are added to fruit juice(s), the liquid media shall be not less than 14 °Brix and they are classified on the basis of the cut-out strength as follows:

Lightly sweetened (name of fruits) *juice*—Not less then 14 °Brix

Heavily sweetened (name of fruits) *juice*—Not less then 18 °Brix

2.2.2.2 Compliance with packing media classification

Cut-out strength of sweetened juice or syrup is to be determined on sample average, but no container may have a Brix value lower than that of the minimum of the next category below, if such there be.

[1] Formerly CAS/RS 78-1976.

2.3. *Sizes and shapes of fruits*

2.3.1 *Diced* peaches, pears or pineapple

75% or more of all such drained fruits are of approximate cube-shapes which:

(a) are not over 20 mm in greatest edge dimension; and

(b) will not pass through square meshes of 8 mm.

2.3.2 *Sectors* of pineapple

80% or more of all the drained pineapple portion approximate wedge-shapes of the following dimensions:

(a) outside arc —10 mm to 25 mm; and

(b) thickness —10 mm to 15 mm; and

(c) radius (from inside to outside arc) —20 mm to 40 mm.

2.3.3 *Whole* grapes or cherries

90% or more by count (based on sample average) of whole grapes, or of whole cherries, approximate normal shape except for proper preparation (such as removing pits or stems) and:

(a) are not broken into two or more parts;

(b) are not seriously crushed, mutilated, or torn.

2.3.4 *Halved* cherries

80% or more by count on sample average) of the cherry units are approximate halves which are not broken into two or more parts.

2.4 *Quality Criteria*

2.4.1 *Colour*—Canned Fruit Cocktail shall have normal colour except that a slight leaching of colour from the coloured cherries is acceptable.

2.4.2 *Flavour*—Canned Fruit Cocktail shall have a normal flavour characteristic for each fruit and for the entire mixture.

Canned Fruit Cocktail with special ingredients shall have the flavour characteristic of that imparted by the fruits in the product and the other substances used.

2.4.3 *Texture*—The fruit ingredients shall not be excessively firm nor excessively soft, as is appropriate for the respective fruit.

2.4.4 *Defects and Allowances*—Canned Fruit Cocktail shall be substantially free from defects within the limits set forth as follows: (See sampling procedure Section 8.1.1.2)

	Maximum limits (based on the weight of drained fruit)
(a) *Blemished fruit pieces*—(consisting of pieces of fruit with dark surface areas, spots penetrating the fruit, and other abnormalities).	20% m/m total of all fruit units so affected.
(b) *Peel (based on averages)*—(considered a defect only when occurring on, or from, those fruits which are peeled).	25 cm^2 aggregate area per kg.
(c) *Pit material (based on averages)*—(consisting of pieces of pit or of fruit stones and hard and sharp pit points; very small pit fragments of less than 5 mm in greatest dimension which do not have sharp points or edges are disregarded).	1 piece, of any size per 2 kg.
(d) *Small stems (based on averages)*—(such as capstems from grapes).	5 per kg.
(e) *Large stems (based on averages)*—(such as from peaches, pears, or cherries).	1 large stem, or piece thereof, per kg.

2.4.5 Classification of "defectives"

A container shall be considered a "defective" when it fails to meet one or more of:

(1) the applicable requirements in 2.3.1 through 2.3.4 (except for style and shapes for grapes and cherries which are based on averages); and

(2) the applicable quality requirements in 2.4.1 through 2.4.4 (except for peel, pit material, and stems which are based on averages).

2.4.6 Lot Acceptance

A lot will be considered as meeting the applicable quality and other requirements referred to in subsection 2.4.5 when:

(a) for those requirements which are not based on averages the number of "defectives", as defined in sub-section 2.4.5, does not exceed the acceptance number (c) of the appropriate Sampling Plan (AQL-6.5) in the FAO/WHO Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969); and

(b) the requirements which are based on sample average are complied with.

3. *Food Additives*

	Maximum level
3. Colours: Erythrosine (To colour cherries only when artificially coloured cherries are used).	Limited by good manufacturing practice.
3.2 Flavours:	
3.2.1 Natural fruit essence	Limited by good manufacturing practice.
3.2.2 Natural flavours and their identical synthetic equivalents.	Limited by good manufacturing practice.[1]
3.2.3 Cherry Laurel Oil (to flavour artificially coloured cherries only).	10 mg/kg in the total product.
3.2.4 Bitter Almond Oil (to flavour artificially coloured cherries only).	40 mg/kg in the total product.
3.3 Anti-oxidant: L-ascorbic acid	500 mg/kg.

[1] Temporarily endorsed.

4. *Containments*

Tin	250 mg/kg, calculated as Sn.[1]

[1] Temporarily endorsed.

5. *Hygiene*

5.1 It is recommended that the product covered by the provisions of this standard be prepared in accordance with the Recommended International Code of Hygienic Practice for Canned Fruit and Vegetable Products (Ref. No. CAC/RCP 2-1969).

5.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may represent a hazard to health.

6. *Weights and Measures*

6.1 *Fill of container*

6.1.1 Minimum fill

The container shall be well filled with fruit and the product (including packing medium) shall occupy not less than 90% of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20 °C which the sealed container will hold when completely filled.

6.1.2 Classification of "defectives"

A container that fails to meet the requirement for minimum fill (90 percent container capacity) of 6.1.1 shall be considered a "defective".

6.1.3 Lot Acceptance

A lot will be considered as meeting the requirement of 6.1.1 when the number of "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

6.1.4 Minimum Drained Weight

6.1.4.1 The drained weight of the product shall be not less than 60% of the weight of distilled water at 20 °C which the sealed container will hold when completely filled.

6.1.4.2 The requirement for minimum drained weight shall be deemed to be complied with when the average drained weight of all containers examined is not less than the minimum required, provided that there is no unreasonable shortage in individual containers.

7. *Labelling*

In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. CODEX STAN. 1-1981) the following specific provisions apply:

7.1 *The name of the food*

7.1.1 The name of the product shall be "Fruit Cocktail".

7.1.2 The following, as applicable, shall be included as part of the name or in close proximity to the name, unless in the country where the product is sold a true pictorial representation of the product accompanied by a complete list of the fruits in the statement of ingredients would suffice in accordance with its national legislation:

"5 Fruits" or "With Five Fruits";

or

"4 Fruits" or "With Four Fruits".

7.1.3 When the packing medium is composed of water, or water and one or more fruit juices in which water predominates, the packing medium shall be declared as part of the name or in close proximity thereto as:

"In water" or "Packed in water".

7.1.4 When the packing medium is composed solely of a single fruit juice, the packing medium shall be declared as part of the name or in close proximity thereto as:

"In (name of fruit) juice".

7.1.5 When the packing medium is composed of two or more fruit juices, it shall be declared as part of the name or in close proximity thereto:

"In (name of fruit) juice"

or

"In fruit juices"

or

"In mixed fruit juices"

7.1.6 When sugars are added to water, or water and one or more fruit juices in which water predominates, the packing medium shall be declared as may be appropriate:

—"Water slightly sweetened" or

"Slightly sweetened water" or

"Extra light syrup" or

—"Light syrup" or

—"Heavy syrup" or
—"Extra heavy syrup".

7.1.7 When the packing medium contains water and one or more fruit juice(s), in which the fruit juice comprises 50% or more by volume of the packing medium, the packing medium shall be designated to indicate the preponderance of such fruit juice, as for example:

"In (name of fruit) juice(s) and water"

7.1.8 When sugars are added to one or more fruit juices, the packing medium shall be declared as may be appropriate:

"Lightly sweetened (name of fruit(s)) juice"
or
"Heavily sweetened (name of fruit(s)) juice"
or
"Lightly sweetened fruit juices"
or
"Lightly sweetened mixed fruit juices"
or
"Heavily sweetened fruit juice"
or
"Heavily sweetened mixed fruit juices"

7.1.9 A declaration, as part of the name or in close proximity to the name, shall be made of any characteristic flavouring; e.g. "with—X—", as appropriate.

7.2 *List of ingredients*

7.2.1 A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with sub-section 3.2(c) of the General Standard for the Labelling of Prepackaged Foods (Ref. CODEX STAN. 1–1981) except as provided for in 7.2.2 and 7.2.3.

7.2.2 When cherries are artificially coloured and/or artificially flavoured, the following declarations are permitted in the list of ingredients in lieu of naming the additive:

"Cherries artificially coloured red";
or
"Cherries artificially coloured red and artificially flavoured".

7.2.3 If ascorbic acid is added to preserve colour, its presence shall be declared in the list of ingredients in the following manner:

"L—ascorbic acid added as an anti-oxidant".

7.3 *Net contents*

The net contents shall be declared by weight in either the metric system ("Système international" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

7.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter, or vendor of the product shall be declared.

7.5 *Country of origin*

7.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the pruposes of labelling.

7.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

8. *Methods of Analysis and Sampling*

8.1 *Sampling*

In accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42–1969).

8.1.1 Size of Sample Unit

8.1.1.1 For ascertaining *proportions of fruits* and *fill of container* (including drained weight) the entire container shall be the sample unit.

8.1.1.2 For ascertaining compliance with percentage requirements for *Size and Shapes* of fruits and *Defects*, the sample unit shall be:

(1) the entire container when it holds 1 litre or less; or

(2) 500 g of drained fruit (or a representative mixture) when the container holds more than 1 litre.

8.2. *Ascertaining Proportions of Fruit*

8.2.1. Procedure

8.2.1.1 Determine drained weight and keep liquid and fruit separate.

8.2.1.2 Separate individual first ingredients, removing those fruits present in lesser amounts (such as cherries, pineapples, grapes).

8.2.1.3 Weigh the individual fruit ingredients to the nearest gramme.

8.2.1.4 Record each fruit's weight and add all of these weights.

8.2.2 Calculation and Expression of Results

Calculate the percentage of fruit proportions:

$$\frac{\text{each fruits weight}}{\text{sum of all fruit weights}} \times \text{100+\% of the fruit weight}$$

*Do not use the original drained weight of the product before separation of the fruits.

8.3. *Determination of Drained Weight*

In accordance with the FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables (Ref. No CAC/RW 36–1970—*Determination of Drained Weight Method I).*

Results are expressed as % m/m calculated on the basis of the mass of distilled water at 20 °C which the sealed container will hold when completely filled.

8.4. *Syrup Measurement (Refractometric Method)*

In accordance with Official Methods of Analysis of the AOAC, 1975, 31.011: Solids by means of refractometer (4), Official Final Action, Reference Tables 52.015 and 52.012.

Results are expressed as % m/m sucrose ("Degrees Brix"), without correction for invert sugar, but with correction for temperature to the equivalent at 20°C.

8.5. *Determination of Water Capacity of Containers*

In accordance with FAP/WHO Codex Alimentarius Recommended Method (Ref. No. CAC/RW 46–1972).

For the convenience of the reader, FDA is also including the text of the existing U.S. standards of identity, quality, and fill of container for canned fruit cocktail which is as follows:

§ 145.135 Canned fruit cocktail.

(a) *Identity*—(1) *Ingredients.* Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail, is the food prepared from the mixture of fresh, frozen, or previously canned fruit ingredients of mature fruits in the forms and proportions as provided in paragraph (a)(2) of this section, and one of the optional packing media specified in paragraph (a)(3) of this section. Such food may also contain one, or any combination of two or more, of the following safe and suitable optional ingredients:

(i) Natural and artificial flavors.

(ii) Spice.

(iii) Vinegar, lemon juice, or organic acids.

(iv) Ascorbic acid in an amount no greater than necessary to preserve color. Such food is sealed in a container and before or after sealing is so processed by heat as to prevent spoilage.

(2) *Varietal types and styles.* The fruit ingredients referred to in paragraph (a)(1) of this section, the forms of each, and the percent by weight of each in the mixture of drained fruit from the finished canned fruit cocktail are as follows:

(i) *Peaches.* Any firm yellow variety of the species *Prunus persica* L., excluding nectarine varieties, which are pitted, peeled, and diced, not less than 30 percent and not more than 50 percent.

(ii) *Pears.* Any variety, of the species *Prunus persica* L. or *Pyrus sinensis* L. which are peeled, cored, and diced, not less than 25 percent and not more than 45 percent.

(iii) *Pineapples.* Any variety, of the species *Ananas comosus* L., which are peeled, cored, and cut into sectors or into dice, not less than 6 percent and not more than 16 percent.

(iv) *Grapes.* Any seedless variety, of the species *Vitis vinifera* L., or *Vitis labrusca* L., not less than 6 percent and not more than 20 percent.

(v) *Cherries.* Approximate halves or whole pitted cherries of the species *Prunus cerasus* L., not less than 2 percent and not more than 6 percent, of the following types:

(*a*) Cherries of any light, sweet variety;

(*b*) Cherries artifically colored red; or

(*c*) Cherries artifically colored red and flavored, natural or artifical.

Provided, That each 127.5 grams (4½ ounces avoirdupois) of the finished canned fruit cocktail and each fraction thereof greater than 56.7 grams (2 ounces avoirdupois) contain not less than 2 sectors or 3 dice of pineapple and not less than 1 approximate half of the optional cherry ingredient.

(3) *Packing media.* (i) The optional packing media referred to in paragraph (a)(1) of this section, as defined in § 1.45.3 are:

(*a*) Water.

(*b*) Fruit juice(s) and water.

(*c*) Fruit juice(s).

Such packing media may be used as such or any one or any combination of two or more safe and suitable nutritive carbohydrate sweetener(s) may be added. Sweetners defined in § 145.3 shall be as defined therein, except that a nutritive carbohydrate sweetener for which a standard of identity has been established in Part 168 of this chapter shall comply with such standard in lieu of any definition that may appear in § 145.3.

(ii) When a sweetener is added as a part of any such liquid packing medium, the density range of the resulting packing medium expressed as percent by weight of sucrose (degrees Brix) as determined by the procedure prescribed in § 145.3(m) shall be designated by the appropriate name for the respective density ranges, namely:

(*a*) When the density of the solution is 10 percent or more, but less than 14 percent, the medium shall be designated as "slightly sweetened water"; or "extra light sirup"; "slightly sweetened fruit juice(s) and water"; or "slightly sweetened fruit juice(s)", as the case may be.

(*b*) When the density of the solution is 14 percent or more but less than 18 percent, the medium shall be designated as "light sirup"; "lightly sweetened fruit juices(s) and water"; or "lightly sweetened fruit juice(s)", as the case may be.

(*c*) When the density of the solution is 18 percent or more but less than 22 percent the medium shall be designated as "heavy sirup"; "heavily sweetened fruit juices(s) and water"; or "heavily sweetened fruit juice(s)", as the case may be.

(*d*) When the density of the solution is 22 percent or more but not more than 35 percent, the medium shall be designated as "extra heavy sirup"; "extra heavily sweetened fruit juices(s) and water"; or "extra heavily sweetened fruit juices(s)", as the case may be.

(4) *Labeling requirements.* (i) The name of the food is "fruit cocktail", "cocktail fruits", or "fruits for cocktail". The name of the foods shall also include a declaration of any flavoring that characterizes the product as specified in § 101.22 of this chapter and a declaration of any spice or seasoning that characterizes the product; for example, "Spice added", or in lieu of the word "Spice", the common name of the spice, "Seasoned with vinegar" or "Sessoned with lemon juice". When two or more of the optional ingredients specified in paragraphs (a)(1) (ii) and (iii) of this section are used, such words may be combined as for example, "Seasoned with cider vinegar, cloves, cinnamon oil and lemon juice".

(ii) The name of the packing medium as used in paragraphs (a)(3) (i) and (ii) of this section, preceded by "In" or "Packed in" shall be included as part of the name or in close proximity to the name of the food. When the packing medium is prepared with a sweetener(s) which imparts a taste, flavor or other characteristic to the finished food in addition to sweetness, the name of the packing medium shall be accompanied by the name of such sweetener(s), as for example, in the case of a mixture of brown sugar and honey, an appropriate statement would be "———— sirup of brown sugar and honey" the blank to be filled in with the word "light", "heavy", or "extra heavy" as the case may be, when the liquid portion of the packing media provided for in paragraphs (a)(3) (i) and (ii) of this section consists of fruit juice(s), such juice(s) shall be designated in the packing medium as:

(a) In the case of a single fruit juice, the name of the juice shall be used in lieu of the word "fruit";

(b) In the case of a combination of two or more fruit juices, the names of the juices in the order of predominance by weight shall either be used in lieu of the word "fruit" in the name of the packing medium, or be declared on the label as specified in paragraph (a)(4)(iii) of this section; and

(c) In the case of a single fruit juice or a combination of two or more fruit juices any of which are made from concentrate(s), the words "from concentrate(s)" shall follow the word "juice(s)" in the name of the packing medium and in the name(s) of such juice(s) when declared as specified in paragraph (a)(4)(iii) of this section.

(iii) Whenever the names of the fruit juices used do not appear in the name of the packing medium as provided in paragraph (a)(4)(ii)(*b*) of this section, such names and the words "from concentrate", as specified in paragraph (a)(4)(ii)(*c*) of this section, shall appear in an ingredient statement pursuant to the requirements of § 101.3(d) of this chapter.

(iv) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) *Quality.* (1) The standard of quality for canned fruit cocktail is as follows:

(i) Not more than 20 percent by weight of the units in the container of peach or pear, or of pineapple if the units thereof are diced, are more than ¾ inch in greatest edge dimension, or pass through the meshes of a sieve designated as 5/16 inch that complies with the specifications for such cloth set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Office Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. If the units of pineapple are in the form of sectors, not more than 20 percent of such sectors in the container fail to conform to the following dimensions: The length of the outside arc is not more than ¾ inch but is more than ⅝ inch; the thickness is not more than ½ inch but is more than 5/16 inch; the length (measured along the radius from the inside arc to the outside arc) is not more than 1¼ inches but is more than ¾ inch.

(ii) Not more than 10 percent of the grapes in a container containing 10 grapes or more, and not more than 1 grape in a container containing less than 10 grapes, are cracked to the extent of being severed into two parts or are crushed to the extent that their normal shape is destroyed.

(iii) Not more than 10 percent of the grapes in a container containing 10 grapes or more, and not more than a grape in a container containing less than 10 grapes, have the cap stem attached.

(iv) There is present in the finished canned fruit cocktail not more than 1 square inch of pear peel per each 1 pound of drained weight of units of pear plus the weight of a proportion of the packing medium which is the same proportion as the drained weight of the units of pear bears to the drained weight of the entire contents of the can. Such drained weights shall be determined by the method prescribed in paragraph (c) of this section.

(v) There is present in the finished canned fruit cocktail not more than 1 square inch of peach peel per each 1 pound of drained weight of units of peach plus the weight of a proportion of the packing medium which is the same proportion as the drained weight of units of peach bears to the drained weight of the entire contents of the can. Such drained weights shall be determined by the method prescribed in paragraph (c) of this section.

(vi) Not more than 15 percent of the units of cherry ingredient, and not more than 20 percent of the units of peach, pear, or grape, in the container are blemished with scab, hail injury, scar tissue or other abnormality.

(vii) If the cherry ingredient is artificially colored, the color of not more than 15 percent of the units thereof in a container containing more than six units and of not more than one unit in a container containing six units or less, is other than evenly distributed in the unit or other than uniform with the color of the other units of the cherry ingredient.

(2) If the quality of canned fruit cocktail falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified.

(c) *Fill of container.* (1) The standard of fill of container for canned fruit cocktail is a fill such that the total weight of drained fruit is not less than 65 percent of the water capacity of the container, as determined by the general method for water capacity of containers prescribed in § 130.12(a) of this chapter. Such total weight of drained fruit is determined by the following method: Tilt the opened container so as to distribute the contents evenly over the meshes of a circular sieve which has been previously weighed. The diameter of the sieve is 8 inches if the quantity of contents of the container is less than 3 pounds, and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under "2.38 mm (No. 8)" in Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standards Series)," prescribed in paragraph (b)(1)(i) of this section, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section. Without shifting the material on the sieve so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and drained fruit. The weight so found, less the weight of the sieve, shall be considered to be the total weight of drained fruit.

(2) If canned fruit cocktail falls below the standard of fill of container prescribed in paragraph (c)(1) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein prescribed.

Interested persons may, on or before January 28, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and 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.

Any comments submitted in support of amendment to the U.S. standards for canned fruit cocktail should be supported by appropriate information and data regarding impact on small business consistent with requirements of the Regulatory Flexibility Act (Pub. L. 96-354).

Dated: November 21, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-28352 Filed 11-27-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Permanent State Regulatory Program of Oklahoma

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on the adequacy of a proposed amendment to the Oklahoma permanent regulatory program which was approved by the Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment submitted by the Oklahoma Department of Mines (ODM) for the Director's approval consists of changes to the definitions of the following phrases: "surface coal mining operations", "coal preparation" and "coal preparation plant."

This notice sets forth the times and locations that the Oklahoma program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m. on December 30, 1985, will not necessarily be considered. A public hearing on the proposal will be held, if requested, on December 24, 1985, at the address shown below under **"ADDRESSES".**

Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief, Director of the Tulsa Field Office by 4:00 p.m., on December 20, 1985. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting rather than a hearing may be held and the results of the meeting will be included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

The public hearing, if requested, will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Oklahoma program amendment and administrative record on the Oklahoma program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: Copies of the Oklahoma program amendment, the Oklahoma program and the administrative record on the Oklahoma program are available for public review and copying at the OSM offices and the Office of State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, Room 5154, 1100 "L" Street NW., Washington, DC. 20240

Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, Oklahoma 73105.

Background

The Oklahoma program was approved by the Secretary of the Interior on January 19, 1981, conditioned on the correction of four deficiencies.

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 detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981 **Federal Register** (46 FR 4902), April 2, 1982 **Federal Register** (47 FR 14152), May 4, 1983 **Federal Register** (48 FR 20049), April 12, 1984 **Federal Register** (49 FR 14674), August 28, 1984 **Federal Register** (49 FR 34000) and March 18, 1985 **Federal Register** (50 FR 10759).

Proposed Amendment

On September 11, 1985, the State of Oklahoma submitted on OSM an amendment to its permanent regulatory program. The amendment consists of changes made to three definitions in the approved Oklahoma regulations. The State revised the definitions of "surface coal mining operations", "coal preparation" and "coal preparation plant". The proposed amendment is intended to implement the revised Federal provisions at 30 CFR 700.5 and 701.5 as published in the July 10, 1985 **Federal Register** (50 FR 28186).

OSM is seeking comment on whether Oklahoma's proposed amendment is no less effective than the requirements of the Federal regulations and satisfies the criteria for approval of State program amendments at 30 CFR 732.17 and 732.15.

The full text of the proposed program modification submitted by Oklahoma for OSM's consideration is available for public review at the addresses listed under **"SUPPLEMENTARY INFORMATION."**

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 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 would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 936

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

Dated: November 21, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

[FR Doc. 85-28462 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-5-FRL-2925-9]

Ohio; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Delayed Determination on Ohio's Application for Final Authorization under the Resource Conservation and Recovery Act.

SUMMARY: This notice announces the decision by the United States Environmental Protection Agency (U.S. EPA) to delay its determination on granting final authorization to the State of Ohio. Ohio has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). U.S. EPA has reviewed Ohio's application and is presently evaluating the Ohio Environmental Protection Agency's capability to administer a quality hazardous waste management program. U.S. EPA will complete the assessment and publish a tentative determination after reviewing the results of the Fiscal Year 1985 year-end (September 30, 1985) State RCRA grant evaluation.

FOR FURTHER INFORMATION CONTACT: Ms. April Katsura, Regulatory Specialist, U.S. EPA, Region V, Waste Management Division, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6134.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA allows U.S. EPA to authorize a State hazardous waste program to operate in the State in lieu of the Federal hazardous waste program. Two types of authorizations may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if U.S. EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006 (c), 42 U.S.C. 6926 (c)). U.S. EPA's implementing regulations at 40 CFR 271.121–271.137 establish a phased approach to interim authorization. Phase I covers U.S. EPA's regulations in 40 CFR Parts 260–263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities). Phase II covers U.S. EPA's regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks. Phase IIB covers permitting of incinerator facilities, and Phase IIC addresses the permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all interim authorizations expire on January 31, 1966. Responsibility for the hazardous waste program returns (reverts) to U.S. EPA on that date, if a State with interim authorization has not received final authorization as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by U.S. EPA if the Agency finds that a State's program is: (1) "Equivalent" to the Federal program; (2) is consistent with the Federal program and other State programs; (3) is no less "stringent" than the Federal Program; and (4) provides for adquate enforcement authority and public participation in the permitting process (Section 3006 (b); 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. U.S. EPA's regulations for final authorization appear at 40 CFR 271.1–271–23. As part of the final authorization process, U.S. EPA evaluates each State program to determine if the State is capable of implementing a quality RCRA program. Performance in accordance with the full set of Interim National Criteria for a Quality RCRA Program in Authorized States, issued May 25, 1984, is the ultimate goal for States with final

authorization. The requirements for the Capability assessment are contained in a June 26, 1984, memo from Lee M. Thomas, (former) Assistant Administrator for Solid Waste and Emergency Response.

B. Ohio

Ohio was granted Phase I Interim Authorization on July 15, 1983. On Janaury 11, 1985, Ohio submitted a draft application for final authorization. The complete application for final authorization was submitted on July 8, 1985.

On September 9, 1985, U.S. EPA transmitted consolidated comments to Ohio on the State's complete application for final authorization. U.S. EPA identified a number of areas that required further clarifications and additional information. Additionally, U.S. EPA is presently evaluating the Ohio Environmental Protection Agency's capability to administer a quality hazardous waste management program. U.S. EPA will complete this assessment and publish its tentative determination after reviewing the results of the Fiscal Year 1985 year-end (September 30, 1985) State RCRA grant evaluation.

This decision will impact the State's receiving final authorization prior to the January 31, 1986, statutory deadline. Prior to that time, U.S. EPA will provide additional information in the Federal Register on the roles and responsibilities of each agency in implementing and enforcing the Federal RCRA program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisons of 5 U.S.C. 605(b), I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice announces to the public U.S. EPA's postponement of its determination on granting final authorization to Ohio. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3, Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Sec. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and, EPA Delegation 8-7.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-28312 Filed 11-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-335; RM-4853]

FM Broadcast Station in Mt. Laguna, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of channel 203A to Mt. Laguna, California, as that community's first local non-commercial educational FM broadcast service, in response to a petition filed by Family Stations, Inc.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Sections 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1982, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.504(a), table of allotments, Noncommercial Educational FM Broadcast Stations. (Mt. Laguna, California) MM Docket No. 85-335, RM-4853.

Adopted: November 4, 1985.

Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Family Stations, Inc. ("petitioner") seeking the allotment of FM Channel 203A to Mt. Laguna, California, as that community's first noncommercial educational broadcast service. Petitioner states that it will apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 203A can be allotted to Mt. Laguna consistent with the minimum distance separation requirements of §§ 73.207 and 73.507 of the Commission's Rules. Moreover, the proposed allocation of Channel 203A at Mt. Laguna would not interfere with the Grade B countour of any domestic Channel 6 television station.

PART 73—[AMENDED]

3. Since the proposal could provide a first local noncommercial eductional FM service to Mt Laguna, the Commission believes it is appropriate to elicit comments on the proposal to amend §73.504 of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Mt. Laguna, CA		203A

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before channel will be allotted.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Michael J. McCarthy, Esq.; Nancy L. Wolf, Esq.; Dow, Lohnes and Albertson; 1255 23rd Street, NW., Suite 500; Washington, DC 20037, (Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Noncommercial Educational FM Table of Allotments, § 73.504(a) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public

should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comments which has not been served on the petitioner constitute an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schoot,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in §§ 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend, the noncommercial educational FM Table of Allotments, § 73.504(a) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel it is alloted, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comment shall be accompanied by a certificate of service. (See § 1.420 (a), and (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-28405 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-344; RM-5060]

FM Broadcast Station in Newberry, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of channel 263A to Newberry, Florida, as its first FM channel, in response to a petition filed by Newberry Broadcasters.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Newberry, Florida); MM Docket No. 85-344 and RM-5060.

Adopted: November 1, 1985.

Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Newberry Broadcasters ("petitioner"), which seeks the allotment of Channel 236A to Newberry, Florida, as its first FM service. Petitioner stated its intention to apply for the channel.

2. A channel 238A allotment to Newberry would be short spaced to a pending rule making for Channel 238A at Silver Springs, Florida (RM-5018). A staff study indicates that, as an alternative, Channel 263A can be allotted to Newberry and meet all the spacing requirements. Therefore, we shall propose Channel 236A for Newberry.

PART 73—[AMENDED]

3. Comments are invited on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the following city:

City	Channel No.	
	Present	Proposed
Newberry, FL		263A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Nancy L. Wolf, Dow, Lohnes and Albertson, 1255 23rd Street NW., Washington, DC 20037 (counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 F.R. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5 (d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, DC.

[FR Doc. 85-28406 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-345; RM-5043]

FM Broadcast Station in Solana, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of channel 282A to Solana, Florida, in response to a petition filed by Sunshine Service Broadcasters.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Solana, Florida); MM Docket 85-345 and RM-5043.

Adopted: November 1, 1985.
Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. Sunshine Service Broadcasters ("petitioner") filed a petition for rulemaking requesting the allotment of Channel 282A to Solana, Florida, as its first FM channel. Petitioner states its intention to apply for the channel, if allotted to Solana.

2. The proposed allotment requires a site restriction of 2.2 kilometers (1.4 miles) north of the city to avoid short spacing to Station WRBQ-FM (Channel 284), Tampa, Florida.

PART 73—[AMENDED]

3. In view of the fact that the proposal would provide a first FM broadcast service to Solana, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to that community as follows:

City	Channel No.	
	Present	Proposal
Solana, FL		282A

4. The Commission's authority to institute rule making procedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner(s), or their counsel or consultant as follows:

Nancy L. Wolf; Dow, Lohnes & Albertson, 1255 23rd Street NW., Washington, DC 20037.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do No Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex-parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comment. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-28407 Filed 11-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-343; RM-5001]

FM Broadcast Station in Mt. Vernon, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 271B1 to Mt. Vernon, Illinois, as a second FM service, in response to a petition filed by Midwest Radio Consultants, Inc.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Mt. Vernon, Illinois): MM Docket No. 85-343 and RM-5001.

Adopted: November 1, 1985.
Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Midwest Radio Consultants, Inc. ("petitioner"), requesting the allotment of Channel 271B1 to Mt. Vernon, Illinois, as its second FM service. Petitioner stated its intention to apply for the channel.

2. We believe that the proposal warrants consideration. The transmitter site is restricted to 21.2 kilometers (13.2 miles) northwest of Mt. Vernon to avoid short spacing to Stations WGEL, Greenville, Illinois (Channel 269A), and to WDRW, Eldorado, Illinois (channel 272A).[1]

PART 73—[AMENDED]

3. In view of the foregoing, the Commission seeks comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Mt. Vernon, IL	231	231, 271B1

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Midwest Radio Consultants, Box 1110, Lansing, Michigan 48901

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in

[1] The separations are met at this restricted site based on a construction permit to Station KEZK, St. Louis, Missouri.

the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-28410 Filed 11-27-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 85-342; RM-5045]

FM Broadcast Station in Little Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 241A to Little Falls, Minnesota, in response to petition filed by Little Falls Broadcasting Company. This allotment could provide for a second FM service for the community.

DATE: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Little Falls, Minnesota); MM Docket No. 85-342 and RM-5045.

Adopted: November 4, 1985.
Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Little Falls Broadcasting Company [1] ("petitioner"), seeking the allotment of FM Channel 241A to Little Falls, Minnesota, as that community's second FM service. Petitioner submitted information in support of the proposal and stated its intention to file an application for the channel, if allocated.

[1] Petitioner is the licensee of Station KLTF(AM), a daytime-only station in Little Falls, Minnesota.

2. Channel 241A can be allocated to Little Falls, Minnesota, consistent with the minimum distance requirements of the Commission's Rules. Since Little Falls, Minnesota, is located within 199 miles of the U.S.-Canadian border, Canadian concurrence is required.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotment could provide a second FM broadcast service to Little Falls, Minnesota, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community.

City	Channel No.	
	Present	Proposed
Little Falls, MN	221A	221A, 241A

4. The Commission's authority to institute rule making procedures, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Erwin Krasnow, Verner, Liipfert, Bernard, McPherson and Hand, Chartered, 1660 L Street NW., Suite 1000, Washington, DC 20036 (counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later

than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85-28411 Filed 11-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-339; Rm-5062]

FM Broadcast Station in Belhaven, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposed the substitution of Channel 266C2 for Channel 221A at Belhaven, North Carolina, and the simultaneous modification of the license of Station WKJA(FM) to specify operation on the new frequency, at the request of Winfas, Inc. and Winfas of Belhaven, Inc.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Belhaven, North Carolina); MM Docket No. 85-339 and RM-5062.

Adopted: November 4, 1985.
Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by Winfas, Inc. and Winfas of Belhaven, Inc. ("petitioner") requesting the substitution of FM Channel 266C2 for Channel 221A at Belhaven, North Carolina, and the simultaneous modifications of its license for Station WJKA to specify operation on the higher powered frequency.[1] Petitioner states that it could provide service to more area and population if Station WKJA operates on Channel 266C2.

2. Channel 266C2 can be allocated to Belhaven in compliance with the minimum distance separation requirements if the transmitter site is restricted to an area at least 24.2 kilometers (15 miles) south to avoid short-spacings to Station WFMA, Channel 284, Rocky Mount, North Carolina, Station WPCM, Channel 266, Burlington, North Carolina, and to Station WWDE, Channel 267, Hampton, Virginia. We note that Channel 266C2 cannot be used at Station WJKA's present site.

3. In view of the above, we will propose to modify the license of Station WJKA, as requested by the petitioner. However, in conformity with Commission precedent, as expressed in *Cheyenne, Wyoming*, 62 F.C.C 2d 63 (1976), should another interest in the allotment be shown, the modification could not be made unless an additional equivalent channel is available in the community to accommodate other expressions of interest. See *Modification of FM and TV Station Licenses*, 56 R.R. 2d 1253 (1984), and § 1.420(g) of the Commission's Rules.

PART 73—[AMENDED]

4. We believe the proposal warrants consideration in view of the expressed need for a wide coverage area FM station. Accordingly, we propose to amend FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Belhaven, NC	221A	266C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until

[1] Petitioner originally filed its request as a counterproposal in MM Docket 84-231, *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*. The request was not considered in that proceeding as the counterproposal did not meet the stated criteria for acceptance. Petitioner has filed a petition for reconsideration of that action. In light of our action herein, that portion of its reconsideration request will be dismissed as moot.

the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in the proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate for service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, DC.

[FR Doc. 85-28412 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-338]

FM Broadcast Station in Wurtsboro and Woodstock, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, on the Commission's own motion, proposes the substitution of Channel 247A for Channel 261A at Wurtsboro, New York, and the substitution of Channel 261A for 272A at Woodstock, New York. This action could provide Wurtsboro with its first local FM service.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Wurtsboro and Woodstock, New York); MM Docket No. 85-338.

Adopted: November 4, 1985.

Released: November 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission, on its own motion, hereby proposes to substitute Channel 247A for Channel 261A at Wurtsboro, New York, and to substitute Channel 261A for Channel 272A at Woodstock, New York. By *Report and Order*, MM Docket No. 83-839, 48 FR 54980, published December 8, 1983, the Commission at the request of Jerome Gillman, Inc. ("Gillman"), allocated Channel 261A to Wurtsboro, as the community's first local FM service, and substituted Channel 272A for Channel 261A at Woodstock, licensed to Woodstock Communications, Inc., Station WDST-FM, with an attendant change in transmitter site. The allocation at Wurtsboro was also conditioned on the use of a site at least 6 miles west of the community in order to avoid a short-spacing to Station WHUD(FM), Peekskill, New York, and to Station WVNJ-FM, Newark, New Jersey.

2. Following the *Report and Order*, applications for Channel 261A at Wurtsboro were filed by Gillman (BPH-831201AE) and Preston Mark Pollack and Susan Lea Pollack (BPH-840605ID) ("Pollacks"). Both of these applications have been granted cut-off status. However, during the processing of these applications, it has been found that there is no site available which could provide the required city-grade coverage

to Wurtsboro and also meet the spacing requirements of § 73.207 of the Commission's Rules.

3. In an effort to retain the possibility of a first local FM service at Wurtsboro, the Commission staff has found that Channel 247A can be allocated in compliance with the Commission's minimum distance separation requirements, with a site restriction of 4 kilometers (2.5 miles) northwest to avoid a short-spacing to Station WYNY, Channel 246, at New York City, New York. The use of Channel 247A at Wurtsboro also negates the necessity for Station WDST–FM at Woodstock to change channel or transmitter site. In light of the siting difficulties encountered by the applicants for Channel 261A at Wurtsboro, the staff examined a terrain map to determine if Channel 247A, with its 4 kilometer north site restriction would also pose the same problems. Our study shows that the proposed transmitter location is at a substantially higher elevation than Wurtsboro. Therefore, we believe that this allocation is feasible.

4. The current applicants for Channel 261A at Wurtsboro will be mailed a copy of this *Notice* in order to elicit their comments. In accordance with the Commission's policy, we would retain cut-off protection for the pending applicants when they amend their applications to the proposed Channel 247A, since the channels are equivalent. See *Phillipsburg, Kansas*, 48 FR 10844, published March 15, 1983, and *Sanibel, Florida*, 50 FR 32706, published August 14, 1985.

5. Since Wurtsboro and Woodstock are located within 320 kilometers (200 miles) of the U.S.-Canada border, the concurrence of the Canadian government must be received before the channel allocations can be finalized.

PART 73—[AMENDED]

6. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Woodstock, NY	272A	261A
Wurtsboro, NY	261A	247A

7. It is ordered, That the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this *Notice of Proposed Rule Making* to the following applicants for Channel 261A at Wurtsboro, New York, and to Woodstock Communications, Inc., licensee of Station WDST–FM, Woodstock, New York.

Jerome Gillman, Inc., MacDaniel Road, Shady, New York 12479 (BPH–831201AE)
Station WDST–FM, Woodstock Communications, Inc., 118 Tinker Street, Woodstock, New York 12498
Preston Mark & Susan Lea Pollack, RFD 1, Box 214, Liberty, New York 12754 (BPH–840605ID)

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

9. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assigments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions

by patties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-28408 Filed 11-27-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-341; RM-5039]

FM Broadcast Station in Clarendon and North Clarendon, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 242A to Clarendon or North Clarendon, Vermont, as either community's first local FM service, at the request of Timothy Allen.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Clarendon and North Clarendon, Vermont): MM Docket No. 85-341 and RM-5039.

Adopted: November 4, 1985.
By the Chief, Policy and Rules Division.

Released: November 22, 1985.

1. The Commission has before it a petition filed by Timothy Allen ("petitioner") requesting the allocation of Channel 261A to North Clarendon, Vermont, as that community's first local FM service. The petitioner originally filed his request as a counterproposal to the proposal to allocate the same channel to Ruthland, Vermont, in MM Docket 84-718.[1] Since an alternative channel is available for allocation which does no conflict with the Rutland proposal and in order to obtain additional information concerning the requested community, allen's request will be considered separately herein. He states that he will file an application for the channel, if allocated.

2. Petitioner states that North Clarendon, located 3 miles south of Rutland, has a 1980 population of 2,372 persons, reflecting a 54% increase over its 1970 population. According to the 1980 U.S. Census, the population figures cited by the petitioner are those for the community of Clarendon, Vermont. In fact, North Clarendon is not listed in the 1980 U.S. Census. We have found, however, that the 1984 Edition of the Rand McNally Road Atlas does list North Clarendon, with a population of 500 persons, separate from the community of Clarendon.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that allocations be made to "communities," which have been defined as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allocation purposes. See, e.g., *Ansley, Alabama,* 46 FR 58688, published December 3, 1981; *Cascade Village, Colorado,* 48 FR 19917, published May 3, 1983; *Red Rock, Georgia,* 48 FR 36170, published August 9, 1983, and cases cited therein. Therefore, petitioner should submit additional information regarding North Clarendon to demonstrate whether it has any business, social organizations, or governmental units that identify themselves with North Clarendon, so that we may determine its community status for allocation purposes. We further request that petitioner clarify whether his interest is in providing local service to Clarendon or North Clarendon, Vermont.

4. A staff engineering study shows that Channel 242A can be allocated to either Clarendon or North Clarendon consistent with the applicable minimum distance separation requirements of §73.207(b) of the Commission's Rules with a site restriction of 2.6 kilometers (1.6 miles) west of Clarendon or 5 kilometers (3.1 miles) southwest of North Clarendon, to avoid short-spacings to Channel 241A at Warren, Vermont, and Station WWMR, Channel 242, at Rumsford, Maine. Additionally, since both communities are located within 320 kilometers (200 miles) of the U.S.-Canada border, the Canadian government must concur in either allocation.

PART 73—[AMENDED]

5. We believe the public interest would be served by proposing to allocate Channel 282A to either Clarendon or North Clarendon, Vermont, as a first local FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the communities listed below, to read as follows:

Channel No.	City	
	Present	Proposed
Clarendon, Vt		242A
or		
North Clarendon, Vt		242A

6. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragrah 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such

[1] *Notice of Proposed Rule Making,* 49 FR 31305, published August 6, 1984.

comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy Allen, RFD 1, Box 1190, Waterbury, Vermont 05676 (petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denials of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceedings or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which this reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-28413 Filed 11-27-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-336; RM-5028]

TV Broadcast Station in Mineola, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 63+ to Mineola, Texas, as that community's first commercial television service, at the request of Golden Communications, Inc.

DATES: Comments must be filed on or before January 15, 1986, and reply comments on or before January 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Mineola, Texas); MM Docket No. 85-336 and RM-5028.

Adopted: November 4, 1985.
Released: November 22, 1985.
By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Golden Communications, Inc. ("petitioner"), requesting the assignment of UHF Television Channel 63 to Mineola, Texas, as that community's first commercial television service. Petitioner stated an intention to apply for the channel. The assignment can be made in compliance with the minimum distance separation requirements.

2. Mineola (population 4,346)[1] in Wood County (population 24,697) is

[1] Population figures are from the 1980 U.S. Census.

located in northeastern Texas approximately 75 miles east of Dallas.

PART 73—[AMENDED]

3. In view of the fact that the proposed assignment could provide a first local television service to Mineola, the Commission believes it is in the public interest to seek comments on the proposal to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Mineola, TX		63+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before January 15, 1986, and reply comments on or before January 30, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James K. Edmundson, Kenkel, Barnard & Edmundson, P.C., 1220 19th Street NW., Suite 202, Washington, DC 20036 (counselor for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which the Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–28409 Filed 11–27–85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 230
Friday, November 29, 1985

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Thursday, December 12, 1985, at 2120 L Street, NW., FTC Hearing Room #1 (Lower Level), Washington, DC. Agenda: Status reports on pending committee projects. Contact: Richard K. Berg, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

Dated: November 25, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85–28391 Filed 11–27–85; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trailside Oil & Gas Field Development; Little Missouri National Grasslands Administrated by the Custer National Forest, McKenzie County, ND

The Department of Agriculture, Forest Service as lead agency and the Bureau of Land Management, USDI, will prepare an environmental assessment for a proposal to permit the development of the Trailside Oil & Gas field on the McKenzie Ranger District.

A proponent has proposed to drill a well in the SE¼, section 4, T147N, R100W. This well is the confirmation well in the field that may lead to development of numerous wells. Most of the field is located within the boundary of the Bennett Cottonwood Essentially Roadless Area (ERA).

A range of alternatives for this field development will be considered. One of these will be nondevelopment of the field. Other alternatives will consider maximum field development to limited development in the Bennett Cottonwood ERA.

Federal, State and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process.

This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The District Ranger will hold a public meeting at the Watford City Civic Center, Watford City, North Dakota, at 7 P.M., Wednesday, December 11, 1985.

David A. Filius, Forest Supervisor, P.O. Box 2556, Billings, MT 59103, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to James Fishburn, District Ranger, Star Rt. 2, Box 8, Watford City, ND 58854 by December 20, 1985.

Questions about the proposed action and environmental assessment should be directed to Tex Williams, Minerals Assistant, McKenzie Ranger District, phone 701–842–2393.

Dated: November 21, 1985.

David A. Filius,

Forest Supervisor.

[FR Doc. 85–28461 Filed 11–27–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Pennsboro Lake Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: 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 Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that the environmental evaluation of the Pennsboro Lake Critical Area Treatment RC&D Measure, Ritchie County, West Virginia, reveals that the proposed action is not a major Federal action and will not significally affect the quality of human environment

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, it has been determined that the preparation and review of an environmental impact statement are not needed for this project. If further information is needed please contact this office.

Rollin N. Swank,

State Conservationist.

November 20, 1985.

[FR Doc. 85–28356 Filed 11–27–85; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Cathleen Lawrence, Personnel Officer,

U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 632-2034.

The following are the names and present titles of the individuals appointed to the register for which Performance Review Boards will be established in the U.S. Arms Control and Disarmament Agency. Each individual will serve a one year renewable term beginning on the effective date of this notice. Specific Performance Review Boards will be established as needed from this register.

These appointments supercede those in the announcement published at 49 FR 42599 on October 23, 1984.

Name and Title

David Emery—Deputy Director
Henry Cooper—Assistant Director, Strategic Programs Bureau
Lewis Dunn—Assistant Director, Nuclear Weapons Control Bureau
Manfred Eimer—Assistant Director, Verification & Intelligence Bureau
Thomas Etzold—Assistant Director, Multilateral Affairs Bureau
Louis Nozenso—Deputy Assistant Director, Strategic Programs Bureau
Norman Wulf—Deputy Assistant Director, Nuclear Weapons and Control Bureau
William Staples—Executive Secretary
Michael Guhin—Counselor
Charles Kupperman—Executive Director, General Advisory Committee
Lucas Fischer—Division Chief, Strategic Programs Bureau, Theatre Affairs Division
Victor Alessi—Division Chief, Strategic Programs Bureau, Strategic Affairs Division
Robert Rochlin—Chief Scientist, Multilateral Affairs Bureau
Alfred Lieberman—Division Chief, Verification & Intelligence Bureau, Operations Analysis Division
Robert Summers—Division Chief, Verification & Intelligence Bureau, Verification Division
William Montgomery—Administrative Director
Thomas Graham—General Counsel
Mary E. Hoinkes—Deputy General Counsel
Alison B. Fortier—Director, Office of Congressional Affairs
Joseph Lehman—Director, Office of Public Affairs

William J. Montgomery,
Administrative Director.

[FR Doc. 85-28420 Filed 11-27-85; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than December 19, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-00018."

Applicant: U.S. Shippers Association, 1209 Orange Street, Wilmington, Deleware 19801 Telephone: 202-662-5298
Application #: 85-00018
Date Deemed Submitted: November 15, 1985.
Members (in addition to applicant): FMC Corporation; Olin Corporation, and Stauffer Chemical Company; Controlling Entity for Stauffer Chemical Company: Chesebrough-Pond's, Inc.

Summary of the Application

The U.S. Shippers Association ("USSA") seeks certification for the following export-related activites:

A. Export Trade

Procurement of Transportation Services covering the export of all products, whether or not manufactured or tendered for shipment by a Member. Such services include overseas freight transportation; inland freight transportation for export shipments to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; insurance; forwarder services; export sales documentation and services; and customs clearance.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

In conducting Export Trade, USSA and its Members may: (1) Act jointly to negotiate charges and other terms and enter into contracts with providers of Transportation Services, including the chartering and space chartering of vessels, for any or all of the Members, and/or non-members; (2) enter into agreements among themselves on the terms of their participation in the negotiation and fulfillment of transportation contracts, including the amount of Transportation Services that each will commit to purchase under such contracts; (3) meet and exchange information on Transportation Services, including information on potential suppliers of Transportation Services, rates and terms, volumes of products available for export, scheduling, and other information necessary to analyze, negotiate for, and procure Transportation Services; and (4) prescribe the following conditions with respect to membership in USSA:

(a) A party may withdraw its membership from USSA as of the last day of any calendar year by giving 180 days' prior written notice to the remaining Members. The remaining Members shall then have the option to terminate USSA or to pay the withdrawing Member the value of its capital account, as adjusted, on the date of its withdrawal. The withdrawing Member shall remain responsible for commitments made by such Member

and by USSA on behalf of such Member prior to the effective date of such Member's withdrawal. (b) Additional parties may be admitted to membership in USSA from time to time upon (i) receiving a minimum of two-thirds vote of USSA's existing Members, (ii) executing a counterpart of USSA's membership agreement, and (iii) making such capital contribution in cash as is determined in good faith by USSA's Board of Directors to represent a fair allocation of the start-up and capital costs of USSA.

Each Member may assign its rights and obligations for a particular Transportation Service to another Member, group of Members, or to non-members.

Dated: November 25, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-28464 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Minority Business Development Center (MBDC); Competitive Applications

November 22, 1985.

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $248,047 for the project performance of 5/1/86 to 3/31/87. The MBDC will operate in the Tampa/St. Petersburg Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $210,840 in Federal funds and a minimum of $37,207 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-86005-01 for the Tampa/St. Petersburg SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is 12/31/85. Applications must be postmarked on or before 12/31/85.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 22, 1985.

Carlton L. Eccles,

Regional Director, Atlanta Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Monday, December 13, 1985 at 9:00 a.m.

[FR Doc. 85-28342 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

The Mid-Atlantic Fishery Management Council will convene a public meeting, December 18-19, 1985 at The Cavalier, 42nd and Atlantic Avenue, Virginia Beach, VA (telephone: 804-425-8555), to discuss the Striped Bass Fishery Management Plan (FMP), the Bluefish FMP, the Atlantic Mackerel, Squid and Butterfish FMP, the surf clam and ocean quahog fishery, a task force project, as well as other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (809) 753-4926.

Dated: November 25, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, F/M1, National Marine Fisheries Service.

[FR Doc. 85-28478 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Peope's Republic of China

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive (as amended), establishing import limits for specified categories of cotton, wool and man-made fiber textile products, including Category 340 (men's and boys' woven shirts), produced or manufactured in the people's Republic of China and exported during the twelve-month period which began on January 1, 1985, was published in the **Federal Register** on December 28, 1984 (49 FR 50432). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of

August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the restraint limit for Category 340 is being increased to 702,045 dozen by the application of carry forward for the agreement year which began January 1, 1985. Carryforward is an amount borrowed from the category limit from the succeeding agreement year and, to the extent used, is deducted from the limit in the succeeding year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983, (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984, (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

November 22, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 24, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985.

Effective on November 29, 1985, the directive of December 24, 1984 is hereby further amended to increase the previously established restraint limit for Category 340 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12 month limit [1]
340	702,045 dozen

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

[1] The Agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald K. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28469 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Peoples' Republic of China

November 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive (as amended), establishing import limits for specified categories of cotton and man-made fiber textile products, including Categories 331, 631, 639 and 645/646, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1985, was published in the **Federal Register** on December 28, 1984 (49 FR 50432). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the restraint limits for the foregoing categories are being adjusted by the application of swing for the agreement year which began on January 1, 1985. The restraint limit for Category 639 is being reduced to account for the amounts added to other category limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

November 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 24, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985.

Effective on November 29, 1985, the directive of December 24, 1984 is hereby further amended to adjust the previously established restraint limits for Categories 331, 631, 639 and 645/646 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12 month limit [1]
331	3,911,716 dozen pairs.
631	739,320 dozen pairs.
639	826,558 dozen.
645/646	668,851 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28472 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia; Correction

November 22, 1985.

On November 6, 1985, a notice was published in the **Federal Register** (50 FR

[1] The Agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

46151) which established levels for Categories 320pt. and 631pt., produced or manufactured in Indonesia and exported during the five designated thirty-day periods beginning on November 6, 1985 and extending through April 5, 1986. The level for Category 320pt. for each thirty-day period should have been 2,140,000 square yards in both the notice document and the letter to the Commissioner of Customs which followed that notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28471 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Increasing the Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

November 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50238) established limits for the aggregate limit as well as for certain specified categories of cotton textile products within the aggregate, including Categories 331 (cotton gloves), 340 (men's and boys, woven cotton shirts), 341 (women's, girls' and infants' cotton blouses and shirts), 347/348 (cotton trousers) and 363 (cotton terry and other pile towels), produced or manufactured in Pakistan and exported during the agreement year which began on January 1, 1985. Under the terms of the Bilateral Cottom Textile Agreement of March 9 and 11, 1982, as amended, between the Government of the United States and Pakistan and at the request of the Government of Pakistan, swing and carryforward are being applied to the restraint limits established for Categories 331, 341 and 347/348. Only carryforward is being applied to the aggregate limit and only swing to the limits for Categories 340 and 363.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

November 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton textile products, produced or manufactured in Pakistan.

Effective on November 29, 1985, the directive of December 21, 1984 is hereby amended to include increased restraint limits for cotton textile products in the following categories, exported during the agreement year which began on January 1, 1985 and extends through December 31, 1985.[1]

Category	Adjusted 12-month restraint limit [1]
300-369	247,447,444 square yard equivalents.
331	677,120 dozen pairs.
340	131,079 dozen.
341	239,357 dozen.
347/348	311,467 dozen.
363	24,093,842 numbers.

[1] The limits have not been adjusted to reflect any imports exported after Dec. 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28470 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Bilateral Cottom Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides, among other things, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryfoward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Requesting Public Comment on Bilateral Textile Consultations on Trade in Categories 310/318 and 359pt. From Taiwan

November 22, 1985.

On October 16, 1985, the American Institute in Taiwan (AIT), under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of cotton yarn-dyed fabric in Category 310/318 and infants' sets in Category 359pt. (TSUSA Nos. 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3445, 384.3446, 384.3447, 384.3448, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172), produced or manufactured in Taiwan.

The purpose of this notice is to advise that if no solution is agreed upon in consultations the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of apparel products in Categories 310/318 and 359pt., produced or manufactured in Taiwan and exported to the United States during the 12-month period which began on January 1, 1984 and extends through December 31, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in 10 copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solication of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28467 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Uruguay Concerning Category 442

November 22, 1985.

On October 31, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Uruguay to enter into consultations concerning exports to the United States of wool skirts in Category 442, produced or manufactured in Uruguay.

The purpose of this notice is to advise the public that, if no solution is agreed upon with the Government of Uruguay in consultations during the sixty-day period which began on October 31, 1985 and extends through December 29, 1985, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 442, produced or manufactured in Uruguay and exported to the United States during the twelve-month period which began on October 31, 1985 and extends through October 30, 1986 at a level of 16,775 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

URUGUAY—MARKET STATEMENT

Category 442—Wool Skirts

October 1985.

Summary and Conclusions

U.S. imports of Category 442 from Uruguay were 21,018 dozens during the year-ending August 1985, 19 percent over a year earlier. Imports for the full year 1984 were 17,440 dozens, 45 percent over 1983. Uruguay is the fifth largest supplier of Category 442, accounting for 5.6 percent of the year-ending August total imports.

The sharp and substantial increase of low-valued imports of Category 442 from Uruguay is disrupting the U.S. market.

U.S. Production and Market Share

Production of Category 442 declined from 1,415,000 dozens in 1982 to 1,045,000 dozens in 1984. The market for U.S. produced and imported Category 442 also declined, but not as sharply. The U.S. producers' share of the market dropped from 92 percent in 1982 to 75 percent in 1984.

U.S. Imports and Import Penetration

Between 1982 and 1984 imports of wool skirts increased by approximately 170 percent, rising from 131,000 dozens to 353,000 dozens. In 1985 wool skirt imports continued to climb, increasing 11.5 percent in the first eight months of the year when compared with the same period in 1984. The ratio of imports to domestic production increased sharply from 9.3 percent in 1982 to 33.8 percent in 1984.

Duty-Paid Values and U.S. Producers' Price

Approximately 97 percent of Uruguay's January-August 1985 imports of Category 442 entered under TSUSA number 383.7522—womens', girls' and infants' woven wool skirts. These garments entered at landed, duty-paid values below the U.S. producers' price for comparable skirts.

[FR Doc. 85-28468 Filed 11-27-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a commodity and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 29, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 2 and September 13, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 31407 and 50 FR 37396) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.5.

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 commodity and service listed.

c. The actions will result in authorizing small entities to provide the commodity and service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1986:

Commodity

Pin, Tent, Wood, 8340-00-261-9752.

Service

Janitorial/Custodial, Federal Office Building, 591 Park Avenue, Idaho Falls, Idaho.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-2843 Filed 11-27-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from

Procurement List 1986 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: January 2, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

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 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

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 1986, October 15, 1985 (50 FR 41809):

Commodities

Shirt, Operating, Surgical Sleeveless: 6532-00-299-9632, 6532-00-299-9627

Detergent, General Purpose: 7930-01-055-6121, 7930-00-282-9700, 7930-00-282-9699, 7930-00-985-6911

Services

Janitorial/Custodial, Army and Air Force Exchange Service, Southeast Exchange Region, 312 Montgomery Street, Montgomery, Alabama

Mailroom Operations, U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington

Deletions

It is proposed to delete the following commodities and service from Procurement List 1986, October 15, 1985 (50 F.R. 41809):

Commodities

Divider, Steel: P.S. Item No. 124-C-114, P.S. Item No. 124-C-234, P.S. Item No. 124-R-54, P.S. Item No. 124-R-114.
(Requirements for USPS Western and Southern Regions only)

Pallet, Wood: 3990-00-555-0458
(For Sharpe Army Depot, Lathrop, California only)

Strap, Chin: 8405-00-152-3952

Service

Janitorial/Custodial, Army Materials and Mechanics Research Center, Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312 and 313 only Watertown, Massachusetts.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-28432 Filed 11-27-85; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on January 9 and 10, 1986, in Washington, DC. The purpose of the meeting is to: (1) Review testing of cigarettes by the National Bureau of Standards; (2) discuss the feasibility of evaluating patents which are claimed to reduce the propensity of cigarettes to ignite other objects; and (3) discuss the analysis of costs and benefits associated with modifying cigarettes to reduce their propensity to ignite mattresses and upholstered furniture.

DATES: The meeting will be on January 9 and 10, 1986, beginning at 9:30 a.m. and concluding at 5:00 p.m. both days.

ADDRESS: The meeting will be in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Hylton, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses. That legislation also specifies that the final technical report must include an analysis of costs and benefits associated with modifying cigarettes to reduce their propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on January 9 and 10 1986, to review a cigarette testing program conducted by the National Bureau of Standards. The purpose of this program is to evaluate certain varieties of cigarettes produced exclusively for testing as sources of ignition. The Technical Study Group will also discuss the feasibility of evaluating patents which are claimed to reduce the propensity of cigarettes to ignite other objects, and the analysis of costs and benefits which is required by the Cigarette Safety Act.

The meeting will be open to observation by members of the public, but only members of the Technical Study Group may participate in the discussion.

Dated: November 22, 1985

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-28483 Filed 11-27-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Commercial Activities Cost Studies

Interested parties should direct inquiries regarding these studies to the appropriate installation contracting office for additional details.

Location	Activity	Start date
1. Ft Hood, TX	Logistical support services.	Oct. 28, 1985.
2. Forts Richardson, Wainwright, and Greely, AK.	Morale, welfare, recreational services.	Do.
3. Ft. Drum, NY	Information mission area (air traffic control, ADP, administration telephone service.	Do.
4. Ft Mead, MD	Installation travel office	Do.
5. Presidio of San Francisco, CA.	do	Do.
6. Ft Detrick, MD	Motor pool operations.	Sep. 1, 1985.
7. Ft Rucker, AL, aeromedical center.	Custodial services	July 15, 1985.
8. Ft Benning, GA, community hospital.	do	Mar. 1, 1986.
9. Ft Riley, KS, medical activity.	do	Oct. 1, 1985.
10. Walter Reed AMC, Washington, DC.	do	Aug. 1, 1985.
11. Ft Buchanan, PR.	Health clinic	June 1, 1985.
12. West Point, NY, medical activity.	Custodial services	Oct. 1, 1985.
13. Walter Reed AMC laborstory, Ft Meade, MD.	Drug testing operations.	Aug. 1, 1985.
14. Tripler AMC Laboratory, Schofield Barracks, HI.	do	Do.
15. Ft Stewart, Ga, medical activity.	Custodial services	July 1, 1985.
16. Ft Harrison, IN, community hospital.	do	Sep. 1, 1985.

Location	Activity	Start date
17. Vint Hill Farms Stations, Warrenton, Va.	Recreational services.	May 1, 1985.
18. Vint Hill Farms Station, Warrenton, VA.	Motor pool operations.	Do.
19. William Beaumont AMC, El Paso, TX.	Custodial services.	Sep. 1, 1985.
20. Ft Huachuca, AZ, medical activity.	do	Do.
21. Ft Myer, VA.	Apparel alteration services.	Do.
22. Ft Belvoir, Va, Davison Airfield.	Aircraft fueling services.	Do.
23. Military Traffic Management, Bayonne, NJ.	Mail services.	Do.
24. Letterkenny Depot, Chambersburg, PA.	Ammunition storage and warehousing.	Oct. 1, 1985.
25. Tooele Depot, Tooele, UT.	do	Do.
26. USA Engineer Division, California.	Word processing services.	May 1, 1985.
27. USA Engineer District, Mobile, AL.	do	Do.
28. USA Engineer District, Norfolk, VA.	Transportation services.	Do.
29. USA Engineer District, Portland, OR.	Storage and warehousing.	Oct. 1, 1985.
30. USA Engineer District, Walla Walla, WA.	Facility maintenance.	Do.
31. USA Engineer District, WV.	Word processing services.	Do.
32. USA Engineer District, Pittsburgh, PA.	Recreational Operations.	Do.
33. USA Engineer District, Jacksonville, FL.	Facility Maintenance.	Do.
34. USA Engineer District, Mobile, AL.	do	Do.
35. USA Engineer District, Ft Worth, TX.	do	Do.
36. USA Engineer District, Tulsa, OK.	edo	Do.
37. USA Engineer Division, California.	do	Do.
38. USA Engineer District, Kansas City, MO.	do	Do.
39. USA Engineer District, Omaha, NE.	do	Do.
40. USA Engineer District, New York, NY.	Floating plant maintenance.	Do.
41. USA Engineer District, Buffalo, NY.	Floating Plant Operations.	Do.
42. USA Engineer District, Detroit, MI.	Jetty/Breakwater Maintenance.	Do.
43. USA Engineer District, Rock Island, IL.	Reservoir Operations Maintenance.	Do.
44. USA Engineer District, St Paul, MN.	Recreation Area Operations Maintenance.	Do.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-28372 Filed 11-27-85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Application for New Awards Under the Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of new applications for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals administered by the Department of Education under the Office of Special Education and Rehabilitative Services. Awards are made under this program for expanding or otherwise improving vocational rehabilitation and other rehabilitation services for severely handicapped individuals. Eligible applicants are State and public and other nonprofit agencies and organizations. The authority for this program is section 311(a)(1) of the Rehabilitation Act of 1973, as amended. Absolute preference will be given to applications that address any of the four proposed priorities in: Persons who have learning disabilities; individuals who have sustained traumatic head injuries; developing alternatives to restricted, segregated employment; and persons who have neuro-muscular disabilities. Applications also will be accepted in a non-priority category.

It is anticipated that approximately $2,900,000 will be available for new projects in Fiscal Year 1986. An estimated 25 new projects will be funded at an average cost of about $115,000. Approximately 80 percent of the total available funds for new projects will be divided equally among the four proposed priority areas. The remaining 20 percent will be used to support non-priority projects.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

It is expected that new projects funded under this program in Fiscal Year 1986 will be approved for project periods of up to 36 months.

In addition to the proposed priorities which have a specific disability focus, the Secretary encourages applicants for new awards to submit applications which demonstrate ways of rehabilitating persons severely disabled by one or more of the following disabilities:

(a) Arthritis
(b) Blindness
(c) Cerebral Palsy
(d) Deafness
(e) Epilepsy
(f) Heart Disease
(g) Mental Illness
(h) Mental Retardation

The Secretary does not consider the above disability listing to be all-inclusive and will, therefore, accept applications which demonstrate effective ways of rehabilitating individuals severely disabled by other disabilities.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before February 13, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.128A), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered, must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Application Forms

Application forms and program information packages are expected to be available by December 13, 1985. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Mary E. Switzer Building, (2312), Washington, DC 20202.

Applicable Regulations

The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78); and

(b) Regulations governing Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (34 CFR Part 369 and 373). A notice of proposed annual priorities was published on November 20, 1985 at 50 FR 47799–47801. Applicants should prepare their applications based on the proposed priorities. If there are any substantive changes made in these proposed priorities when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

FOR FURTHER INFORMATION CONTACT: Leo J. Eger, Division of Special Projects, Rehabilitation Services Administration, U.S. Department of Education, Room 3330, Mary E. Switzer Building, 400 Maryland Avenue, SW., (MS–2312) Washington, DC 20202. Telephone: (202) 732–1344.

(29 U.S.C. 777a(a)(1))

Dated: November 25, 1985.

(Catalog of Federal Domestic Assistance No. 84.128, Rehabilitation Services—Special Projects)

William J. Bennett,

Secretary of Education

[FR Doc. 85–28440 Filed 11–27–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Fuel Economy of Motor Vehicles; Availability of the 1986 Gas Mileage Guide

The Department of Energy (DOE) hereby gives notice of the availability of the 1986 Gas Mileage Guide. The Environmental Protection Agency (EPA) has issued regulations on Fuel Economy Testing, Labeling and Information Disclosure Procedures and Requirements (40 CFR Part 600) which, among other things, contain requirements for dealers of 1981 and later model year automobiles and light trucks to have copies of a booklet, the Gas Mileage Guide, available and on display in their showrooms and to keep an adequate stock on hand to meet public demand. In the booklet, prospective purchasers will be able to find the fuel economies of the various model vehicles certified as of August 31, 1985 for sale in the United States. DOE is required by section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), as added by Section 301 of the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), to publish and distribute this booklet. Section 600.405–77 of the EPA regulations states that dealers will be expected to make these booklets available as soon as they are received by them, but in no case later than 15 working days after notification is given of booklet availability. The publication today of this notice constitutes such notification.

The 1986 Gas Mileage Guide is available for display and distribution by dealers in their showrooms. Any dealer who has not already received Guides from DOE or requires additional copies should request copies in writing to the following address, specifying the quantity desired. This year there is one edition of the Guide to serve all 50 states.

Write: Fuel Economy Distribution, Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830.

Issued in Washington, DC, November 14, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85–28349 Filed 11–27–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 85–28–NG]

Natural Gas Imports; Citizens Energy Corp. and Citizens Resources Corp.; Application to Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 1, 1985, of an application from Citizens Energy Corporation (Citizens Energy) and Citizens Resources Corporation (Citizens Resources), jointly (Citizens), for a blanket authorization to import Canadian natural gas for individual short-term and spot sales. Authorization is requested to import up to 200 Bcf of Canadian natural gas during a period of two years beginning on the date of first delivery of the import. Citizens propose to submit quarterly reports within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than December 30, 1985.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr. (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8162.

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042; 100 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: Citizens Energy is a non-profit Massachusetts corporation engaged in providing low-cost energy to low-income consumers. Citizens Resources is a for-profit wholly-owned subsidiary of Citizens Energy. Citizens are jointly requesting a blanket authorization to import quantities of natural gas from Canada that they intend to sell to prospective customers such as domestic pipelines, local distribution companies, and industrial and commercial end-users who will purchase specific quantities of the gas to meet short-term needs. Citizens state that they intend to seek natural gas from prospective Canadian sources, including various individual procedures, producer groups and associations and pipeline companies. Citizens state the terms of the transactions will not differ materially from their current short-term and spot market transactions in domestic natural gas and petroleum commodities. In any one transaction either Citizens Energy or Citizens Resources will purchase Canadian gas for resale or act as agent for the buyer or seller, and may negotiate transportation arrangements for the gas on behalf of either of those parties.

Within the limits of the requested authorization, Citizens propose to sell imported gas under the terms, including price, existing in the spot or short-term marketplace at the time each individual sale is negotiated. Citizens have not entered into import agreements to date and assert that, because opportunities to buy and sell gas in the spot market appear and vanish rapidly, advance regulatory authority to import natural gas for this type of sale is required. Citizens cite previous blanket import authorizations approved by the ERA as examples supporting their request. Citizens state that in view of Canada's recently announced, liberalized policy for its natural gas exports, particularly with respect to prices for spot and short

term export transactions, it is important to them to have access to potentially economical Canadian supplies for its programs and customers and to obtain competitive viability with those competitors in their market areas who hold authority to import Canadian supplies.

According to Citizens, the nature of the spot or short-term marketplace will dictate the terms and conditions of the proposed import. Thus, if Citizens cannot obtain competitively priced Canadian gas or adjust the sales price to meet the market price, no sales will be made and no gas would be imported under the requested authorization. In other words, Citizens contend the proposed blanket import authority would not be utilized unless the Canadian natural gas, in each subsequent individual transaction, is needed, competitively priced and deliverable to the buyer through existing facilities.

Citizens propose to file with the ERA quarterly reports of individual transactions within 30 days following each calendar quarter. Such reports will indicate, by month, whether sales of imported gas have been made and, if so, will provide the purchase and sale prices, volumes imported, any special contract price adjustments, any take-or-pay or make-up provisions, the duration of the agreements, ultimate sellers and purchasers, transporters, and the markets served.

Citizens state in its application that their request for a blanket authority to import up to 200 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery for sale to domestic purchasers on the spot or short-term market will not be inconsistent with the public interest as measured by the competitiveness of the import, the need for the gas in the markets served and the security of supply as evaluated by the customary short duration of the spot market transaction and limitation of the requested authorization to import the gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable, the filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Office of Natural Gas Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. December 30, 1985.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Citizens' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, November 20, 1985.

Robert T. Davies,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-28388 Filed 11-27-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. EL86-10-000]

Kentucky Power Co.; Filing of Petition for an Expedited Declaratory Order

November 22, 1985.

On November 18, 1985 Kentucky Power Company (KEPCO) filed a petition for an expedited declaratory order. KEPCO asks that the Commission issue an order concerning KEPCO's rights and obligations under "the American Electric Power System (AEP System) Interconnection Agreement and the AEP System pooling arrangement as it has developed over the years." KEPCO submitted a memorandum of law, affidavits and exhibits in support of its petition.

KEPCO states that it has served copies of its petition and supporting documents on the Kentucky Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28448 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-65-000]

Ohio Gas Marketing Corp.; Notice of Filing

November 22, 1985.

Take notice that on November 15, 1985, Ohio Gas Marketing Corporation ("OGMC") 3933 Price Road, Newark, Ohio 43005, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. sections 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket certificate of public convenience and necessity and blanket temporary abandonment authority authorizing OGMC to conduct a short-term spot sales marketing program, hereinafter referred to a Ohio Gas Marketing Program ("OGMP"), all as more fully set forth in the application which is on file with the commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce, (2) permit limited-term, partial abandonment of certain natural gas sales, (3) confer pre-granted abandonment authorization for sales of natual gas made pursuant to the requested certificate, and (4) grant to Applicant any other authorizations which the Commission may grant to similar applicants covered by its October 29, 1985 "Order Permitting and Approving Limited-Term Abandonments and Granting Certificates" in Tenneco Oil Co., et al., Docket Nos. CI85-633-000 *et al.* OGMC also requests the Commission to declare that the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation not otherwise exempt from the NGA.

Under the OGMP, OGMC proposes to sell released natural gas qualifying for ceiling prices higher than that prescribed for Section 109 of the Natural Gas Policy Act of 1978 (NGPA). OGMC and participating producers will seek temporary releases of gas from the existing purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis. OGMC requests authority to sell gas under the program without any end-use restrictions.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before December 5, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 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, 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 parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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. 85-28449 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-210-001]

Ringwood Gathering Co., Notice of Filing

November 22, 1985.

Take notice that on November 12, 1985, Ringwood Gathering Company (Ringwood) tendered for filing Original Sheet No. 4A to its FERC Gas Tariff in accordance with the Federal Energy Regulatory Commission's order that issued October 31, 1985 in Docket No. RP85-210-000. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 18, 1985. Ringwood states that Original Sheet No. 4A reflects the elimination of the purchase gas cost adjustment of $.0031 per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28450 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-58-002]

Texas Gas Pipe Line Corp.; Notice of Tariff Filing

November 22, 1985.

Take notice that on November 12, 1985, Texas Gas Pipe Line Corporation (Texas Gas) tendered for filing Substitute Fifteenth Revised Sheet No. 4a to its FERC Gas Tariff, Second Revised Volume No. 1 to correct a mathematical error contained in its original filing of November 4, 1985. Texas Gas states the revised sheet reflects a net increase of 20.89¢ per Mcf at 14.65 psia in the commodity charge of Texas Gas' Rate Schedules G-1 and G-2. The proposed effective date for this tariff sheet is December 1, 1985. Texas Gas also enclosed a revised Appendix A with the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28451 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CP86-143-000]

Texas Gas Transmission Corp.; Application

November 20, 1985.

Take notice that on November 1, 1985, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-143-000 an application pursuant to

Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible service basis for certain end-use customers (Customers), all as more fully set forth in the attached appendix and in the application which is on file with the Commission and open to public inspection.

Texas Gas states that these Customers include end-users who are eligible for service under Texas Gas's TSC program, as approved by the Order Approving Settlement and Reversing Prior Order issued on September 18, 1984, in Texas Gas's Docket No. CP83-485-000. It is stated that other customers have been receiving service authorized pursuant to § 157.209 of the Commission's Regulations but are not eligible for TSC service. Texas Gas states it would render service to and from the existing delivery and receipt points as stated n the individual transportation agreements it has attached to the application, conditioned on appropriate third party transportation, where necessary.

Texas Gas proposes to charge the appropriate rate for the type of service involved, as it may exist from time to time, and as specified in Texas Gas's rate schedule filed with the Commission. Texas also proposes to collect the applicable GRI funding unit where appropriate.

Texas Gas further requests automatic authorization to add and/or delete receipt points under all transportation agreements for which authority for service is requested, since such customers have indicated that they may be purchasing gas from a variety of sources during the term of the agreement.

Texas Gas states that no new facilities are necessary for the transportation of gas to and from the delivery and receipt points presently contained in the transportation agreements; however, Texas Gas requests authority to construct and report any new facilities necessary under its blanket certificate issued in Docket No. CP82-407-000 and § 158.208 of the Commission's Regulations.

Texas Gas states that the term of the subject transportation service would be, for TSC customers, a term beginning on the date of initial deliveries after certification in this docket and continuing until the expiration of Texas Gas's TSC program or any extension thereof, and for all other Customers, a term beginning on the date of initial deliveries after certification under this docket, and continuing for a primary term of one year from such date and from year to year thereafter until cancelled by either party upon 60 days prior written notice.

Texas Gas states that all the transportation services involved in this application are presently being performed or have been performed by Texas Gas under § 157.209 of the Commission's Regulations or pursuant to special marketing program (SMP) certificate authority. It is stated that because of the issuance of the Commission's Order No. 436 on October 9, 1985, which would rescind § 157.209 effective November 1, 1985, and the expiration of the various SMP certificates under which transportation authority was based, Customers for whom authority is sought face having either all or part of their transportation volumes interrupted on October 31, 1985. Texas Gas represents that these Customers have requested that Texas Gas file the subject application requesting authorization for transportation service to be initiated again on their behalf, so that these Customers may continue to receive the economic benefits which have been associated with the transportation by Texas Gas of low-cost gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1985, 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 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 is 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 Texas Gas to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix

Customer	Contract quantity (Mcf per day)
1. ARMCO Inc.[1]	42,000
2. Brownsville Utility Dept., City of Brownsville, TN/The Haywood Co.*[2]	250
3. City of Carrollton, KY/Dow Corning Corp.*[2]	2,500
4. City of Elizabethtown, KY/Crucible Magnetics Division, Crucible Materials Corp.*[2]	500
5. City of Elizabethtown, KY/Dow Corning Corp.*[2]	300
6. City of Elizabethtown, KY/Gates Rubber Co.*[2]	1,300
7. Franklin Boxboard Corp.*	1,300
8. Georgia-Pacific Corp	1,600
9. Illinois Gas Co./Pioneer Asphalt*	800
10. Indiana Gas Co., Inc./Fairfield Manufacturing Co.*	900
11. Indiana Gas Co., Inc./Knauf Fiber Glass*	2,300
12. Indiana Gas Co., Inc./U.S. Gypsum*[2]	3,200
13. Jackson Utility Div., City of Jackson, TN/Proctor and Gamble Manufacturing Co	1,500
14. Louisville Gas and Electric Co./Ralston Purina Co*[2]	3,000
15. Memphis Light, Gas and Water Div., City of Memphis, TN (Memphis)/Buckeye Cellulose Corp.*[2]	4,500
16. Memphis/Buckman Laboratories*[2]	1,000
17. Memphis/Conley Frog and Switch Co.*[2]	400
18. Memphis-DIXICO, Inc.*[2]	300
19. Memphis/DuPont Supply*[2]	5,000
20. Memphis/W.R. Grace & Co.*[1]	40,000
21. Memphis/Humko Chemical*[2]	5,000
22. Memphis/Hunt Wesson Foods*	2,400
23. Memphis/Kellogg Co.*	2,000
24. Memphis/Kimberly-Clark Corp.*[2]	4,000
25. Memphis/QO Chemicals*	1,500
26. Memphis/Ralston Purina*	3,000
27. Memphis/Regional Medical Center at Memphis*	1,400
28. Memphis/Trumbull Asphalt*	875
29. Memphis/Velsicol Chemical*	1,000
30. Middletown Paperboard Co., a Division of Newark Boxboard[1]	1,500
31. Mississippi Valley Gas Co. (Mississippi)/Archer Daniles Midland Co.*[2]	2,500
32. Mississippi/Colortile Ceramic Manu. Co	635
33. Mississippi/Mohasco Carpet Corp., Greenville Mill Division*	1,500
34. Mississippi/System Fuels, Inc.*	200,000
35. Mississippi/Travenol Laboratories*[2]	1,000
36. Mississippi/U.S. Gypsum*[2]	4,000
37. Olin Corp	4,500
38. Terre Haute Gas Corp./CF Industries, Inc.*[2]	14,000
39. Texas Gas Exploration Corp	20,000
40. United Cities Gas Co./Goodyear Tire and Rubber Co.*	6,000
41. Vulcan Chemicals, a Division of Vulcan Materials Co.*	5,000
42. Western Kentucky Gas Co., Divison of Texas American Energy Corp. (Western Kentucky)/Alumax Aluminum Corp.*[2]	1,500
43. Western Kentucky/Emerson Electric Co.*	750
44. Western Kentucky/General Tire and Rubber Co.*	4,500
45. Western Kentucky/B.F. Goodrich*	1,500
46. Western Kentucky/Goodyear Tire and Rubber Co.*	1,000
47. Western Kentucky/Green River Steel Corp.*[2]	2,000
48. Western Kentucky/Logan Aluminum, Inc.*	4,000
49. Western Kentucky/National Southwire Aluminum Co.*	3,000
50. Western Kentucky/Phelps Dodge Magnet Wire, Inc.*[2]	2,000
51. Western Kentucky/Southwire Co.*[2]	1,000
52. Westvaco Corp.*	10,000

*TSC Contract.
[1] ANR Pipeline Co. (ANR) and United Gas Pipe Line Co. (United) are involved in the transportation of at least a portion of this gas.
[2] United is involved in the transportation of at least a portion of this gas.
[3] ANR, United and Natural Gas Pipeline Co. (NGPL) are involved in the transportation of at least a portion of this gas.
[4] NGPL is involved in the transportation of at least a portion of this gas.
[5] United, Florida Gas Transmission Co. and Tennessee Gas Transmission Co. (Tennessee) are involved in at least a portion of this gas.
[6] Tennessee is involved in the transporation of at least a portion of this gas.
[7] Arkla Energy Resources (Arkla) is involved in the transportation of at least of a portion of this gas.
[8] ANR is involved in the transportation of at least a portion of this gas. (Gas is delivered to ANR.)
[9] NGPL and Tennessee are involved in the transportation of at least a portion of this gas.

[FR Doc. 85-28442 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-93-011]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 22, 1985.

Take notice that Trunkline Gas Company (Trunkline) on November 12, 1985 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2: First Revised Sheet Nos. 3504 and 3536; Second Revised Sheet Nos. 3504, 3536, 3589 and 3636; First Revised Sheet Nos. 3670, 3701, 3725, 3747 and 3798.

Trunkline proposes that First Revised Sheet Nos. 3504 and 3536 become effective December 1, 1983. Trunkline proposes that Second Revised Sheet Nos. 3504, 3536, 3589, and 3636 and First Revised Sheet Nos. 3670, 3701, 3725, 3747 and 3798 become effective March 1, 1985.

Trunkline states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Trunkline transport customers to reflect Trunkline's current transportation rates as approved in Docket No. RP83-93, *et al.* by Commission's Orders dated December 2, 1983, April 10, 1985 and October 25, 1985 to be effective December 1, 1983 and March 1, 1985, respectively.

A copy of this filing has been served on these transport customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28452 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-53-000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.;

November 19, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-53-000]

Take notice that on October 18, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-53-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to continue to transport natural gas on behalf of certain end-users, all as more fully set forth in the Appendix hereto and in the application which is on file with the Commission and open to public inspection.

Consistent with ANR's blanket certificate issued by the Commission in Docket No. CP82-480-000, and the then current provisions of the Commission's Regulations in §§ 157.205, 157.206 and 157.209, ANR states that it has provided transportation services on behalf of numerous end-users. Due to the imminent termination of authorizations to provide such services pursuant to the referenced regulations, it is explained that these end-users have requested that ANR obtain permanent certificate authorization to provide transportation services beyond October 31, 1985, to December 31, 1986. Except for the term of service, ANR proposes to render the referenced services pursuant to the terms of the existing contracts with the respective end-users. The charges and all other pertinent information relative to the services are set forth in the appendix herein.

Comment date: December 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

Appendix attached.

Appendix

End-user volumes to be transported (dt/d), end-use applications(s), facility location	Receipt points	Delivery points	Seller & price per dt	Transportation rates cents per dt	Fuel percent of volumes transported
Amcast, 500, Boiler fuel and other industrial uses, Cederburg, WI.	Gathering in the States of KS, TX, LA, and OK.	To various delivery points to Wisconsin Gas Co. (Wisconsin Gas) in Wisconsin.	Gathering—$2	74.59	3
Appleton, 1,000, Boiler fuel or other industrial uses, Appleton, WI.	do	To various delivery points to Wisconsin Natural Gas Co. (Wisconsin Natural) in Winnebago, WI.	do	74.59	3
Armour through its agent Tricentrol, 2,000, Boiler fuel or other industrial uses, Bradley, IL.	Northwest Central Pipeline Co. (NW Central) in Rice County, KS.	Midwestern Gas Transmission Co. (Midwestern) in Will County, IL.	Tricentrol—$2.81	22.1	3
Badger Paper, 5,300, Boiler fuel or other industrial uses, Peshtigo, WI.	Gathering in the States of KS, TX, LA, and OK.	To various delivery points to Wisconsin Public Service Corp. (WPSC) in Marinette County, WI.	Gathering—$2.35	74.59	3
BASF, 900, Boiler fuel and other industrial uses, Holland, MI.	do	To various delivery points to Michigan Power Co. in Holland, MI.	Gathering—$2.30	74.59	3
Bemis, 725, Boiler fuel and other industrial uses, Sheyboygen, WI.	Gathering in the States of OK, TX, KS, and or LA.	To various delivery points to WPSC in Wisconsin..	do	74.59	3
Brillion, 2,000, Boiler fuel and other industrial uses, Brillion, WI.	do	do	do	74.59	3
Consolidated through North Central, 2,500, Boiler fuel and other industrial uses, Fort Madison, IA.	Gathering in the States of KS, TX, LA, and OK.	To North Central in Lee County, IA	do	74.59	3
Eagle, 1,000, Boiler fuel and other industrial uses, Grand Haven, MI.	do	To Michigan Gas Utilities Co. delivery points in Ottawa County, MI.	do	74.59	3
Federal Mogul through its agent Petro Source, 1,000, Boiler fuel and other industrial uses, Macomb, IL.	Petro Source in the State of OK	To Panhandle Eastern Pipeline Co. in Hansford County, TX.	Petro Source—$2.10	5.8	1
Fort Howard, 1,000, Boiler fuel and other industrial uses, Green Bay, WI.	Gathering in the States of KS, TX, LA, and OK.	To various delivery points to Wisconsin Natural in Wisconsin..	Gathering—$2.30	74.59	3

End-user volumes to be transported (dt/d), end-use applications(s), facility location	Receipt points	Delivery points	Seller & price per dt	Transportation rates cents per dt	Fuel percent of volumes transported
Hardwoods, 512, Boiler fuel and other industrial uses, Tomahawk, WI.	Gathering in the States of OK, TX, KS, and/or LA.	To various delivery points to WPSC in Wisconsin.	do	74.59	3
Henkel through its agent Tricentrol, 3,000, Boiler fuel and other industrial uses, Kankakee, IL.	NW Central in Rice County, KS or gas which Tricentrol causes other gas sellers to deliver in the State of OK.	To Midwestern in Will County, IL	Tricentrol—$2.81	[1]	3
Hexcal, 700, Boiler fuel and other industrial uses, Zeeland, MI.	Gathering in the States of OK, TX, KS, and LA.	To various delivery points to Michigan Power in Holland, MI.	Gathering—$2.30	74.59	3
Interlake through its agent MGM, 15,000, Boiler fuel and other industrial uses, Riverdale, IL.	Midwestern in Wood County, WI	Midwestern in Will County, IL	Northern gas marketing—Price not to exceed maximum lawful price under NGPA.	11.3	1
IDF through Gathering, 1,600, Boiler fuel and other industrial uses, Milwaukee, WI.	Gathering in the States of OK, TX, KS, and/or LA.	To various delivery points to Wisconsin Gas in Waukesha County, WI.	Gathering—$2.30	74.59	3
James River, 10,000, Boiler fuel Green Bay, WI	Gathering and/or sellers including the Cheney Group, Inc. in the States of KS, OK, LA, and TX.	To various delivery points to WPSC in Brown County, WI.	do	74.59	3
Kimberly Clark, 5,600, Boiler fuel and other industrial uses, Wisconsin, facilities.	Gathering in the States of OK, TX, KS	To various delivery points to WPSC or Wisconsin Natural in Wisconsin.	do	74.59	3
Kohler, 10,500, Boiler fuel and other industrial uses, Kohler, WI.	Gathering in the States of OK, TX, KS, and/or LA.	To various delivery points to WPSC in Sheboygan County, WI.	do	74.59	3
Ladish, 5,000, Boiler fuel and other industrial uses, Cudahay, WI.	do	To various delivery points to Wisconsin Natural in Waukesha County, WI.	do	74.59	3
Mead Johson, 550, Boiler fuel and other industrial uses, Zeeland, MI.	Gathering in the States of OK, TX, KS, and LA.	To various delivery points to Michigan Power in Holland, MI.	do	74.59	3
Park Davis, 1,600, Boiler fuel and other industrial uses, Holland, MI.	do	do	do	74.59	3
Patrick Cudahay, 1,500, Boiler fuel and other industrial uses, Cudahay, WI.	Gathering in the States of OK, TX, KS, and/or LA.	To various delivery points to Wisconsin Natural in Wisconsin.	do	74.59	3
Scott, 2,000, Boiler fuel and other industrial uses, Marinette, WI.	Gathering in the States of KS, TX, OK, and LA.	To various delivery points to WPSC in Marinette County, WI.	do	74.59	3
Simplex, 1,000, Boiler fuel and other industrial uses, Adrian, MI.	do	To various delivery points to Michigan Power in Constantine, MI.		74.59	3
Stepan through its agent EUSS, 1,000, Boiler fuel and other industrial uses, Elwood, IL.	Producers Marketing Corp. (PMC) and others in the States of OK and KS.	To Midwestern in Will County, IL	PMC—Price not to exceed maximum lawful price under NGPA.	30.2	3
Uniroyal, 1,000, Boiler fuel and other industrial uses, Stoughton, WI.	Gathering in the States of LA, OK, TX, and KS.	To various delivery points to Wisconsin Power and Light Co. in Dane County, WI.	Gathering—$2.30	74.59	3
White Pigeon, 1,500, Boiler fuel and other industrial uses, White Pigeon, MI.	do	To various delivery points to Michigan Power in Holland, MI.	do	74.59	3
Wisconsin Paperboard, 1,500, Boiler fuel and other industrial uses, Milwaukee, WI.	do	To various delivery points to Wisconsin Gas in Wisconsin.	do	74.59	3

[1] 22.1¢ for gas in Rice County, KS; 30.2¢ for gas received in OK.

2. Colorado Interstate Gas Company

[Docket No. CP86-63-000]

Take notice that on October 23, 1985, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-63-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of its sales lateral facilities serving the town of Castle Rock in Douglas County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 1.9 miles of 4-inch, 4.2 miles of 3-inch and 4.2 miles of 2-inch sales lateral and apprutenant facilities to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples). It is stated that the facilities can be more efficiently operated if owned by Peoples and would therefore, permit Peoples to serve better the expanding distribution requirements of the community of Castle Rock and environs. It is further stated by Applicant that the granting of the authorization as requested would not result in the abandonment of any services presently provided by Applicant to Peoples or any other party.

It is asserted that the sales price of the facilities to be abandoned by Applicant would be $24.000.

Comment date: December 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP86-89-000]

Take notice that on October 30, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-89-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing CIG to sell natural gas to its jurisdictional transmission system customers, including end-users served by those customers, under a new discount rate schedule, Rate Schedule SDR-2, through September 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that since calendar year 1979, CIG's annual sales volume has declined substantially with no forecast of recovery of states that it has made sustained efforts to reduce its gas sales price by renegotiating gas purchase contracts and releasing certain gas under contract.

CIG indicates that it has also made sales to qualifying customers at a discounted rate in an effort to retain sales. CIG states that on September 7, 1984, it filed in Docket No. CP84-699-000 for authority to implement a special discount rate (Rate Schedule SDR-1) for a term ending September 30, 1985, and that the Commission granted authority for the discount rate on November 20, 1984, which rate ws 15.0 cents per Mcf less than the Rate Schedule G-1 commodity rate in effect from time to time. It is indicated that CIG's jurisdictional transmission system customers qualified to purchase gas at the discount rate when gas purchase reached a threshold volume which was 90 percent of the customer's annual purchase volume as established in the settlement approved in Docket No.

RP82–54. Thus, customers could not qualify until reaching the threshold volume, it is stated.

CIG states that Rate Schedule SDR–2 is a proposal for a discount rate available to all of CIG's jurisdictional transmission system customers and end-users served by those customers. The concept is different from Rate Schedule SDR–1 in that customers would be offered service under Rate Schedule SDR–2 immediately upon implementation without having to first purchase gas up to a threshold volume, it is indicated.

CIG states that the proposed rate for Rate Schedule SDR–2 would (1) be as high as CIG believes may be charged and still allow the customer to purchase th gas; (2) not be higher than the rate in the rate schedule normally used for service to a resale customer, computed at the load factor for that customer based upon deliveries for the 12 months ended September 30, 1985; and (3) not be lower than CIG's variable costs for such sale.

CIG proposes to establish a rate range with a ceiling price and a minimum price for offering the discount sale to a particular customer. It is stated that the ceiling price would be the rate under the basic rate schedule under which a particular distributor or pipeline purchases gas from CIG computed at the load factor for such customer for the 12 months ended September 30, 1985. It is indicated that for end-users, the rate would be CIG's rate to the distributor or pipeline serving such end-user and that this ceiling price would essentially be the price at which CIG would sell the gas under the customer's basic general service rate schedule. By being able to charge up to this rate, CIG states that it would have flexibility to set the discount rate up to the maximum market clearing price. CIG provides an illustration of the ceiling prices by rate schedule when using load factors of 40, 60, and 100 percent, based on the rates effective as of September 28, 1985, as contained in Sheet Nos. 7 and 8 of CIG's FERC Gas Tariff, Original Volume No. 1:

Rate schedule	Price/per Mcf (40 pct load factor)	Price/per Mcf (60 load factor)	Price per Mcf (100) load factor
G-1, PR-1	$3.6766	$3.4788	$3.3206
P-1	3.6405	3.4547	3.3061
SG-1	3.6766	3.6766	3.6766
H-1	3.6307	3.4321	3.2732
F-1	2.9861	2.8881	2.8096

It is stated that service under Rate Schedule SDR–2, proposed herein, is an effort by CIG to compete with alternative gas supplies or alternative fuels available to CIG's qualifying customers, which includes all of CIG's jurisdictional transmission system customers and end-users supplied by those transmission system customers. CIG states that all sales under the discount rate would be interruptiable and made at the sole discretion of CIG and that customer qualification terms would be incorporated into a service agreement between CIG and the customer. An affidavit from each customer would be required stating that if the discount rate were not available, the customer would use natural gas from another source or an alternative fuel, it is stated.

CIG states that natural gas sold by it under Rate Schedule SDR–2 would benefit all of CIG's customers by reducing potential take-or-pay liabilities and that these sales would enable CIG to reduce its supply and requirement imbalance. These sales would not add any additional risks to CIG's customers because no additional costs would be incurred by CIG to effect the discount price, it is indicated.

CIG proposes that service under Rate Schedule SDR–2 be authorized for a term ending September 30, 1986, and that any extension beyond that date would be subject to a subsequent filing by CIG and pursuant to Commission authorization.

CIG states that there are no new facilities or additional delivery points proposed to effectuate service under Rate Schedule SDR–2.

CIG proposes to file monthly reports to keep the Commisssion informed of activities pursuant to Rate Schedule SDR–2. It is stated that such reports would include total volumes sold to all customers and the average revenue per Mcf, volumes purchased by each customer, the price, and the names of the transporters involved.

CIG states that Rate Schedule SDR–2 service would benefit CIG's customers by providing a means for CIG to offer a discount rate to qualifying customers without increasing the cost to any CIG customer by imposing additional costs to offset the discount price.

Comment date: December 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gulf Transmission Company

[Docket No. CP86–78–000]

Take notice that on October 28, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP86–78–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user natural gas on behalf of Jessop Steel Company (Jessop), under the certificate issued in Docket No. CP83–496–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport up to 3.3 billion Btu equivalent of natural gas per day for Jessop's Washington, Pennsylvania, plant through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or in the event Columbia Gas Transmission Corporation (Columbia Transmission) files a statement of notification pursuant to the new § 284.223(g) of the Commission's Regulations, and thereafter files for blanket certificate under § 284.221 of the Regulations such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1–000, up to the end of the term of the July 10, 1985, gas transportation agreement. Columbia Gulf states that the gas to be transported would be purchased by Jessop from Yankee Resources, Inc. (Yankee) and would be used as boiler fuel and process gas in Jessop's Washington, Pennsylvania, plant.

It is indicated that Jessop has made arrangements to purchase this gas from Yankee. The gas purchased from Yankee would be transported by Texas Gas Transmission Corporation and delivered to Columbia Gulf at Egan Parish, Louisiana. Columbia Gulf would redeliver the gas to Columbia Transmission for redelivery to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Jessop, near Washington, Pennsylvania.

Columbia Gulf asserts that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

It is explained that the volumes to be transported pursuant to the July 10, 1985, gas transportation agreement are 3.3 billion Btu for peak day, 2,600 billion Btu for average day and 793,000 billion Btu on an annual basis.

Comment date: January 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP86-71-000]

Take notice that on October 25, 1985, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86-71-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hussey Copper Ltd., Hussey Copper Corp. (Hussey Copper), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 1.120 billion Btu equivalent of natural gas per day, less retainage, on behalf of Hussey Copper to its plant in Leetsdale, Pennsylvania. Applicant proposes to charge one of the rates set forth in Rate Schedule TS-1 of its F.E.R.C. Gas Tariff, Original Volume No. 1. Applicant states that the current rates for TS-1, within the distributor's total daily entitlement, are said to be as follows: received from receipt points other than Leach, Kentucky—29.93 cents per million Btu. The current rates for TS-1, in excess of the distributor's total daily entitlement, are said to be as follows: Received from receipt points other than Leach, Kentucky—41.27 cents per million Btu. Applicant would also retain a percentage of the total quantity of natural gas delivered into its system hereunder for company-use and unaccounted-for gas, as reflected in Rate Schedule TS-1. It is stated that this percentage is currently 2.43 percent. In addition to the foregoing transportation charges, Hussey Copper is being charged the current General R & D Funding Unit of the Gas Research Institute, it is stated.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Applicant indicates that the gas transportation agreement specifies the points of receipt by Applicant and the point of redelivery to Columbia Gas of Pennsylvania, Inc. the distribution company serving Hussey Copper. It is further indicated that Hussey Copper is purchasing gas from IESCO/J & J Enterprises and that the gas would be used as boiler fuel and process gas. Applicant states that the volumes to be transported are 1.120 billion Btu for peak day, 1.001 billion Btu for an average day and 365.500 billion Btu on an annual basis.

Applicant further requests that continuation of transportation be allowed through the later of (1) any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or (2) in the event Applicant files a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and thereafter files for a blanket certificate under § 284.221 of the Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85-1-000, or (3) up to the end of the term of the transportation agreement, which would continue in effect for a term of one year and month to month thereafter subject to termination upon proper notice to the other parties at any time subsequent to the first anniversary of the agreement.

Comment date: January 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. National Fuel Gas Supply Corporation and Penn-York Energy Corporation

[Docket No. CP76-492-037]

Take notice that on October 18, 1985, National Fuel Gas Supply Corporation (National), 1100 State Street, Erie, Pennsylvania 16501, and Penn-York Energy Corporation (Penn-York), 10 Lafayette Square, Buffalo, New York 14203, Filed in Docket No. CP76-492-037 an eleventh amendment to its pending application in Docket No. CP76-492, as amended, pursuant to section 7 of the Natural Gas Act requesting permanent authorization to operate underground gas storage facilities in Allegany County, New York, to provide long-term storage service to various customers, and to acquire, construct and operate new and existing facilities, and permanently authorizing National to provide storage, peaking, and standby exchange service to Penn-York and to provide related transportation service for some of Penn-York's customers, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that this amendment is intended to consolidate, revise and supersede in their entirety the request for authorization pending in Docket Nos. CP76-492-036 and CP85-282-000.

Applicants state that Penn-York is currently authorized by temporary certificates to provide an aggregate of 24,497,877 Mcf annual gas storage service to 20 customers under uniform terms of service effective in the storage year beginning April 1, 1985. Penn-York proposes to render, beginning April 1, 1986, a new class of firm 150-day service under proposed Rate Schedule SS-2 while continuing to provide 110-day service under a slightly modified Rate Schedule SS-1, and to change the annual storage volume of several of its customers. The following chart shows annual storage service by customer as presently authorized and as proposed to be authorized:

Customer*	Authorized service for year beginning 4/1/85 in Mcf	Proposed service for year beginning 4/1/86 in Mcf	
		SS-1, 110-day	SS-2, 150-day
Berkshire	400,000	400,000	
Boston	876,620	876,620	
Central Hudson	500,000	500,000	
Colonial	2,000,000	2,000,000	
Conn. L&P	1,500,000	1,500,000	
Conn. Natural	1,500,000	1,500,000	
Delmarva	750,000		**675,163
Elizabethtown	1,500,000	1,500,000	
Essex	350,000	350,000	
Fitchburg	136,257	**300,000	
Gas Service	200,000	**400,000	
Granite	2,400,000	2,400,000	
Manchester	135,000	**250,000	
O&R	1,500,000	1,500,000	
Penn Fuel	850,000	**765,184	
Penn & Southern	200,000		**180,043
Southern Conn	150,000		150,000
Transco	5,000,000	5,000,000	
UGI	4,000,000		**3,600,867
Valley	550,000	**650,000	
Total	24,497,877	19,891,804	4,606,073

*The Berkshire Gas Company (Berkshire), Boston Gas Company (Boston), Central Hudson Gas & Electric Corporation (Central Hudson), Colonial Gas Company (Colonial), The Connecticut Light and Power Company (Conn. L&P), Connecticut Natural Gas Corporation (Conn. Natural), Delmarva Power & Light Company (Delmarva), Elizabethtown Gas Company (Elizabethtown), Essex County Gas Company (Essex), Fitchburg Gas and Electric Light Company (Fitchburg), Gas Service, Inc. (Gas Service), Granite State Gas Transmission, Inc. (Granite), Manchester Gas Company (Manchester), Orange and Rockland Utilities, Inc. (O&R), Penn Fuel Gas, Inc. (Penn Fuel), Pennsylvania & Southern Gas Corporation (Penn & Southern), The Southern Connecticut Gas Company (Southern Conn.), Transcontinental Gas Pipe Line Corporation (Transco), UGI Corporation (UGI) and Valley Gas Company (Valley). Customers for which changes in levels of service are proposed are indicated by "**".

Penn-York proposes to charge $1.0000 per Mcf of annual storage volume as the initial rate for 150-day service. Penn-York also proposes an additional receipt point for storage service to UGI and O&R at the existing interconnection of Penn-York's facilities with those of Columbia Gas Transmission Corporation near Penn-York's

Independence compressor station in Potter County, Pennsylvania.

Penn-York further seeks permanent certificate authorization to operate its three storage fields and to acquire, construct and operate, at an aggregate estimated cost of $15,103,937, the following facilities:

(a) 2,400,100 Bcf additional base gas;

(b)(i) 12 additional wells in existing storage fields including 8 injection/withdrawal wells in North Beech Hill/West Independence and 3 injection/withdrawal wells in South Beech Hill (all with necessary gathering lines), and 1 observation well on the western edge of Beech Hill;

(ii) 4 existing wells at Beech Hill (including 3 in North Beech Hill/West Independence and 1 in South Beech Hill) to be converted from observation wells to injection/withdrawal wells (with necessary gathering lines);

(c) Additional 2,750 horsepower compressor unit at the Beech Hill compressor station; and

(d) 10,000 feet of 12 inch pipeline to tie together the Independence and Beech Hill gathering systems.

Applicants state that 1,000,000 Bcf of existing total authorized capacity at Penn-York's East Independence facility must be converted from top gas to base gas because of the inability to turn more than 2,200,000 Mcf of top gas during each storage year. Applicants further state that an additional 1,400,000 Mcf of base gas would be required at the West Independence/North Beech Hill and South Beech Hill fields in order to turn, respectively, 12,200,000 Mcf and 5,000,000 Mcf of top gas annually. Penn-York proposes to acquire such 2,400,000 Mcf of gas at the lowest net delivered costs which is reasonably available when required for injection.

Applicants also state that the eleven new injection/withdrawal wells and the conversion of four existing observation wells is required to improve deliverability and to achieve optimum top gas capacity in the reservoir. Applicants further state that the additional 2,750 horsepower compressor unit would be added to the existing Beech Hill compressor station in order to afford greater flexibility and security in operations, and the new pipeline connection between the Independence and Beech Hill facilities would extend such flexibility and security to the Independence operations.

The following chart summarizes the total volumes by field and the relationship between top and base gas as it currently exists and as proposed herein:

	Top gas existing	Base gas existing	Total existing
E. Independence	3.2	2.9	6.1
W. Independence	6.2	5.0	13.2
Beech Hill	12.0	5.8	17.8
Total	23.4	13.7	37.1

	Top gas revised	Base gas revised	Total revised
E. Independence	2.2	3.9	6.1
W. Independence-N. Beech Hill	12.2	8.3	20.5
S. Beech Hill	5.0	3.9	8.9
Total	19.4	16.1	35.5

National requests permanent certificate authorization to continue rendering firm long-term storage service to Penn-York in an annual storage volume of 5,100,000 Mcf. Applicants state that Penn-York requires National's storage capacity to supplement Penn-York's own capacity in serving its customers.

National also requests permanent certificate authorization to render, on a firm long-term basis, up to 35,845 Mcf peaking delivery and 2,663,000 Mcf associated gas banking service to Penn-York, which Applicants indicate would enable Penn-York to meet its proposed firm contractual commitments for 110-day and 150-day services. Based on Penn-York's existing facilities, the construction of the additional facilities described herein and the availability of 5.1 Bcf of storage from National, Applicants state that Penn-York's maximum available deliverability on the withdrawal cycle would be approximately 175,690 Mcf per day. Applicants further state that contractual commitments require Penn-York to provide a maximum of 211,535 Mcf per day deliverability under National's peaking service to cure Penn-York's shortfall in available deliverability. Applicants also indicate that the proposed peaking deliverability service incorporates a gas banking feature, enabling Penn-York to deliver up to 2,663,000 Mcf of credit quantities of gas to National and to receive up to 2,639,000 Mcf of advanced quantities from National.

In addition, National requests permanent certificate authorization to render to Penn-York up to 3,880,000 Mcf of standby delayed exchange service on a best-efforts basis. It is stated that such service would provide added assurance of Penn-York's reliable storage injections and withdrawals for its customers. National would charge Penn-York 61.69 cents per Mcf of receipt volumes delivered by Penn-York and 61.69 cents per Mcf to the extent that loaned volumes delivered by National exceed receipt volumes delivered within the same storage year. National states that it currently has sufficient capacity to render supplemental storage, standby exchange, peaking and associated banking services to Penn-York and hence no new facilities are required.

National further requests permanent certificate authorization for the transportation service it has been providing, under various temporary authorizations, for Delmarva, Elizabethtown, Penn Fuel, Transco and UGI in conjunction with storage service provided by Penn-York to such customers. Applicants state that National would continue to render such transportation in the quantities and under the terms and conditions applicable to existing transportation service except that (a) Delmarva's maximum daily volume would be reduced from 6,818 Mcf to 6,330 Mcf, (b) the maximum daily volume for Penn Fuel would be reduced from 7,727 Mcf to 6,956 Mcf and (c) the maximum daily injection volume for UGI would be reduced from 26,667 Mcf to 18,004 Mcf and the maximum daily withdrawal volume would be reduced from 36,664 Mcf to 32,735 Mcf, each consistent with the reduced volume and applicable class of corresponding storage service to be provided by Penn-York. In addition, it is stated that an unused delivery point at Transco's interconnection with National would be omitted from Penn Fuel's transportation.

Applicants further seek miscellaneous certificate and abandonment authorizations. It is stated that the 5,400,000 Mcf of storage service provided by National for Penn-York under temporary authorization is no longer necessary in view of both the 5,100,000 Mcf of storage service and also the 3,880,000 Mcf of standby exchange service to be provided as described above. However, National requests a permanent certificate for the period during which it provided such service under National's Rate Schedule X-37 should be cancelled as no such service is foreseen. It is further asserted that abandonment of the exchange service performed between National and Penn-York pursuant to National's Rate Schedule X-33 and Penn-York's Rate Schedule X-1 is appropriate because the exchange has been wholly performed and completed.

Comment date: December 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Northwest Central Pipeline Corporation

[Docket No. CP86-66-000]

Take notice that on October 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-66-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace and relocate the Smith Center town border setting and appurtenant facilities in Smith County, Kansas, under the certificate issued Northwest Central in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that the existing town border setting is obsolete and located within 100 yards of a newly constructed high school. Northwest Central proposes to relocate the setting to an existing regulator site approximately one-quarter mile north and east. It is said that the current volume of deliveries through the facilities is 164,250 Mcf annually with a peak day requirement of 1,700 Mcf. It is indicated that no increase in deliveries through the new facilities is anticipated. The cost to reclaim is stated to be $2,140 with an estimated salvage value of $980. The estimated cost of construction is stated to be $39,450, which would be paid from treasury cash.

Northwest Central states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: January 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gulf Transmission Company

[Docket No. CP85-858-000]

Take notice that on September 5, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-858-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon fourteen wellhead measurement stations, all as more fully set forth in the appendix hereto and in the application which is on file with the Commission and open to public inspection.

Applicant states that the facilities proposed to be abandoned were required for measurement and connection of gas purchased by Applicant's affiliate, Columbia Gas Transmission Corporation, from various wells in various areas. Applicant states that service from such wells has ceased and abandonment of these facilities would not result in the termination of service or detriment to any of Applicant's customers. Applicant estimates that the cost of removal of these facilities would be $76,100 with a salvage value of $50,600.

Meter station	Field	Parish	Producer
503	Chalkley	Cameron	Texas Eastern (successor in interest to Skyline).
540	North Erath	Vermilion	Amoco Production, Getty Oil, M.P.S. Production, Mosgacher, Phillips Petroleum.
542	Erath	Vermilion	Texaco, Phillips Petroleum, Getty Oil, Exxon.
550	West Gueydan	Vermilion	Exxon, Edgewater Oil.
552	Erath	Vermilion	Texaco, Phillips Petroleum, Getty Oil, Exxon.
561	Florence	Vermilion	Amoco Production.
574	Valentine	Lafourche	Geological Geophysical Association.
583	Parc Perdue	Vermilion	Texaco.
588	Thornwell	Jefferson Davis	Windsor, Edgewater Rep. National Bank.
589	Valentine	Lafourche	Texaco.
591	North Erath	Vermilion	Getty Oil, Amoco Production, Mosbacher.
597	St. Paul Bayou Area	Terrebonne	WWF Oil.
612	North Chalkley	Calcasieu	Imperial American.
617	Delhi Area	Richland	Sun Oil.

Comment date: December 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Sea Robin Pipeline Company

[Docket No. CP72-118-004]

Take notice that on October 24, 1985, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston Texas 77001, filed in Docket No. CP72-118-004 a petition to amend the order issued February 7, 1974, in Docket No. CP72-118, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of Tennessee Gas Pipeline Company, a Division of Tenneco Inc.'s (Tennessee), gas from production in South Marsh Island Blocks 141, 144 and 160 (SMI 141, SMI 144, SMI 160), offshore Louisiana, and to establish an additional delivery point for the delivery of such gas to Sea Robin, pursuant to an amendment to a gas transportation agreement between the parties, dated December 7, 1984, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Sea Robin states that in accordance with the December 7, 1984, amendment, Tennessee would deliver gas to Sea Robin at the delivery points and in such quantities as stated below.

Production areas	Delivery points	Quantities (1,000 ft³ per day)
1. EC 261, offshore Louisiana.	Producers' platform, EC 261.	2,500
2. SMI 235, offshore Louisiana.	Producers' platform, SMI 235.	500
3. SMI 160, offshore Louisiana.	Sea Robin's existing system SMI 127.	3,000
4. SMI 141 and 144, offshore Louisiana.	Sea Robin's existing system SMI 127.	9,000
Total maximum daily quantity.		15,000

Sea Robin states that it would transport and redeliver equivalent volumes of gas received to Columbia Gulf Transmission Company, for the account of Tennessee, at the terminus of Sea Robin's pipeline located near Erath, Louisiana. It is explained that for each Mcf of gas redelivered by Sea Robin for Tennessee's account, Sea Robin would charge Tennessee the monthly demand charge plus the commodity charge as set forth on Twentieth Revised Sheet No. 4-A of Sea Robin's FERC Gas Tariff, Original Volume No. 1. It is stated that effective July 1, 1985, the demand charge is $3.11 per Mcf and the commodity charge is 1.30 cents per Mcf. Further, Sea Robin states that in addition to firm contract demand volumes, gas accepted by Sea Robin in excess of such firm volumes would be determined by Sea Robin to be firm transportation contract overrun volumes and that for each Mcf in excess of the countract demand, Sea Robin would charge Tennessee the overrun charge as set forth in the Twentieth Revised Sheet No. 4-A of Sea Robin's FERC Gas Tariff, Original Volume No. 1. Sea Robin states that effective July 1, 1985, such excess charge is 10.22 cents per Mcf.

Sea Robin states that it would utilize existing facilities to implement the proposed transportation service and that no construction of facilities would be required by Sea Robin.

Comment date: December 9, 1985, in accordance with the first subparagraph

of Standard Paragraph F at the end of this notice.

10. South Georgia Natural Gas Company

[Docket No. CP86-99-000]

Take notice that on October 30, 1985, South Georgia Natural Gas Company (South Georgia), Post Office Box 1279, Thomasville, Georgia 31799-1279, filed in Docket No. CP86-99-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain facilities by sale to Floridin Company (Floridin), an existing direct sale customer, under the authorization issued in Docket No. CP82-548-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

South Georgia proposes to abandon by sale to Floridin a portion of the pipeline and related facilities through which it presently delivers gas to Floridin, near Quincy, Florida. Specifically, South Georgia proposes to abandon approximately 103 feet of 6-inch pipeline and approximately 71 feet of 4.5-inch pipeline and related valves and piping in Gadsden County, Florida. South Georgia states that the pipeline facilities proposed to be abandoned by sale to Floridin are located on Floridin's property and that Floridin has increased its operational activities in the area of its plant which has resulted in congestion which presents greater operational and maintenance problems for South Georgia. South Georgia states further that the proposed abandonment would not affect the service by South Georgia to Floridin under their April 1, 1975, direct sale agreement, as amended.

Comment date: January 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP86-103-000]

Take notice that on October 31, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-103-000 an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for the ultimate delivery of natural gas to an end-user under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to construct and operate a 1-inch sales tap on United's 8-inch Jackson lateral in Rankin County, Mississippi, United States that the sales tap would be used to sell and deliver up to 2,920 Mcf of natural gas annually to Mississippi Valley Gas Company, a local distribution company, for resale to the Super Saver Store in Bolton, Mississippi, for commercial use.

Comment date: January 3, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 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 filing 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 is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28126 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-175-000 et al.]

Northwest Central Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission.

1. Northwest Central Pipeline Corporation

[Docket No. CP86-175-000]

November 20, 1985.

Take notice that on November 1, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-175-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim certain measuring, regulating and appurtenant facilities serving Southern States Oil Company (Southern States), in Rice County, Kansas, and to abandon the transportation of gas through these facilities under the authorization issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that Southern States has requested that the facilities be reclaimed since they no longer have a need for gas at their waterflood operation. It is estimated that the cost to reclaim these facilities is $1,400 and that the estimated salvage value is $0.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP86-113-000]

November 21, 1985.

Take notice that on October 31, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No.

CP86–113–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate additional points of delivery for an existing wholesale customer under the certificate issued to Columbia in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate certain facilities necessary to provide two additional points of delivery in Upshur, West Virginia, to an existing wholesale customer, Mountaineer Gas Company (Mountaineer). Mountaineer, it is said, received authorization from its State regulatory agency to attach or provide service to new customers. Columbia states that the additional volumes of gas to be provided through the proposed new points of delivery are within its currently authorized level of sales and that deliveries of such volumes would not affect the peak day an annual deliveries to which Mountaineer is entitled.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP86–115–000]

November 21, 1985.

Take notice that on October 31, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S. E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027 (Applicants), filed in Docket No. CP86–115–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of SCM Corporation (SCM) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicants propose to transport up to 375 million Btu equivalent of natural gas per day on behalf of SCM through the later of any extension of the existing authority to transport under Section 157.209 of the Commission Regulations, and/or in the event Columbia files a statement of notification pursuant to new § 284.223(g) and thereafter files for a blanket certificate under § 284.221 of the Commission's Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1–000, up to the end of the term of the transportation agreement. Columbia Gulf, it is said would receive the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to UGI Corporation (UGI) for ultimate delivery to SCM at its plants in Reading, Pennsylvania.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the UGI's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the UGI's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP85–903–000]

November 21, 1985.

Take notice that on September 24, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP85–903–000 a request, as supplemented November 5, 1985, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 C.F.R. § 157.205) for authorization to transport natural gas on behalf of H.H. Robertson Company (H.H. Robertson) under their certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in their request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 747 million Btu equivalent of natural gas per day on behalf of H.H. Robertson through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or the period of time established by the Commission in the final rule issued in Docket No. RM85–1, up to the end of the term of the transportation agreement. Columbia Gulf would receive the gas at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Columbia Gas of Pennsylvania, Inc. (CPA), for ultimate delivery to H.H. Robertson.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—16.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the CPA's total daily entitlements. However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt

points other than Leach, Kentucky, if the volumes are in excess of the CPA's total daily entitlements. Columbia Transmission further states it would retrain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP86-84-000]

November 21, 1985.

Take notice that on October 29, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86-84-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PPG Industries, Inc. (PPG), under certificate authority granted in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 8 billion Btu of natural gas per day which PPG purchases from Kepco, Inc. It is explained that Columbia would receive the gas from Kepco, Inc., at certain points located in Floyd and Martin Counties, Kentucky, and would redeliver the gas to National Fuel Gas Distribution Corporation (National Fuel), the distribution company serving PPG, near Meadville, Pennsylvania. The gas would be used as boiler fuel and process gas in PPG's Meadville, Pennsylvania, plant. Columbia proposes to provide the transportation service through the later of any extension of its existing authority to transport under § 157.209 of the Commission Regulations, and/or in the event Columbia files a statement of notification pursuant to new § 284.223(g) and thereafter files for a blanket certificate under § 284.221, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85-1-000, up to the end of the term of the related transportation agreeement.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within National Fuel's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the National Fuel's TDE's. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company

[Docket No. CP86-151-000]

November 21, 1985.

Take notice that on November 1, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027 (Applicants), filed in Docket No. CP86-151-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Chemetals, Incorporated (Chemetals) under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 1.4 billion Btu equivalent of natural gas per day on behalf of Chemetals pursuant to a gas transportation agreement (agreement) dated August 20, 1985, through the later of any extension of the existing authority to transport under § 157.209 of the Commission's Regulations, and/or in the event Columbia and Columbia Gulf file a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and thereafter file for a blanket certificate under § 284.221 of the Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85-1-000, up to the end of the term of the transportation agreement, which is one year from the date of the agreement and from month to month thereafter.

It is stated that Columbia Gulf would receive the gas from United Gas Pipe Line Company at existing points of interconnection in Erath and Olla, Louisiana. Columbia Gulf would redeliver the gas to Columbia, it is indicated, for further delivery to Baltimore Gas & Electric Company (BG&E), the distributor serving Chemetals.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas with 1.69 percent of the total quality of gas delivered into its system retained for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent with 1.50 percent retainage; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent with 1.50 percent retainage; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent with 0.75 percent retainage.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent; and gas received from Columbia Gulf at other receipt points—29.93 cents per dt equivalent. Columbia states that, for gas in excess of BG&E's total daily entitlement, it would charge 32.50 cents per dt equivalent for gas received from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from Columbia Gulf at other receipt points. Columbia further states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia indicates that it would collect the GRI surcharge for all quantities transported under the agreement.

The proposed transportation service was commenced on September 13, 1985, pursuant to § 157.209(e)(2) of the Commission's Regulations, it is explained.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP86-81-000]

November 21, 1985.

Take notice that on October 28, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP86-81-000 a request pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Equitable Gas-Energy Company (Gas-Energy) under the certificate issued in Docket No. CP83–508–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Equitable proposes to transport up to 2,000 it is equivalent of natural gas per day on behalf of Gas-Energy. Equitable proposes to render the transportation service through October 1, 1986, or the extended term of the blanket certificate program whichever is later.

It is stated that Gas-Energy has entered into a gas sales agreement to purchase natural gas from J&J Enterprises, Inc. (J&J), and that such gas was not committed or dedicated to interstate commerce on November 8, 1978. It is further stated that Equitable would receive such gas at existing delivery points from J&J in Armstrong County, Pennsylvania, and Ritchie, Doddridge, Taylor and Marion Counties, West Virginia. Equitable would redeliver such gas to Gas-Energy's plant in Pittsburgh, Pennsylvania, it is explained. Equitable states that should it add receipt points for additional sources of gas, such additional sources of gas would only be obtained to constitute the quantities to be transported hereunder and not to increase those quantities.

Equitable states that it would charge 25.0 cents per Mcf which charge is reflected in Equitable's Rate Schedule TS–1, effective August 30, 1985.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

K N Energy, Inc.

[Docket No. CP86–158–000]

November 21, 1985.

Take notice that on November 1, 1985, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–158–000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157.205(b)) for authorization to construct and operate sales taps for the delivery of gas to end users under the certificate issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct new sales taps in order to sell natural gas to the following individuals:

Name	Location	Quantities (Mcf)		End-use
		Peak day	Annual	
W. Ostrom	Buffalo Co., NE	2	120	Domestic.
H. White	Scott Co., KS	10	350	Irrigation.

Applicant asserts that the sales to each customer would be made at the appropriate rate as provided by state authorities. The total cost to construct the proposed facilities would be $1,700.00, it is estimated.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP86–75–000]

November 21, 1985.

Take notice that on October 28, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86–75–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to deliver to Mississippi Valley Gas Company (Mississippi Valley) gas for resale in its Jackson, Mississippi, area, under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable it to sell and deliver to Mississippi Valley, the local distributor, an estimated daily average of 685 Mcf of gas per day or 1,104 Mcf per peak day for resale for residential use in the Jackson, Rankin County, Mississippi, area. United would make the sale to Mississippi Valley under United's Rate Schedule DG–N pursuant to an effective service agreement dated February 7, 1980. United states the proposed sale is within Mississippi Valley's authorized maximum daily quantity.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28447 Filed 11–27–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–53–000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

November 20, 1985.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP86–102–000]

Take notice that on October 31, 1985, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86–102–000 an application pursuant to § 157.205 of the Regulations (18 CFR Part 205) for authorization to install a 1-inch sales tap on United's 6-inch Fort Polk Line in West Vernon Parish, Louisiana, under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable United to sell and deliver to Entex, Inc., the local distributor, an estimated daily average of 50 Mcf of gas per day for resale to the Forth Polk Military Hospital located in Entex's DeRidder, Louisiana, service area, under United's Rate Schedule DG–S. It is asserted that the peak volumes through the subject sales tap would be 81 Mcf of gas per day and the annual volumes of 18,250 Mcf. United asserts that it has sufficient capacity to render the proposed service without detriment or disadvantage to United's other customers.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP86–104–000]

Take notice that on October 31, 1985, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86–104–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act

[18 CFR 157.205] for authorization to construct and operate a sales tap for delivery of gas to Entex, Inc. (Entex), for resale under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct a 1-inch sales tap on its 20-inch Cities Service pipeline in Calcasieu Parish, Louisiana. It is stated that the tap would permit United to sell an average of 2 Mcf of gas per day to Entex for resale to the Palvest Inc. industrial Park for commercial use.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP86–156–000]

Take notice that on November 1, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–156–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign volumes of gas to be delivered to an existing distributor customer, Madison Gas & Electric (MG&E), and incident thereto to accomplish the reassignment, rebuild an existing meter station, under the certificate issue in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as Commission and open to public inspection.

ANR states it has been requested by MG&E to reassign certificated volumes of gas at existing delivery points. ANR states this does not effect a change in annual or daily contract quantities. ANR would continue to deliver to MG&E at four locations in Wisconsin: South Madison, Madison, North Madison and Windsor. ANR explains that MG&E is proposing the construction of its own facilities into ANR's Windsor gas station to provide an alternative feed to MG&E's North Madison system. ANR estimates it would cost approximately $536,093 to rebuild its Windsor gate station which would involve installing three 8-inch turbine meters and constructing 1,340 feet of 6-inch pipe and appurtenant facilities.

The present and proposed quantities of natural gas to be delivered at each of the points and the end-use of the gas are as follows:

Delivery point	Current MDQ (dt)	Proposed MDQ (dt)	End-use
South Madison	75,000	70,000	General System Supply.[1]
Madison	75,000	70,000	Do.
North Madison	75,000	70,000	Do.
Windsor Gate	600	10,600	Do.

[1] General system supply includes residential, industrial and commercial loads.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP86–33–000]

Take notice that on October 11, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86–33–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user natural gas on behalf of Anchor Hocking Corporation (Anchor Hocking), under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1 billion Btu equivalent of natural gas per day for Anchor Hocking through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations and/or such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1, up to the end of the term specified in the August 13, 1985, transportation agreement, which has a term of one year and month to month thereafter from the effective date of such transportation agreement. Columbia states that the gas to be transported would be purchased from Ohio L&M Company, Inc. (Ohio L&M), and would be used to fire ovens and for space heating in Anchor Hocking's Connellsville, Pennsylvania, plant.

Columbia states that Anchor Hocking has made arrangements to purchase this gas from Ohio L&M. Columbia further states that Gas Transport, Inc., would transport the gas from Ohio L&M and redeliver to Columbia at Gravel bank, Washington County, Ohio. Columbia would redeliver the gas to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Anchor Hocking, near Connellsville, Pennsylvania.

Columbia asserts that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: Gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within the CPA's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per MMBtu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of CPA's TDE's. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

It is explained that the volumes to be transported pursuant to the August 13, 1985, gas transportation agreement are 1 billion Btu for peak day, 465 million Btu for average day and 171 billion Btu on an annual basis.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.;

[Docket No. CP86–69–000]

Take notice that on October 25, 1985, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP86–69–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR § 157.205) for authorization to transport natural gas on behalf of LTV Steel Company (LTV) under the certificates issued in Docket Nos. CP86–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas and Columbia Gulf propose to transport up to 3,545 million MBtu equivalent of natural gas per day on behalf of LTV through the later of any extension of the existing authority to transport natural gas under § 157.209 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.209), and/or in the event Columbia Gas files a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and thereafter files for a blanket certificate under § 284.221 of the Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1–000, up to the end of the term of the transportation agreement, dated July

1, 1985. It is stated that the transportation agreement would remain in effect for a term of one year from July 1, 1985, and from month to month thereafter.

It is further stated that Monterey Pipeline Company would transport and redeliver the natural gas to Comumbia Gulf at existing points of receipt in Louisiana which in turn would transport and redeliver the natural gas to Comumbia Gas. Columbia Gas would then transport and redeliver the natural gas to Columbia Gas of Pennsylvania, Inc. (CPA) for ultimate delivery to LTV for use as boiler fuel and process gas in its plant at Aliquippa, Pennsylvania.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of natural gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of natural gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of natural gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of naturala gas and retain 0.75 percent.

Columbia Gas states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: natural gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and natural gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the CPA's total daily entitlements (TDE). However, Columbia Gas states it would charge 32.50 cents per dt equivalent for natural gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for natural gas received from receipt ponts other than Leach, Kentucky, if the volumes are in excess of the CPA's TDE's. Columbia Gas further states it would retain 2.43 percent of the total quantity of natural gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gas Transmission Corporation

[Docket No. CP86–70–000]

Take notice that on October 25, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 24314, filed in Docket No. CP86–70–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of U.S.S. Chemicals, Division of U.S. Steel Corporation (U.S.S. Chemicals) under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Columbia would transport up to 3 billion equivalent of natural gas per day for U.S.S. Chemicals through the later of any extension of the existing authority to transport under § 157.209 of the Commission's Regulations, and/or in the event Columbia files a statement of notification pursuant to new § 284.223(g) of the Commission's Regulations and thereafter files for a blanket certificate under § 284.221 of the Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1–000, up to the end of the term of the transportation agreement. Columbia further states that the gas to be transported would be purchased from Yankee Resources, Inc. (Yankee), and would be used as boiler fuel and process gas in U.S.S. Chemicals' Neville Island, Pennsylvania, plant.

It is indicated that U.S.S. Chemicals has made arrangement to purchase this gas from Yankee. Columbia states that it would receive the gas from Yankee and redeliver the gas to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving U.S.S. Chemicals, near Neville Island, Pennsylvania.

In addition, Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within CPA's total daily entitlements (TDE). However, Columbia Transmission states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the CPA's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.

[Docket No. CP86–73–000]

Take notice that on October 25, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, (Applicants) filed in Docket No. CP86–73–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hammermill Paper Company (Shipper) under the certificates issued in Docket Nos. CP86–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 6,180 million Btu of natural gas per day and up to 1,604,250 million Btu of natural gas per year on behalf of Shipper. It is stated that Shipper would purchase the natural gas from EnTrade Corporation, which would arrange for the volumes of gas to be initially delivered to and transported by United Gas Pipe Line Company (United). It is explained that United would then deliver Shipper's natural gas at existing interconnections with Columbia Gulf, which in turn would deliver thermally equivalent quantities of natural gas to Columbia Gas at Leach, Kentucky, and at other undesignated delivery points. Applicants state that Columbia Gas would deliver these volumes of natural gas to National Fuel Gas Supply Corporation (Natural Fuel) at existing interconnections and that National Fuel, pursuant to the September 10, 1985, transportation agreement would then transport and deliver Shipper's gas to National Fuel Gas Distribution Corporation, the distributor serving Shipper's plant in Erie, Pennsylvania.

Columbia Gulf proposes to charge one of the rates set forth in its Rate Schedule T–2 on file with the Commission. It is stated that the applicable charges under this rate schedule would be as follows: Offshore to Kentucky—23.92 cents per

dt equivalent and 1.69 percent retainage for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent and 1.5 percent retainage; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent and 1.5 percent retainage; and Corinth, Mississippi to Kentucky—6.38 cents per dt equivalent and 0.75 percent retainage. Columbia Gas states that it would charge one of the rates in its Rate Schedule TS–1. It is explained that the applicable charges under this rate schedule would be as follows: From Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent; from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided that volumes are within National Fuel's total daily entitlements (TDE). If volumes transported are in excess of National Fuel's TDE then Columbia Gas states that it would charge 32.50 cents per dt equivalent for the natural gas it receives from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for the natural gas received from receipt points other than Leach, Kentucky. In additional, Columbia Gas asserts that it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported.

Applicants also request flexible authority to add or delete points as to sources of gas and/or receipt/delivery points. Applicants assert the flexible authority would be on behalf or Shipper at the same end-use location and under the same terms and conditions as would be authorized herein. Applicants would file reports providing certain information with regard to the addition or deletion of receipt and/or delivery points as further detailed in the request and any additional sources of gas would be obtained to constitute the transportation quantities herein and not to increase those quantities, it is stated.

Shipper would utilize the quantities of natural gas as boiler fuel and process gas, it is asserted. Applicants further state that they would not construct or add to existing facilities to provide the transportaton services. Applicants propose to perform the service through the later or any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or in the event Columbia Gas files a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and the Commission Order No. 436 issued October 9, 1985. It is noted that the underlying transportation agreement between Applicants and Shipper has a term expiring on September 10, 1986, to be continued month to month thereafter. Service was commenced on September 10, 1985, pursuant to § 157.209(a)(2), it was reported.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.

[Docket No. CP86–80–000]

Take notice that on October 25, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, (Applicants) filed in Docket No. CP86–80–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Stauffer Chemical Company (Stauffer Chemical) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in their request on file with the Commission and open to pulic inspection.

Applicants propose to transport up to 1.8 billion Btu equivalent of natural gas per day on behalf of Stauffer Chemical through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or in the event Columbia Transmission files a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and thereafter files for a blanket certificate under § 284.221 of the Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85–1–000, up to the end of the term of the transportation agreement which is one year and month to month thereafter. It is stated that Columbia Gulf would receive the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Mountaineer Gas Company (MGC) for ultimate delivery to Stauffer Chemical.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the MGC's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the MGC's TDE's. Columbia Transmission further states it would retain 2.43 percent ot the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R & D Funding unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP86–65–000]

Take notice that on October 24, 1985, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84110, filed in Docket No. CP86–65–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate facilities necessary to establish a new point for the sale and delivery of natural gas to Washington Natural Gas Company (Washington Natural) and to reallocate natural gas service between sales delivery points under the certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a new sales delivery point, to be known as the Lake Francis meter station, for Washington Natural in King County, Washington. Applicant states that the new delivery point would be used to provide natural gas service to existing residential customers in Lake Francis, Washington, who are currently

being served by propane through existing distribution facilities. The estimated cost of the facilities is $73,000, it is explained.

Washington Natural has requested a reassignment of natural gas currently provided under Applicant's ODL–1 Rate Schedule to provide service to the proposed Lake Francis meter station, it is indicated. It is stated that Washington Natural has requested that Applicant transfer 19,200 therms of its maximum daily delivery obligation from the existing North Seattle delivery point to the proposed Lake Francis meter station.

Comment date: January 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Southern Natural Gas Company

[Docket No. CP86–98–000]

Take notice that on October 30, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–98–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain regulating facilities and to change the operation of an existing delivery point by changing the maximum delivery pressure as reflected in an amended contract, under the certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to Atlanta Gas Light Company (Atlanta) at the Guyton-Springfield delivery point in Effingham County, Georgia, at a contract delivery pressure of 250 psig. It is explained that in order for Atlanta to meet the peak hour demands expected this winter at the aforementioned delivery point, Atlanta has requested and Southern has agreed to change the delivery pressure at the Guyton-Springfield delivery point from 250 psig to 400 psig on a when-available basis, but not less than 250 psig, pursuant to Southern's FERC Gas Tariff section 3 of the General Terms and Conditions which allows customers to request changes in delivery pressure. As a result of the increased delivery pressure, Southern further states that the 2-inch regulator and necessary auxiliaries which cut the station pressure from 400 psig to the current pressure are no longer necessary to the operation of the subject delivery point. Said regulating facilities are obsolete and Southern States that they are difficult and expensive to maintain and, therefore, Southern proposes to abandon the aforementioned regulating facilities.

Southern states that the proposed abandonment and increased delivery pressure would not result in any termination of service, and that said change would not affect the maximum daily amount of gas Southern would be obligated to deliver to Atlanta. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries at the revised delivery pressure without detriment or disadvantage to its other customers; (2) deliveries at the increased delivery pressure would have no significant impact on Southern's peak day and annual deliveries; and (3) the abandonment and change are not prohibited by any existing tariff of Southern.

Southern also proposes to change the name of the delivery point, formerly disignated Guyton-Springfield, to Springfield-Guyton.

Comment date: January 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

11. Williston Basin Interstate Pipeline Company

[Docket No. CP86–43–000]

Take notice that on October 15, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86–43–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, through existing facilities, for Sugar Creek Resources, Inc. (Sugar Creek), on behalf of Koch Hydrocarbon Company (Koch), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Williston Basin proposes to continue transporting up to 250 Mcf of gas per day for Sugar Creek on behalf of Koch. It is explained that Koch uses the gas to enhance oil recovery in Harding County, South Dakota. Williston Basin states that the transportation service began on September 4, 1985, pursuant to its blanket authorization issued in CP83–1–000 and that the service would continue to be provided under Service Class I, Rate Option B of Williston Basin's Rate Schedule T–4. Williston Basin states that the underlying service agreement stipulates that the service would terminate on September 3, 1987, subject to final balancing, two years after its commencement.

Comment date: December 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

12. Texas Eastern Transmission Corporation

[Docket No. CP86–46–000]

Take notice that on October 16, 1985, Texas Eastern Transmission Corporation (Applicant), One Houston Center, Houston, Texas 77010, filed in Docket No. CP86–46–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for The Brooklyn Union Gas Company (Brooklyn Union) and New Jersey Natural Gas Company (New Jersey) and to construct and operate additional pipeline facilities required to render such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization:

(1) To render for Brooklyn Union a firm, long-term transportation service consisting of the receipt, transportation, and delivery of natural gas up to a maximum daily transportation quantity (MAXDTQ) of 12,161 dt equivalent of natural gas and such additional quantities on an interruptible basis as mutually agreed upon pursuant to a precedent agreement dated September 24, 1985, and a *pro forma* gas transportation agreement.

(2) To render for New Jersey a firm, long-term transportation service consisting of the receipt, transportation, and delivery of natural gas up to a MAXDTQ of 9,498 dt equivalent of natural gas and such additional quantities on an interruptible basis as mutually agreed upon pursuant to a precedent agreement dated September 24, 1985, and a *pro forma* gas transportation agreement.

(3) To construct and operate the following facilities required to render such service:

(a) Approximately 5.75 miles of 24-inch pipeline loop, 3.0 miles of 36-inch pipeline loop, and 2.25 miles of 42-inch pipeline loop at six locations on Applicant's existing system located in various counties in Pennsylvania and New Jersey.

(b) Expansion of facilities at Applicant's meter station No. 953 located in Middlesex County, New Jersey.

Applicant states that the estimated total capital cost of the proposed facilities is $11,568,000 and that it would initially finance the cost of constructing the proposed facilities through revolving credit arrangements, short-term loans, and funds on hand.

Applicant states that it was requested by Brooklyn Union and New Jersey to provide a firm transportation service in order to provide delivery of natural gas that Brooklyn Union and New Jersey would purchase from Consolidated Gas Transmission Corporation (Consolidated).

Applicant proposes to receive from Consolidated for the accounts of Brooklyn Union and New Jersey the stated quantities of natural gas at the existing point of interconnection between Applicant and Consolidated located at Applicant's meter station No. 931 in Clinton County, Pennsylvania. Applicant further states that it would transport and redeliver equivalent quantities to

(1) Brooklyn Union at Applicant's meter station No. 058 in Richmond County, New York; and

(2) New Jersey at Applicant's meter station No. 953 in Middlesex County, New Jersey.

Applicant also states that pursuant to the Brooklyn Union agreement and the New Jersey agreement, service would commence on November 1, 1986, and continue for a primary term terminating on and including October 31, 2009.

Applicant states that based upon the estimated annual cost of service for the facilities proposed, Applicant estimates it would charge Brooklyn Union and New Jersey a monthly demand charge of $11.9890 per dt equivalent and an excess charge of $.3942 per dt equivalent. Such rates would be adjusted in the event the actual cost of the facilities varies from the estimated cost of construction, it is explained.

Comment date: December 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.

[Docket No. CP78-430-008]

Take notice that on October 29, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, (Petitioners) filed in Docket No. CP78-430-008 a joint petition pursuant to section 7(c) of the Natural Gas Act to amend the certificate issued September 25, 1978, in Docket No. CP78-430, as amended January 4, 1980, and August 21, 1980, authorizing the exchange and transportation of natural gas between Transco and Texas Eastern, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that the order issued September 25, 1978, as amended, authorized Texas Eastern and Transco to exchange up to 17,000 Mcf of natural gas per day, produced onshore Louisiana. Petitioners aver that the gas exchange agreement, dated May 23, 1978, as amended September 26, 1979, and June 2, 1980, which forms the basis for the September 25, 1978, certificate, as amended, provides for a gas-for-gas exchange with no monetary compensation to either party.

Petitioners state that as part of such exchange 17,000 Mcf of gas per day are currently delivered to Transco by or for the account of Texas Eastern at the point of connection of Transco's system to the outlet of Conoco Inc.'s Acadia plant, Acadia Parish, Louisiana. Similarly, it is explained, 10,000 Mcf of gas per day and 7,000 Mcf of gas per day are delivered to Texas Eastern by or for the account of Transco at the point of connection of Texas Eastern's system to the outlet of Gulf Oil Corporation's Venice gas processing plant, Plaquemines Parish, Louisiana, and at a point 29 feet and 5 inches from where Texas Eastern's 10-inch Longstreet line interconnects with its 24-inch Provident City-to-Castor line at Mile Post 256.3, DeSoto Parish, Louisiana, respectively. Petitioners explain that Texas Eastern and Transco deliver equivalent quantities of gas to or for the account of the other at the point of connection between their systems near Ragley, Louisiana.

Petitioners state that by amendments to the agreement, dated March 19, 1982, November 18, 1982, March 20, 1984, and June 28, 1984, a new Transco point of receipt from Texas Eastern and a new Transco point of delivery to Texas Eastern were added to such exchange arrangement. Petitioners explain that with regard to the additional point of receipt, up to 3,000 Mcf of gas per day would be delivered to Transco by or for the account of Texas Eastern at the point of connection of the pipeline facilities near the Temple No. 1 well in the Spider Field, DeSoto Parish, Louisiana.

Petitioners state that with regard to the additional point of delivery, Transco would deliver up to 3,000 Mcf of gas per day to Texas Eastern at a point 29 feet and 5 inches from where Texas Eastern's 10-inch Longstreet line intersects with its 24-inch Provident City-to-Castor line at Mile Post 256.3, DeSoto Parish, Louisiana. The total exchange volumes delivered and received by each party would remain at 17,000 Mcf per day.

Comment date: December 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Tennessee Gas Pipeline Company a Division of Tenneco Inc.

[Docket No. CP86-120-000]

Take notice that on October 31, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-120-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation/exchange service currently rendered by Tennessee for Southern Natural Gas Company (Southern) under authorization granted in Docket No. CP78-197, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Tennessee states that by certificate issued in Docket No. CP78-197 on March 2, 1978, the Commission authorized Tennessee, pursuant to a gas transportation and exchange agreement with Southern dated January 30, 1978, to transport gas received from Southern, up to 3,600 Mcf per day, produced from East Cameron Block 34, offshore Louisiana, and to deliver it to Columbia Gulf Transmission Company near Chalkley, Louisiana, for the account of Southern. Tennessee explains that pursuant to the agreement, which is on filed with the Commission as Tennessee's Rate Schedule T-70, Tennessee receives the gas from Southern at a point of interconnection on Tennessee's 12-inch lateral located in Section 16, Township 15 South, Range 5 West, in Cameron Parish, Louisiana. Tennessee further explains that the gas is transported to and is delivered at a point on Tennessee's 30-inch Kinder-Sabine pipeline at Tennessee's compressor station No. 823 near Kinder, Louisiana, in Jefferson Davis Parish, where the gas is exchanged for the account of Southern and subsequently redelivered at existing points of exchange in Cameron Parish, Louisiana.

By its application, Tennessee seeks Commission approval to abandon this transportation and exchange service. Tennessee advises that a new superseding transaction has commenced pursuant to the self-implementing provisions of the Commission's Regulations and was reporting in Docket No. ST85-618-000 and that Tennessee and Southern are currently preparing a

joint application requesting a certificate pursuant to section 7(c) of the Natural Gas Act for the superseding service.

Comment date: December 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

15. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP83-131-003]

Take notice that on October 1, 1985, Northern Natural Gas Company, Division of Internorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP83-131-003 a petition to amend the order issued January 20, 1984, in Docket No. CP83-131-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in the quantity of natural gas transported for Amoco Gas Company (Amoco) from one offshore platform, to transport quantities of natural gas from two additional offshore platforms, and to provide overrun service over and above the maximum daily quantities, in accordance with a March 10, 1983, gas transportation agreement, as amended, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Northern states that pursuant to the March 10, 1983, gas transportation agreement it transports up to 45,000 Mcf of gas per day on a firm basis for Amoco attributable to production in Matagorda Island area, Block 623-B (MAT 623-B), offshore Texas. It is further stated that such gas is transported by Northern through its 3.5-mile segment of 24-inch offshore pipeline which extends from MAT 623-B to an interconnection with the Seagull Shoreline System (SSS), an intrastate pipeline, in MAT 624. Northern explains that it delivers the MAT 623-B gas for Amoco's account to SSS for further transportation.

Northern indicates that the March 10, 1983, agreement has now been amended three times (March 6, 1984, November 7, 1984, and August 14, 1985). Consistent with the amended agreement Northern proposes to increase the maximum daily quantity (MDQ) transported from MAT 623-B for Amoco from 45,000 Mcf of gas per day to 61,000 Mcf per day, and to transport gas from two new supply sources, MAT 623-A and MAT 623-C. Specifically, Northern proposes to transport a MDQ of 32,000 Mcf per day from MAT 623-A and 60,000 Mcf per day from MAT 622-C. In addition Northern proposes to transport overrun quantities from all three sources on an interruptible basis. Northern proposes to charge the following rates:

Supply source	Monthly transportation charge	Overrun charge (cents per 1,000 ft³
MAT 623-B	$52,480	2.83
MAT 623-A	73,544	7.56
MAT 622-C	72,088	3.95

Comment date: December 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

16. Consolidated Gas Transmission Corporation

[Docket No. CP86-45-000]

Take notice that on October 16, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-45-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificant of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to The Brooklyn Union Gas Company (Brooklyn Union) and New Jersey Natural Gas Company (New Jersey), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to sell on a firm, long-term basis up to 12,161 dt equivalent of natural gas per day to Brooklyn Union under a gas sales agreement dated September 19, 1985, and up to 9,498 dt equivalent of natural gas per day to New Jersey, under a gas sales agreement dated July 12, 1985. Applicant proposes to begin the sales on November 1, 1985. Applicant proposes to begin the sales on November 1, 1986, and states that the sales would continue for a primary term of five years and year-to-year thereafter. Applicant proposes to serve Brooklyn Union and New Jersey under Applicant's proposed Rate Schedule CD of its FERC Gas Tariff, Original Volume No. 1.

It is stated that Brooklyn Union and New Jersey have arranged for Texas Eastern Transmission Corporation (Texas Eastern) to transport the gas to their market areas. Applicant states that it would deliver the gas to Texas Eastern at an existing point of interconnection between their facilities located in Clinton County, Pennsylvania, near Leidy Storage Pool. Applicant states that it would not be necessary for Applicant to construct any facilities to render the proposed sales.[1]

Applicant also states that the gas to be sold to Brooklyn Union and New Jersey would come from Applicant's general system supply, that is, gas available to Applicant under existing supply arrangements. Applicant states taht the proposed sales quantities are surplus to the needs of Applicant's customers throughout the primary term of this sale. Applicant states that Brooklyn Union and New Jersey would use the gas in their general system supplies to meet current and future requirements of their customers.

Applicant further states that it currently sells up to 14,721 dt equivalent of natural gas per day to Brooklyn Union and up to 10,558 dt per day to New Jersey, under Phase I of the *Boundary* proceedings, as authorized by order issued February 2, 1984, in Docket No. CP81-107-006, *et al.* Applicant states that as of November 1, 1986, its firm sales to Brooklyn Union and New Jersey with transportation by Texas Eastern would be reduced to 2,560 dt per day to Brooklyn Union and 1,060 dt per day to New Jersey, as authorized in Phase 1A of the *Boundary* proceedings by order issued June 18, 1984, in Docket No. CP83-403-001, *et al.* Applicant further states that the sales proposed herein would allow Applicant to continue to serve Brooklyn Union and New Jersey at the same level as currently authorized.

Comment date: December 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

17. Columbia Gulf Transmission Company

[Docket No. CP86-90-000]

Take notice that on October 30, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP86-90-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two 15-horsepower, skid-mounted compressor units with related pipe valves and fittings, in the South Thornwell Field, Jefferson Davis and Cameron Parishes, Lousisiana (the facilities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that these compressor units were installed to compress gas recoverable from a vapor recovery unit, which gas otherwise would not have been recovered and sold. Applicant asserts that there is no longer any more flash gas to be

[1] Texas Eastern has filed in Docket No. CP86-46-000 an application seeking Commission authorization to render firm transportation service for Brooklyn Union and New Jersey and to construct and operate the necessary pipeline looping facilities.

recovered at this field and thus no need for compression units. Consequently, Applicant seeks permission and approval to abandon the facilities.

Comment date: December 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

18. Columbia Gulf Transmission Co. Columbia Gas Transmission Corp. and Natural Gas Pipeline Company of America

[Docket No. CP80-432-005]

Take notice that on October 25, 1985, Columbia Gulf Transmission company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325-1273, and Natural Gas Pipeline Company of America (Natural), P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP80-432-005 a petition to amend the order issued March 23, 1982, in Docket No. CP80-432 pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange and redelivery of an additional source of natural gas from Vermilion Block 277, offshore Louisiana, among Columbia Gulf, Columbia Gas and Natural, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued March 23, 1982, Columbia Gulf, Columbia Gas and Natural are authorized to exchange up to 8,000 Mcf of natural gas per day.

It is explained that Natural has available to it certain quantities of natural gas attributable to Vermilion Block 277, offshore Louisiana. The Petitioners propose to include this gas in the exchange of gas authorized in Docket No. CP80-432 in accordance with an amendment dated October 4, 1984, to the gas exchange and interim transportation agreement dated June 25, 1980. No additional facilities would be required to implement the proposal.

Comment date: December 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

19. Colorado Interstate Gas Company

[Docket No. CP86-17-000]

Take notice that on October 8, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-17-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for various Shippers and authorizing the addition and deletion of delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that it has initiated transportation service pursuant to Subparts B and G of Part 284 of the Commission's Regulations on behalf of the listed Shippers and proposes to continue such service upon the grant of the authority requested in the subject proceeding:

Shipper	Part 284 Subpart	Docket No.
Mountain Fuel Resources, Inc.	G	ST84-156
Bridgeline Gas Distribution Co.	B	ST84-464
Columbia Gas Transmission Co.	G	ST80-262
K N Energy, Inc.	G	ST85-638
Cabot Transmission Corp.	B	ST84-792
West Texas Gas, Inc.	G	ST84-929
Texas Gas Transmission Corp.	G	ST81-264
United Gas Pipe Line Co.	G	ST82-411
Western Natural Gas and Transmission Corp. (On behalf of Southern Union Gas Co.).	B	ST85-1109
Northern Natural Gas Co., Division of InterNorth, Inc.	G	ST84-704

CIG further states that it and the Shippers have entered into contract amendments, which extend the term of the Shippers' contracts through October 31, 1987.[1]

Comment date: December 10, 1985 in accordance with Standard Paragraph F at the end of this notice.

20. El Paso Natural Gas Company

[Docket No. CP86-62-001]

Take notice that on October 31, 1985, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-62-001 an amendment to its pending application filed October 22, 1985, in Docket No. CP86-62-000 pursuant to section 7 of the Natural Gas Act to modify its Exhibit Z-1 in the original application so as to request limited-term authority to implement or continue additional transportation transactions with pre-granted abandonment, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

El Paso states that in its application filed in Docket No. CP86-62-000, it requested authority pursuant to section 7(c) of the Natural Gas Act to provide transportation services for 17 low priority end-users, 18 intrastate pipelines and/or local distribution companies and 3 interstate pipelines. It is further stated that in reponse to the issuance of Order No. 436 such authority was sought in order to implement or continue after October 31, 1985, those transportation services which were not already separately certificated or clearly "grandfathered." El Paso explains that it listed the 38 transportation transactions in an exhibit to the application labeled Z-1.

El Paso notes that subsequent to the filing of its application in Docket No. CP86-62-000, the Commission issued on October 24, 1985, its Final Rule; Technical Corrections in Docket No. RM85-1-000, which corrected typographical errors in Order No. 436 and made certain technical corrections. Based on the technical corrections and subsequent review, El Paso asserts that it has determined that certain additional arrangements need to be contained in El Paso's application at Docket No. CP86-62-000. El Paso further asserts that it is uncertain as to whether or not the arrangements can be continued without subjecting El Paso to the full requirements of Order No. 436 and, therefore, seeks authority to include such arrangements under the requested section 7 authorizations. Therefore, El Paso proposes to modify its Exhibit Z-1 so as to reflect the full scope of arrangements which should be contained in its application.

It is indicated that the additional transactions involve original contract services for five intrastate pipelines or local distribution companies and one interstate pipeline company as well as amended contract services for one interstate pipeline (two transactions) and two end-users. (See Appendix for additions to Exhibit Z-1. El Paso requests specific authorization under section 7 to continue or to implement the additional transactions listed in the appendix through June 30, 1986, by which time it is anticipated that current uncertainties involving implementation of Order No. 436 would have been resolved.

Comment date: December 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

[1] Pursuant to a contract amendment dated October 2, 1985, the primary term of the agreement between CIG and K N Energy, Inc., has been revised to remain in full force and effect through March 1, 1986.

Appendix

EL PASO NATURAL GAS COMPANY

[Revisions to Exhibit Z-1]

Shipper	Contract date	Docket No. And date commenced	Identity	Dollars per dth	Code	Maximum quantity (1,000 ft³ per day)
(1) Gas Marketing, Inc	10/01/85	ST 2/M, 10/01/85	TSA/T-1	$0.0717	Back Haul—NM	40,000
(2) Intratex Gas Company	10/19/83	ST84-108, 10/20/83	SPR	.0397	Short Haul	10,000
(3) Pacific Gas and Electric Co	08/12/85	ST85-1710, 08/12/85	TSA/T-1	.1775	Mainline—CA	150,000
				.2072	Displacement-Parted Rate	
(4) Valero Transmission Co	11/27/84	ST 2/M, 2/M	SPR		Cost Free Exchange	5,000
(5) Wester Transmission Co	09/03/85	ST 2/M, 2/M	TSA/T-1	.0717	Back Haul—NM	40,000
(6) Northwest Central Pipeline Corp.	07/15/85	ST 2/M, 2/M	SPR		Cost Free Exchange	25,000
(7) Power Tex Joint Venture	11/09/84	ST85-302, 12/03/84	SPR	.07055	Back Haul—TX	30,000
(8) Richardson Fuels Corp	02/27/85	ST85-118, 05/29/85	SPR	.0397	Short Haul	7,500
				.07055	Back Haul—TX	
(9) Southwest Gas Corp	09/01/85	ST 2/M, 09/01/85	TSA/T-2	.2072	Displacement-Parted Rate	72,000
				.0589	San Juan Triangle	
(10) Southwest Gas Corp	04/12/85	ST85-1064, 05/01/85	SPR		Mainline—AZ	10,000

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 notices that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing 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 is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the istant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR §157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28443 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-228-000, et al.]

John L. Boeri, Jr., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

November 22, 1985.

Take notice that the following filings have been made with the Commission.

1. John L. Boeri, Jr.

[Docket No. QF86-228-000]

On November 1, 1985, John L. Boeri, Jr. (Applicant), of R.R. 2, Woodstock, Vermont 05091 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 250 kilowatt hydroelectric facility is located at Lulls Brook in the Town of Hartland, Vermont.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Malacha Power Project, Inc.

[Docket No. QF86-185-000]

On November 1, 1985, Malacha Power Project, Inc. (Applicant), of P.O. Box 250, Fall River Mills, California 96028 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 29.9 megawatt hydroelectric facility (P. 8296) is located on the Pit River near Fall River Mills in Lassen County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

3. Michael J. Goodwin

[Docket No. QF86-258-000]

On November 1, 1985, Michael J. Goodwin (Applicant), of 1320 Blue Ridge Avenue, Rockford, Illinois 61103 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the applicant's address in Rockford, Illinois. The facility will consist of an internal combustion engine generator. Waste heat is recovered from both jacket water and exhaust gases for space and water heating. The electric power production capacity of the facility will be 25 kW. The primary energy source will be natural gas. Installation of the facility is expected to begin on March 1, 1986.

4. Michael J. Goodwin

[Docket No. QF86-259-000]

On November 1, 1985, Michael J. Goodwin (Applicant), of 1320 Blue Ridge Avenue, Rockford, Illinois 61103 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 1329 Blue Ridge Avenue, Rockford, Illinois 61103. The facility will consist of an internal combustion engine generator. Waste heat is recovered from both jacket water and exhaust gases for space and water heating. The electric power production capacity of the facility will be 100 kW. The primary energy source will be biomass in the form of wood and agricultural residues. Installation of the facility is expected to begin in October 1986.

5. Michael J. Goodwin

[Docket No. QF86-261-000]

On November 1, 1985, Michael J. Goodwin (Applicant), of 1320 Blue Ridge Avenue, Rockford, Illinois 61103 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 1329 Blue Ridge Avenue, Rockford, Illinois 61103. The facility will consist of an internal combustion engine generator. Waste heat is recovered from both jacket water and exhaust gases for space and water heating. The electric power production capacity of the facility will be 25 kW. The primary energy source will be natural gas. Installation of the facility is expected to begin in January 1987.

[Docket No. QF86-257-000]

6. Michael J. Goodwin

On November 1, 1985, Michael J. Goodwin (Applicant), of 1320 Blue Ridge Avenue, Rockford, Illinois 61103 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the applicant's address in Rockford, Illinois. The facility will consist of an internal combustion engine generator. Waste heat is recovered from both jacket water and exhaust gases for space and water heating. The electric power production capacity of the facility will be 25 kW. The primary energy source will be biomass in the form of wood and agricultural residues. Installation of the facility began on September 15, 1985.

[Docket No. QF86-275-000]

7. Minnesota Mining and Manufacturing Company

On November 1, 1985, Minnesota Mining and Manufacturing Company, (Applicant) of P.O. Box 33331, St. Paul, Minnesota 55133-3331 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Austin, Texas. The facility will consist of two dual fuel engine generators, two heat recovery boilers (HRB), a condensing steam turbine-generator, and an auxiliary boiler. The steam from the HRB and auxiliary boiler is used for the heating needs of the Austin Center/3M research and administrative facility. The net power production capacity of the facility will be 13 MW. The primary energy source will be natural gas. The facility is scheduled to start-up in the fourth quarter of 1987.

[Docket No. QF86-292-000]

8. P.H. Glatfelter Co.

On November 1, 1985, P.H. Glatfelter Co. (Applicant), of 228 South Main Street, Spring Grove, Pennsylvania 17362-0500 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Spring Grove, Pennsylvania. The facility will consist of coal anthracite culm, and biomass fired boilers, and five extraction steam turbine-generators producing 44.71 megawatts of electric power and four turbines producing shaft power. The extracted steam will be used in on-site paper mill processes. Installation of new equipment will begin in May 1986.

[Docket No. QF86-242-000]

9. Redevelopment Agency, City of San Jose

On October 31, 1985, Redevelopment Agency, City of San Jose (Applicant), of Cith Hall, Room 436, 801 North First Street, San Jose, California 95110 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of a new Convention Center as part of a "superblock" project. The facility will consist of a natural reciprocating engine-generator producing 1500 kilowatts, and a waste heat recovery boiler supplying hot water to the superblock for heating and domestic hot water. Operation is scheduled to begin in March 1988.

[Docket No. QF86-291-000]

10. Rumford Cogeneration Company

On November 1, 1985, Rumford Cogeneration Company (Applicant), in care of Boise Cascade Corporation, Rumford, Maine 04276 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Rumford, Maine. The facility will consist of coal and biomass fired boilers, and two extraction steam turbine-generators

producing 75,250 kilowatts electric power and providing process steam to the Rumford Paper Mill. Installation will begin in May 1986.

[Docket No. QF86-229-000]

11. California Private Power Limited Partnership 1985

On November 1, 1985, California Private Power Limited Partnership 1985 (Applicant), of 30423 Canwood Street, Suite 216, Agoura Hills, California 91301 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Home of Guiding Hands, 10025 Los Ranchitos Road, Lakeside, California 92040. The facility will consist of a natural gas fired reciprocating engine-generator producing 75 kilowatts. Reclaimed heat from engine cooling water will provide domestic hot water, space, and swimming pool heating. Installation will begin in January 1986.

[Docket Nos. QF86-255-000 and QF86-255-001]

12. Alan Hall

On November 1, 1985, Alan Hall (Applicant), of 8602 W. Northwest Road, Mt. Morris, Illinois 61054 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the applicant's address in Mt. Morris, Illinois. The facility will consist of an internal combustion engine generator. Waste heat is recovered from both jacket water and exhaust gases for space and water heating. The electric power production capacity of the facility will be 15 kW. The primary energy source will be oil or biomass in the form of wood and agricultural residues. Installation of the facility is expected to begin in October, 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 nd 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28445 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-227-000 et al.]

Borden Chemical et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

November 20, 1985.

Take notice that the following filings have been made with the Commission.

1. Borden Chemical, Inc.

[Docket No. QF86-227-000]

On November 1, 1985, Borden Chemical (Applicant), of P.O. Box 427, Geismar, Louisiana 70734 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Borden Chemical Geismar Plant, Geismar, Louisiana. The facility will consist of a combustion turbine-generator and a waste heat recovery boiler. The electric power production capacity will be 35,300 kilowatts. The primary energy source will be natural gas. The extracted heat will be used in plant processes and a reformer furnace producing synthesis gas for methanol production. Construction is expected to begin in January 1986.

2. Bel Air Hydropower Associates

[Docket No. QF86-233-000]

On November 1, 1985, Bel Air Hydropower Associates (Applicant), of 1701 Frederick Road, Baltimore, Maryland 21228 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 250 kilowatt hydroelectric facility is located on Winter Run near the Town of Bel Air in Harford County, Maryland.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. American REF-FUEL Company of Lehigh Valley

[Docket No. QF86-289-000]

On November 1, 1985, American REF-FUEL Company of Lehigh Valley (Applicant), of P.O. Box 3151, Houston, Texas 77253 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Lower Saucon Township, Bethlehem, Pennsylvania and will consist of a steam turbine generator and two boilers. The net electric power production capacity will be 19.4 MW. The primary source of energy will be biomass in the form of commercial and municipal solid waste.

4. Beaver Falls Power Company

[Docket No. QF86-223-000]

On November 1, 1985, Beaver Falls Power Company (Applicant), of P.O. Box 498, Brudies Road, Brattleboro, Vermont 05301 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,500 kW hydroelectric facility (P. 2593-003) is located in Lewis County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR

Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Cogen Technologies, NJ, Inc.

[Docket No. QF86-186-000]

On November 1, 1985, Cogen Technologies, NJ, Inc. (Applicant), of 14614 Falling Creek Drive, Suite 212, Houston, Texas 77068 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bayonne, New Jersey at the site of the International Maytex Tank Terminals. The facility will consist of a combustion turbine generator, a waste heat recovery boiler and an extraction steam turbine. The primary energy source will be natural gas. The net electric power production capacity will be 112 megawatts. Installation will begin in December 1985.

6. Crown Zellerbach Corporation

[Docket No. QF86-154-000]

On October 31, 1985, Crown Zellerbach Corporation, (Applicant), of One Bush Street, San Francisco, California 94104 submitted for filing an appliction for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The existing topping-cycle cogeneration facility is located at 4th Street in Bogalusa, Louisiana. The facility will consist of four boilers, one automatic extraction back pressure steam turbine-generator, and one automatic extraction condensing turbine generator. The extracted and exhausted steam from the turbines is used for pulp and papermaking process. The electric power production capacity of the facility is 62 MW. The primary energy source is a combination of coal, hog fuel and black liquor.

7. International Falls Power Company

[Docket No. QF86-218-000]

On October 31, 1985, International Falls Power Company (Applicant), of P.O. Box 1414, 1600 South West 4th Avenue, Portland, Oregon 97201 (c/o Bosie Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10,800 kW hydroelectric facility (P. 5223-001) is located on the Rainey River in Koochiching County, Minnesota.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Jared E. and Pamela S. Holve

[Docket No. QF86-118-000]

On October 30, 1985, Jared E. and Pamela S. Holve (Applicant), of Route 2, Box 190, Springfield, California 93265 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.2 MW hydroelectric facility (P. 8960) will be located on Bear Creek near Springville in Tulare County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Robertson Paper Box Company, Inc.

[Docket No. QF86-266-000]

On November 1, 1985, Robertson Paper Box Company, Inc. (Applicant), of Oakdale Road, Montville, Connecticut 06353 submitted for filing an application for certification of a facility as a qualifying cogeneration facility purusant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The approximately 3,700 kilowatt cogeneration facility will be located at the Robertson Paper Box Company, Inc. in Montville, Connecticut. The primary energy source will be natural gas with No. 2 fuel oil to be used during the interruptions. The facility is expected to be tested and put in to operation in the third quarter of 1986.

10. Spruce Run Hydropower Associates

[Docket No. QF86-234-000]

On November 1, 1985, Spruce Run Hydropower Associates (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 300 kilowatt hydroelectric facility is located on the Spruce Run near the Town of Clinton in Hunterdon County, New Jersey.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Ultrapower, Inc.

[Docket No. QF86-149-001]

On October 30, 1985, Ultrapower, Inc. (Applicant), of 16845 Von Karman Avenue, Irvine, California 92714 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Kern County, California and consist of a steam turbine generator unit and a boiler. The useful thermal energy will be injected into oil wells using thermal enhanced oil recovery techniques. The maximum net electric power production capacity will be 28.85 MW. The primary source of energy will be coal.

12. Vermont Hydroelectric, Inc.

[Docket No. QF86-267-000]

On November 1, 1985, Vermont Hydroelectric, Inc. (Applicant), of Chace Mill, 1 Mill Street, Burlington, Vermont 05401 submitted for filing an application for certification of a facility as a qualifying small power production

facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The one megawatt hydroelectric facility will be located at an existing dam in Swanton, Franklin County, Vermont.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

13. Viron Corporation

[Docket No. QF86-226-000]

On November 1, 1985, Viron Corporation (Applicant), of 1828 Swift, Suite 300, North Kansas City, Missouri 64116 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Trio Dye and Finish Co., Inc., 440-450 East 22 Street, Paterson, New Jersey 07054. The facility will consist of two natural gas fueled internal combustion engines each driving a generator. The electric power production capacity will be 120 kilowatts. Factory process heat is collected from exhaust gasses, engine coolant, and oil cooler. Installation began in September 1985.

14. Waste Management, Inc.

[Docket No. QF86-224-000]

On November 1, 1985, Waste Management, Inc. (Applicant), of 3003 Butterfield Road, Oak Brook, Illinois 60521 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located on property adjacent to 4620 Hannan Road, Wayne, Michigan 84184. The facility will consist of a combustion turbine-generator using methane gas extracted from a sanitary landfill. The electric power production capacity will be 3 megawatts.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28444 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF84-152-002 et al.]

Ultrapower, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

November 21, 1985.

Take notice that the following filings have been made with the Commission.

1. Ultrapower Incorporated

[Docket No. QF84-152-002]

On October 30, 1985, Ultrapower Incorporated (Applicant), of 16845 Von Karmam Avenue, Irvine, California 92714 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility (Rio Bravo No. 1) will be located in Kern County, near Bakersfield, California. The facility will consist of a coal-fired boiler and a steam turbine generator. The sequentially produced steam will be injected into oil wells using thermal enhanced oil recovery techniques. The electric power production capacity of the facility will be 29.78 MW. The installation of the cogeneration facility will begin on July 1, 1986.

By orders issued March 27, 1984 and March 19, 1985, the Director of the Office of Electric Power Regulation granted certification of the facility as a small power production facility under docket Nos. QF84-152-000 and QF84-152-001.

2. AES Fall River, Inc.

[Docket No. QF86-173-000]

On November 1, 1985, AES Fall River, Inc. (Applicant), of 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Fall River, Massachusetts. The facility will consist of one coal-fired boiler and extraction condensing steam turbine generator. The extracted low pressure process steam will be delivered to the adjacent facilities of the Tillotson Corporation and affiliated companies. The process steam will be used to manufacture latex rubber products. The electric power production capacity of the facility will be 180 MW. The installation of the facility will begin about January 1988.

3. Central Hydroelectric Corporation

[Docket No. QF86-125-000]

On October 30, 1985, Central Hydroelectric Corporation (Applicant), of 3451 Longview Drive, Suite 130, North Highlands, California 95660 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 11.95 MW hydroelectric facility (P. 8377-000) will be located on Main Isabella Dam near Isabella in Kern County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. City of Reading, Pennsylvania

[Docket No. QF86-232-000]

On November 1, 1985, the City of Reading, Pennsylvania, Bureau of Water (Applicant), or Eighth and Washington Streets, Reading, Pennsylvania 19601 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.05 megawatt hydroelectric facility (P. 7662) is located on Maiden Creek in Berks County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. David Robertson

[Docket No. QF86-89-000]

On October 28, 1985, David Robertson (Applicant), of 2037 Los Luceros NW, Albuquerque, New Mexico 87104 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the above address. The facility will consist of a photovoltaic array with a peak capacity of .75 kW.

5. Elektra Power Corporation

[Docket No. QF86-120-000]

On October 30, 1985, Elektra Power Corporation (Applicant), of 744 San Antonio Road, Palo Alto, California 94303 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.98 MW hydroelectric facility (P. 8725-000) will be located on North Fork Battle Creek near Manton in Shasta County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Georgia-Pacific Corporation

[Docket No. QF86-187-000]

On November 1, 1985, Georgia-Pacific Corporation (Applicant), of 133 Peachtree Street, N.E., Atlanta, Georgia 30303 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 8.2 megawatt hydroelectric facility (P. 3829) is located on Hudson River near Thomson in Washington County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 28446 Filed 11-27-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 1 Through November 8, 1985

During the week of November 1 through November 8, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 19, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 1 Through Nov. 8, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 4, 1985	White Consolidated Industries, Inc., Washington, DC	KEE-0005	Exception from the Energy Conservation Program for consumer products. If granted: White Consolidated Industries, Inc. would receive an exception from the provisions of 10 C.F.R. Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to Frigidaire Model FPCI18TDWO refrigerator.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

(Week of Nov. 1 Through Nov. 8, 1985)

Date	Name and location of applicant	Case No.	Type of submission
Nov. 8, 1985	Economic Regulatory Administration, Washington, DC	KRZ-0005	Interlocutory. If granted: The remedial provisions of the Proposed Remedial Order issued to Mountain Fuel Supply Company (Case No. HRO-0084) would be modified.
Do	Economic Regulatory Administration, Washington, DC	KRZ-0006	Interlocutory. If granted: Wexpro Company would be joined as an additional party to the Proposed Remedial Order proceeding involving Mountain Fuel Supply Company (Case No. HRO-0084).
Do	Ed Flood Oil Company, Inc. Amarillo, TX	KEE-0006	Exception to the reporting requirements. If granted: Ed Flood Oil Company, Inc. would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Do	Thriftway Company, Washington, DC	KRD-0004	Motion for discovery. If granted: Discovery would be granted to Thriftway Company in connection with its Statement of Objections submitted in response to the June 28, 1985 Proposed Remedial Order (HRO-0303) issued to Thriftway Company.

REFUND APPLICATIONS RECEIVED

(Week of Nov. 1 to Nov. 8, 1985)

Date received	Name of refund proceeding and name of refund applicant	Case No.
Nov. 4, 1985	Husky/Magowan Oil Company	RF161-75
Do	Gulf/Miller Gulf Station	RF40-3070
Do	Saber/Tesoro Petroleum Company	RF192-6
Do	Navajo/Tesoro Petroleum Company	RF203-6
Do	Saber/Conoco, Inc	RF192-7
Do	True/Alden Oil Company	RF195-4
Do	Harris/O.K. Gas & Oil	RF193-14
Do	Bayou/Delta Petroleum Corp.	RF117-16
Do	ARKLA/Medlock Oil Company	RF153-25
Nov. 5, 1985	Husky/Glasgow Husky Travel Center	RF161-76
Oct. 31, 1985	Leese/Glen's Chevrolet Subaru	RF211-1
Nov. 4, 1985	Leese/Robert's T.B.A. Service	RF211-2
Do	Leese/Evelyn Stuart	RF211-3
Nov. 6, 1985	Champlain/Ron's CITGO Service	RF187-11
Nov. 7, 1985	Champlain/Loren D. Hazen, Jr.	RF187-12
Do	OKC/Highland Petroleum Inc.	RF13-38
Nov. 8, 1985	True/Cal Gas Corporation	RF195-5

[FR Doc. 85-28387 Filed 11-27-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of October 21 Through October 25, 1985

During the week of October 21 through October 25, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Leese Oil Company, 10/21/85; HEF-0583

The DOE issued a Decision and Order establishing procedures for the disbursement of $30,000 (plus accrued interest) obtained as a result of a Consent Order entered into by the DOE and Leese Oil Company (Leese). The funds will be available to customers who purchased motor gasoline from Leese during the period August 1, 1979 through April 30, 1980. End-users and resellers who request a refund of $5,000 or less will not be required to make a detailed showing of injury. Successful applicants will receive refunds proportionate to the volume of motor gasoline they purchased from Leese during the consent order period.

Resources Extraction and Processing Company, 10/21/85; HEF-0574

The DOE issued a Decision and Order setting forth the procedures it will use to distribute $125,000.00 which it received from Resources Extraction and Processing Company (REAPCO). REAPCO, a gas plant operator which sold natural gas liquids and natural gas liquid products, remitted the money to the DOE pursuant to a consent order. That consent order settled all DOE claims against REAPCO for the period October 1, 1978 through January 28, 1981.

The DOE determined that the settlement monies should be distributed in a two stage process. During the first stage the DOE will attempt to refund moneys to purchasers of REAPCO products. The DOE will accept first stage applications for refund until 90 days after publication of the Decision and Order in the **Federal Register**. If any funds remain after first stage refund procedures are completed, the DOE will establish appropriate second stage refund procedures. Additional information is contained in the Decision and Order.

Refund Applications

Aminoil U.S.A., Inc., Boughman Tile Co., Inc., et al., 10/21/85; RF139-45, et al.

The DOE issued a Decision and Order granting refunds to 14 purchasers of natural gas liquid products from the Aminoil U.S.A., Inc. consent order fund. All of the refund applicants were ultimate consumers of the NGLPs or filed for a refund of $5,000 or less. All of the applicants, therefore, were presumed to have been injured by the alleged overcharges and, thus, a separate detailed showing of injury was not required. The refunds to these firms total $154,119, representing $98,756 in principal and $55,363 in interest.

Enterprise Oil & Gas Company/Osceola Refining Company, et al., 10/21/85; RF158-1, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers of middle distillates or residual fuel purchased from Enterprise Oil and Gas Company. Each applicant provided evidence that it purchased middle distillates or residual fuel from Enterprise and requested a refund at or below the $5,000 threshold level. In accordance with the procedures established in the Enterprise Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on a prorated portion of the alleged overcharges to the applicant. The total amount of refunds approved in this Decision is $17,660, representing $11,217 in principal and $6,443 in interest.

Gary Energy Corporation/LCL Oil Company, 10/25/85; RF47-19

LCL Oil Company filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Gary Energy Corporation. The firm claimed a refund of $3,962.99 on the basis of its purchase of 367,795 gallons of diesel fuel from Gary during the consent order period. The DOE determined that a threshold refund amount of $5,000 plus accrued interest was previously granted to LCL on October 8, 1985, with respect to its purchases of propane from Gary during the same consent order period. The provisions of the Special Refund Proceedings in connection with the Gary Consent Order provided that an applicant could only receive a total of $5,000 or less from a single consent order fund without demonstrating economic injury. Since LCL had failed to submit cost banks or to demonstrate injury, the DOE concluded that LCL's request for an additional refund of $3,962.99 should be denied.

Gulf Oil Corporation/Lewis L. Klabin, et al., 10/22/85; RF40-41, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. The

DOE granted the five applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total $426, representing $369 in principal and $57 in interest.

Gulf Oil Corporation/Red Top Sedan Service, Inc., et al., 10/22/85; RF40–1542, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by Red Top Service, Inc. (Red Top) on behalf of itself and two affiliates, American Sightseeing Tours, Inc. and Big Tenn Taxi. All three firms were end-users of petroleum products purchased from the Gulf Oil Corporation. The DOE granted the six applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total $5,069, representing $4,386 in principal and $683 in interest.

Husky Oil Company/Cavalry Petroleum Company, et al.; 10/23/85; RF161–1, *et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed by Cavalry Petroleum Company, *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Husky. The firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by the firms, the DOE concluded that each of the eight firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $23,929, representing $17,377 in principal and $6,552 in interest.

Husky Oil Company/Mapleton Sales, Inc., et al., 10/22/85; RF161–22, *et al.*

The DOE issued a Decision and Order concerning 34 Applications for Refund filed by Mapleton Sales, Inc., *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Husky. The 34 firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by the firms, the DOE concluded that each of the 34 firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The refunds granted total $123,400, representing $89,606 in principal and $33,794 in interest.

Husky Oil Company/W.S. Hatch Company, et al., 10/23/85; RF161–8, *et al.*

The DOE issued a Decision and Order concerning three Applications for Refund filed by W. S. Hatch Company, *et al.* Each of the applicants was an ultimate consumer of Husky refined petroleum products. Each applicant was therefore granted a refund in accordance with the Husky special refund procedures. *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). Each of the applicants received a refund based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $878, representing $638 in principal and $240 in interest.

Tenneco Oil Company/Capitol Oil Company, 10/23/85; RF7–128

The DOE issued a Decision and Order concerning Capitol Oil Company's Application for Refund for monies available from the Tenneco Oil Company escrow account. Capitol applied for a volumetric refund based on the presumption of injury for small claims. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The DOE concluded that Capitol Oil Company should receive a refund of $1,452, representing $930 in principal and $522 in interest.

Tenneco Oil Company/Liberty Oil Company, 10/23/85; RF7–131

The DOE issued a Decision and Order concerning Liberty Oil Company's Application for Refund for monies available from the Tenneco Oil Company escrow account. Liberty applied for a volumetric refund based on the presumption of injury for small claims. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The doe concluded that Liberty Oil Company should receive a refund of $659, representing $422 in principal and $237 in interest.

Tenneco Oil Company/Rice Oil Company, 10/23/85; RF7–130

The DOE issued a Decision and Order concerning Rice Oil Company's Application for Refund for monies available from the Tenneco Oil Company escrow account. Rice applied for a volumetric refund based on the presumption of injury for small claims. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The DOE concluded that Rice Oil Company should receive a refund of $1,087, representing $696 in principal and $391 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Oxnard Refining Co.—HRO–0291, HRD–0291, HRH–0291

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 19, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–28386 Filed 11–27–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of two funds of $25,420.99 (plus accrued interest) and $9,566.00 (plus accrued interest) obtained as a result of separate consent orders which the DOE entered into respectively with GGC, Inc. of Hobbs, New Mexico (Case No. HEF–0076) and Goodman Oil Company of Boise, Idaho (Case No. HEF–0082). The funds will be available to customers who purchased motor gasoline from GGC or Goodman during their consent order periods.

DATE AND ADDRESS: Applications for refund of a portion of the consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to either the GGC, Inc. Refund Proceeding or the Goodman Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with §205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to separate consent orders entered into by GGC, Inc. of Hobbs, New Mexico and Goodman Oil Company of Boise, Idaho. The consent orders settled possible pricing violations with respect to the firms' sales of motor gasoline to customers during the respective consent order periods (September 1, 1979 through July 31, 1980 and July 25, 1979 through December 31, 1979).

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The Proposed Decision and Order

discussing the distribution of the consent order funds was issued on June 26, 1985. 50 FR 27671 (July 5, 1985).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased motor gasoline from GGC or Goodman during the relevant consent order periods. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: November 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

November 20, 1985.

Names of Firms: Zia Fuels (GGC Inc.)
Goodman Oil Company.

Dates of Filing: October 13, 1983.

Case Numbers: HEF-0076, HEF-0082.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with separate consent orders entered into with Zia Fuels (GGC Inc.) (GGC) of Hobbs, New Mexico, and Goodman Oil Company (Goodman) of Boise, Idaho. GGC and Goodman both sell motor gasoline to other motor gasoline marketers (resellers and retailers) and in bulk to commercial and farm accounts (end-users). Therefore, GGC and Goodman were subject to the Mandatory Petroleum Allocation and Price Regulations set forth at 10 CFR Part 212.

DOE audits of the firms' operations revealed possible regulatory violations with respect to the firms' pricing of motor gasoline.[1] In order to settle all claims and disputes concerning GGC and Goodman's compliance with the DOE price regulations in sales of motor gasoline during their respective consent order periods, the firms and the DOE executed consent orders whereby GGC and Goodman agreed to remit the alleged overcharges to the DOE for later disbursement. Each consent order refers to the DOE's allegations of regulatory violations, but notes that no findings of violation were made. Additionally, each consent order states that the firm does not admit that it committed any such violations. The consent order amounts and periods are set forth below:

Firm	Consent order amount	Consent order period
GGC	[2] $25,420.99	September 1, 1979 to July 31, 1980.
Goodman	9,566.00	July 25, 1979 to December 31, 1979.

[2] This amount represents the $23,748.00 principal consent order amount plus $1,672.99 interest which accrued prior to the completion of GGC's payments to the DOE.

On June 26, 1985, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute the funds received pursuant to the consent orders to parties who were injured by GGC or Goodman's alleged regulatory violations. *See Zia Fuels*, Case No. HEF-0076 (June 26, 1985) (Proposed Decision), 50 FR 27671 (July 5, 1985). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the GGC and Goodman consent orders. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by GGC or Goodman's alleged overcharges during the applicable consent order period. We stated that money available after payment of refunds to eligible claimants in the first stage would be distributed through a second-stage process, but that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

[1] In its audit of Zia Fuels, the ERA found that the firm and another entity, Morris Oil Company, were controlled by Garland Morris of GGC, Inc. and that Zia Fuels and Morris Oil Co. sold motor gasoline to each other. As a result, the ERA concluded that Zia Fuels and Morris Oil Co. should be audited under the single firm concept. *See* 10 CFR 212.31 (definition of "firm"). Accordingly, the GGC consent order covers both Morris Oil Company and Zia Fuels' operations during the consent order period.

We have received no comments regarding the first stage procedures tentatively established in the Proposed Decision. However, we have received comments from several States concerning the disposition of funds in the second stage of the proceeding. This Decision and Order establishes the procedures to be used for filing and processing claims in the first stage of the GGC and Goodman refund process. Therefore, we will not determine second stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds necessarily will depend on the size of the funds. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*).

II. Jurisdiction

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the GGC and Goodman consent order funds. The OHA will therefore grant the ERA's petition and assume jurisdiction over the funds received pursuant to the GGC and Goodman consent orders.

III. Refund Procedures

Since we did not recieve any comments objecting to the first stage procedures tentatively established in the Proposed Decision, we have concluded that those procedures should be adopted. The GGC and Goodman consent order funds will be distributed to claimants who satisfactorily demonstrate that they were injured by GGC or Goodman's alleged regulatory violations. The information available to us regarding the firms' operations during their consent order periods indicates that GGC sold motor gasoline in the states of New Mexico and Texas, and Goodman sold motor gasoline in the states of Idaho, Washington, and Oregon.[3] We expect that claimants will

[3] At the time of the DOE audit, in addition to reselling gasoline to wholesale customers, Goodman

Continued

fall into two general categories: (i) Resellers and retailers (hereinafter collectively referred to as resellers) who resold GGC or Goodman motor gasoline and (ii) individuals or firms that consumed GGC or Goodman motor gasoline for their own use (end-users).

A. Showing of Injury

Resellers of GGC or Goodman motor gasoline will generally be required to demonstrate injury in order to receive a refund. To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the motor gasoline purchased from GGC or Goodman at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from GGC or Goodman, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.[4] *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,123 (1982); *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 (1985). The presence of banks alone, however, does not automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

As we proposed, we will adopt certain presumptions commonly used in refund proceedings. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of motor gasoline sold by GGC and Goodman during the consent order period.

The OHA has referred to this presumption in the past as a volumertric refund amount. Second, we will adopt a presumption of injury with respect to small claims. In addition, for the reasons discussed below, we will adopt a presumption that spot purchasers of GGC or Goodman motor gasoline are not eligible for refunds.

B. Volumetric Presumption

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of motor gasoline marketed by GGC and Goodman. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing each settlement amount by the total gallonage of motor gasoline sold by the consent order firm during the consent order period. In the GGC proceeding, we have established a volumetric refund amount of $0.005022 per gallon, exclusive of interest ($25,420.99 consent order fund divided by 5,061,994 gallons, the estimated total volume of motor gasoline sold by GGC during the eleven-month consent order period).[5] In the Goodman proceeding, the volumetric refund amount is $0.002296 per gallon, exclusive of interest ($9,566 consent order fund divided by 4,166,667 gallons, the estimated volume of motor gasoline sold by Goodman during the five-month consent order period). Since consent orders are necessarily the result of compromise, the volumetric refund amounts derived from those consent order settlements are also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather, it is a method by which we can estimate the portion of the consent order funds that should be allocated to a given purchaser. However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and any purchaser may file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

C. Small Claims Presumption

We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of GGC or Goodman motor gasoline. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion*. We will adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

D. Spot Purchasers

A reseller that made only spot purchases from GGC or Goodman shall be presumed not to have suffered an injury, and therefore will be ineligible to receive a refund, even one below the threshold level, unless it makes a showing that rebuts this presumption. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass theough the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers 8 DOE at 85,396–97. The same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim, even for an amount below the threshold, must submit evidence to show injury and establish that the firm was unable to exercise discretion as to where and when to make the purchases(s) upon which the refund claim is based.

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operated three retail service stations in Payette, Weiser, and Grandview, Idaho. Sales from those retail outlets are not covered by the consent order, which mentions only sales from Goodman's bulk plants.

[4] In the present cases, the consent order periods are subsequent to the amendment to the price rule which eliminated the banking requirement for retailers effective July 15, 1979, 44 FR 42541 (July 19, 1979). Therefore, retailer applicants will not be required to submit bank information.

[5] In the Proposed Decision, we tentatively established a volumetric refund amount of $0.12378 per gallon based on our estimate that GGC sold 2,053,726 gallons of motor gasoline during the consent order period. Our subsequent review of GGC sales volumes has resulted in the larger estimated total volume indicated above and the correspondingly lower volumetric amount.

E. End-Users

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order periods, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of motor gasoline on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. End-users of GGC or Goodman motor gasoline will need only to document their purchase volumes from the firms to make a sufficient showing that they were injured by the alleged overcharges.

F. Minimum Refund Level

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitutiion in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

IV. Refund Application Procedures

We have determined that the procedures described in the Proposed Decision are the most equitable and efficacious means of distributing the GGC and Goodman consent order funds. Accordingly, Applications for Refunds will now be accepted from parties who purchased GGC or Goodman motor gasoline during the consent order periods. The following information should be included in all Applications for Refund:

1. At the top of the first page, the applicant's name and Case No. HEF-0076 for claims in the GGC proceeding, or case No. HEF-0082 for claims in the Goodman proceeding.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. How the claimant used the GGC or Goodman motor gasoline, i.e., whether it was a reseller, retailer, or end-user.

4. The volume of GGC or Goodman motor gasoline it purchased by month for the period of time for which it is claiming it was injured by the alleged overcharges.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000 it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations up through decontrol of the product category concerned.[6]

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

6. Whether the claimant or any person acting on its instruction has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying GGC or Goodman enforcement proceeding.

7. Whether the claimant was in any way affiliated with GGC or Goodman. If so, it should state the nature of the affiliation.

8. Whether there has been any change in ownership of the entity that purchased GGC or Goodman motor gasoline since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided, as well as either the reasons why the refund should be paid to the applicant rather than the other owners or a signed statement from the other owners indicating they do not claim a refund.

9. Whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR § 205.9(d).

10. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the alleged confidential material has been deleted, together with a statement specifying why the information is believed to be privileged or confidential.

All Applications should be sent to either the GGC, Inc. Refund Proceeding or the Goodman Oil Company Refund Proceeding, Office of Hearing and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by GGC, Inc. and Goodman Oil Company pursuant to the consent orders executed on November 2, 1980 and September 2, 1981, respectively, may now be filed.

(2) All Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: November 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-28389 Filed 11-27-85; 8:45 am]

BILLING CODE 6450-01-M

[6] See footnote 4 *supra.*

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2932-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 12, 1985 through November 15, 1985 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-L65098-ID, Rating EO2, Challis Nat'l Forest, Land and Resource Mgmt. Plan, ID. Summary:

EPA's concern is that the DEIS and Forest Plan did not show capability to meet Idaho water quality standards. In particular, the fisheries standards, riparian area management prescriptions, and monitoring program do not clearly provide adequate levels of protection to the identified stream benefical uses.

ERP No. D–BLM–J03009–00, Rating LO, Bairoil/Dakota Carbon Dioxide Projects, Approval, Right-of-Way Grants, and Issuance of Permits, 404 Permit, UT, WY, ND, and SD. Summary: EPA did not have any significant objections to the project. EPA commended the Bureau of Land Management (BLM) for their responsiveness to EPA's concerns expressed during the scoping process. EPA also recommended consideration of block value location on both sides of valve Class I and II stream crossings in order to better protect aquatic life and water quality.

ERP No. D–BLM–L70003–AK, Rating EO2, Central Yukon Planning Area, Resource Mgmt. Plan, Northwest Resource Area, Development, AK. Summary: EPA had two major concerns regarding the RMP/DEIS. First, it appears probable that the preferred alternative will result in a significant, avoidable restriction of subsistence uses. Second, the absence of a clear and strong commitment to the monitoring and enforcement of BLM's policies, requirements, and regulations leave open the possibility that severe water quality impacts will result from mining operations. EPA recommended that the FEIS redesignate Alternative B as the preferred alternative.

ERP No. DS–IBR–J28002–CO, Rating EO2, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, 404 Permit, CO. Summary: EPA's review indicated concerns with the selection of alternatives, the baseline hydrologic information presented, and the water quality analyses. EPA requested that the FEIS be modified to include alternatives which separate the "no action alternative" from the projects of others. Quantitative analysis of potential water quality impacts resulting from reduced flows was also requested, along with a modification of the baseline hydrologic period to allow comparisons between the alternatives and existing conditions. Additional concerns included the impacts of water depletions on the aquatic community; the lack of channel stability analysis; minimal assessment of secondary impacts resulting from increased water depletions and availability; and the lack of detailed mitigation plans in the DEIS.

ERP No. D–IBR–K39020–CA, Rating EC2, State Water and Federal Central Valley Projects, Coordinated Operation Agreement, Approval, CA. Summary: EPA strongly supports the development of an Agreement. However, EPA notes environmental concerns with the DEIS: (1) A lack of commitment to meet current water standards (Suisun Marsh standards), and (2) the need to outline a procedure by which future water quality standards will be reviewed for consistency with Congressional directives.

Final EISs

ERP No. F–AFS–J65132–WY, Bighorn Nat'l Forest, Land and Resource Mgmt. Plan, WY. Summary: EPA's review identified several remaining concerns relating to, among others, site-specific impact asessment plans, monitoring, coordination during Plan implementation, and water quality standards consistency. The FEIS did, however, include several substantive revisions which addressed some of EPA's concerns and recommendations regarding water resources; watershed; riparian areas and wetlands; management of mineral development and vegetation; and monitoring.

ERP No. F–AFS–L65091–00, Caribou Nat'l Forest, Cache Nat'l Forest, and Curlaw Nat'l Grassland, Land and Resource Mgmt. Plan, ID, WY, and UT. Summary: EPA made no formal comments. EPA found the project to be satisfactory as proposed.

ERP No. FS–BLM–A01054–00, Federal Coal Mgmt. Program, Continuation or Implementation of a New Program. Summary: EPA found that most recommendations have been accepted. EPA continues to recommend that BLM advise coal mine operators that injection of wastes into abandoned mine workings may be subject to the permitting requirements of the Underground Injection Control regulations (40 CFR 144).

ERP No. F–BLM–K65063–NV, Esmeralda—Southern Nye Planning Area, Resource Mgmt. Plan, Wilderness Designation, NV. Summary: EPA's review of the FEIS indicated that more information should have been provided on protective measures for riparian and other sensitive biological areas, location of water resources, and baseline air quality.

ERP No. F–BLM–L70002–OR, Two Rivers Planning Area, Resource Mgmt. Plan, John Day and Deschutes Rivers, OR. Summary: EPA made no formal comments. EPA reviewed the FEIS and found it to be adequate.

ERP No. F–CDB–F89023–MI, Cobo Hall Convention Center, Renovation and Expansion, UDAG/CDBG, MI. Summary: EPA's comments concerning noise, water quality, and solid waste impacts of the project were adequately addressed in the FEIS. The FEIS indicated that further coordination with EPA will occur in order to resolve remaining air quality concerns.

ERP No. F–FHW–F40238–OH, Cross County Highway/OH–126 Completion, Colerain Ave./US–27 to Galbraith Rd./US–42, Right-of-Way Acquisition and 404 Permit, OH. Summary: EPA expressed objection due to the lack of a commitment to specific noise mitigation measures. Since noise mitigation will be finalized during the later design phase, EPA requested that the Record of Decision include a statement requiring the Ohio Department of Transportation to coordinate the noise analysis and planned mitigation measures with EPA.

ERP No. F–FHW–L40144–OR, Kuebler Blvd.—Cordon Rd. Improvements, S. Commercial St. to N. Santiam Highway, 404 Permit, OR. Summary: EPA made no formal comments. EPA's review found no objections to the proposed project.

Amended Notices

The following reviews were completed during the week of November 4 through 8, 1985 and should have appeared in the FR Notice published on November 22, 1985.

ERP No. F–COE–L34009–OR, Rating EC2, West Hayden Island Marine Industrial Park Development, Sect. 10 and 404 Permits, OR. Summary: EPA believes the FEIS should provide a more thorough analysis of need and alternatives. EPA was concerned that there was no detailed plan to mitigate the loss of wetland and riparian habitat.

ERP No. F–COE–E30030–FL, Pinellas Beach Erosion Control Project, FL. Summary: EPA continues to have some generic concerns with the use of localized beach nourishment in dealing with generalized shoreline recession. The initial reservations which EPA raised to the proposal noted in the DEIS have been adequately addresed in the FEIS.

ERP No. F–SFW–J64003–MT, Charles M. Russell Nat'l Wildlife Refuge Mgmt., MT. Summary: EPA has no objections to the Final EIS.

Dated: November 25, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

FR Doc. 85–28481, Filed 11–27–85; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2932-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 18, 1985 through November 22, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850508, Draft, FHW, TN, TN Connector Route Construction, TN-6/US 31 to I-65, Maury and Williamson Cos., Due: January 13, 1986, Contact: Thomas Ptak (615) 251-5394.

EIS No. 850509, Draft, SFW, NJ, Great Swamp National Wildlife Refuge Comprehensive Management Plan, Morris County, Due: January 31, 1986, Contact: Curtis Laffin (617) 965-5100.

EIS No. 850510, Draft, CDB, CA, San Bernardino Enterprise Zone Application, Designation and CDBG, Due: January 13, 1986, Contact: Valerie Ross (714) 383-5057.

EIS No. 850511, Draft, FHW, FL, Business US 41 Bridge-Edison Bridge Replacement and Approach Roads Upgrading, Lee County, Due: January 14, 1986, Contact: R. V. Robertson (904) 681-7231.

EIS No. 850512, Draft, AFS, CA, Stanislaus National Forest, Land and Resource Management Plan, Due: March 10, 1986, Contact: Blaine Cornell (209) 532-3671.

EIS No. 850513, Draft, AFS, CA, Sequoia National Forest, Land and Resource Management Plan, Tulare, Kern and Fresno Cos., Due: March 28, 1986, Contact: James Crates (209) 784-1500.

EIS No. 850514, Draft, BLM, CO, James Creek Coal Preference Right Lease Application, Development and Leasing, Rio Blanco County, Due: February 24, 1986, Contact: Greg Goodenow (303) 824-8261.

EIS No. 850515, Final, FHW, VA, VA-164/Western Freeway Construction, I-664 Interchange to Norfolk and Western Railway, Due: December 30, 1985, Contact: James Tumlin (804) 771-2371.

EIS No. 850516, Final, COE, FL, Upper St. Johns River Basin Flood Control, Water Supply and Enhancement Plan, Due: December 30, 1985, Contact: Gerald Atmar (904) 791-2615.

EIS No. 850517, Final, OSM, WY, Red Rim Area, Petition Evaluation, Designation or Nondesignation of Land Unsuitable for Surface Coal Mining, Fremont, Sweetwater, Carbon Cos., Due: December 30, 1985, Contact: Allen Klein (303) 844-2451.

EIS No. 850518, Final, DOE, CO, Durango/Vanadium Inactive Uranium/Vanadium Mill Tailing Site, Remedial Actions and Cleanup of Radioactively Contaminated Material, La Plata County, Due: December 30, 1985, Contact: John Themelis (505) 844-3941.

Dated: November 25, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-28482 Filed 11-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 21, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0187

Title: Section 73.3594, Local Public Notice of Designation for Hearing

Action: Extension

Respondents: Applicants for authorization to operate a broadcast station

Estimated Annual Burden: 1,295 Responses; 5,180 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-28403 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

Jose J. Martinez & Assoc., et al.; Hearing Designation order

In re Applications of:

Jose J. Martinez & Ana Algarin d/b/a/ Jose J. Martinez & Associates, Ceiba, Puerto Rico.	MM Docket No. 85-352; File No. BP-840914AA.
Req: 890 kHz, 0.25 kW, U; Continental Broadcasting Corporation, WVOZ, San Juan, Puerto Rico; Has: 870 kHz, 5 kW, DA-1, U; Req: 870 kHz, 10 kW, DA-1, U.	File No. BP-841219AB.

For Construction Permit.

Adopted: November 12, 1985.

Released: November 22, 1985.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned applications for a new AM broadcast station and for changes in the facilities of an existing AM station.

2. The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by Continental Broadcasting Corporation. Accordingly an appropriate issue will be specifiied.

3. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine if there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of the antenna towers proposed by Continental Broadcasting Corporation.

2. To determine: (a) The areas and populations which would gain or lose primary aural service from the proposal of Continental Broadcasting Corporation and the availability of other primary service to such areas and populations, (b) the areas and populations which would receive primary aural service from the remaining proposal and the

[1] The facilities specified herein are subject to modification, suspension or termination without right of hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, and to bilateral and other multilateral agreements between the United States and other countries.

availability of other primary service to such areas and populations, and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

5. It is further ordered, that the Federal Aviation Administration is made a party to these proceedings.

6. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC 20554.

7. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-28400 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

Patton-Brown Broadcast Group et al.; Hearing Designation Order

In re Applications of:

Phil W. Patton and Wallace S. Brown d/b/a/ Patton-Brown Broadcast Group, Jasper, Tennessee: Req: 820 kHz, 1 kW, D.	MM Docket No. 85-351; File No. BP-841129AA.
BAZ Broadcasting, Inc., WDEB, Allardt, Tennessee: Has: 1500 kHz, 1 kW, (0.5 kW-CH), D; Req: 820 kHz, 0.5 kW, D.	File No. BP-850301AA.
Nickajack Broadcasting Company, Inc., Jasper, Tennessee: Req: 820 kHz, 1 kW, D.	File No. BP-850328AG.

Adopted: November 12, 1985.

Released: *November 22, 1985.*

By the Chief, Audio Services Division.

1. The Commission has under consideration the above-captioned mutually exclusive applications of Phil W. Patton and Wallace S. Brown d/b/a Patton-Brown Broadcast Group (Patton-Brown), Baz Broadcasting, Inc. (Baz) and Nickajack Broadcasting Company, Inc. (Nickajack). Also before us is an informal objection to the Nickajack proposal filed by Patton-Brown.

2. The Commission has not yet received Federal Aviation Administration clearance for the antenna constructions proposed by Nickajack and by Patton-Brown. Additionally, Baz's application indicated a correction of the coordinates of its existing antenna system, yet there is no evidence of Federal Aviation Administration notification of this change. Accordingly, an appropriate issue will be specified.

3. Baz has requested a waiver of § 73.1125 of the Commission's Rules, which governs the location of the licensee's main studio. Baz, however, proposes to locate its studio at the transmitter site, and thus fulfills the requirements of § 73.1125(2). Accordingly, the request for a waiver by Baz is unnecessary.

4. Patton-Brown has requested that Nickajack's application be returned as unacceptable for filing for failure to comply with the public notice requirements of § 73.3580 of the Commission's Ruels. Patton-Brown states that Nickajack's public notice lacks some of the information that § 73.3580(f) requires be listed, such as studio location, names of the officers of the applicant corporation, and an address where the application is available for public inspection. While these allegations are correct, we believe that the republication of a corrected notice is the proper remedy, with notice given the presiding Administrative Law Judge within thirty days of the release of this Order.

5. Section 73.1125 of the Commission's Rules requires that the studio location be in the principal community of license or at the station transmitter site. Nickajack stated on its application form that its studio location has not yet been determined, but did not commit itself to a location meeting these requirements. The applicant must clarify this point by filing an amendment with the presiding Administrative Law Judge within thirty days of the release of this Order.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for a hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

7. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of the antenna towers proposed by Phil W. Patton and Wallace S. Brown d/b/a Patton-Brown Broadcast Group, Baz Broadcasting, Inc., and Nickajack Broadcasting Company, Inc.

(2) To determine (a) the areas and populations which would gain or lose primary aural service from the proposal of Baz Broadcasting, Inc., and the availability of other primary service to such areas and populations; (b) the areas and populations which would receive primary aural service from the other proposals and the availability of other primary service to such areas and populations, and (c) in light thereof, and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

(3) To determine in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

(4) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party to these proceedings.

9. It is further ordered, that the informal objection filed by Phil W. Patton and Wallace S. Brown d/b.a. Patton-Brown Broadcast Group is denied.

10. It is fruther ordered, that Nickajack Broadcasting Company, Inc. comply with all public notice requirements of section 73.3580 of the Commission's Rules and certify as to that fact with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

11. It is fruther ordered, That Nickajack Broadcasting Company, Inc. must submit an amendment to the presiding Administrative Law Judge within thirty (30) days of the release of this Order certifying compliance with section 73.1125 of the Commission's Rules.

12. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data, Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC 20554.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Ruels, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-28401 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

Silver Spring Associates et al.; Hearing Designation Order

In re Applications of:

Silver Spring Associates, Coburg, Oregon; Req: 1570 kHz, 5kW, DA-D.	MM Docket No. 85-353; File No. BP-840723AD.
Thomas F. Muller, Kelso, Washington; Req: 1570 kHz, 5 kW, DA-D.	File No. BP-840723AF.

For Construction Permit.

Adopted: November 12, 1985.

Released: November 22, 1985.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Silver Spring Associates (Silver Spring) and Thomas F. Muller (Muller) for construction permits for new AM broadcast stations.

2. Since the proposals of Silver Spring and Muller constitute major environmental actions as defined by § 1.1305 of the Commission's Rules, they are required to submit the environmental information described in § 1.1311. The environmental narrative statements submitted by these applicants were prepared by the same engineering consultant and are essentially identical in nature. A question arises under these circumstances as to whether the statements reflect individual conditions or are instead "boilerplate" submissions. In preparing their responses to the issue which we are specifying here, it is our expectation that the parties will address this concern as well as the specific deficiencies in the statements, namely failure to provide (1) a description of the site and surrounding area, (2) a discussion of considerations leading to selection of the site, and (3) a statement that the site selection is not a cause for local controversy.

3. Accordingly, Silver Spring and Muller will be required to file within 30 days of the release of this Order their amended environmental narrative statements with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. Since no determination has been received from the Federal Aviation Administration as to whether the antennas proposed by Silver Spring and Muller would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

5. The engineering portions of both the Silver Spring and Muller applications must be amended to correct the following deficiencies: (1) no site photos were included and (2) the proposed standard radiation patterns do not meet the requirements of § 73.150 of the Rules. The specified theoretical RMS of the proposed standard radiation patterns results in less than a 1 ohm loss resistance per tower. These amendments must be filed with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

6. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) If a final environmental impact statement is issued with respect to the applications of Silver Spring Associates and Thomas F. Muller, which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

(2) To determine whethere there is a reasonable possibility that the tower heights and locations proposed by Silver Spring Associates and Thomas F. Muller would constitute hazards to air navigation.

(3) To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations.

and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service.

(4) To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

(5) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

(8) It is further ordered, that the Federal Aviation Administration is made a party to this proceeding.

9. It is further ordered, that § 1.1317 of the Commission's rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Silver Spring Associates and Thomas F. Muller shall submit the amended environmental narrative statements required by Section 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

10. It is further ordered, that Silver Spring Associates and Thomas F. Muller file amendments to correct the engineering deficiencies in their proposals with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street NW., Washington, DC.

12. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-28402 Filed 11-27-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1936-R
Name: Bremen International, Inc.
Address: One World Trade Ctr., #1211, New York, NY 10004
Date Revoked: November 6, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2870
Name: Rapid Movements, Ltd.
Address: 1180 Pratt Blvd., Elk Grove Village, IL
Date Revoked: November 12, 1985
Reason: Surrendered license voluntarily

License Number: 2150
Name: T.J. Colbeck & Co. (New York), Inc.
Address: 42 Broadway, #1932, New York, NY 10004
Date Revoked: November 12, 1985
Reason: Surrendered license voluntarily

License Number: 2412
Name: National Cargo Services, Inc.
Address: 7323 N.W. 56th Street, Miami, FL 33166
Date Revoked: November 14, 1985
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-28421 Filed 11-27-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010823-002
Title: Canadian Transport Company/ C.M.B. n.v. Joint Container Service Agreement
Parties: Canadian Transport Company C.M.B. n.v.
Synopsis: The proposed amendment would modify the agreement to permit the parties to consult and agree upon minimum per container revenue levels below which C.M.B. may not set Container Service rates. It would provide that the C.M.B. bill of lading shall specify, beneath C.M.B.'s name, "A Joint Service With Canadian Transport Company."

By Order of the Federal Maritime Commission.

Dated: November 25, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 28465 Filed 11-27-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Agreement No.: 224-010854
Title: Portland Terminal Agreement
Parties: Evergreen Marine Corporation (Taiwan) Ltd. The Port of Portland (Port)
Synopsis: This agreement provides Evergreen with the use of six acres of the Terminal No. 6 container facility for a term to expire on March 31, 1987.

The agreement will become effective on the first day of the month following the date the Commission designates as the effective date. The Port would perform all vessel and stevedoring services for which Evergreen will pay the Port rates and charges according to the Port's Terminal Tariff 6. The Port will share wharfage and dockage revenue with Evergreen when certain revenue plateaus are reached. Evergreen agrees to utilize the Port as its published, regularly scheduled, direct port of call for at least 75 percent of its Pacific Northwest sailings of its Far East liner sevice.

By Order of the Federal Maritime Commission.

Dated: November 25, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28466 Filed 11-27-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Fidelity Bancorporation; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve bank indicated for that application or to the offices of the board of Governors. 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.

Comments regarding this application must be received not later than December 20, 1985.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York 10045:

1. *First Fidelity Bancorporation,* Newark, New Jersey; to acquire 100 percent of the voting shares of The Morris County Savings Bank, Morrristown, New Jersey.

Board of Governors of the Federal Reserve System, November 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28338 Filed 11-27-85

BILLING CODE 6210-01-M

Mellon Bank Corp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation,* Pittsburgh Pennsylvania; to acquire AVCO Financial Services of the United States, Inc., Newport Beach, California, and acquire substantially all of the assets of AVCO which engages in making, acquiring and servicing loans and other extensions of credit for its account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The types of loans or extensions of credit made by AVCO are predominately financing of site-built homes and mobile homes. AVCO also finances the purchase of recreational vehicles and boats.

Board of Governors of the Federal Reserve System, November 22, 1985.

James McAfee,

Associate Secretary of the Board

[FR Doc. 85-28339 Filed 11-27-85; 8:45 am]

BILLING CODE 6210-01-M

Nothern Kentucky Trust Corp., Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Northern Kentucky Trust Corp., Inc.*, Alexandria, Kentucky; to engage *de novo* through its subsidiary, Northern Kentucky Financial Corporation, Florence, Kentucky, in making, acquiring and servicing loans or other extensions of credit of a type permissible for a consumer finance company licensed under section 288 of the Kentucky Revised Statutes and as permitted by § 225.25(b)(1)(i) of Regulation Y. Loans will be made, serviced and collected from a single office in Florence, Kentucky, to residents of Boone County, Kenton County and Campbell County, Kentucky, and to residents of all contiguous counties in Kentucky, Indiana and Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First American Corporation of Nashville*, Nashville, Tennessee; to engage *de novo* through its subsidiary, First American Trust Company, N.A., Nashville, Tennessee, in establishing a new national trust company, pursuant to § 225.25(b)(3) of Regulation Y. This activity would be conducted in the State of Tennessee.

2. *First Commerce Corporation*, New Orleans, Louisiana; to engage *de novo* through its subsidiary, First Commerce Mortgage Corporation, New Orleans, Louisiana, in the origination, sale, and servicing of mortgage loans, pursuant to § 225.25(b)(1) of Regulation Y. These activities would be conducted in the State of Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.*, Des Moines, Iowa; to engage *de novo* in the activity of acquiring loans from banking subsidiaries of applicant; purchasing participations in loans made by the banking subsidiaries for the sole purposes of providing liquidity to the subsidiaries and facilitating the needs of the subsidiaries' customers; servicing loans for the subsidiaries; and making additional extensions of credit related to loans acquired from subsidiaries and participations purchased from subsidiaries, pursuant to § 225.25(b)(1) of Regulation Y. This activity would be conducted in the State of Iowa.

2. *Community Bank, Inc.*, Middleton, Wisconsin; to engage *de novo* through its subsidiary, CBI Trust and Financial Services, Inc., Madison, Wisconsin, in performing basis trust services, including the settlement of estates, the administration of trusts and guardianships, and the performance of agencies, pursuant to § 225.25(b)(3) of Regulation Y. Comments on this application must be received not later than December 17, 1985.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Siloam Springs Bancshares, Inc.*, Bentonville, Arkansas; to engage *de novo* in placing mortgage loans with institutional lenders as a brokering and charging an origination fee to the borrower, pursuant to § 225.25(b)(1) of the Board's Regulation Y, 12 CFR 225.25(b)(1). Siloam Springs Bancshares, Inc. will broker loans from its office in Bentonville, Arkansas. Borrowers will be located in the States of Arkansas, Missouri, and Oklahoma.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Investment Management, Inc., Minneapolis, Minnesota, in serving as the advisory company for a mortgage or a real estate investment trust, serving as investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940 ("1940 Act"), 12 U.S.C. 80a-2(a)) to an investment company registered under the 1940 Act, including sponsoring, organizing, and managing a closed-end investment company; providing portfolio investment advice to any other person; furnishing general economic information and advice, general economic statistical forecasting services and industry studies, and providing financial advice to state and local governments, pursuant to section 225.25(b)(4) of Regulation Y.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Central Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Central Data Processing, Inc., Houston, Texas, in providing to others data processing and data transmission services, facilities and data bases, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than December 17, 1985.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through its subsidiary, Security Pacific Management Consulting Corporation, Los Angeles, California, in providing management consulting advice to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loans companies, pursuant to § 225.25(b)(11)) of Regulation Y.

Board of Governors of the Federal Reserve System, November 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28340 Filed 11-27-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78P-0148 et al.]

Availability of Approved Variances for Laser Light Shows

Correction

In FR Doc. 85-25673 appearing on page 43795 in the issue of Tuesday, October 29, 1985, make the following corrections:

1. In the first line of the third column of the table, "EMS" should read "LMS".

2. In the last entry of the fourth column of the table, "Aug. 2, 1985" should read "Aug. 1, 1985".

3. In the first line of text in the second column appearing under the table, "(42 U.S.C. 26f)" should read "(42 U.S.C. 263f)".

BILLING CODE 1505-01-M

[Docket No. 85N-0460]

Revisions of Certain Food Chemicals Codex, 3d Ed., Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex, 3d Ed., monographs and is soliciting specification information on proposed new

monographs. For certain substances used as food ingredients, revised materials, consisting of new monographs, and additions, changes, and corrections in several current monographs are being prepared by the National Academy of Science/National Research Council (NAS/NRC) Committee on Food Chemicals Codex. These revised materials will be published in the third supplement to the Food Chemicals Codex, 3d Ed.

DATE: Comments by January 28, 1986 (The NAS/NRC Committee on Food Chemicals Codex advises that comments that are not received by this date cannot be considered for the third supplement but will be considered for later supplements).

ADDRESS: Written comments to the NAS/NRC Committee on Food Chemicals Codex, National Academy of Sciences (NAS–341), 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Robert A. Mathews, Committee on Food Chemicals Codex, Food and Nutrition Board, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580;

or

John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to the NAS/NRC to support preparation of the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. In the **Federal Register** of April 9, 1984 (49 FR 13925), FDA announced that the Committee on Food Chemicals Codex (NAS/NRC) was considering monographs and revisions for inclusion in the second supplement to the Food Chemicals Codex, 3d Ed. (FCC III). The public was invited to comment and to make suggestions for consideration for inclusion in that publication.

The agency now gives notice that the NAS/NRC Committee on Food Chemicals Codex is soliciting comments and information on proposed new monographs and proposed changes to certain current monographs. Information received in response to this notice will be used for developing these new monographs and for determining the necessity of the contemplated changes to the current monographs. These changes and new monographs will be published in the third supplement to the Food Chemicals Codex, 3d Ed. Copies of the proposed changes to current monographs may be obtained from the National Academy of Sciences at the address listed above.

FDA emphasizes, however, that it will not consider adopting the third supplement to the Food Chemicals Codex, 3d Ed., until the public has had ample opportunity to comment on the changes it contains. The opportunity for public comment will be announced in a notice published in the **Federal Register.**

The NAS/NRC Committee on Food Chemicals Codex invites comments and suggestions of specifications by all interested parties on the proposed monographs and proposed revisions of current monographs.

I. Proposed new monographs

Beets, dehydrated
Bentonite
Carbon Dioxide
Lactose
Smoke Flavor

II. Current monographs to which the NAS/NRC is proposing to make revisions

Aluminum Sodium Sulfate
Amino Acids
Bromocresol Purple TS
Calcium Hydroxide
Calcium Sorbate
Carnauba Wax
Diatomaceous Earth
Ferric Pyrophosphate
Iron Carbonyl
Malic Acid
Manganese Gluconate
Paraffin, Synthetic
Pectin
Potassium Benzoate
Propylene Glycol
Sodium Alumino Silicate
Sodium Hydroxide Solution
Sodium Metabisulfate
Sodium Saccharin
Sodium Stearyl Fumarate
Sulfur Dioxide Test/Dextrose
Talc
Xanthan Gum
Zinc Gluconate

Two copies of written comments regarding this notice are to be submitted to the National Academy of Sciences at the address listed above. The National Academy of Sciences will forward copies of each comment to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 85N–0460 for public review.

Dated: November 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–28353 Filed 11–27–85; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Reproduction Endocrinology Study Section; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the National Institutes of Health announces the establishment by the Secretary of Health and Human Services of the Reproductive Endocrinology Study Section.

The Reproductive Endocrinology Study Section shall advise the Secretary; the Assistant Secretary for Health; and the Director, National Institutes of Health, regarding applications for grants-in-aid for research and research training activities and proposals relating to the field of reproductive endocrinology, including aspects of management of reproductive endocrine disorders and hormonal imbalances as related to infertility and during pregnancy and puberty, breast cancer, and prostrate cancer.

Authority for this committee shall terminate two years from the date of establishment, unless renewed by appropriate action as authorized by law.

Dated: November 18, 1985.

James B. Wyngaarden, M.D.,

Director, N.I.H.

[FR Doc. 85–28399 Filed 11–27–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institutes; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, January 23–24, 1986, Building 31, Conference Room 4, A-Wing, National Institutes of Health, Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, January 23, and from 8:30 a.m. to adjournment on Friday, January 24, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a

summary of the meeting and a roster of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C–12, Federal Building, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 18, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–28398 Filed 11–27–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting a notice describing a system of records maintained by the National Park Service. The notice titled "Organization Roster, Pay/Pers—Interior, NPS–16", previously published in the **Federal Register** on November 10, 1983 (48 FR 51702), is being deleted from the inventory of systems of records notices describing records maintained by the Department of the Interior that are subject to the provisions of the Privacy Act. The records described in NPS–16 are now covered under a Departmentwide system of records notice titled "Payroll, Attendance, and Leave Records—Interior, Office of the Secretary–85" which was published in the **Federal Register** on October 1, 1984 (49 FR 38712), and/or the governmentwide system of records notice published by the Office of Personnel Management (OPM/GOVT–1).

This change is effective November 29, 1985. Additional information concerning this action can be obtained from the Department Privacy Act Officer, Officer of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240

Dated: November 20, 1985.

James P. Jadlos,

Acting Director, Office of Information Resources Management.

[FR Doc. 85–28374 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–70–M

President's Commission on American Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, December 12, 1985, starting at 9:00 am, in the East Campus Lecture Hall of the LBJ School of Public Affairs, 2405 East Campus Drive, University of Texas, Austin, TX 78705.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in urban recreation program in this country. Attendees have been invited by the Commission for this public hearing.

Notice is further given that second meeting will be held on Friday, December 13, 1985, by the Commission starting at 9:00 am, in the Givens Recreation Center, 3811 East 12th Street Austin, Texas 78721.

This meeting of the Commission will provide for a review of the work plan and Committee reports to the full Commission.

Both meetings will be opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: November 26, 1985.

Victor H. Ashe,

Executive Director; President's Commission on Americans Outdoors.

[FR Doc. 85–28484 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Indian Affairs

Pueblo of Taos, NM; Transfer of Federally-Owned Land

November 12, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. In the absence of the Assistant Secretary—Indian Affairs, 209 DM 8.3A authorizes the Deputy Assistant Secretary—Indian Affairs final approval authority.

On July 24, 1985, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93–599 dated January 2, 1975 (88 Stat. 1954), the below-described property and improvements were transferred by the Director, Disposal Division, Fort Worth Regional Office, General Services Administration, to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Pueblo of Taos, New Mexico.

Taos Pueblo Doctor's Quarters

The following described parcel of land in Taos County, New Mexico:

In the Northwest Quarter of Section 3, T. 25 N., R. 13 E., New Mexico Principal Meridian, described as follows:

Beginning at the most easterly corner of the tract herein described, said point being a rebar w/cap #8489; Whence from said beginning point the section corner common to sections 3, 4, 9 and 10, T. 25 N., R 13 E., N.M.P.M., a brass cap in place, bears S. 25°50'01" W., and is a distance of 4626.23 feet; Thence leaving said beginning point, S. 47°38'31" W., 104.63 feet; Thence N. 83°43'25" W., 45.70 feet to a point of curvature; Thence notherly 63.88 feet distance, along the arc of a curve and bearing to the right (said curve having a radius of 34.82 feet and a chord which bears N. 10°40'51" W., 55.29 feet distance), to a point of tangency; Thence N. 49°42'08" E., 89.44 feet; Thence N. 71°09'40" E., 20.73 feet; Thence S. 41°52'27" E., 69.87 feet to the point and place of beginning of the tract herein described and containing 0.2342 acre.

This land, totaling 0.2342 acre, is to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Pueblo of Taos. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

Hazel E. Elbert,

Deputy Assistant Secretary-Indian Affairs.

[FR Doc. 85–28414 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget Interim Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

Title: Actual Grazing Use Report, 43 CFR 4130.6–2
Abstract: This form is used by permittees to provide information on the actual amount of livestock grazing use made on the public lands within a specified time to the Bureau of Land Management for billing purposes and program monitoring.
Bureau Form Number: 4130–5
Frequency: Annually
Description of Respondent: Grazing permittees required to report actual livestock use on the public land
Annual Responses: 15,000
Annual Burden Hours: 6,000
Bureau Clearance Officer (alternate): Rebecca Daugherty (202) 653–8853

Dated: October 1, 1985.

Billy R. Templeton,

Assistant Director-Renewable Resources.

[FR Doc. 85–28380 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–84–M

Emergency Closure of Public Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

SUMMARY: Notice is hereby given that effective immediately the following described public lands within the Albuquerque District are closed to all vehicle access except for travel on existing maintained roads or as permitted for administrative purposes.

FOR FURTHER INFORMATION CONTACT: Jim Ramakka, Wildlife Biologist, Bureau of Land Management, Caller Service 4104, Farmington New Mexico 87499 (505) 325.3581

New Mexico Principal Meridian

T. 30 N., R. 15 W.
Sec. 30: Lots 5, 6, 7, 8, 9, 10, 11, 12
Sec. 31: Lots 1 and 2, E½NW¼, NE¼, N½SE¼, NE¼SW¼
T. 30 N., R. 16 W.
Sec. 25: All.

The area described above contain 1,396 acres of public land, more or less. The area which is closed to vehicle use and routes that are designated as open to vehicular travel are identified on maps available upon request.

The purpose of this closure is to implement the Endangered Species Act policy established by Pub. L. 97–304 by preventing offroad vehicle damage to a Federally listed threatened plant species and to prevent watershed damage on steep slopes.

The authority for closure is 43 CFR 8341.2. This closure will remain in effect until off-road vehicle disignations for the Farmington Resource Management Plan are implemented.

Dated: November 21, 1985.

L. Paul Applegate,

District Manager

[FR Doc. 85–28377 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–FB–M

[OR–34702]

Oregon; Conveyance of Public Lands; Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 1,559.78 acres of public land out of Federal ownership. This action will also open 3,739.81 acres of reconveyed land to surface entry and to mining and mineral leasing.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 1,559.78 acres of public land in Deschutes County, Oregon from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Williamette Meridian

T. 16 S., R. 11 E.,
Sec. 1, W½SW¼SW¼;
Sec. 2, S½SW¼;
Sec. 5, SE¼SE¼;
Sec. 6, that portion of lot 6 lying west of the County road right-of-way;
Sec. 7, lots 1, 2, 3, and 4, the SE¼SW¼, W½SE¼, SE¼SE¼, E½NW¼, except that portion of lot 3 lying easterly of the County road right-of-way;
Sec. 8, NE¼NE¼, S½NE¼, SE¼NW¼, SW¼SW¼, E½SW¼, and SE¼;
Sec. 9, W½W½;
Sec. 11, NW¼ and NE¼NE¼;
Sec. 16, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 17, NE¼NE¼, S½NE¼, NW¼, and S½;
Sec. 18, lots 1, 2, 3, and 4, NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1, 2, and 4, S½NE¼, W½NE¼NW¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, N½NE¼, SW¼NE¼, NE¼NW¼, E½NW¼NW¼, S½NW¼, N½NW¼, and SW¼SW¼;
Sec. 30, N½NE¼.

The area described contains 3,739.81 acres in Deschutes County.

3. At 8:30 a.m., on January 3, 1986, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on January 3, 1986, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on January 3, 1986, the land will be open to location under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on January 3, 1986, the land will be open to applications and offers under the mineral leasing laws.

Dated: November 19, 1985.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–28376 Filed 11–27–85; 8:45 am]

BILLING CODE 4310–33–M

Coeur d'Alene District Office, Idaho; Management Framework Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Action.

SUMMARY: In accordance with Departmental regulation 43 CFR 1610.5–5(a), notice is hereby given that the BLM Coeur d'Alene District has amended the Emerald Empire and Chief Joseph Management Framework Plans (MFPs). These two land use plans describe the management of public lands in the ten northern counties of the Idaho panhandle.

SUPPLEMENTARY INFORMATION: The Emerald Empire and Chief Joseph MFPs were amended to incorporate land use allocations for 11,989 acres of public land which were not included in the original MFPs. The planning decisions for the subject lands involve most resource components. Approximately 640 acres are slated for intensive forest management; 4100 acres for continued livestock grazing; and 5280 acres to remain in their current roadless

condition. The lands covered by this amendment are adjacent to, or are surrounded by, lands which are covered in approved land use plans. The land use decisions contained in the MFP amendment are a direct continuation of the allocations and actions approved in the primary MFPs. The MFP amendment was prepared using normal Bureau procedures, including environmental assessment and active public participation. In addition, all the lands considered in the amendment were fully analyzed in the Northern Idaho Grazing Management Environmental Impact Statement (1981).

Protest

A formal protest period will be in effect for 30 days from the publication date of this notice. A protest may only encompass those issues which were submitted for the record during the planning process. Protests must be made in writing to the Director, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. The actions prescribed in the MFP amendment will be implemented following the close of the protest period.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Coeur d'Alene District Office, 1808 North 3rd Street, Coeur d'Alene, Idaho 83814, (208) 765-7356.

Dated: November 21, 1985.

Wayne Zinne,

District Manager.

[FR Doc. 85-28381 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-GG-M

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 that a meeting of the Richfield District Grazing Advisory Board will be held December 18, 1985 at 9:00 a.m. in the BLM District Office, 150 East 900 North, Richfield, Utah 84701.

Agenda for the Board Meeting will be:

1. Weed Control
2. Shrub Loss
3. AWP—Proposed Projects For FY 86
4. Update On Proposed Omnibus Bill
5. Project Maintenance Policy—Sevier River Resource Area
6. Change In Season Of Use—Sevier River Resource Area
7. Fire Rehabilitation
8. Status Of Boards Charter
9. Grazing Subleasing Regulations

This meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 p.m. and 2:00 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection.

Dated: November 19, 1985.

Donald L. Pendleton,

District Manager.

FR Doc. 85-28378 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-84-M

[M 67079]

Order Providing for Opening of Lands; Montana

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Opening order.

SUMMARY: This order will open lands segregated from appropriation under the public land laws by Power Project 787.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1975, as amended 16 U.S.C. 818) and pursuant to the determination of the Federal Energy Regulatory Commission on October 15, 1985, it is ordered as follows:

1. By order dated October 15, 1985, the Federal Energy Regulatory Commission vacated Project 787 in its entirety and described as follows. These lands are located within the Custer National Forest.

Principal Meridian

T. 8 S., R. 19 E.,
Sec. 33, SE¼SE¼;
Sec. 34, SW¼SW¼.

2. At 8:00 a.m. on December 13, 1985, the above-described lands shall be open to such forms of appropriation as may by law be made of National Forest land, subject to any existing withdrawals, leases, licenses or permits. Inquiries concerning the land should be addressed to the Bureau of Land Management, P.O. Box 36800, Billings Montana 59107.

Dated: November 21, 1985.

John A. Kwiatkowski,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 85-28382 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-DN-M

Planning Analysis: Utah; Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of September 12, 1985 Notice, Vol. 50, No 177 Page 37291.

SUMMARY: After further review, we have determined that a planning amendment is not required for the Mountain Valley MFP and that one will not be prepared.

Dated: November 20, 1985.

Donald L. Pendleton,

District Manager.

[FR Doc. 85-28375 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-DQ

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6238, Block A-556, High Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on November 19, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals

Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28360 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Arco Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Arco Oil an Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4547, Block 668, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on November 7, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28361 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Chevron, U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1240, Block 51, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28362 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 054, Block 129, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28367 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Mobile Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobile Oil Exploration, and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2300, Block 235, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of Hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 15, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notcie 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28369 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5219, Block 145, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 19, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 to Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under with the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28370 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Operating Co. Development Operations Coordination Document; TXP

AGENCY: Minerals Management Service, Interior.

ACTION: Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4222, Block 46, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1985.

ADDRESSES: A copy of the subject is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties become effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28379 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3061, Block A-85, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on November 21, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: November 22, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28363 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Notice of availability.

SUMMARY: OSM is announcing the availability of four annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The four reports, covering the States of Alabama, Alaska, Ohio, and Wyoming were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Alabama: Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Alaska and Wyoming: Casper Field Office, Office of Surface Mining, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918.

Ohio: Columbus Field Office, Office of Surface Mining, 2242 South Hamilton Road, 2nd Floor, Columbus, Ohio 43227.

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress.

The first six evaluation reports for this year (Illinois, Kentucky, Maryland, Mississippi, Montana and North Dakota) were completed and sent to Congress on November 5, 1985. These final reports were made publicly available on November 14, 1985 (50 FR 47122). Four additional evaluation reports for Alabama, Alaska, Ohio, and Wyoming were completed and sent to Congress on November 25, 1985, and are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: November 25, 1985.

Len Richeson,

Acting Assistant Director, Program Operations, Office of Surface Mining.

[FR Doc. 85-28463 Filed 11-27-85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-261(A), 263(A), and 264(A) (Preliminary) and 731-TA-289(A)-291(A) (Preliminary) [1]]

Welded Steel Wire Fabric for Concrete Reinforcement From Italy, Mexico, and Venezuela

AGENCY: International Trade Commission.

[1] On Oct. 24, 1985, the Commission instituted investigations Nos. 701-TA-261 through 264 and 731-TA-289 through 291 (Preliminary) in response to petitions filed by the Wire Reinforcement Institute

Continued

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–261(A), 263(A), and 264(A) (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy, Mexico, and Venezuela of welded wire cloth, gauze, fabric, screen, netting, and fencing, not cut to shape, for concrete reinforcement, provided for in item 642.8010 of the Tariff Schedules of the United States Annotated, which are alleged to be subsidized by the Governments of Italy, Mexico, and Venezuela. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in these cases by January 6, 1986.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–289(A)–291(A) (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy, Mexico, and Venezuela of welded wire cloth, gauze, fabric, screen, netting, and fencing, not cut to shape, for concrete reinforcement, provided for in item 642.8010 of the Tariff Schedules of the United States Annotated, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by January 6, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: David Coombs (202–523–1376) or Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on November 20, 1985 by the Wire Reinforcement Institute, Inc., McLean, Virginia.

Participation in These Investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 10, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lynn Featherstone (202–523–0242) not later than December 6, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 12, 1985, a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 22, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-28390 Filed 11-27-85; 8:45 am]

BILLING CODE 7020-02-M

(50 F.R. 45176, Oct. 30, 1985). On Nov. 6, 1985, however, the Wire Reinforcement Institute withdrew its petitions for the purpose of amending them with additional information (see 50 F.R. 47126, Nov. 14, 1985). The amended petitions, which cover the same products as the original petitions, but which no longer include imports from Korea, were filed on Nov. 20, 1985. The suffix "(A)" on the Commission's investigation numbers denotes investigations based on the amended petitions.

INTERSTATE COMMERCE COMMISSION

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

Anheuser-Busch Companies, Inc., One Busch Place, St. Louis, Missouri 63118

2. Wholly Owned Subsidiaries and State of Incorporation

(1) Anheuser-Busch, Inc., Missouri
(2) August A. Busch & Company of Massachusetts, Inc., Massachuse'ts
(3) August A. Busch & Company of Florida, Inc., Florida
(4) Busch Properties, Inc., Delaware
(5) Consolidated Farms, Inc., Delaware
(6) Metal Container Corporation, Delaware
(7) Kingsmill Realty, Inc., Virginia
(8) Busch International Sales Corporation, Delaware
(9) St. Louis Refrigerator Car Company, Common Law Massachusetts Business Trust (Unincorporated)
(10) Manufacturers Railway Company, Missouri
(11) Manufacturers Cartage Company, Missouri
(12) M.R.S. Redevelopment Corporation, Missouri
(13) M.R.S. Transport Company, Texas
(14) Williamsburg Transport, Inc., Virginia
(15) Busch Entertainment Corporation, Delaware
(16) Kingsmill Resorts, Inc., Delaware
(17) Container Recovery Corporation, Ohio
(18) Metal Label Corporation, Tennessee
(19) Busch Creative Services Corporation, Delaware
(20) Busch Agricultural Resources, Inc., Delaware
(21) Busch Industrial Products Corporation, Delaware
(22) Anheuser-Busch International, Inc., Delaware
(23) Golden Eagle Distributing Company, Delaware
(24) Civic Center Corporation, Missouri
(25) Anheuser-Busch Europe, Delaware
(26) Stadium Plaza Redevelopment Corporation, Missouri
(27) Broadway Redevelopment Corporation, Missouri
(28) St. Louis Sports Hall of Fame, Inc., Missouri
(29) Suffolk-Busch Development Corporation, Massachusetts
(30) Eagle Snacks, Inc., Delaware
(31) Anheuser-Busch Beverage Group, Inc., Delaware
(32) Nutri-Turf, Inc., Delaware
(33) Anheuser-Busch Asia, Inc., Delaware
(34) A–B Sports, Inc., Delaware
(35) Anheuser-Busch Metal Corporation, Delaware
(36) SP Parks, Inc., Delaware
(37) Innoven IV Corporation, Delaware
(38) BACI, Inc., Delaware
(39) Innervision Productions, Inc., Missouri
(40) Campbell Taggart, Inc., Delaware
(41) Rainbo Baking Company of Albuquerque, Delaware
(42) Colonial Baking Company of Atlanta, Delaware
(43) Colonial Baking Company of Augusta, Delaware
(44) Rainbo Bread Company of Aurora, Delaware
(45) Colonial Baking Company of Cedar Rapids, Delaware
(46) Colonial Baking Company of Chattanooga, Delaware
(47) Colonial Baking Company of Columbus, Delaware
(48) Rainbo Baking Company of Corpus Christi, Delaware
(49) Manor Baking Company of Dallas, Delaware
(50) Rainbo Bread Company, Delaware
(51) Colonial Baking Company of Des Moines, Delaware
(52) Rainbo Baking Company of El Paso, Delaware
(53) Evansville Colonial Baking Company, Delaware
(54) Rainbo Bakeries of San Joaquin Valley, Inc., Delaware
(55) Rainbo Bread Company of Nebraska, Delaware
(56) Colonial Baking Company of Gulfport, Delaware
(57) Rainbo Baking Company of Harlingen, Delaware
(58) Rainbo Baking Company of Houston, Delaware
(59) Colonial Baking Company of Huntsville, Delaware
(60) Betts Baking Company, Delaware
(61) Colonial Baking Company of Indianapolis, Inc., Delaware
(62) Rainbo Baking Company of Johnson City, Delaware
(63) Manor Baking Company, Delaware
(64) Rainbo Baking Company of Lexington, Delaware
(65) Colonial Baking Company of Little Rock, Delaware
(66) Rainbo Baking Company of Louisville, Delaware
(67) Rainbo Baking Company of Lubbock, Delaware
(68) Colonial Baking Company of Memphis, Delaware
(69) Colonial Baking Company of Alabama, Delaware
(70) Colonial Baking Company of Muncie, Inc., Delaware
(71) Colonial Baking Company of Nashville, Delaware
(72) Rainbo Baking Company of Oklahoma City, Delaware
(73) Rainbo Baking Company of Phoenix, Delaware
(74) Rainbo Bakers, Inc., Delaware
(75) Rainbo Bread Company of Roanoke, Delaware
(76) Rockford Colonial Baking Company, Delaware
(77) Rainbo Baking Company of Sacramento Valley, Delaware
(78) Rainbo Bread Company of St. Joseph, Delaware
(79) Colonial Baking Company of St. Louis, Delaware
(80) Rainbo Baking Company of San Antonio, Delaware
(81) Colonial Baking Company of Springfield, Delaware
(82) Kilpatrick's Bakeries, Inc., Delaware
(83) Rainbo Baking Company of Tucson, Delaware
(84) Rainbo Baking Company of Tulsa, Delaware
(85) Rainbo Baking Company of Wichita, Delaware
(86) El Charrito, Inc., Delaware
(87) Herby's Foods, Inc., Texas
(88) Merico, Inc., Texas

1. Parent Corporation and Address of Principal Office

Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440

2. Wholly-Owned Subsidiaries Which Will Participate in the Operations and Address of Their Respective Principal Offices and Place of Incorporation

(a) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware
(b) Cargill Marine and Terminal, Inc., P.O. Box 9300, Minneapolis, Minnesota 55440—Delaware
(c) C. Tennant Sons & Co., of New York, P.O. Box 9300, Minneapolis, Minnesota 55440—Delaware Subsidiary of Excel Corporations
(d) Excel Corporation, P.O. Box 2519, Wichita, Kansas 67219—Delaware
(1) Excel Transportation, Inc., P.O. Box 2519, Wichita, Kansas 78219—Kansas
(e) Hohenberg Bros. Company, 266 South Front Street, Memphis, Tennessee 38101—Tennessee Subsidiary of Hohenberg Bros. Company:
(1) R.T. Hoover & Co., Inc. 817 Texas Avenue, El Paso, Texas 79999—Texas
(f) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware
(g) Mid-State Metals, Inc., 15407 McGinty Road West, Wayzata, Minnesota 55391—Illinois
(h) North Star Steel Company, 2901 Metro Drive Suite 330, Minneapolis, Minnesota 55420—Minnesota Subsidiary of North Star Steel Company:
(1) Magnimet Corporation, P.O. Box 28, Monroe, Michigan 48161—Michigan
(i) North Star Steel Texas, Inc., 465 Orleans, Beaumont, Texas 77704—Delaware

(j) Young's Inc., Rural Route 1 Roaring Spring, Pennsylvania 16673—Pennsylvania
(k) Zelrich Steel Company, Inc., P.O. Box 29667, Dallas, Texas 75229—Texas
(l) Sunny Fresh Foods, Inc., P.O. Box 5613, Minneapolis, Minnesota 55440—Delaware Subsidiary of Sunny Fresh Foods, Inc.:
(1) Wrightco, Inc., P.O. Box 428, 206 West 4th Street, Monticello, Minnesota 55362—Minnesota

1. Parent Corporation and Address of Principle Office

Johnson Controls, Inc., 5757 North Green Bay Avenue, Milwaukee, WI 53201

2. Wholly-Owned Subsidiary Which Will Participate in the Operations, and State(s) of Corporation

Hoover Universal, Inc., 825 Victors Way, Ann Arbor, MI 48104—State of Incorporation: Michigan
Ferro Manuracturing Corp., 32661 Edward Avenue, Madison Heights, MI 48071—State of Incorporation: Michigan

1. Parent Corporation

The Langdale Company, Post Office Box 1088, 1202 Madison Highway, Valdosta, Georgia 31603–1088

2. Wholly-Owned Subsidiary Participating in the Operations

Coastal Plans Timber Company, Post Office Box 91, 1110–A Old Clyattville Road, Valdosta, Georgia 31601
Industrial Saw Works, Inc., Post Office Box 757, 1132 Old Clyattville Road, Valdosta, Georgia 31601
Langdale Tire Company, Post Office Box 5172, 1628 James P. Rodgers Drive, Valdosta, Georgia 31601
Greenleaf Wood Products, Inc., Post Office Box 1136, 1110–B Old Clyattville Road, Valdosta, Georgia 31601
Langdale Fuel Company, Post Office Box 746, 314 Tucker Road, Valdosta, Georgia 31601
Southern Reman., Inc., Post Office Box 772, 1130 Old Clyattville Road, Valdosta, Georgia 31601
The Val D'Aosta Company, d/b/a Sheraton Inn—Valdosta, Post Office Box 1191, I–75 and Highway 84, Valdosta, Georgia 31601.

All subsidiaries are incorporated in the State of Georgia.

James H. Bayne,

Secretary.

[FR Doc. 85–28392 Filed 11–27–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Midwestern Insulation Contractors and Engineers

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 17, 1985 a proposed Consent Decree in *United States* v. *Midwestern Insulation Contractors and Engineers*, Civil Action No. 85–1989K was lodged with the United States District Court for the District of Kansas. The proposed Consent Decree concerns violations of the notice provisions of the National Emission Standard for Hazardous Air Pollutants ("NESHAPs") for asbestos. 40 CFR Part 61. The proposed Consent Decree requires the defendant to comply with the notice provisions of the asbestos NESHAP and to pay a civil penalty of $3,500.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Midwestern Insulation Contractors and Engineers* D.J. Ref. 90–5–2–1–806.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Kansas, U.S. Courthouse, Room 306, 401 North Market Street, Wichita, Kansas 67202 and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the Consent Decree may be examined at the Environmental Environment Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–28359 Filed 11–27–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Denver, CO

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 12, 1985, a proposed consent decree in *United States* v. *The City and County of Denver*, Civil Action NO. 84–JM–1507, was lodged with the United States District Court for the District of Colorado. The proposed decree requires Denver to pay seven thousand five hundred dollars ($7,500) into the Hazardous Substance Response Trust Fund and to treat all contaminated groundwater resulting from the installation of groundwater monitoring wells at the Lowry Landfill site near Denver, Colorado.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City and County of Denver*, D.J. Ref. 90–11–2–93.

The proposed consent decree may be examined at the Office of the United States Attorney, Attention Janice Chapman, Esq., 1961 Stout Street, Suite 1200, Federal Office Building, Denver, Colorado 80294, and at the Region VIII Office of the Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202–2413, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1728, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 ($.10/page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–28358 Filed 11–27–85; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; Optoelectronics Group Project

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("The Act"), Battelle Memorial Institute—Columbus Division ("Battelle") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities

of the parties to an agreement with Batelle to undertake a research project in the field of optoelectronics and (2) the nature and objectives of the research project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the research project and the general area of planned activities are given below:

Battelle is undertaking a research project in the field of optoelectronics for the following companies:

Allied Corporation
Amp Incorporated
Dukane Corporation
Hewlett-Packard Company
ITT Corporation
Litton Systems, Inc.

The purpose of the research project, which will be carried out by Battelle, is to develop micro-robotic alignment, micro-positioning, and micro-attachment techniques for automated assembly of optical fibers, semiconductor lasers, photodiodes, and optical guided-wave circuits. Further, to develop package materials and structures for those devices.

Membership in this group research project remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc 85-28335 Filed 11-27-85; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meeting

The fourth quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington DC on December 17, 1985. The meeting will take place in the Thirteenth Floor Conference Room at the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., from 10:00 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

Dated: November 25, 1985.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-28371 Filed 11-27-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Task Force on Economic Adjustment and Worker Dislocation, Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will have its first meeting at 10:00 a.m., on Tuesday, December 17, 1985, in the Secretary's Conference Room, S-2508, 200 Constitution Ave. NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to outline an Agenda for the Task Force, and begin to discuss to the parameters of the issues involved with economic adjustment and worker dislocation.

For additional information contact: Mr. Joseph Talbot, U.S. Department of Labor, Room S-2220, Washington, DC 20210, (202) 523-6076.

Signed at Washington, DC, this 25th day of November, 1985.

Michael Baroody,

Assistant Secretary for Policy.

[FR Doc. 85-28480 Filed 11-27-85; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1985; Certification

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsection (f) or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of States subject to the credit reduction for 1985 and States that qualify for credit reduction relief is published below.

Dated: November 20, 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

November 12, 1985.

The Honorable James A. Baker III,
Secretary of the Treasury,
Washington, D.C. 20220.

Dear Secretary Baker: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and the status of the States with regard to the reduction in credit provisions of section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Employers in 12 States are subject to a reduction in FUTA offset credit for taxable year 1985:

Connecticut
Illinois
Louisiana
Michigan
Minnesota
Ohio
Pennsylvania
Puerto Rico
Vermont
Virgin Islands
West Virginia
Wisconsin

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) added a new subsection (f) to section 3302 of FUTA which under certain conditions limits the FUTA tax credit reduction in 1984 to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year.

To qualify for a full cap in taxable year 1985, a State must have taken no action in the 12 months ending September 30, 1985, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) A reduction in the State's unemployment tax effort;

(2) A net decrease in the solvency of the State unemployment compensation system; and, further, that:

(3) The State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar years in the five-calendar year period ending with calendar year 1984; and

(4) The outstanding balance of advances to the State on September 30 of calendar year 1985 was not greater than the outstanding balance for such State on September 30, 1982.

I have determined that under these criteria three States qualify for the full cap and are subject to reduced FUTA credits for 1985 as follows:

Connecticut (percent)	0.7
Puerto Rico (percent)	0.6
Vermont (percent)	0.6

Section 512(a) of the Social Security Amendments of 1983 (Pub. L. 98-21) added a new paragraph (8) to section 3302(f) of FUTA which under certain conditions partially limits the FUTA tax credit reduction in 1985

(5) If a State meets the requirements of (1) and (2), and (3) or (4), above, the reduction in credits otherwise applicable to employers in the State for 1985 is reduced by 0.1 percentage point, but not below the higher of 0.6 percent and the rate for the prior year.

(6) If a State meets the requirements of (1) and (2) above, and also meets the requirements of Section 1202(b)(8)(B) of the Social Security Act for 1985, the reduction in

credits otherwise applicable to employers in the State for 1985 is reduced by 0.2 percentage points, but not below the higher of 0.6 percent and the rate for the prior year.

I have determined that under these criteria four States qualify for a partial cap and are subject to reduced FUTA credits for 1985 as follows:

Illinois (percent)	0.9
Ohio (percent)	0.8
Pennsylvania (percent)	0.9
West Virginia (percent)	0.8

I have determined that three States are not affected by the full or partial cap and are subject to reduced FUTA credits for 1985 as follows:

Louisiana (percent)	0.6
Minnesota (percent)	1.1
Virgin Islands (percent)	1.2

Section 272 of the Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) amended section 3302 of the Internal Revenue Code of 1954 by adding subsection (g) which gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet the following criteria in order to avoid the offset credit reduction:

(7) Repay all loans for the one-year period ending on November 9, plus the additional tax due by reason of the reduced credit applicable to tax year 1985,

(8) Have or will have sufficient funds remaining after the transfer to pay benefits for at least three months from November 1 of the same year without receiving another title XII advance; and

(9) Have taken action by amendment of the State law, after the date of the first advance taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

I have determined that under these criteria two States qualify and are thus not subject to reduced FUTA credits for 1985 as follows:

Michigan Wisconsin

Sincerely,

Carolyn M. Golding,

Director, Unemployment Insurance Service.

[FR Doc. 85-28479, Filed 11-27-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-72]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCOS).

DATE AND TIME: December 16, 1985, 8:30 a.m. to 5 p.m.; December 17, 1985, 8:30 a.m. to 12 noon.

ADDRESS: Comptroller of Currency Conference Center, 490 L'Enfant Plaza East SW., Room 3-b (third floor), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Hartman, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW., Washington, DC 20024, (202/453-8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activites; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 60 persons including Commission members and other participants).

Type of Meeting: Open.

Agenda

Monday, December 16, 1985

8:30 a.m.—Introduction.
8:45 a.m.—Low-Cost Earth to Low Earth Orbit Transportation.
11 a.m.—Inner Solar System Space Infrastructure.
1 p.m.—Automation, Robotics, etc.
2 p.m.—Space Commercialization.
2:45 p.m.—Intelsat Corporation.
3:30 p.m.—Earth Observations Research and Development.
4:15 p.m.—Oceanic Observations Research and Development.
5 p.m.—Adjourn.

Tuesday, December 17, 1985

8:30 a.m.—International Geosphere Biosphere Program.
9 a.m.—Earth Observaton Needs of Underdeveloped Nations.
9:30 a.m.—Earth Observations Satellite Company (EOSAT).
10:45 a.m.—GEOSAT Committee, Inc.
11:15 a.m.—Inner Solar System Space Infrastructure.
12 noon—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

November 21, 1985.

[FR Doc. 85-28336 Filed 11-27-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Establishment of Advisory Committee

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the establishment of the Qualifications Review Panel for the Position of Director, John Fitzgerald Kennedy Library. The Archivist of the United States has determined that establishment of this advisory committee is in the public interest.

Designation. Qualifications Review Panel for the Position of Director John Fitzgerald Kennedy Library.

Purpose. The committee will solicit and review Personal Qualifications Statements (SF-171) of candidates for the position of Director of the John Fitzgerald Kennedy Library and recommend to the National Archives and Records Administration Merit Selection Panel those applicants considered to be best qualified for referral to the Archivist of the United States for final selection.

Dated: November 26, 1985.

Claudine Weiher,

Acting Archivist of the United States.

[FR Doc. 85-28548 Filed 11-27-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings;

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Date: December 11, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications Subvention category, Texts Program, Division of Research Programs, for projects beginning after April 1, 1986.

Date: December 13, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications Subvention category, Texts

Program, Division of Research Programs, for projects beginning after April 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–28441 Filed 11–27–85; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 27, 1985. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 15, 1985.

The application received is as follows:

Applicant

John L. Bengston, National Marine Mammal Laboratory, National Marine Fisheries Service, Seattle, Washington 98115

Activity for Which Permit Requested

Taking; Import into U.S.A.

This project consists of ship-supported and land-based investigations of seals in the vicinity of the Antarctica Peninsula and in the Weddell Sea. Its primary purpose is to study the feeding ecology, reproduction, and population dynamics of the pelagic Antarctic seals and to examine their role in the marine ecosystem. Crabeater and leopard seals are the main target species.

From February–April, 1986, the *USCGC Glacier* will support the AMERIEZ II cruise in the Weddell Sea. The stomach contents, feeding activity, diving patterns, and reproductive status of crabeater, leopard, and Ross seals will be investigated along transects running from the ice edge deeper into the consolidated pack ice areas. Seals will be collected along these transects to provide data on feeding ecology (stomach and gut contents), reproductive status (reproductive tracts), and age structure (teeth).

The ship is planning to make several multiple-day stations, lasting up to 4 days at a time. During these opportunities, time-depth recorders and radio transmitters will be deployed on crabeater, leopard, and Ross seals to monitor their feeding and diving behavior.

Shore-based surveys of pinnipeds hauled out in the vicinity of Palmer Station will also be carried out. These surveys will be investigations of the numbers of southern elephant seals. To facilitate the census work, temporary paint marks will be applied to selected elephant seals hauled out in the survey area. These marks will have no adverse or long-term impact on the individual seals.

The species to be investigated are as follows:

Seal species	Number	Disposition
Lobodon sp	600	Capture/release.
Do	600	Sacrifice.
Hydrurga sp	300	Capture/release.
Do	150	Sacrifice.
Leptonychotes sp	250	Capture/release.
Do	20	Sacrifice.
Ommatophoca sp	130	Capture/release.
Do	20	Sacrifice.
Arctocephalus sp	700	Capture/release.
Do	20	Sacrifice.
Mirounga sp	350	Capture/release.
Do	20	Sacrifice.

Locations

Antarctic Peninsula area and Weddell Sea.

Dates

January 1986–December 1986.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A.N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 85–28365 Filed 11–27–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–529 And STN 50–530]

Arizona Public Service Co., et. al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the

applicants) for the Palo Verde Nuclear Generating Station, Units 2 and 3 located at the applicant's site in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action: The exemption from Appendix J of 10 CFR Part 50 would eliminate the full pressure test required by paragraph III.D.2(b)(ii) and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the applicants' letter dated October 7, 1985.

The Need for the Proposed Action: The proposed Appendix J exemption is required to prove the applicant with greater plant availability over the lifetime of the plant. Without the proposed exemption, the applicant would be required to perform a full presssure test of air locks each time the plant enters the cold shutdown mode, thereby extending each outage.

Environmental Impacts of the Proposed Action: With respect to the proposed exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This would lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarraned delays in owner ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "FES Related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2 and 3," dated February 1982.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter dated October 7, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated: at Bethesda, Maryland, this 22 day of November, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-28476 Filed 11-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island Unit 2 Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on December 12, 1985, from 7:00 PM to 10:00 PM at the Holiday Inn, 23 South Second Street, Harrisburg, PA. The meeting will be open to the public.

At this meeting the Panel will receive a presentation by Norman and Marjorie Aamodt on the results of their health survey of residents in the area of TMI-2. They will also provide a critique of the health studies relating to the March 28, 1978 accident at TMI-2, conducted by the Division of Epidemiology Research, Pennsylvania Department of Health. The Panel will also receive a status report on the progress of defueling from General Public Utilities nuclear Corporation. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492-7466.

Dated: November 25, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-28475 Filed 11-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company, for operation of the Fermi-2 facility located in Monroe County, Michigan.

The purpose of the proposed amendment is to make a modification to the Fermi-2 Technical Specifications regarding the requirement to inert the primary containment by December 21, 1985, in accordance with the applicable regulation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's amendment application has been made in its letter dated November 13, 1985, as part of its request to delay the inerting of the primary containment until completion of its Startup Test Program. This test program will be ended upon the successful completion of the 100 percent rated thermal power trip tests as described in Chapter 14 of the Fermi-2 FSAR. The proposed modification is to Specification 3.10.5 which states that containment inerting be suspended until six months after initial criticality. Since initial criticality was achieved on June 21, 1985, inerting would therefore be required no later than December 21, 1985, for operation of the Fermi-2 facility.

Based on the three criteria in 10 CFR 50.92 for defining a significant hazards consideration, operation of the Fermi-2 facility in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Neither the probability nor the consequences of an accident will be changed since the proposed delay in inerting the Fermi-2 containment will not significantly alter the plant parameters which were considered when the Commission issued its regulation regarding the delay in inerting.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The fission product inventory which would add decay heat into the fuel elements would not differ significantly from that assumed in the applicable regulation (i.e., 10 CFR 50.44(c)(3)(i)). This is assured by the proposed operational restriction of 120 effective full power days.

(3) Involve a significant reduction in a margin of safety since the plant parameters which were previously assumed in establishing a margin of safety against the possibility of a hydrogen explosion inside primary containment, have not changed.

On the above mentioned bases, the staff proposes to determine that this amendment which modifies one section of the Fermi-2 Technical Specifications, does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By December 30, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. A request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B. J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esquire, 2000 Second Avenue, Detroit, Michigan, 48826, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or

request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan, 48161.

Dated at Bethesda, Maryland, this 22nd day of November, 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85-28591 Filed 11-27-85; 8:45am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Atlanta Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Atlanta, Georgia, will hold a public meeting from 9:00 a.m. to 3:00 p.m., on Friday, December 20, 1985, at the Peachtree—Twenty-Fifth Building, 1718 Peachtree Road, NW., Room 162, Atlanta, Georgia, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call B.R. Wells, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, (404) 881-4749.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 22, 1985.

[FR Doc. 85-28435 Filed 11-27-85; 8:45 am]

BILLING CODE 8025-01-M

California; Designation of Disaster Loan Area

The City of Santa Ana, Orange County, California constitutes a disaster area because of damage resulting from a fire in the Pioneer Town Shopping Center which occurred on July 10-11, 1985. Eligible small businesses without credit elsewhere and small agricultural cooperatives without credit elsewhere may file applications for economic injury assistance until the close of business on August 21, 1986, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825

or other locally announced locations. The interest rate for eligible small business applicants without credit elsewhere is 4 percent and 10.5 percent for eligible small agricultural cooperatives without credit elsewhere.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-28436 Filed 11-27-85; 8:45 am]

BILLING CODE 8025-01-M

New Jersey; Declaration of Disaster Loan Area

The county of Cape May in the State of New Jersey constitutes a disaster area because of damage caused by Hurricane Gloria which occurred on September 27, 1985. Applications for loans for physical damage may be filed until the close of business on January 20, 1986, and for economic injury until the close of business on August 20, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (nonprofit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222008 for physical damage and for economic injury the number is 637000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 20, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-28437 Filed 11-27-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 42425]

Southwest Airlines Co. Enforcement Proceeding; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to be held on February 4, 1986, will be held on February 19, 1986, at 9:30 a.m. (local time) in Room 5332 Nassif Bldg., 400 7th Street, SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

Dated: at Washington, DC, November 22, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-28473 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-62-M

Application of Wright Air Service, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-11-60) Docket 43314.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Wright Air Service, Inc., fit willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transporation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 16, 1985; and answers to objections shall be filed no later than December 26, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43314 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. Nolan, (202) 426-7631, Aviation Enforcement and Proceedings (C-70, Room 4116), or Linda L. Lundell (202) 755-3812, Special Authorities Division (P-47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Dated: November 21, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-28474 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Hillsborough County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hillsborough County, Florida.

FOR FURTHER INFORMATION CONTACT: D.B. Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7239.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to construct an expressway in Hillsborough County, Florida. The proposed project would involve the construction of the Northwest Expressway from Interstate 275 to State Road 597 (Dale Mabry Highway), a distance of 17 miles. The proposed improvements within those corridors are considered necessary to provide for the existing and projected traffic demands of the area.

Alternatives under consideration include (1) taking no action; (2) improvements to existing State Road 60 (Eisenhower Boulevard) from Interstate 275 northward to Hillsborough Avenue, then on new location to State Road 597 (Lake LeClare alignment); and (3) improvements to existing State Road 60 from Interstate 275 northward to Hillsborough Avenue, then on new alignment using an abandoned railroad to State Road 597 (Railroad alignment).

Federal, State and local agencies have contributed early coordination comments. Additionally, a project planning team developing this project has contacted Federal, State and local agencies for information relative to land use planning, water quality analysis, and local planning needs. Public information meetings relative to corridor locations have been held. A public hearing will be held after approval of the draft EIS. The draft EIS will be made available for public and agency review and comment prior to this public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

Issued on: November 21, 1985.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 85-28368 Filed 11-27-85; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 230
Friday, November 29, 1985

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

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 6, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–28561 Filed 11–26–85; 1:59 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 13, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–28562 Filed 11–26–85; 1:59 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE 11:00 a.m., December 20, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–28563 Filed 11–26–85; 1:59 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 27, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–28564 Filed 11–26–85; 1:59 pm

BILLING CODE 6351–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 2, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

CreditAmerica Lending and Thrift Company, an operating noninsured industrial bank located at 1027 Oak Street, Brainerd, Minnesota.

Application for consent to purchase a 100-percent ownership in another financial entity:

The Hibernia Bank, San Francisco, California, an insured State nonmember bank, for consent to acquire 100 percent of the stock of Hibernia Pacific Limited, a corporation to be organized in Hong Kong.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46, 367–SR
Bank of Lake Helen, Lake Helen, Florida
Case No. 46, 368–SR
Bank of Enville, Enville, Tennessee
Case No. 46, 369–SR
Carroll County Bank, Huntingdon, Tennessee
Case No. 46, 370–SR
Watkins Banking Company, Faunsdale, Alabama

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: November 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–28506 Filed 11–26–85; 11:06 am]

BILLING CODE 6714–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 2, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors

requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for recission of denial of application for Federal deposit insurance:

First American Bank and Trust, Inc., North Charleston, South Carolina.

Memorandum regarding the Corporation's liquidation and receivership activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: November 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28507 Filed 11-26-85; 11:06 am]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:27 p.m. on Friday, November 22, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Chester State Bank, Chester, Texas, which was closed by the Banking Commissioner for the State of Texas on Friday, November 22, 1985; (2) accept the bid for the transaction submitted by Bank of East Texas, Chester, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Bank of East Texas, Chester, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Chester State Bank, Chester, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:30 p.m., and at 6:55 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Allen County Bank and Trust Company, Leo, Indiana, which was closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, November 22, 1985; (2) accepted the bid for the transaction submitted by The Indiana National Bank, Indianaplis, Indiana; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1923(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 6:56 p.m., and at 11:30 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution making funds available for the payment of insured deposits made in California Heritage Bank, San Diego, California, which was closed by the Superintendent of Banks for the State of California, on Friday, November 22, 1985.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 26, 1985

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28592 Filed 11-26-85; 3:51 pm]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:50 a.m. on Saturday, November 23, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the bid of Grossmont Bank, La Mesa, California, an insured State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in California Heritage Bank, San Diego, California, which was closed by the Superintendent of Banks for the State of California on Friday, November 22, 1985; (2) approve the application of Grossmont Bank, La Mesa, California, for consent to purchase certain assets of and assume the liability to pay deposits made in California Heritage Bank, San Diego, California, and for consent to establish the two offices of California Heritage Bank as branches of Grossmont Bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

FR Doc. 85-28593 Filed 11-26-85; 3:52 pm]

BILLING CODE 6714-01-M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, November 25, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution.

The Board further determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Application of Republic Bank, Pinellas County (P.O. Clearwater), Florida, for consent to purchase certain assets of and assume the liability to pay deposits made in the Seminole, Florida, branch of Amerifirst Federal Savings and Loan Association, Miami, Florida, a non-FDIC-insured institution.

Application of the The Second National Bank of Warren, Warren, Ohio, for consent to purchase certain assets of and assume the liability to pay deposits made in the Howland Office of Peoples Savings and Loan Company, Ashtabula, Ohio, a non-FDIC-insured institution.

Application of Keith County Bank & Trust Company, Ogallala, Nebraska, an insured State nonmember bank, for consent to merge, under its charter and with the title "Adams Bank and Trust," with Bank of Brule, Brule, Nebraska; Chase County Bank & Trust Company, Imperial, Nebraska; Security State Bank, Madrid, Nebraska; and First Security Bank, Sutherland, Nebraska, all insured State nonmember banks, and for consent to establish the sole office of each of the four banks as branches of the resultant bank.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28594 Filed 11-26-85; 3:53 pm]

BILLING CODE 6714-01-M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 25, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4) and (c)(9)(B)).

Dated: November 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28595 Filed 11-26-85; 3:54 pm]

BILLING CODE 6714-01-Mu

11

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 3, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, December 5, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-36: Robert R. Weed, The Bob Weed Company
Recommendations Regarding the Proposed Revision of 11 C.F.R. 110.1 and 110.2
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-28584 Filed 11-26-85; 3:39 am]

BILLING CODE 6715-01-M

12

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., December 4, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Consideration of a draft proposed rule concerning retroactive provisions in agreements subject to the Shipping Act of 1984.

Portions closed to the public:

1. Petition for investigation and relief of Rainbow Navigation, Inc., concerning conditions in the United States/Iceland trade.

2. **DOCKET NO. 85-1:** Carrier International Corporation v. Waterman Steamship Corporation—Consideration of exceptions and reply to exceptions relative to Initial Decision of Administrative Law Judge.

3. Docket No. 84-10: The Coca-Cola Export Corporation v. Peruvian Amazon Line—Consideration of exceptions and reply to exceptions relative to Initial Decision of Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28504 Filed 11-26-85; 10:21 am]

BILLING CODE 6730-01-M

13

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 3, 1985, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Changes in the RULA Regulations
(2) Canadian Service
(3) Appeal of Nonwaiver of Overpayment, Harold E. Phillips
(4) Request for Reconsideration of Annuity Beginning Date, Arnold Marcum

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: November 25, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-28550 Filed 11-26-85; 1:35 pm]

BILLING CODE 7905-01-M

14

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 2, 1985.

An open meeting meeting will be held on Tuesday, December 3, 1985, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, December 3, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt amendments to Rules 80(c)(1) and 80(e) that would (1) change the categories of records available to the public in regional offices other than New York and Chicago, and (2) delete references to the public reference facilities previously located in Los Angeles. The release would also amend Rule 80(c)(1)(i) and Rule 310 of the Commission's privacy regulations, to delete references to the Los Angeles public reference facilities. For further information, please contact Jonathan G. Katz at (202) 272-2995.

2. Consideration of whether to publish certain interpretive positions of the staff of its Division of Investment Management regarding Form ADV and other reporting and disclosure requirements applicable to investment advisers under the Investment Advisers Act of 1940. This action would update a previous interpretive release (IA Rel. No. 767) on adviser registration and annual reporting requirements. For further information, please contact Jay Gould at (202) 272-2107.

3. Consideration of whether to adopt amendments to Rule 22 and Form U-1 under the Public Utility Holding Company Act of 1935 which would require that applications and declarations for orders thereunder contain proposed notices which may be used by the Commission giving public notice of such filings. For further information, please contact Kathleen A. Brandon at (202) 272-2676.

4. Consideration of whether to issue a notice of filing of an application by IDS Mutual, Inc., *et al.*, IDS/American Express Inc., IDS Life Insurance Company and Shearson Leham/American Express Inc., *et al.* for exemption from section 10(f) of the Investment Company Act of 1940 and rule 10f-3 thereunder and whether to issue a release giving notice and soliciting comment on whether, and if so, how the Commission should amend rule 10f-3. For further information, please contact Houghton R. Hallock at (202) 272-3030 (with respect to the application) or Philip J. Neihoff at (202) 272-2048 (with respect to the amendment of rule 10f-3).

5. Consideration of whether to issue a memorandum opinion and order permitting Arkansas Power & Light Company, a wholly owned electric subsidiary of Middle South Utilities, Inc., a registered holding company, to enter into $125 million of pollution control financing. This proposal was noticed by the Commission on July 23, 1985 (HCAR No. 23772). For further information, please contact William C. Weeden at (202) 272-7683.

6. Consideration of whether to issue an order granting the application of Maui/Waikiki Hotel Associates, LaSalle/Market Streets Associates, and VMS National Properties for exemption from Sections 12(g), 13(a) and 14 of the Securities Exchange Act of 1934, as amended. For further information, please contact William E. Toomey at (202) 272-2573.

The subject matter of the closed meeting scheduled for Tuesday, December 3, 1985, following the 10:00 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.
Opinion and order.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Douglas Michael at (202) 272-2467.

John Wheeler,

Secretary.

November 26, 1985.

[FR Doc. 85-28565 Filed 11-26-85; 2:02 pm]

BILLING CODE 8010-01-M

15

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 226 (November 22, 1985).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. (EST), Tuesday, November 26, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

E. REAL PROPERTY TRANSACTIONS

3. Filing of Condemnation Cases.

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 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional time shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: November 25, 1985.

Approved:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

John B. Waters,

Director.

[FR Doc. 85–28506 Filed 11–26–85; 2:03 pm]

BILLING CODE 8120–01–M

Federal Register

Friday
November 29, 1985

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 264, 265, 266, 270, 271, and 302

Hazardous Waste Management System; Used Oil; Final Rule and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 266, and 271

[SWH-FRL 2910-1]

Hazardous Waste Management System; Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 11, 1985, EPA proposed under Subtitle C of the Resource Conservation and Recovery Act (RCRA) to begin regulation of hazardous waste and used oil burned for energy recovery in boilers and industrial furnaces. The proposal provided administrative controls for those persons who market and burn hazardous waste and used oil fuels. Most of the requirements are being finalized as proposed, but some modifications have been made in response to comment.

The final rule prohibits the burning in nonindustrial boilers of both hazardous waste fuel and of used oil that does not meet specification levels for certain hazardous contaminants and flash point. It also provides administrative controls to keep track of marketing and burning activities. These controls include notification to EPA of waste-as-fuel activities, use of a manifest, or, for used oil, an invoice system for shipments, and recordkeeping. Hazardous waste fuels, including processed or blended hazardous waste fuels, are also subject to storage requirements.

DATES: *Effective Dates:* The effective dates for the regulations are:

1. *Prohibitions.* The prohibitions on marketing and burning of hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers in §§ 266.31(a) (2) and (b), and 266.41 (a) (2) and (b) are effective on December 9, 1985. To implement and enforce the prohibitions, the following provisions are also effective on December 9, 1985:

(a) The used oil fuel specification in §266.40(e), except for the specification level for lead which is effective May 29, 1986.

(b) The rebuttable presumption of mixing hazardous halogenated wastes with used oil in §266.40(c); and

(c) The used oil analysis requirements and attendant record keeping requirements in §§266.43(b) (1) and (6), and 266.44 (d) and (e);

2. *Storage Controls.* The storage controls for hazardous waste fuels in §§266.34(c) and 266.35(c) are effective on May 29 1986; and

3. *All Other Provisions.* The effective date for all other provisions of these regulations (e.g., manifests and, for off-specification used oil fuel, invoice requirements for shipments; certification notices to suppliers; and recordkeeping of manifests or invoices, and certification notices) is March 31, 1986. At that time, the manifest or invoice requirements supersede and apply in lieu of the warning label requirements of RCRA section 3004(r).

Compliance Dates: The compliance dates for the regulation are:

1. *Notification.* Marketers and burners of hazardous waste fuel and off-specification used oil fuel are required to notify EPA regarding their waste-as-fuel activities under §§ 266.34(b), 266.35(b), 266.43(b)(3), and 266.44(b). These persons must so notify either EPA or States authorized by EPA to operate the hazardous waste program by January 29, 1986; and

2. *Submission of Part A Permit Applications.* All existing marketers and burners (see provisions in 40 CFR 270.2 and 270.70(a)) who store hazardous waste fuels and who are not currently operating pursuant to interim status (section 3005(e) of RCRA), must file a notification of their storage activities with EPA by January 29, 1986 and submit a Part A permit application to EPA by May 29, 1986.

In addition, marketers and burners already operating pursuant to interim status, but who operate existing hazardous waste fuel storage facilities newly subject to regulation by today's rule, must file a notification of their storage activities with EPA by January 29, 1986 and submit an amended Part A permit application to EPA (with an informational copy to the authorized State) by May 29, 1986.

Explanation for these effective dates and compliance dates is provided in Part Five, section III of this preamble.

ADDRESSES: The official record for this rulemaking is in Room S-212, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The record may be viewed from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or (202) 382-3000. For Technical information, contact Robert Holloway, Waste Combustion Program, Waste Management and Economics Division, Office of Solid Waste, WH-565A, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone: (202) 382-7917. Single copies of the final rule can be obtained by calling the RCRA Hotline number above.

SUPPLEMENTARY INFORMATION:

Preamble Outline

Today's preamble is organized into five major sections. Part I contains background information that summarizes major provisions of the rule. It also describes how the rule fits into the Agency's strategy for regulating other types of used oil recycling and disposal and for regulating the actual burning of hazardous waste and off-specification used oil in industrial boilers and industrial furnaces. In addition, this section discusses nonregulatory approaches to the problems considered by EPA.

Part II describes when a waste is burned for energy recovery and identifies those hazardous wastes and used oils subject to this regulation. It also discusses the basis for exempting a number of waste-derived fuels and for not exempting others. In addition, it describes the test for distinguishing between used oil and hazardous waste fuels. Further, this section defends the risk assessment used to identify used oil constituents included in the specification, and explains the basis for the final specification. Finally, this section responds to a number of comments regarding allowing the blending of used oil fuel to meet the specification, availability of analytical procedures for used oil, and the regulatory status of combustion residuals.

Part III identifies those boilers and industrial furnaces subject to this regulation and explains the basis for regulating nonindustrial boilers immediately. It also discusses how nonindustrial boilers can continue to burn hazardous waste under permit standards for hazardous waste incinerators. Finally, this section discusses controls for used oil space heaters and EPA's intent to provide additional controls for these devices in future rulemakings.

Part IV discusses the administrative controls on marketers and burners that provide a tracking system for shipments and otherwise provide for implementation and enforcement of the prohibitions. This section also discusses the basis for applying the storage standards to all hazardous waste fuels and general permit procedures. Finally, this section provides examples of how the rule operates.

Part V discusses how the rules operate immediately, even in states authorized to operate the hazardous waste program. This section also discusses the economic impacts on the regulated community, and particularly, the used oil recycling industry.

PART ONE: BACKGROUND

I. Legal Authority

These regulations are promulgated today under the authority of sections 1006, 2002(a), 3001, 3002, 3003, 3004, 3005, 3007, 3010, and 3014 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, the Quiet Communities Act of 1978, the Solid Waste Disposal Act Amendments of 1980, the Used Oil Recycling Act of 1980, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6905, 6912(a), 6921, 6922, 6923, 6924, 6925, 6927, 6930, and 6932.

II. Overview of the Final Rule

With today's rulemaking, EPA begins to regulate those hazardous wastes and used oil that are marketed and burned for energy recovery. The chief purpose of these rules is to prohibit the burning of hazardous waste and contaminated used oil in nonindustrial boilers. The prohibitions are implemented and enforced by placing administrative controls on marketers and burners of these fuels.

Today's rule also establishes a rebuttable presumption that used oil that contains more than 1000 ppm total halogens is mixed with halogenated hazardous waste and, therefore, is a hazardous waste. The presumption may be rebutted by showing the used oil has not been mixed with hazardous wastes (e.g., by showing it does not contain significant levels of halogenated hazardous constituents). Used oil presumed to be mixed with hazardous waste is subject to regulation as hazardous waste fuel when burned for energy recovery.

In addition, the rule establishes a specification for used oil fuel (i.e., used oil not mixed with hazadous waste) that is essentially exempt from all regulation and may be burned in nonindustrial boilers. The specification sets allowable levels for designated toxic constituents, flash point, and total halogens.

Burning of hazardous waste fuel and off-specification used oil fuel in industrial and utility boilers and industrial furnaces continues to be exempt from regulation. The Agency intends to regulate such burning under permit standards to be proposed in 1986, as discussed below.

Administrative requirements such as notification, receipt of identification number, and compliance with manifest or invoice (for off-specification used oil fyel) systems are being promulgated today to enforce the prohibitions on burning of hazardous waste fuel and offspecification used oil in nonindustrial boilers.

Today's rule also applies RCRA hazardous waste storage standards to facilities storing hazardous waste fuels. Such waste-derived fuels have heretofore been exempt (on an interim basis) from storage standards when produced by a person other than the generator. See §§ 266.30(a) and 266.34(c), 50 FR at 667 (January 4, 1985).

Several modifications have been made to the proposed rule in response to comments. These include: the rebuttable presumption of mixing hazardous halogenated solvents with used oil is based on a total halogen level of 1000 ppm rather than a total chlorine level of 4000 ppm; a specification for total halogens is added to the used oil fuel specification at a level of 4000 ppm; and the effective date of the lead specification level (set at 100 ppm) is deferred for six months, while the other specification parameters are effective ten days after promulgation.

The Agency is also developing two other rulemakings that will regulate the blending and burning of used oil and hazardous waste for energy recovery. EPA will soon be proposing a rule that would list used oil as hazardous waste and establish special management standards for recycled oil, including oil burned for energy recovery. Those rules would go beyond today's final rule by providing standards for used oil generators and collectors, and by regulating the transportation and storage of used oil. Today's final rule

places administrative controls only on marketers and burners of used oil burned for energy recovery, and does not regulate the transportation and storage of used oil.

In 1986, we are scheduled to propose permit standards for the actual burning of hazardous waste and used oil in boilers and industrial furnaces. Under those permit standards, hazardous waste could be burned in any boiler or industrial furnace, irrespective of purpose (i.e., hazardous waste could be burned for energy recovery, material recovery, or destruction).[1] Burning of contaminated (i.e., off-specification) used oil would be permitted under special permit-by-rule standards.

III. Nonregulatory Alternatives

EPA carefully examined a number of nonregulatory strategies for managing used oil, but failed to identify any that would be as protective as these regulations. See 50 FR at 1687 (January 11, 1985). The most promising approach considered was a tax rebate system. Under this system, a tax on virgin lube oil would be rebated to "acceptable" users of used oil (e.g., rerefiners, "acceptable" burners). We explained in the proposal, however, why a tax rebate system would be ineffective in protecting human health and the environment and impractical to implement.

In response to EPA's discussion on nonregulatory alternatives, one commenter suggested a program whereby "do-it-yourself" oil changers would voluntarily bring their used oil to gas stations to be sold to rerefiners. While the Agency is strongly in favor of of rerefining, EPA's objective in promulgating today's regulations is to begin to regulate used oil management to ensure that it is managed in an environmentally acceptable manner. See RCRA section 3014. This provision does not authorize EPA to determine preferential recycling approaches and to direct used oil to those approaches, provided alternative types of recycling are conducted in a manner that protects human health and the environment.[2]

PART TWO: MATERIALS THAT ARE REGULATED

I. Overview

Today's rules apply to hazardous waste and used oil burned for energy recovery. When so recycled, these wastes, and materials that are produced from or otherwise contain these wastes as a result of blending, processing, or other treatment, are termed hazardous waste fuel or used oil fuel. These terms are defined in this section. We also discuss how to determine when a waste is burned for energy recovery and the applicability of these rules to burning for materials recovery. In addition, we discuss when combustion residuals from boilers and industrial furnaces burning hazardous waste and used oil are subject to regulation as hazardous waste. Finally, we discuss, in response to comments, our plans to give special consideration to regulating the on-site burning of *de minimis* quantities of hazardous waste fuel and off-specification used oil in the development of permit standards for boilers and industrial furnaces scheduled to be proposed in early 1986.

In defining "hazardous waste fuel", we discuss the basis for exempting certain hazardous waste fuels from these regulations—petroleum refinery fuel products derived from hazardous waste produced by refining and ancillary operations, and coke and coal tar derived from hazardous waste produced by coal coking operations in the iron and steel industry—and why we are rejecting arguments by some commenters to exempt or exclude other hazardous waste fuels.

In defining "used oil fuel", we define used oil and explain the difference between used oil and "oily waste." In addition, we discuss the specification for used oil that may be burned in nonindustrial boilers, and explain why we added total halogens to the proposed specification at a level of 4,000 ppm and why PCBs were deleted from the proposed specification. We also respond to comments regarding why other parameters were not added to the specification and why certain specification levels were selected. We also discuss how to distinguish between hazardous waste fuel and used oil when the used oil may have been mixed with hazardous halogenated solvents, when used oil may be mixed with small quantity generator hazardous waste, and when used oil exhibits a characteristic of hazardous waste. Finally, we respond to comments on allowing blending of used oil to meet the specification, banning all burning of used oil in nonindustrial boilers, and the availability of analytical testing procedures to determine conformance with the specification.

II. Determining When a Waste is Burned for Energy Recovery

Today's regulations apply to hazardous waste and used oil burned for "energy recovery." This limitation raises two questions: how to distinguish burning for energy recovery from burning for destruction, and determining how to regulate if burning is conducted to recover materials.

In the January 11, 1985 proposal (see 50 FR at 1690), we explained that the Agency had already addressed what is meant by burning for legitimate energy recovery. We explained that burning of low energy hazardous waste as alleged fuel is not considered to be burning for legitimate energy recovery, even if the low energy hazardous waste is blended with high energy materials and then burned. Thus, boilers and industrial furnaces burning low energy wastes (i.e., having less than 5,000–8,000 Btu/lb heating value, as generated) [3] could be considered to be incinerating them, and so be subject to regulation as hazardous waste incinerators.

Although today's rule prohibits the burning of hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers, the principles of the statement remain in force. We have indicated, however, that if we were to apply the Enforcement Policy Statement to industrial (and utility) boilers and industrial furnaces, we would seek to enforce in situations where low energy hazardous waste adulteration was deliberate and massive. This is because we have said that larger industrial boilers are more efficient at recovering energy and so could be deemed, more often, to be burning lower energy wastes legitimately. (See 48 FR at 11159 (March 16, 1983).)

A second question is the scope of these regulations when burning involves material recovery. Normally, the purpose for which a material is burned makes no difference in environmental effect. Hence, EPA envisions an ultimate regulatory scheme where regulation of burning applies (as may be necessary to protect human health and the environment) regardless of purpose in all situations within the Agency's jurisdiction. We now address this

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[1] Hazardous waste may be burned for destruction, previously and under today's rule, only under RCRA hazardous waste incinerator standards found in 40 CFR Parts 264 and 265.

[2] We believe that today's regulations will, in fact, result in a substantial increase in used oil rerefining. Used oil that does not meet the specification and that is currently burned for energy recovery in nonindustrial boilers must either be blended to meet the specification or diverted to industrial or utility boilers or industrial furnaces. We expect that a substantial amount of this oil will find its way to rerefiners. We note also that EPA anticipates proposing in Spring 1986 Federal procurement guidelines under authority of RCRA Section 6002 regarding procurement of recycled lubricating oils.

[3] See Statement of Enforcement Policy issued January 18, 1983 (printed at 48 FR 11157 (March 16, 1983)).

question as it applies to burning in boilers, burning for a dual purpose in industrial furnaces, and burning in industrial furnaces solely for material recovery.

We explained in the January 11, 1985 preamble that since boilers, by definition, have as their primary purpose the recovery of energy, if materials are also recovered, this recovery is ancillary to the purpose of the unit, and so does not alter the regulatory status of the activity. (See also definition of "boiler" in 50 FR at 661 (January 4, 1985).) We also explained that the regulations apply when an industrial furnace burns the same material for both energy and material recovery (e.g., when blast furnaces burn organic wastes to recover both energy and carbon values).

Today's regulations, however, do not apply to hazardous wastes burned in industrial furnaces solely for material recovery. In large part, this is because the primary focus of today's regulations is on waste burning in nonindustrial settings (apartment buildings, hospitals, etc.). In addition, as discussed in the January 4, 1985 preamble to the definition of solid waste and the preamble to the proposed rule in this proceeding, there are certain situations where control of burning for material recovery in industrial furnaces could lead to an impermissible intrusion into the production process and so be beyond EPA's authority under RCRA. See 50 FR 630, 1690. These situations are limited, and involve circumstances where the secondary material being burned is indigenous to the process in which the industrial furnace is used, for example, because the secondary material contains the same types and concentrations of constituents (particularly hazardous constituents listed in Appendix VIII of Part 261) as the raw materials normally burned in the industrial furnace. *Id.*[4] In EPA's forthcoming regulations establishing permit standards for burning in boilers and industrial furnaces, EPA will establish permit standards for industrial furnaces burning for material recovery (as well as for energy recovery or destruction) in all situations not beyond EPA's regulatory authority.

[4] An example could be a smelting furnace resmelting one of its own listed process residues. In such situations, the secondary material would not be a solid waste at the time of burning in the industrial furnace even though it is classified as a solid waste for purposes of storage prior to burning. Note further that the derived-from rule [§ 261.3(c)(2)(i)] thus would not apply to wastes generated by the burning.

III. Hazardous Waste Subject to Regulation

A. Definition of Hazardous Waste Fuel

1. *Hazardous Waste Fuel.* With certain exceptions discussed below, these rules apply to hazardous wastes (and fuels that are produced from or otherwise contain hazardous waste as a result of processing, blending, or other treatment), that are burned for energy recovery in a boiler or industrial furnace that is not operating under RCRA standards for hazardous waste incinerators.[5] Such fuel is termed "hazardous waste fuel".[6]

Certain commenters questioned whether these rules (and by extension RCRA section 3004(q)) would apply when energy recovery from burning hazardous wastes is merely incidental, or when energy recovery is not the principal purpose of burning. Today's rules apply where energy recovery is significant or purposeful. The Agency stated as long ago as 1983 in a Statement of Enforcement Policy (48 FR 11159 (March 16, 1983)) that ordinarily burning low energy (less than 5,000 Btu lb.) hazardous waste is not considered to involve energy recovery, in spite of incidental energy release. See also 50 FR at 630 (January 4, 1985), and 50 FR 1690 (January 11, 1985) reiterating this principle. Thus, if boilers or industrial furnaces burn hazardous wastes containing organic constituents these rules would not invariably apply.

These rules do apply, however, if hazardous wastes (*viz.* any hazardous secondary material (see § 261.2(c)(2), January 4, 1985 and August 20, 1985)) are burned in industrial furnaces or boilers both to recover energy (i.e., to provide substantial, useful heat energy) and for some other recycling purpose, even if energy recovery is not the predominant purpose of the burning. EPA already has taken this position in the rules codifying section 3004(q) of RCRA. 50 FR 28724 (July 15, 1985). In addition, as noted above, the Agency is moving away from tests based on purpose because the purpose of burning normally is unrelated to its environmental effect. Indeed, the argument that these rules (as well as RCRA section 3004(q)) should apply only where energy recovery is the principal purpose of burning would resurrect the discredited "primary purpose" test formerly used by EPA to distinguish recycling from incineration. As both the Agency and the Congress have stated, this standard was largely irrelevant for evaluating environmental effects of burning, and proved exceedingly difficult to administer. See 48 FR 14483 (April 4, 1983); S. Rep. No. 284, 98th Cong. 1st Sess. at 36 (1983). Nor is section 3004(q) of RCRA limited to situations where energy is the principal purpose of burning, the plain language of the statute applying to hazardous waste burned "for purposes of energy recovery" (RCRA section 3004(q)(1)(B)), or "burned to recover useful energy" (RCRA section 3004(q)(2)(B)). The statute also classifies hazardous waste-derived petroleum coke as a section 3004(q) fuel (see RCRA section 3004(q)(2)(A)), even though petroleum coke is burned for several purposes, only one of which (and not necessarily the most important) is energy recovery. See S. Rep. No. 284, *supra* at 39.[7]

Consequently, these rules apply where hazardous wastes are burned in boilers or industrial furnaces and provide substantial, useful heat energy. Such burning is considered to involve a hazardous waste fuel within the meaning of RCRA section 3004(q).

2. *Eliminating Certain Existing Regulatory Exemptions for Hazardous Waste Fuels.* These rules expand the

[5] If a waste that is hazardous only because it exhibits a characteristic is used as an ingredient in a fuel, and the waste-derived fuel does not exhibit a characteristic, the waste-derived fuel would not be considered to be a hazardous waste. (See § 261.3(d)(1).)

[6] Several commenters suggested that "hazardous waste fuel" is an inappropriate term to use to describe these fuels since it creates a stigma that will discourage the use of the fuel because of the perceived increased risks associated with hazardous waste. Commenters believed that the negative association of hazardous waste with the fuel would cause many users to stop burning such fuels and, therefore, depress the business of those marketing these fuels, particularly used oil mixed with hazardous waste. Several commenters suggested that the Agency use a different term with less negative connotation (e.g., "regulated" or "RCRA-regulated fuel").

We acknowledge that we have previously (see § 261.6(a)(1), 50 FR 655 (January 4, 1985)) termed hazardous wastes that are recycled as "recyclable materials". We continue to believe, however, that hazardous waste burned for energy recovery should be termed "hazardous waste fuel" for a number of reasons. The warning label provision of section 3004(r) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) requires that an invoice or bill of sale for hazardous waste fuel bear a statement that the fuel contains hazardous waste. Although that provision is superseded by the manifest requirement promulgated today, we believe that Congress intended that EPA controls for such fuels make it clear that the fuels are, or contain, hazardous waste. In addition, although the January 4, 1985 promulgation termed recycled hazardous waste as "recyclable materials", that rule also provided basic controls for hazardous waste burned for energy recovery (expanded by today's rule) and, in fact, first defined such waste as "hazardous waste fuel". See Subpart D of Part 266, 50 FR 667.

[7] Section 3004(q) also applies on its face to cement kilns burning hazardous waste even though these industrial furnace do not burn wastes for the sole purpose of energy recovery. RCRA section 3004(q)(2)(C).

universe of hazardous waste subject to RCRA regulation when burned for energy recovery by removing two exemptions. Although the Agency has jurisdiction to regulate under RCRA all spent materials, sludges, by-products, and § 261.33 commercial chemical products, all fuels to which these materials are added, and all fuels derived from or otherwise containing these materials when they are transported, stored, and burned for energy recovery (see 50 FR 630 (January 4, 1985), and 50 FR 33541 (August 20, 1985)), EPA currently regulates the storage and transportation of hazardous waste burned for energy recovery only on a limited basis. Thus, the following hazardous waste fuels are provisionally exempt: (1) Spent materials and by-products exhibiting a characteristic of hazardous waste; and (2) hazardous waste fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel. (See §§ 266.30 and 266.36 in 50 FR 667 (January 4, 1985).) Under the first exemption, only listed wastes and sludges (both listed and characteristic) are currently regulated.* Thus, nonsludge, characteristic-only wastes are currently exempt. Under the second exemption, waste-derived fuels produced by off-site, third-party marketers are currently exempt. Today's rules remove both of these exemptions so that the transportation, storage, and other controls apply to *all* hazardous waste fuels.

We have also explained why neither exemption is environmentally justifiable. See 50 FR 1705 (January 11, 1985). There is no general distinction between potential adverse effects of burning listed or characteristic hazardous wastes. Nor is there any general distinction between hazardous waste fuels marketed directly by generators or by marketers unrelated to those generators. These exemptions, in fact, have always been provisional, and exist because of the Agency's initial uncertainty (in 1980) about an appropriate regulatory regime for recycled wastes. *Id.* Although the Agency promulgated a regulatory regime for many recycling activities on January 4, 1985, we decided to remove these exemptions in today's rulemaking dealing solely with burning for energy recovery rather than in the January 4, rulemaking to avoid confusion or disruption that would result from extensive, piecemeal changes of the current (i.e., May 19, 1980) rules. See 50 FR 632 (January 4, 1985).

B. Consideration of Exemption for Ignitable-Only Hazardous Waste

In the proposed rule, we solicited comments on whether wastes that are hazardous only because of their ignitability should be exempted from the prohibition on burning in nonindustrial boilers. (See 50 FR 1701 (January 11, 1985.) We also asked if these "ignitable-only" wastes should be exempt from all controls (including storage and transportation), or just the prohibition on burning in nonindustrial boilers.

We reasoned that burning such wastes would not pose any greater danger of fires or explosions than commercial fuel oils if the minimum flash point was limited to 100° F. However, we also noted that ignitable-only wastes may actually contain significant levels of toxic compounds because the Agency has not completed its listing of wastes that are hazardous because of their toxicity. Therefore, we indicated that as a part of any exemption scheme those toxic compounds of concern must be identified, acceptable concentrations must be determined, analysis procedures must be prescribed, and recordkeeping procedures must be required.

For a number of reasons, today's rule does not provide an exemption for ignitable-only hazardous waste. Although commenters acknowledged the need to ensure that the waste does not contain significant levels of toxic constituents, they were not helpful in suggesting a rational approach for setting safe levels for the constituents or an implementation scheme that would avoid the expense of analyzing shipments for virtually every compound on Appendix VIII of Part 261. Several commenters suggested that the presence of Appendix VIII compounds that occur naturally in virgin fuel (e.g., toluene, xylene, benzene, metals) should be considered in setting acceptable levels for an exemption. For "non-fuel" compounds, several commenters suggested a maximum level of 100 ppm while one commenter suggested 1 ppm, and another suggested that acceptable levels be based on assessment of risk. As we indicated in the proposal, 100 ppm may be an appropriate level for some constituents while a lower level, perhaps 1 ppm, would be appropriate for the more toxic constituents. Commenters provided no insight on how acceptable levels would be assigned to the various compounds of concern. Moreover, even if it were assumed that acceptable levels for all Appendix VIII compounds could be determined, commenters did not focus on the analytical burden they would face to endure that shipments met the conditional exemption.

We have concluded that a conditional exemption would be very difficult to develop and very expensive to the regulated community to implement. Moreover, it is not clear that a substantial amount of hazardous waste would even be eligible for an exemption conditioned on the presence of only very low levels of the Appendix VIII constituents not normally present in virgin fuel oil.

We note, however, that we are considering whether special permit standards would be appropriate for ignitable-only wastes under the Phase II permit standards for boilers and industrial furnaces to be proposed in 1986. Such special standards could be fashioned after the current standards for burning ignitable-only waste in incinerators. See §§ 264.340(b) and (c). Under the incinerator standards, site-specific factors such as quantity of waste and location of the facility may be used to determine if measurable, but low, levels of Appendix VIII compounds may pose a hazard to public health or the environment. Wastes found to be ignitable-only with insignificant levels of Appendix VIII compounds are exempt from the performance and operating standards for incinerators. Although waste analysis is required, the analytic burden is minimized by considering only the Appendix VIII compounds that could reasonably be expected to be found in the waste. Thus, consideration of an exemption on a case-by-case basis as part of a permit proceeding provides a rational approach to consider the significance of low levels of Appendix VIII compounds and allows for cost-effective (i.e., limited) waste analyses.

C. Regulation of Fuels Derived From Petroleum Refinery Waste

1. *Petroleum Refineries that Reintroduce Hazardous Wastes From Petroleum Refining, Production, and Transportation to the Refining Process.* EPA solicited comment on the status of fuels from petroleum refineries that reintroduced oil-bearing hazardous wastes from petroleum refining, production and transportation to the refining process. See 50 FR 1689–1690. Although we proposed to define these materials as hazardous waste fuel, we

* Listed commercial chemical products, however, are not solid wastes (or hazardous wastes) when burned for energy recovery if they are themselves fuels or normal components of commercial fuels. See 40 CFR 261.33, 50 FR 28744 (July 15, 1985). An example is pipeline interface generated from the transport of toluene, when the interface is burned for energy recovery.

solicited comment on the extent to which the hazardous waste contaminants are removed by the refining process, or are so diluted by the process that they do not significantly increase the level of contaminants present in fuel. *Id.* If this is the case, EPA believes it has the ultimate authority to exclude the derived fuels from being solid wastes, since the more waste-derived fuels from a process are like products from the same process produced by virgin materials, the less likely EPA is to classify the waste-derived fuel as a waste. (It is clear, however, that EPA possesses jurisdiction under RCRA to make these determinations. See RCRA section 3004(r).) The American Petroleum Institute (API) submitted relevant data on these points which EPA noticed for public comment on June 26, 1985. 50 FR 26389.

These data, though limited, seem to indicate that at large, sophisticated refineries, these recycling practices do not significantly contribute to metals levels in the refined fuels. However, EPA cannot as yet determine whether this is due to the refining process itself, or whether the amounts of waste reintroduced into the process are so low as to be diluted. In particular, API's data indicated that less than one percent of hazardous waste (*i.e.*, chiefly oil reclaimed from hazardous wastes) is reintroduced into the refining stream at a crude petroleum refinery. Based on these data, they show that the increase in metals content in the final product is minimal. For example, cadmium levels increased from 0.11 ppm to 0.12 ppm while lead levels increased from 0.89 ppm to 0.91 ppm. (See Table 3, p. 16 of API's submission on comments on reopening of comment period dated June 12, 1985.) Thus, when only a small percentage of waste is reintroduced back into the refining process, it does not appear to appreciably effect metals levels in the final refined products. However, the Agency is concerned that if contaminants are simply being diluted, then if there were a significant increase in the amount of hazardous waste feed, resulting fuels could be significantly contaminated since the wastes being reintroduced contain concentrations of toxic metals far greater than those in most crude oils. In fact, the Agency has some preliminary data from its petroleum refining industry study which indicates that for at least some metals—arsenic and cadmium—the distillation process does not necessarily remove the metals from the fuels.

The Agency is considering an approach which would indicate that if the amount of hazardous waste that was reintroduced back into the petroleum refinery was minimal (*i.e.*, less than one percent), the fuel produced at the refinery would be excluded (*i.e.*, would not be a solid waste). In the short term there are certain implementation difficulties with this idea, particularly the difficulties of determining compliance for each batch since refining is a continuous process. The Agency is continuing to evaluate this possibility, however.

Rather, EPA believes that more time is needed to study these questions. In particular, EPA intends to examine further the question of whether removal actually occurs as a result of refining. This would have bearing not only on the question of whether regulation is justified, but also on the question of whether resulting fuels should be classified as products or as wastes. EPA particularly wishes to examine the extent to which these wastes can influence the composition of fuels from smaller, less sophisticated refineries which may remove fewer metals from the wastes, and also may use a higher percentage of wastes as feed-stocks.

At present, however, since there is no persuasive evidence that reintroduction of these indigenous hazardous wastes into the refining process actually contributes significant concentrations of metals to the resulting fuels, EPA is leaving in place the existing exemption for such fuels contained in § 261.6(a)(3)(v).[9] See 50 FR 33542 (August 20, 1985). Another factor influencing continuation of the exemption is that fuels produced only from virgin crude oil can have higher levels of toxic metals than fuels partially produced from these hazardous wastes.[10] See 50 FR 1695 (January 11, 1985).

Thus, fuels produced from refining of indigenous, oil-bearing hazardous wastes at a petroleum refining facility will continue to be exempt. By "petroleum refining facility" EPA means to include any facility that produces hydrocarbon products (*e.g.* gasoline, kerosene, distillate fuel oils, residual fuel oil, etc.) from crude oil or its immediate fractionation products through straight distillation of crude oil or other intermediate products (*e.g.*, gas oils, naphtha, etc.) (This is the definition of the Petroleum Refining Standard Industrial Classification (SIC 2911).). For these hazardous wastes to be considered to be refined, they must be inserted into a part of the process designed to remove contaminants in the normal operation of the refining process. See 50 FR 28725 (July 15, 1985). As we explained there, this would mean insertion of the wastes prior to distillation or catalytic cracking. (The distillation process is used to split the feedstock into fractions based on the various boiling points of the feedstock components. The data submitted by API indicates that most of the metals concentrate in the heavier (high boiling point) fractions. Many times these fractions are not used for fuels but rather to produce asphalt or petroleum coke. Therefore, there is a significant probability of contaminant removal from many fuel fractions if there is distillation in the process.) In addition, without distillation or insertion of the wastes into another part of the process designed to remove contaminants, there will be no removal of contaminants at all, and Congress regarded some removal as one of the prerequisites for exemption. See RCRA sections 3004 (r)(2)(B) and (r)(3)(A), and 50 FR at 28725 (July 15, 1985). Consequently, if a facility takes an oil-bearing hazardous waste and processes it without distillation to produce a fuel, the resulting fuel is *not* covered by this exemption and so could be subject to regulation. Similarly, if a refinery inserts the waste into a part of the process after distillation or catalytic cracking (as explained above), resulting fuels are *not* automatically exempt.[11]

Under EPA's proposal, such fuels (i.e., fuels derived from petroleum refining wastes which fuels are produced by processes *not* using distillation, or the fuels resulting when petroleum refining waste are inserted into the refining process after points at which any contaminant removal can occur) were classified as hazardous waste fuel (assuming they were derived from listed refinery wastes, or exhibit a hazardous

[9] As explained in detail in the preamble to the proposed rule, this provision does *not* exempt the hazardous wastes before they are reintroduced into the refining process (50 FR at 1689).

[10] EPA also considers these waste-derived fuels to remain petroleum, rather than hazardous substances, for purposes of the comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). See CERCLA section 101(14) (excluding petroleum from definition of hazardous substances). In light of the widespread nature of these recycling practices, to do otherwise would potentially read the exclusion for petroleum out of CERCLA. In addition, there is no indication that Congress meant for these waste-derived fuels to be considered hazardous substances when it added sections 3004(r) (2) and (3) to RCRA (which provisions indicate that such fuels remain hazardous wastes).

[11] Incidentally, certain used oil-based processes produce used oil fuel from processes that use distillation. These processes are not refining operations (in spite of the use of distillation) because they do not produce fuels *from crude oil.* Fuels from such a process thus are not automatically exempt from regulation, but would be if they meet the specification for used oil fuel. If this type of processor should also use oilbearing petroleum refining hazardous waste as a feed material, the resulting fuels would be exempt if they meet the used oil fuel specification, since the operation is comparable to those described in the following paragraph in the text.

waste characteristic) subject to all the regulatory requirements for such fuels. EPA has modified this position in the final rule so that such fuels are *not* subject to regulation if they meet the same specification applied to fuels produced from processing used oil—a very similar operation. (In fact, the Agency is aware of operations that blend petroleum refining hazardous wastes and used oil.) We have added an exemption to §261.6(a)(3) to make this point. This will ensure that the resulting fuels will pose no greater environmental hazard than the virgin fuels that would be burned in their place.[12] [13] EPA thus believes this is the proper means of controlling this potential problem. If the waste-derived fuel should exceed the fuel specification, it would be subject to all of the rules applicable to hazardous waste fuels. (As a hazardous waste fuel which is not completely derived from used oil, the fuel is not eligible to be regulated under the special standards reserved for used oil. See RCRA section 3014. This position is consistent with the one taken in the proposed rule.)

2. *Oil Recovered from Petroleum Refining Hazardous Wastes that is Returned to the Refining Process.* A related question is the status of oil that is recovered from hazardous wastes generated during normal petroleum refining, production, or transportation practices. The recovered oil is usually returned to the refining process as a substitute for crude oil but can also be burned directly as a fuel. Under amended § 261.3(c)(2) (see 50 FR 664 (January 4, 1985) and 50 FR (August 20, 1985)), such oil remains in the hazardous waste system (if it is to be used to produce fuel or is burned for energy recovery). EPA solicited additional comment on this issue on May 13, 1985 (50 FR 19956).

EPA is not yet able to amend the rules to state under what circumstances reclaimed oil might not be considered to be a waste. This is largely because available data (which are limited) show that the oil can contain higher metals levels than virgin fuel oil.[14] EPA thus needs to study further the particular means of oil recovery from these wastes, and the composition of the resulting oils in relation to composition of virgin fuels.[15]

EPA is prepared, however, to continue the existing exemption (in § 261.6(a)(3)(vi)) for these recovered oils, and for fuels from petroleum refining which are partially produced from these recovered oils. The data submitted by API appear to show that the recovered oil does not contribute significant levels of metals to the refined fuels. (The Agency is continuing to investigate whether this is due to dilution or removal incident to refining.) Nor does the Agency believe it appropriate at this time to regulate the recovered oil prior to reintroduction to the refining process in light of the incomplete characterization of the oil's composition, the likelihood of similar handling practices for recovered oil as for crude oil, and the possibility of disproportionate impact of such regulation on off-site facilities recovering oil from these wastes vis-a-vis refineries recovering oil from their own wastes (which recovered oil is almost invariably piped directly back to the refining process and so would not be regulated under current EPA rules.[16]

However, if the recovered oil is to be burned directly as a fuel, EPA has determined that the oil should be regulated as a hazardous waste fuel unless the oil meets the specification for used oil fuel. The situation is exactly analogous to hazardous waste fuels produced by processing (rather than refining) these oil-bearing wastes. We have explained above why it is appropriate to apply the fuel specification to these waste-derived fuels, rather than (as at proposal) to regulate them as hazardous waste fuels regardless of composition. We also are including an exemption in § 261.6(a)(3) for recovered oil burned directly that meets the used oil fuel specification.

4. *Statatory, Conditioned Exemption of Coke Derived from Indigenous Petroleum Refinery Wastes.* The petroleum refining industry also produces coke from refinery process wastes. If the coke is produced from or contains listed hazardous waste, the coke produced from such wastes is a hazardous waste. The Hazardous and Solid Waste Amendments (HSWA) of 1984, however, exempted from regulation as hazardous waste fuel such-derived coke provided: (1) The Hazardous waste used to produce the coke is indigenous to petroleum refining; (2) the coke is produced at the same facility that generated the hazardous waste; and (3) the coke does not exhibit a characteristic of hazardous waste. (See section 3004(q)(2)(A). This statutory exemption is codified at § 266.31(b)(2) [17] and is redesignated in today's rule as § 266.1(a)(3)(ix).

D. Exemption of Coke and Coal Tar Produced From Coal Tar Decanter Sludge by the Iron and Steel Industry

EPA indicated in the proposed rule that it would consider granting an exemption to coke produced from coal tar decanter sludge [EPA Hazardous Waste K087] if commenters provided data that demonstrate that hazardous contaminant levels in the coke are not appreciably increased by recycling the tar sludge. (See 50 FR 1690.) Today's rule exempts such waste-derived coke (a hazardous waste fuel even though not burned exclusively or necessarily primarily for energy recovery (see section III.A.1 above)) from regulation as hazardous waste and also excludes coal tar produced from coal tar decanter sludge.

Tar decanter sludge is generated during the recovery of a coal tar by-product produced during the production of coke from coal. The sludge is listed as hazardous waste because of high levels (about 1%) of phenol and naphthalene. The sludge is frequently recycled by mixing it with coal before it is charged to a coke oven to produce coke. The coke product is typically used as a fuel in steel blast furnaces. In addition, the sludge is sometimes mixed back into the coal tar by-product which is also

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[12] See preamble section IV-C of Part Two for discussion on basing the used oil fuel specification levels for metals on levels found in virgin fuel oils. It should be noted that the specification level for lead is higher than levels found in virgin fuel. EPA is subjecting nonexempt fuels derived from petroleum industry wastes to the higher lead specification, at least as an interim measure, because many of the facilities potentially affected also process used oil. For the moment, therefore, EPA will apply all of the used oil fuel specification to the resulting fuels. The Agency, however, is studying this question further in preparing its Phase II rules.

[13] EPA could not normally apply this logic to fuels derived from hazardous wastes because the types of hazardous constituents potentially present are much more numerous, and could be present in much higher concentrations, than those found in oil-bearing wastes from petroleum refining, production, and transportation (or in used oil). See 50 FR 1691 n.14. Hazardous constitutents in other wastes also would not correspond to hazardous contaminants in virgin fuels.

[14] See comments from American Petroleum Institute (Table 3, p. 18) dated June 12, 1985.

[15] EPA solicited comment on the applicability of the variance for closed-loop processes contained in amended § 260.31(b). It is possible that a parrallel variance (to be applied on an industry-wide basis if appropriate) for materials that are reclaimed but must be reclaimed further before final recovery (§ 260.31(c)) is appropriate. The Agency also is continuing to assess the relationship of these situations to RCRA section 3004(r) (2) and (3). Other comments to the Agency's notice (particularly those on the existing regulatory status of recovered oil and on whether there is any difference in fuels "produced from" or "containing" hazardous waste) were answered in the Agency's August 20 notice. See 50 FR 33541.

[16] As noted above, hazardous wastes from which oil is recovered are regulated until the point of oil recovery. Distinguishing between recovered oil and listed hazardous wastes (i.e., API Separator Sludge, Slop Oil Emulsion Solids, etc.) will not always be an easy decision. In making this distinction, the Agency will consider a number of factors, including water content, solids content, and, in some cases, metals content. Thus, wastes with high water or solids content will generally be perceived as hazardous wastes subject to regulation and not as recovered oil. For example, if an oily waste is sent off-site to be dewatered, this material would not be considered a recoverd oil (exempt from regulation) but a waste subject to regulation, if this material were also hazardous.

[17] See 50 FR 28751 (July 15, 1985).

frequently used as a fuel. Both of these waste-derived fuels are exempted from today's rules for the reasons discussed below.

The American Iron and Steel Institute (AISI) and Koppers Company, Inc. provided comments explaining the coking operation and how tar decanter sludge is recycled. In particular, when the sludge is mixed with coal before it is charged to the coke oven, the hazardous constitutents in the sludge (phenol and naphthalene) are driven off during the coking process along with other volatile compounds formed by the thermal cracking of organic compounds in the coal. These volatile compounds are condensed to recover a coal tar by-product. The tar decanter sludge is produced during recovery of the coal tar and consists of coal tar and "inert carbonaceous material carried over from the coking operation". (See AISI comments, page 3.) AISI and Koppers provided analyses of the waste-derived coke product indicating that phenol and naphthalene were not detected in the coke at detectable levels ranging from less than 1 ppm to as high as 20 ppm.

We conclude that phenol and naphthalene are not present in such coke at levels that would pose substantial risk to human health and the environment, particularly considering that the coke is burned as fuel and that any trace levels of these compounds would be readily combustible.

AISI also indicates that the same principle (i.e., if recycling a waste does not increase levels of toxic constituents in a waste-derived product, the product should be exempt from regulation) should be applied to coal tar mixed with tar decanter sludge. AISI states that when tar decanter sludge is mixed back into the coal tar (after passing through a ball mill to produce a uniform material), the phenol and naphthalene content of the coal tar by-product is not significantly affected. AISI argues that coal tar itself contains significant levels of these hazardous compounds (typically 1% phenol and 10% naphthalene), and that tar decanter sludge is simply a mixture of coal tar and carbonaceous material. Further, the sludge is mixed with the coal tar in small volumes representing about 1% of the coal tar by-product. We, therefore, conclude that such recycling does not increase levels of phenol and napthalene in the coal tar by-product, and the coal tar should be exempt from today's rules when burned for energy recovery.

These exemptions apply only to the waste-derived products, and only when derived from tar decanter sludge. Thus, tar decanter sludge is subject to full RCRA regulation prior to recycling, and the exemption does not extend to coke or coal tar derived from hazardous waste (e.g., spent solvents) other than tar decanter sludge designated as EPA Hazardous Waste KO87.

E. Status of Gas Recovered from Landfills

We are indicating that today's final rules on hazardous waste fuels do not apply to gas recovered from landfills that is burned for energy recovery in boilers or industrial furnaces. Although it is clear that EPA has authority to regulate gaseous emissions from hazardous wastes (see, *e.g.*, RCRA Section 3004(n)), EPA has not yet addressed whether there are any limits on this authority, and, if there are limits, what the extent might be. Nor has the Agency received comment on these questions sufficient to make a considered decision. In light of the absence of a record and the potential difficulty of the question, we are not deciding the question in today's rule but instead are indicating that recovered landfill gas is not regulated under today's rules.

F. Request for Exclusion of Cadence Product 312

Several commenters requested EPA to exclude Cadence product 312 from regulation as a hazardous waste fuel. Cadence product 312, better known under its former trademark name of "CHEM-FUEL" (hereinafter termed "Cadence product"), is a blend of hazardous spent solvent recovery still bottoms and other hydrocarbon-based hazardous waste that is patented for use in blast furnaces by Cadence Chemical Resources, Inc. (hereinafter termed "Cadence").

Cadence product is produced by licensees of the Cadence process who blend spent solvents generated by others as well as solvent recovery still bottoms that they generate by their reclamation activities. The licensees ensure that the blend meets specifications set by furnace operators for parameters including heating value (10,500–14,000 Btu/lb) and chlorine content (1–5%). Thus, the mix can contain up to 5% chlorinated spent solvents, most of which are carcinogenic. The entire mix is then sent to the blast furnace for burning.

Many commenters argued that Cadence product is not subject to regulation as a hazardous waste fuel because it is not burned in the blast furnace for energy recovery. Rather, they argue that Cadence product is burned as an ingredient in the iron-making process to provide carbon, hydrogen, and chlorine and that it only provides incidental energy to the furnace. Commenters further argue that Cadence product is a valuable product used in a major commodities market, and, hence that EPA does not have authority under RCRA to regulate it. They assert that it is a commercial product with recognized specifications and procedures for its production.

For the reasons given below (and as provided further in the Response to Comment Background Document), we either disagree with the commenters' claims or find them irrelevant to the question of whether Cadence product is subject to regulation as a hazardous waste fuel. Specifically, we find that Cadence product is burned partially for energy recovery because the heat energy contributed by the product to a blast furnace is substantial and useful. In addition, the Cadence product has the attributes of an inherently waste-like material, and is the type of secondary material EPA is empowered to investigate and regulate as may be necessary to protect human health and the environment. Both of these points are discussed below.

1. *Cadence Product is Burned Partially for Energy Recovery.* Cadence argues that their product is burned in a blast furnace to provide ingredients necessary to drive furnace reactions and to enhance furnace operations. In particular, Cadence argues, and we agree, that the product has the beneficial effect of *cooling* flame temperatures in the combustion zone of the furnace and of providing hydrocarbons that are converted to gases needed to react with the iron ore to produce iron. Cadence also argues that the chlorine in the product has a beneficial effect on furnace operations, and, thus, also acts as an ingredient.[18] Cadence also argues, however, that the heat energy released from burning the product in a blast furnace is "incidental and unavoidable" (Cadence comments dated March 12, 1985, p. 11), and, thus, the product is not burned for energy recovery. We disagree with Cadence on this point and will show below that the

[18] Cadence claims that the chlorine from the product reacts with "alkali compounds to prevent their deleterious action on the coke and ore particles" and to prevent furnace wall scale. See statement by John Elliot dated March 11, 1985 (pp. 3–4) attached to Cadence comments dated March 12, 1985. Although not relevant to EPA's argument that Cadence product is burned partially for energy recovery, EPA questions whether such chlorine results in substantial improvement in furnace operations and, thus, constitutes a *bona fide* (i.e., necessary) ingredient given that it is not common practice to inject chlorine-bearing materials in a blast furnace.

product, in fact releases substantial, useful heat energy to a blast furnace and, thus, is burned partially for energy recovery within all reasonable understanding of the term. Although we agree that energy recovery is not the sole purpose for burning Cadence product in a blast furnace, the fact that substantial, useful energy is recovered subjects Cadence product to regulation as hazardous waste fuel. (See discussion above in section III.A.1 where we explain that regulation of burning for energy recovery does not turn on the sole or primary purpose of burning.)

a. *General Description of Blast Furnace Operations.* Iron blast furnaces are used to smelt iron ores to produce crude iron (pig iron) suitable for steelmaking. The iron blast furnace is a large, shaft (vertical) reactor. Iron ores along with coke and fluxes such as limestone and dolomite are charged into the top of the reactor. A large volume of air preheated to 2000 °F (termed "hot blast") is injected into the bottom of the furnace to burn the coke to produce the heat and reducing gas needed to drive furnace reactions. Temperatures in the combustion zone at the bottom of the furnace range from 3700–3900 °F. The coke provides both the primary source of heat and the primary source of carbon used to produce the reducing gas carbon monoxide. The carbon monoxide reduces the iron ore by (net) energy absorbing reactions to produce pig iron. About 1000 lbs of coke are required to produce a ton of pig iron. Gases drawn off the top of the furnace contain excess carbon monoxide to give the gas a heating value of about 90 Btu/ft^3. About one third of this furnace gas is used as a fuel in stoves to preheat the combustion air (i.e., the hot blast). The remainder of the furnace top gas is used as a fuel in a boiler plant or in other heating applications within the steel plant. Melted iron and liquid slag are drawn off from the bottom of the furnace.

b. *Modern Methods of Reducing Coke Rates.* Coke has become increasingly expensive since the early 1960's because of the rising price of metallurgical coals needed to produce suitable coke and the rising cost of coking operations because of environmental and other concerns. Reducing coke rates is also advantageous because furnace productivity is increased by increasing the iron ore to coke volume ratio charged to the furnace (i.e., coke can be replaced by iron ore, thus increasing iron output).

The two principle methods of reducing coke rates are to increase hot blast temperatures and to inject fuels[19] through tuyeres (i.e., firing nozzles) into the combustion zone at the base of the furnace. Both approaches generally are employed together because fuel injection enables operators to control flame temperatures in the combustion zone (raised by increasing hot blast temperatures) to optimum levels. In addition, the injection of hydrocarbon fuels replaces the carbon in the displaced coke and ensures that appropriate furnace gas composition conducive to iron ore reduction is maintained. The heat energy of the hydrocarbon fuels also replaces the heat energy of the displaced coke. Given that coke is both the primary fuel and the primary source of reducing gas (carbon in the coke is converted to the reducing gas carbon monoxide), when the coke rate is decreased substantially (i.e., by increasing hot blast temperature and using fuel injectants) the heat energy and source of reducing gas supplied by the displaced coke must be provided by some other source.[20] [21] This source is the tuyere-injected fuels like the Cadence product.

c. *Although Fuel Injectants Cool Flame Temperatures, They Provide Substantial, Useful Heat Energy.* Before we explain how liquid fuel injectants with substantial heating value like No. 6 fuel oil or Cadence product contribute substantial heat energy to a blast furnace, we will explain how they, at the same time, actually cool flame temperatures in the combustion zone. Combustion zone temperatures are maintained at 3700–3900 ° F by the combustion of coke in the presence of the 2000 ° F hot blast (i.e., preheated combustion air). The net reaction of injected fuels is endothermic (heat absorbing) in this zone. Injected liquid fuels first undergo endothermic vaporization, then exothermic combustion to (ideally) carbon dioxide and water where sensible heat is released, and finally, endothermic dissociation[22] and reduction in the presence of excess carbon provided by the coke to form the reducing gases carbon monoxide and hydrogen.

Cadence argues that these liquid fuel injectants are not burned for energy recovery because tuyere-injected fuels undergo net endothermic (i.e., heat-absorbing) reactions in the combustion zone which reactions actually cool flame temperatures, and that any heat energy released from subsequent reactions is incidental and unavoidable. Cadence's argument ignores the fact that fuel injectants first behave as *bona fide* fuels by combusting to (ideally) carbon dioxide and water. The amount of sensible heat released during this combustion phase is measured by a fuel injectant's heating value in Btu/lb. Immediately after the fuel is combusted, the combustion products act as ingredients to furnace reactions by being converted to the reducing gases carbon monoxide and hydrogen during endothermic reactions. The fact that fuel injectants release substantial heat energy while providing hydrocarbons for reactions enables operators to reduce coke rates.[23] (As noted above, coke is both the primary fuel and primary source of carbon to the blast furnace.)

The heat energy released from subsequent (i.e., outside the combustion zone) reactions of fuel injectant hydrocarbons is in fact substantial, intentional, and useful contrary to Cadence's claim that it is incidental and unavoidable. As discussed above, furnace top gas is used as fuel in stoves to heat the hot blast, in a boiler plant, or in other heating applications within the steel plant. The excess reducing gas contained in the top gas that was not used to reduce the iron ore gives the top gas substantial heating value. The excess reducing gas is contributed by

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[19] Cadence's terminology notwithstanding, tuyere-injected materials with substantial heating value are invariably termed fuels in the technical literature.

[20] "The same atoms of carbon are involved in reactions that generate the heat for the furnace as are involved as the reducing agent (as carbon monoxide) to convert the ore to metallic iron." Statement by John Elliot in reference to his review of an EPA internal, deliberative, draft document. Mr. Elliot's comments are contained in correspondence from counsel to Cadence, to Winston Porter, Assistant Administrator for the Office of Solid Waste and Emergency Response, dated October 31, 1985. (Release of this internal, post comment period EPA document was not intended.)

[21] Steam had been a popular (nonfuel) injectant in the 1960's because it was relatively cheap and readily available, and it introduced hydrogen for reduction. (Hydrogen supplements carbon monoxide as a reducing gas in the furnace.) The use of steam as an injectant, however, consumes coke in the combustion zone thereby reducing the overall effectiveness of any increase in blast temperature. Fuel oil injection, however, not only acts as a coolant, allowing the use of higher blast temperatures, but also replaces a portion of the coke. *Source:* "Fuel-Oil Injection Into Blast Furnaces: A Literature Review", Journal of the Institute of Fuel, vol. 49, n 399, June 1976, p. 73.

[22] At the 3700–3900 ° F temperatures in the combustion zone, a fraction of the carbon dioxide and water vapor is thermally dissociated to form carbon monoxide, hydrogen, and oxygen. See Babcock and Wilcox, *Steam, Its Generation and Use*, 1978, p. 6–7.

[23] "Injection of hydrocarbons through the tuyeres of a blast furnace is carried out (a) to replace coke by cheaper sources of fuel and reductions; (b) to increase (by lowering the proportion of coke in the charge) the amount or iron ore in the furnace shaft." *Source:* Peacey, J.G. and Davenport, W.G., *The Iron Blast Furnace*, p. 140, included in comments submitted by Cadence on October 25, 1985.

the coke and fuel injectants, roughly in proportion to the amount of hydrocarbons each provides to the furnace. As shown in the table below, furnace top gas is a substantial fuel source in that only about one-third of the fuel gas is used to heat the hot blast while two-thirds is available for other uses.

Empirical demonstration that burning fuel injectants supplies substantial energy to blast furnaces is provided by standard literature references. The table below shows an energy balance for a modern 28-foot diameter hearth furnace operating at a hot blast temperature of 2000 ° F with a coke rate of 870 lb/ton of hot metal (i.e., pig iron) and using fuel oil injected at a rate of 170 lb/ton of hot metal. The fuel injectant provides about 22% of the heat input to the furnace. The amout of coke needed to supply this energy (and reductants) to a furnace producing 4,000 tons per day of hot metal would be more than 300 tons per day. Thus, it is clear that fuel injectants provide substantial, useful heat to the furnace.

BLAST FURNACE ENERGY BALANCE

	Millions of Btu per ton of hot metal
Energy input:	
Calorific value of coke	10.9
Calorific value of tuyere-injected fuel oil	3.1
Total	14.0
Energy output:	
Calorific value of top gas	[1](5.2)
Top gas consumed in heating blast air	[1](1.8)
Net top gas energy available for other uses	3.5
Heat for chemical reactions, heat loss, and sensible heat of hot metal and slag	10.5
Total	14.0

[1] Energy obtained from coke and fuel oil (in the form of excess carbon monoxide and hydrogen) and partially recycled as hot blast.

Source: Based on data in Kirk-Othmer Encyclopedia of Chemical Technology, v 13, p. 742. (1981).

Injectants that have no heating value like steam, or minimal heating value,[24] provide no or minimal heat energy to the furnace and, thus, are not considered to be fuel injectants. Thus, injectants with no or minimal heating value are not considered to be burned for energy recovery.

Cadence's argument in fact proves too much. It is clear that net furnace reactions are endothermic—heat from the coke and fuel injectants is required to drive reactions that reduce iron ore to metallic iron. Under Cadence's logic that a material involved in an endothermic reaction is not a fuel irrespective of its heating value, the coke would not be a fuel. Yet it is the primary fuel source to the furnace. The fact is that both coke and fuel injectants like the Cadence product serve a dual purpose of providing substantial needed energy and reductants.

d. *Use of Cadence Product as a Fuel Injectant.* Cadence product is blended with No. 6 fuel oil in a volume ratio of about 50/50 for use as a fuel injectant. Cadence product is a fuel injectant, rather than a nonfuel injectant (e.g., steam), because it has a heating value by specification of 10,500 to 14,000 Btu/lb, which is comparable to the heating value of coke and coal. Cadence product, like other liquid fuel injectants, cools flame temperatures in the combustion zone. It also provides hydrocarbons for conversion to the reducing gases carbon monoxide and hydrogen, provides substantial, useful heat energy to the blast furnace, and thus enables operators to reduce the coke rate.[25]

In addition, we note that Cadence itself has informed the Agency, the Congress, and the public on many occasions that Cadence product is burned by blast furnaces (at least partially) as a fuel. Cadence's President Mr. Reese so stated in testimony to Congress. Cadence's comments to the Agency in the definition of solid waste rulemaking (Cadence comments dated August 1, 1983, p. 16) refer to the product as "CHEM-FUEL" and stressed this point:

. . . CHEM-FUEL, like coke, is both a raw material and an energy source when used in the blast furnace. Its principal components are hydrocarbons which provide the essential carbon and hydrogen for ore reduction and energy generation. (Emphasis original)

Cadence's licensees also stressed this point when dealing with EPA's enforcement officials, making the emphatic point that high Btu hazardous wastes were utilized so that the burning legitimately recovered energy. Cadence's patent application states that the material is used to support combustion in blast furnaces. Even in the present rulemaking, a number of Cadence's suppliers indicated that the Cadence product (to which their hazardous wastes contributed) "is used as a fuel by steel producers . . .". (Comments of Detroit Edison, March 11, 1985; to the same effect, see comments 37, 73, and 87 to this rulemaking.) Indeed, the Cadence material was marketed for years under the tradename "CHEM-FUEL". The Agency thus believes that the company's own pronouncements, as well as those of its licensees and customers, indicate strongly that Cadence product is burned (partially) for energy recovery.

2. *Cadence Product Is the Type of Recycled Material Over Which EPA has Jurisdiction.* Stepping back for the moment from the intricacies of blast furnace operations, it is apparent to the Agency that the Cadence product is the type of material EPA is empowered to evaluate and regulate if necessary to protect human health and the environment due to the nature of the Cadence product, its similarity to other waste-derived fuels concededly within EPA's authority, and the nature of the end recycling practice. Cadence product is produced by Cadence's licensees essentially by the simple blending of hazardous solvent still-bottoms and other hydrocarbon-based hazardous wastes to meet a specification for parameters of concern to blast furnace operators, including heating value and chlorine content. Some of the hazardous wastes are collected from generators while other hazardous wastes (e.g., solvent recovery still-bottoms) are generated by the licensee. The specification limits heating value of Cadence product to 10,500–14,000 Btu/lb and chlorine content to 1–5%. Thus, Cadence product is similar (or, according to companies in the blending business, identical) in production and content to hazardous waste fuels burned in other industrial furnaces like cement kilns.

Cadence claims that:

> the waste-derived materials used to manufacture Cadence Product 312 are not suitable for direct use in blast furnaces; they first must be analyzed and then fully processed to finished goods specifications in a Cadence manufacturing facility. The production of Cadence Product 312 is completely analogous to many well-recognized manufacturing operations.

These unsupported assertions overstate the sophistication of the Cadence "manufacturing process". In fact, we understand that, other than simple blending, the only processing that is sometimes used at facilities that produce Cadence product is the distillation of spent solvents to recover solvent. This process, wholly unrelated to the "manufacture" of Cadence product, generates still bottoms that are blended with other petroleum-based wastes to produce the product. Although Cadence licensees conduct analyses of waste feedstocks and blended product to ensure conformance with specifications, other waste blenders that market hazardous waste fuels (e.g., for use in cement kilns) also conduct analyses of feedstocks and fuel product

[24] The Agency always considers a material with a minimum heating value of 5,000–8,000 Btu/lb to be a *bona fide* fuel. See section II in the text.

[25] "There is no question that Cadence Product 312 adds to the sensible heat of the heat and material balance of the process and that energy is recovered." *Source:* Nickel, Melvin E., "Comments on the Injection of Auxiliary Fuels in the Tuyeres of the Iron Blast Furnace", September 30, 1965, p. 4 (unpublished report).

to meet a specification. Thus, the blending of wastes to produce Cadence product is similar to other waste-derived fuel operations.

Cadence's operations thus raise the troubling question of what degree of processing can transform a waste into a product. The Cadence process involves relatively minimal processing. No significant resources are recovered from the Cadence product until it actually is burned. The Agency always has been leery of the notion that minimal processing of hazardous wastes prior to recovery of resources from them (in this case, energy) transforms wastes into products. It was for this reason that EPA amended § 261.3(c) (2) on January 4, 1985 to state that materials reclaimed from hazardous wastes remain hazardous wastes when burned for energy recovery, and indicated in the same rule that hazardous wastes that are partially but not fully reclaimed remain hazardous wastes (see § 260.30(c).) These provisions illustrate the general principle that minimal processing before final recovery does not ordinarily transform a hazardous waste into a product. Cadence's process appears to raise analogous problems of using a relatively minimal processing step as a means of insulating hazardous waste recycling from RCRA jurisdiction. When this fact is coupled with the fact that the form of end recycling of the Cadence product closely resembles incineration (in the sense that hazardous wastes are burned by controlled flame combustion), it is apparent to the Agency that RCRA jurisdiction over the burning exists.

Even more fundamentally, EPA does not believe that the question of jurisdiction over the Cadence product (or other similar waste-derived materials) need turn narrowly on the question of whether it is burned partially for energy recovery. Cadence product is composed of toxic chlorinated solvent still bottoms which (on a nationwide basis) are typically disposed of or incinerated. These still bottoms are not similar to raw materials customarily used in the iron-making process (i.e., toxic chlorinated solvents are not a typical feed or energy source to the iron-making process). The recycling practice, as well as prior transportation and storage has the potential to cause substantial harm to human health and the environment if conducted improperly.[26]

EPA believes that recycling of hazardous secondary materials that are so different from the raw materials customarily utilized in the process is a prototypical situation it is empowered to control under RCRA Subtitle C. This is particularly true in this case because the recycling involves burning (viz. controlled flame combustion), and so resembles incineration. The recycling activity also is not part of a continuous industrial process, but rather involves unrelated parties and processes (i.e., the hazardous waste generators who generate spent solvents and hazardous still bottoms, intervening processors (who not only process but add additional hazardous still bottoms to the mixture), and the steel mill), in addition to involving secondary materials normally unrelated to the ironmaking process. For these reasons, EPA is prepared to exercise its authority to designate Cadence product, and all similar materials, as solid wastes pursuant to § 261.2(d) when recycled via controlled thermal combustion in processes not customarily utilizing chlorinated toxicants as a fuel or raw material should this ever prove necessary. In light of the Agency's judgment that Cadence product is burned partially for energy recovery and so is subject to regulation as hazardous waste fuel, it is unnecessary to exercise this authority at the present time.[27]

3. *Conclusion.* In closing on this issue, EPA stresses that it is not finding that Cadence is engaging in an unsafe or undesirable recycling practice. Quite the opposite—Cadence has found a means of utilizing resources in wastes, coupled with destruction of the wastes toxic constituents, that appears to be environmentally beneficial. What EPA is finding in this proceeding is that the Agency is empowered—that is, has the jurisdiction—to evaluate the potential risks posed by this recycling activity and to prescribe regulatory standards if the Cadence product, managed improperly (see RCRA section 1004(5)), could pose a substantial hazard to human health and the environment. This is how EPA always has read its overriding statutory duty to regulate hazardous waste management "as *may* be necessary to protect human health and the environment." It may be that due to the mechanics of blast furnace operation, substantially tailored (or even no standards) are needed to ensure waste destruction. EPA is investigating this question as part of its Phase II rulemaking on burning hazardous wastes. EPA is asserting here that it has jurisdiction to make this evaluation.

IV. Used Oil Subject to Regulation

A. Definition of Used Oil Fuel

These rules apply to used oil, and fuels produced by processing, blending, or other treatment of used oil, that are burned for energy recovery in a boiler or industrial furnace that is not operating under RCRA standards for hazardous waste incinerators. "Used oil" means any oil that has been refined from crude oil, used, and, as a result of such use, contaminated by physical or chemical impurities. See RCRA section 1004(36).[28] Used oils include the following: (1) Spent automotive lubricating oils (including car and truck engine oil), transmission fluid, brake fluid, and off-road engine oil; (2) spent industrial oils, including compressor, turbine, and bearing oils, hydraulic oils, metalworking oils, gear oils, electrical oils, refrigerator oils, and railroad drainings; and (3) spent industrial process oils.

These rules apply only to used oil and not necessarily to "oily waste". Oily wastes, such as bottom clean-out waste from virgin fuel oil storage tanks, or virgin fuel oil spill clean-up, are not used oils because the oil was never "used" for its intended purpose. Thus, oily waste is not subject to these rules

[26] Preliminary results of EPA's emissions test for a blast furnace burning Cadence material indicate that these devices may be able to destroy 99.99% of toxic organic constituents in the material. If confirmed, this means that these devices may be able to safely burn toxic organic wastes under appropriate conditions. This does not mean, however, that these devices could always be expected to achieve 99.99% destruction efficiency, absent regulatory controls on operating conditions. Storage of Cadence Product also has the potential to cause substantial harm. As discussed in the text in section II of Part Four, the fact that a hazardous waste fuel is being stored as a commodity is insufficient to prevent substantial risk.

[27] There is another point in Cadence's presentation that is deeply troubling to the Agency. Cadence is arguing that when they blend and process chlorinated hazardous wastes, the resulting processed material is a product excluded from RCRA so long as there are specifications (such as for total chlorine) on the end "product" and so long as all components of that "product" are put to beneficial use when burned. This argument applies with equal force if the chlorinated hazardous wastes being processed were dioxin or chlorophenoxy pesticide wastes (rather than carcinogenic solvents): the blended product would still be used as a reducing agent in iron-making, toxic organic compounds would provide hydrocarbons to the iron-making process, and chlorine would remove accumulated wall scale within the furnace. Although these types of hazardous wastes are not blended into Cadence product to our knowledge, the point is that their argument does not preclude such use. Cadence's argument would in fact be identical. It thus seems to the Agency that Cadence's argument proves far too much, and seeks to preclude EPA from exercising authority well within the Agency's purview.

[28] The Agency will soon be proposing to modify the definition of used oil in the Used Oil Listing and Management Standards rulemaking.

(provided it is not mixed with used oil and that it is not a hazardous waste).

Today's rule marks the first time the Agency has used the regulatory authorities created by the Used Oil Recycling Act of 1980 (UORA). (UORA is codified substantially as sections 1004 (36)–(39) and 3014 of RCRA.) UORA requires the Agency to establish "performance standards and other requirements as may be necessary to protect public health and the environment from hazards associated with recycled oil." See RCRA section 3014(a). Burning used oil for energy recovery—the subject of this rule—is an example of recycling. See RCRA, section 1004 (37).

The regulation of used oil fuels raises the legal question of how the provisions of UORA are to be integrated with other RCRA provisions. As we stated at proposal, EPA believes that UORA authorities may be used independent of, or as a supplement to, Subtitle C of RCRA. If recycled used oil (called "recycled oil" under RCRA section 1004 (37)) is not also a hazardous waste, it is subject to regulation under the provisions of section 3014 rather than sections 3001–3006, 3008, and 3010. As noted at proposal, this has significant implications. For example, permits are not necessarily required to manage recycled oil, the criminal enforcement provisions of section 3008(d) do not apply, and the regulatory program cannot be delegated to the States under section 3006. (See Part Five of this preamble for a discussion of the impact of this rule on authorization of State programs.)

If recycled oil is also a hazardous waste, many of the Subtitle C regulations for other hazardous wastes (40 CFR Parts 262–266) may apply. Section 3014, as amended by the Hazardous and Solid Waste Amendments of 1984, provides detailed guidance on regulating recycled oil that is a hazardous waste.

Today's rule establishes a specification for used oil that is substantially excluded from regulation [29] and that may be burned without restriction in nonindustrial boilers or any other boiler or industrial furnace.Used oil exceeding any of the specification levels for toxic metals, flash point, or total halogens is termed "off-specification used oil" and is subject to regulatory controls. The specification and issues pertaining to implementing the specification are discussed below.

Of major importance is how to distinguish between used oil and hazardous waste given that used oil has been frequently found to contain hazardous halogenated spent solvents and given that hazardous waste fuel is regulated differently than used oil under today's rule (as well as under the RCRA statutory scheme). For example, hazardous waste fuel is not subject to the specification and so may not be burned in nonindustrial boilers (unless the boiler operates under RCRA hazardous waste incinerator standards), and hazardous waste fuel is subject under today's rules to storage controls.[30]

Issues pertaining to distinguishing between used oil and hazardous waste are discussed below.

B. Distinguishing Between Used Oil and Hazardous Wastes

A number of commenters took issue with EPA's discussion of how it intends to distinguish between hazardous waste and used oil (or if used oil is listed as a hazardous waste, between used oil and other hazardous wastes). See 50 FR 1690–1693. EPA indicated that there are situations where it is difficult to tell if a waste is used oil or a hazardous waste. The difficulty is in determining whether a used oil was mixed with a hazardous waste, or whether the oil became contaminated during its (the oil's) use. The legislative history of the Used Oil Recycling Act indicates clearly that used oil that is contaminated during use is to be classified as used oil and, if recycled, be subject to regulation under section 3014. See H.R. Rep. No. 96–1415 at 6.

We noted in the proposed rule that the Agency is delegated discretion in determining how to classify these situations, and set out the general principles that will guide the Agency's exercise of discretion. These are: (1) Where possible, clear, objective tests should be used to classify hazardous waste and used oil; (2) the Agency should not adopt a scheme whereby most used oil is classified as a hazardous waste ineligible for regulation under the Section 3014 standards; and (3) any objective test should ensure that massively adulterated used oils are classified as hazardous waste. See 50 FR 1691.

The Agency adheres to this analysis in today's final rule, and indeed, this position had the support of most of the commenters. Several commenters argued, however, that EPA's approach showed an unwarranted bias against regulating used oil as hazardous waste, and so would lead to situations where used oil is not regulated adequately to protect human health and the environment because most of the RCRA Subtitle C standards would not apply. One commenter even went so far as to suggest that the Agency was misreading its legal mandate under the HSWA to regulate used oil as a hazardous waste.

These commenters misapprehend both the law and EPA's stated approach. In the first place, RCRA as amended draws clear distinctions between hazardous waste and used oil. The statute contains a separate provision dealing with used oil as a distinct class and authorizes separate standards for its management. (See RCRA section 3014.) Nor does the statutory directive that EPA decide whether to list used oil as a hazardous waste (RCRA section 3014(b)) obliterate this distinction. Even if EPA lists used oil as a hazardous waste (and the Agency intends to propose such action later this year), used oil would still be subject to regulation under different standards than apply to other hazardous wastes. See RCRA sections 3004(a) and 3014(c), (d). Thus, it remains necessary to distinguish between used oil and other hazardous waste.

It also is clear that EPA has discretion on how to make these distinctions. The legislative history to the 1984 amendments is explicit on this point. See S. Rep. No. 98–284, 98th Cong. 1st Sess. at 36, 38; see also the Conference Report, H. Rep. No. 98–1133, 98th Cong. 2d Sess., which speaks of used oil contaminated with hazardous waste as used oil to be regulated under Section 3014 (i.e., as a used oil, not as a hazardous waste).[31]

EPA takes sharp issue with the commenters' assumption that its proposed (and now final) exercise of discretion in classifying used oil leads to a reduction in environmental protection. With respect to buring used oil, the rule promulgated today establishes a used oil fuel specification that regulates as necessary to protect human health and the environment, within the meaning of RCRA section 3014, when the used oil is burned in nonindustrial boilers. (See

[29] The person who first claims used oil burned for energy recovery meets the specification is subject to notification, used oil analysis, and recordkeeping requirements. In addition, he must keep records of the name and address of the facility receiving each shipment, the date of delivery, and quantity delivered. See § 266.43(b) (1) and (6).

[30] As noted at proposal, a hazardous waste fuel specification is not a feasible option because of the hundreds of hazardous constituents that would have to be addressed and the difficulties of analyzing for all of these constituents.

[31] Specific comments that EPA exercised its discretion improperly with regard to used oil containing halogenated hazardous substances and used oil from small quantity generators are addressed in the preamble sections dealing with these issues.

section IV.C above.) With respect to other management standards for recycled used oil, EPA will soon be proposing cradle to grave management standards for such oil consistent with Section 3014. EPA is not doing so in this rulemaking because the Agency wishes to avoid piecemeal regulation of the used oil management community wherever possible.[32] The commenters are incorrect, however, that this temporary deferral will lead to an ultimate reduction in environmental protection.

We discuss below how we apply the principles for distinguishing between used oil and hazardous waste to: Used oil containing halogenated wastes; used oil containing hazardous waste generated by small quantity generators; and used oil that exhibits a characteristic of hazardous waste.

1. *Used Oil Containing Halogenated Wastes.* Today's rule, like the proposed rule, reiterates the principle found in § 261.3(a)(2) of the existing regulations that a hazardous waste mixed with a solid waste is a hazardous waste. Thus, under this rule, mixtures of hazardous waste and used oil ordinarily are classified as hazardous waste. It is not always possible, however, to prove—or even to be sure—that such mixing has occurred, particularly when no one has observed the act of mixing. Used oil containing small amounts of hazardous halogenated compounds is an example where there may be uncertainty.

Since hazardous halogenated compounds—many of them hazardous waste—are frequently found in used oil (see Table 1 in the proposal (50 FR 1686)), the Agency believes (and virtually all commenters agreed) that a simple, objective test is needed to determine when used oil has been mixed with hazardous spent halogenated solvents (or other halogenated hazardous waste) in order to avoid case-by-case confusion as to when mixing has occurred, and to aid in consistent enforcement of the regulation. To this end, EPA proposed, and is adopting today a rebuttable presumption as to when mixing with hazardous wastes has occurred.

a. *The Rebuttable Presumption: The Standard and Means of Rebuttal.* Today's rule establishes a rebuttable presumption that used oil containing more than 1,000 ppm total halogens has been mixed with hazardous spent halogenated solvents (i.e., EPA Hazardous Waste No's. F001 and F002) or other hazardous halogenated wastes and, therefore, is a hazardous waste under provision of the "mixture rule" of 40 CFR 261.3 (i.e., a mixture of a listed hazardous waste and other material is a hazardous waste unless delisted under provisions of 40 CFR 260.20).

In response to comment that EPA clarify the available means of rebutting this presumption, the final rule states that the presumption can be rebutted by demonstrating to enforcement officials that the oil is not mixed with hazardous waste. One such approach in making this demonstration is to show that the used oil does not contain significant levels of halogenated hazardous constituents. See § 266.40(c). Thus, the presumption can be rebutted successfully even if some hazardous halogenated compounds are present in the oil. We believe that oil containing less than on the order of 100 ppm of any individual hazardous halogenated compound listed as a hazardous spent solvent (i.e., EPA Hazardous Waste Numbers F001 and F002) should not be presumed to be mixed with spent solvent. As the Agency stated at proposal (50 FR 1691) and as confirmed by a number of comments, when these compounds are present at such low levels, it is difficult or impossible to pinpoint the source of the contamination. Such low levels found at the generator's site certainly do not indicate deliberate mixing with solvents.[33] Both used oil and hazardous halogenated solvents are frequently generated by the same facility, and some incidental contamination is probably inevitable. It should be noted that burning used oil with such levels of solvent will not pose significant risk from emissions of either incompletely burned solvents or hydrochloric acid.[34]

Presence of a compound listed as a hazardous halogenated spent solvent at levels between 100 and 1000 ppm may indicate mixing with spent solvent depending on circumstances specific to individual cases. For example, if the used oil in question is from a large tank at a processing facility where oil from a number of generators has been mixed, even low solvent levels may be indicative of adulterative mixing. Used oil mixed with significant levels of solvent by a generator may have been diluted with unadulterated oil from other generators, or spent solvent collected from a generator may have been mixed (illegally) into the used oil by a collector or the processor.

Mixing of used oil with *nonsolvent* halogenated hazardous waste, however, could be indicated by the presence of hazardous constituents at levels lower than 100 ppm. For example, if a waste is not typically cogenerated with used oil, incidental contamination is not likely. Other factors include whether the hazardous constituents could be added or formed during use of the oil. Thus, if a used oil contains greater than 1000 ppm total halogens, and some of the halogens are (for example) chlorophenoxy pesticides, the presumption of mixing would not necessarily be overcome by showing that the pesticide is present at levels less than 100 ppm.

b. *Explanation of Changes in the Rebuttable Presumption Between Proposal and Final Rule.* The rebuttable presumption of mixing hazardous halogenated solvents with used oil promulgated today differs from the proposal in two respects: total halogens rather than total chlorine is used as the basic indicator, and the indicator level has been lowered from 4000 ppm to 1000 ppm. Total halogens are used as the indicator because commenters noted that common chlorine tests actually measure total halogens reported as total chlorine. The change, thus, is essentially a technical correction because the used oil analyses available to the Agency and used to support the rule already reported presence of total halogens as total chlorine.

We lowered the indicator level from 4000 ppm to 1000 ppm because many commenters argued that the higher level would allow and even encourage significant mixing of hazardous halogenated solvents with used oil (contravening one of EPA's enumerated principles). More importantly, this level correlates sufficiently well with presence of significant levels of hazardous halogenated spent solvents as to justify use of a presumption, as discussed below. The 1000 ppm total halogen level was in fact recommended by a number of commenters, including the State of New York which has substantial experience with this issue.

We have reviewed the more than eleven hundred used oil analyses available in the record for the proposed rule and the additional data submitted by commenters and concluded that used

[32] EPA is adopting the used oil fuel specification for nonindustrial boilers in advance of other rules for recycled oil to meet the most pressing environmental concern with respect to recycled oil management, and because the prohibitions on hazardous waste burning would have little practical significance unless coupled with controls on burning recycled oils.

[33] For example, if 100 ppm of a solvent is detected in 200 gallons of used oil (the quantity frequently generated over a month by a service station, prior to pick up by a collector), only 0.002 gallons, or *0.25 ounces* of solvent have been mixed. Such small amounts could not possibly represent the monthly quantity of spent solvent from degreasing operations at the service station.

[34] PEDCO, Environmental Inc., *A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters*, August 1984, pp. 5–1 through 5–8.

oil will generally contain less than 1000 ppm of total halogens *unless* it is mixed with hazardous chlorinated solvents or is metalworking oil containing chlorinated additives.[35] Eighty-seven percent (87%) of the samples from a wide range of sources—generators, processors, distributors, burners—that contain more than 1000 ppm total chlorine (halogens) also contained significant levels of hazardous chlorinated solvents (e.g., more than 100 ppm of any particular solvent).[36, 37] Some of the 13% of the samples containing more than 1000 ppm total chlorine but no chlorinated solvents are known to be metal-working oils (either because they were obtained from generators known to be involved in metal-working or because of their extremely high chlorine content) containing nonhazardous chlorinated additives. Others may be mixed with these highly chlorinated metalworking oils such that chlorine levels are greater than 1000 ppm but lower than typical for metalworking oils, or the chlorine may be from some other source.[38] Based on these data showing a high percentage of correlation, and on the supporting comments, it is EPA's opinion that the 1000 ppm total halogen level is a valid indicator for presence of mixing with listed halogenated hazardous waste.

EPA expressed concern at proposal that certain used oils might contain levels of *inorganic* halogens greater than 1000 ppm, and therefore, that a higher level was appropriate for the presumption. The Agency no longer believes this to be a valid concern. The Agency stated at proposal that used oil, particularly crankcase oil from leaded gasoline engines, could occasionally contain up to 3000 ppm inorganic chlorine (or bromine) levels [39, 40] and that the higher level of 4000 ppm would indicate mixing with chlorinated solvents. Chlorine or bromine are added to leaded gasoline to "scavenge" lead from engine components and, thus, reduce wear and improve engine performance. The chlorine or bromine form inorganic lead compounds, some of which end up in crankcase oil from engine blow-by. Commenters suggested, however, that little used oil has levels of these inorganic halogens exceeding 1000 ppm. As further corroboration, EPA's own data on used oil sampled at generators' sites (including both crankcase and industrial oil, but excluding highly chlorinated metalworking oil or oil adulterated with hazardous halogenated solvents) indicates that the oil contained less than 1000 ppm total halogens in 32 of 36 cases.[41, 42] In addition, as lead is phased out of gasoline, chlorine and bromine additives also will be lowered, thus reducing inorganic halogen levels. EPA consequently believes that very few used oils will trip the presumption due to inorganic halogen content of over 1000 ppm. Moreover, as just discussed, there is a strong correlation between halogen levels of 1000 ppm and high levels of hazardous halogenated solvents, even in EPA's present data base which does not reflect the lead phasedown.

Nor do most used oils contain high levels of *organic* halogens without also containing high levels of halogenated spent solvents. The only used oils that might are metalworking oils, which comprise a small segment of the used oil fuel market. See 50 FR at 1692 (January 11, 1985). Metalworking oils can contain extreme pressure additives that are nonhazardous chlorinated paraffinic compounds that can result in organic chlorine levels of several percent. These organic chlorinated compounds are not toxic (i.e., they are not listed as constituents of hazardous waste in Appendix VIII of Part 261), and, thus, the hazard from incomplete combustion of these compounds is not of concern.[43] The issue here is application of the presumption to these oils.

We believe that the rebuttable presumption of mixing halogenated solvents with used oil should still apply to persons who manage highly chlorinated metalworking oils. In the first place, these oils can still be mixed with hazardous halogenated solvents (as confirmed both by data and by comments on the proposed rule). Metalworking operations often use large quantities of degreasing solvents. Second, metalworking oils also can be adulterated with halogenated hazardous wastes after leaving the site of generation. Finally, persons managing used metalworking oils that are not adulterated should have readily available means of rebutting the presumption.[44]

c. *Additional Response to Comment on the Rebuttable Presumption.* (1) *Basis for Not Setting the Halogen Indicator Level on Risk.* Some commenters maintained that the chlorine level for the presumption of mixing should be based on risk posed by the solvent/oil mixture, rather than on the basis of mixing, *per se*. These

[35] Some metalworking oils contain extreme pressure additives that are nonhazardous highly chlorinated paraffinic compounds. Thus, used metalworking oils may contain halogen levels higher than 1000 ppm even though they are not mixed with hazardous halogenated solvents. See discussion in text regarding application of the rebuttable presumption to these metalworking oils.

[36] Based on review of analyses in Franklin Associates Ltd., *Composition of Used Oil*, Appendix A. Of the more than 1100 used oil analyses, 311 samples contained more than 1000 ppm of halogens and were analyzed for halogenated solvents. Eighty-seven percent of those samples contained significant levels of solvent. We presumed that samples with high lead levels, no halogenated solvents, and low halogen levels (but more than 1000 ppm of halogens) would contain less than 1000 ppm halogens when lead is phased out of gasoline, because chlorine or bromine is added to gasoline only to scavenge lead from engine components. Thus, halogen levels will fall as lead is phased out of gasoline. Thus, 26 such samples are excluded from the samples containing more than 1000 ppm of halogens.

[37] The Texas Air Control Board submitted comments on the proposed rulemaking that included a report entitled, *Analysis of Fuel Oils and Waste Oils for Sulfur, Organochlorides, and Lead*, August 1984. Data in Table VI of that report indicate that 77% of used oils (27 of 35 samples) containing more than 1000 ppm total halogens also contained significant levels of hazardous halogenated solvents.

[38] Although used oil samples have been found to contain hazardous halogenated compounds listed in Appendix VIII of Part 261 (e.g., dichloroethane, tetrachloroethane) that are are not listed as F001 or F002 hazardous halogenated solvents, these samples invariably also contain significant levels of the F001 or F002 solvents. See Table VI of the Texas Air Control Board report referenced in note 27, and data in GCA Corporation, *The Fate of Hazardous and Nonhazardous Wastes in Used Oil Disposal and Recycling*, October 1983, p. 43.

[39] NBS Technical Note 1130—*Test Procedures for Recycled Oil Used as Burner Fuel*, August 1980, p. 51.

[40] Franklin Associates, Ltd., *Composition of Used Oil*, Appendix A.

[41] Based on review of used oil analyses in Franklin Associates, Ltd., *Composition of Used Oil*, Appendix A. We should note that 3 crankcase oil samples contained 1000 to 1500 ppm total halogens (and no halogenated solvents). We presume the halogens were attributable to leaded gasoline additives because those oils had high lead levels—1000 to 3000 ppm. We presume that those oils would in the future contain less than 1000 ppm total halogens as lead is phased out of gasoline (beginning July 1985), and, concurrently and necessarily, halogen gasoline additives are also reduced. Therefore, we believe it is reasonable to exclude these 3 samples form the total halogens so that 35 of 36 unadulterated, nonmetalworking samples contianing more than 100 ppm total halogens.

[42] Data in GCA Corporation, *The Fate of Hazardous and Nonhazardous Wastes in Used Oil Disposal and Recycling*, October 1983, p. 43, also indicate that used oil generally contains less than 1000 pm total halogens.

[43] We are, however, concerned about the acid-forming potential of these compounds when combusted, and the resultant emissions of hydrochloric acid and the effects of accelerated corrosion on boiler parts and any emission control equipment. These oils will fail the used oil fuel specification for total halogens and are subject to regulation as off-specification used oil (see section IV.C of text).

[44] As noted earlier, the final rule indicates that one way the presumption may be rebutted is by showing that the oil does not contain significant levels of halogenated hazardous constituents.

comments mistake the Agency's purpose: to distinguish used oil from hazardous waste. As EPA pointed out in the preamble to the proposed rule, the basis of the presumption is not a new concept. Section 261.3(b) says that when a solid waste is mixed with a hazardous waste, the mixture is a hazardous waste unless it does not exhibit a characteristic of hazardous waste, or, if the hazardous waste was a listed waste (like many halogenated solvents), unless the mixture is delisted under petitioning provisions of 40 CFR 260.20 and 260.22. The rebuttable presumption merely provides a simple, objective test for when the Agency will presume such mixing has occurred. The risks posed by burning both hazardous waste (including adulterated used oil) and off-specification used oil are addressed in today's rule with respect to burning in nonindustrial boilers and will be addressed further by the permit standards for burning such fuels in industrial boilers and industrial furnaces.

We note further that a number of commenters erred by considering the rebuttable presumption level for total halogens to fix the level at which used oil containing halogens would be subject to regulation (assuming no other source of adulteration). The rebuttable presumption is not a measure of when regulation is necessary, but a measure of when mixing can be presumed to have occurred. Used oil containing halogens at less than the presumption level could still be regulated as hazardous waste, but the burden would be on EPA to prove that such used oil is a hazardous waste by virtue of mixing with a listed hazardous waste. See 50 FR 1692, n. 22. EPA's burden would not automatically be satisfied by showing evidence of halogen levels in the used oil.

(2) *Organic Versus Total Halogens as the Indicator Level.* Several commenters suggested that organically-bound chlorine (or, more correctly, halogens) rather than total chlorine should be used for the presumption of mixing because it avoids the problems with inorganic halogens discussed above (i.e., some oils with insignificant hazardous halogenated solvent levels may contain more than 1000 ppm total halogens because of presence of inorganic chlorine). After serious consideration, we have decided to base the presumption on total halogen levels due to the problems of implementing a standard based on organic halogens.

We know of no quick, simple method for determining organically-bound halogen levels in used oil. The sample must be "washed" to remove inorganic halogens before determining organic halogen levels. Moreover, we have only just recently investigated techniques for washing to remove inorganic halogens from used oil and are not yet ready to recommend a procedure. Even if an acceptable technique were available, washing would add substantially to the time required to determine halogen levels. (See discussion of analytical procedures in section IV–F of Part Two of this preamble.) The need for washing also would raise analytical costs unnecessarily.

In addition, organic halogens would be a more accurate measure of presence of hazardous halogenated solvents than total halogens only if used oil often contains more than 1000 ppm of inorganic halogens. We have discussed above, however, that the data indicate that inorganic halogen levels are generally lower than 1000 ppm. Finally, use of organic halogens rather than total halogens does not avoid the problem of occasional false-positives caused by nonhazardous organic chlorine additives found in metalworking oils.

In summary, a presumption based on organic halogen levels offers few advantages and has serious problems.

2. *Used Oil Containing Hazardous Waste Generated by Small Quantity Generators.* EPA proposed that used oil containing hazardous waste generated by small quantity generators be regulated as used oil. 50 FR 1692. The Agency reasoned that in exercising its discretion as to how to classify used oil (i.e., as used oil or as hazardous waste), EPA should avoid a scheme whereby most used oil was classified as hazardous waste ineligible for regulation under the special standards for used oil. EPA was concerned that this might result if small quantity generator hazardous waste-used oil mixtures were classified as hazardous waste. *Id.* At the same time, EPA solicited comments on alternative approaches, including regulating such mixtures as hazardous waste or classifying only automotive oil containing small quantity generator waste as used oil. *Id.* at n. 24.

Comments were divided. Although some commenters supported the Agency, others were critical, maintaining that EPA's proposal could encourage adulteration of used oil, and lead to significant enforcement problems.

EPA has decided to modify its proposal, in part due to the public comments. More importantly, however, our re-evaluation of available data indicates that few small quantity generators are presently mixing hazardous waste with used oil. Analyses indicate that fewer than 15% of the generators of crankcase oil (who are presumed to be small quantity generators), and fewer than 12% of the generators of industrial oils (some of whom may have been small quantity generators), generate used oil that is mixed with significant levels of halogenated hazardous solvents.[45] In addition, the average vehicle maintenance shop or service station, according to EPA's data,[46] produces an average of 50 kg/month of hazardous waste in the form of spent solvents, and 500 kg/month of used oil. Intentional mixing would yield a contamination rate of 10%, or 100,000 ppm. The data in the following table show that actual contamination at the generator site, with few exceptions, is orders of magnitude lower and so probably results from inadvertent, and perhaps unavoidable, contamination during use of the oil or handling of used oil.[47]

[45] Analysis of 21 samples of crankcase oil known to be obtained from the generator (e.g., service stations, auto repair shops, truck dealer, construction equipment facility), and thus not adulterated with solvents by collectors or processors, reveals that only 3 contain significant levels of hazardous halogenated solvents. Analysis of 26 samples of industrial oil known to be obtained from the generator indicate only 3 contain significant levels of hazardous halogenated solvents. Analysis of data in Franklin Associates, Ltd., *Composition of Used Oil.* Appendix A.

[46] Industrial Economics, Inc., *Draft Regulatory Analysis for Proposed Regulations Under RCRA for Small Quantity Generators of Hazardous Waste,* February 1985, Draft Report, Exhibit 3–1.

[47] Several commenters mistakenly criticized EPA's statement at proposal (50 FR 1692) that small quantity generators do not massively adulterate their used oil. They reasoned that because most used oil comes from small quantity generators, and much is adulterated, that the generators are doing the adulteration. In fact, all data indicate that *collectors* and *processors* are the principal source of hazardous waste contamination. Comparison of used oil sampling data from generators and from processing facilities in the table below shows a dramatic increase in halogenated solvent levels at used oil processing facilities.

Solvent Concentrations Increase Dramatically as Used Oil Moves From the Generator to Processing Facilities

	Solvent Concentrations, ppm (90th percentile levels)		
	Solvent A[1]	Solvent B[2]	Solvent C[3]
Oil sampled at generator site:			
Automotive oil	16	11	55
Industrial oil	33	33	60
Oil sampled at processing facility:			
Automotive oil	6,000	800	3,000
Industrial oil	3,500	600	2,200

[1] 1,1,1-Trichloroethane.
[2] Trichloroethylene.
[3] Tetrachloroethylene.

Source: Franklin Associates, Ltd., *Composition of Used Oil,* pp. 3–33 to 3–36.

TABLE 1.—SOLVENT CONCENTRATIONS IN USED OIL AT GENERATOR FACILITIES

Type of generator	Solvent Concentrations, ppm (90th percentile levels)		
	Solvent A [1]	Solvent B [2]	Solvent C [3]
Automotive oil	16	11	55
Industrial oil	33	33	60

Notes:
[1] 1,1,1-Trichloroethane
[2] Trichloroethylene
[3] Tetrachloroethylene
Source: Franklin Associates, Ltd., *Composition of Used Oil*, pp. 3-33 to 3-36.

Consequently, it does not appear that classifying small quantity generator waste-used oil mixtures as hazardous waste would result in classifying large percentages of used oil as ordinary hazardous waste. As a factual matter, EPA's stated concern at proposal thus does not appear to be present.

The final rule thus states that this type of mixture is to be *classified* as a hazardous waste. (But, as explained below, at least for purposes of this rulemaking, these mixtures are subject to regulation as used oil fuel when burned for energy recovery.) We have decided, however, at least for the time being to regulate this (usually exempt) small quantity generator waste regardless of the quantity generated when it is mixed with used oil as part of a waste-derived fuel. EPA is taking this step for a number of reasons. To do otherwise would create the very situation feared by the commenters whereby the rules would create an incentive to adulterate and be much more difficult to enforce. This is because if small quantity generator waste could be mixed with otherwise-regulated used oil and the mixture was exempt from regulation, people undoubtedly would take advantage of the opportunity to escape regulation, or raise the issue of mixing as a defense in enforcement actions. Potentially large volumes and percentages of recycled used oil could go unregulated, in derogation of Congressional intent.[48] Thus, the final rule contains an amendment to § 261.5 indicating that small quantity generator hazardous waste-used oil mixtures are not exempt from regulation when burned for energy recovery but are subject to Subpart E of Part 266.

This means that, at least on an interim basis, such mixtures can be burned in nonindustrial boilers if they meet the fuel specification. These mixtures also are subject to the administrative controls for off-specification used oil fuels should they fail to meet the fuel specification. Generators of these mixtures would *not* be subject to regulation unless they are also marketers of used oil fuel. (See Part Four below.)

EPA has not reached a final decision on which controls should apply to this type of hazardous waste. We also wish to examine further, and seek comment on, the impacts on small businesses should all of these hazardous wastes be regulated at various levels of control. See RCRA section 3001(d). Because we believe further comment on an ultimate regulatory regime is appropriate, we have decided to retain as an interim measure the regulatory scheme initially proposed whereby this type of small quantity generator waste remains subject to all of the controls applicable to used oil fuel. This will ensure that there is no outright exemption while the Agency evaluates an ultimate resolution in its consideration of comment on the comprehensive rules for recycled oil soon to be proposed.

3. *Used Oil that Exhibits a Characteristic of Hazardous Waste.* Used oil itself might be a hazardous waste if it exhibits a characteristic of hazardous waste. The most likely possibility is ignitability.[49, 50] As discussed at proposal (see 50 FR at 1693), EPA intends that used oil that is a hazardous waste solely because it exhibits a characteristic of hazardous waste be regulated as used oil fuel (where so recycled), provided that it is not mixed with a hazardous waste.[51] Ignitable used oil is regulated as used oil under today's rule and is prohibited from burning in nonindustrial boilers when its flash point is less than that of commercial fuel (i.e., 100 °F).

We have considered whether a low flash point serves as a presumptive indication of mixing with hazardous waste, and therefore, that such mixtures should be regulated as hazardous wastes ineligible for regulation under section 3014 standards for used oil. We conclude that low flash point is not an indicator of mixing for a number of reasons and that such oil should be regulated as used oil.

Low flash point may not be indicative of mixing with hazardous waste because the low flash point may be attributable to benzene, toluene, or xylene added to crankcase oil from engine blow-by (these compounds are constituents of gasoline) rather than as spent solvent. Low flash point could also be attributable to mixing gasoline from tank drainings at auto service and repair shops with used oil. Gasoline is a commercial chemical product exhibiting a characteristic of hazardous waste. When gasoline (or any commercial chemical product) is discarded, it is subject to regulation as hazardous waste. But when a commercial chemical fuel is recycled (e.g., mixed with used oil and burned for energy recovery), it is not discarded (within the meaning of the rule) and so is not a hazardous waste. See § 261.33 (July 15, 1985) and 50 FR 618 (January 4, 1985).

In addition, today's rule for burning low flash point used oil (or any off-

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[48] The Agency is also of the initial view that if used oil is listed as a hazardous waste then *unmixed* recycled used oil should continue to be regulated, regardless of quantity generated. (Regulation probably would begin once used oil is aggregated.) EPA's reasoning for regulating this type of hazardous waste differently from other small quantity generator hazardous wastes will be set out more fully in the soon-to-be-proposed regulations listing used oil as a hazardous waste and proposing management standards for recycled oil, but in summary:

- Exempting small quantity generator used oil (used oil generated in quantities of 0–100 kg per month) would exempt approximately 9 per cent of all used oil generated. In contrast, the exemption for small quantity generator hazardous waste (hazardous waste generated in monthly quantities of 0–100 kg per month) exempts only 0.007 percent of all hazardous waste. EPA does not believe such a result consistent with Congressional intent that recycled oil be regulated as necessary to protect human health and the environment, particularly in light of statements of evident legislative intent that crankcase oil (which is generated by small quantity generators) be regulated. See RCRA section 3014(b); H.R. Rep. 96-1415 at 6.
- The total volume of recycled used oil generated by small quantity generators is significantly greater than that of all other small quantity generator hazardous wastes combined: 340,000 tons/year vs. 180,000 tons/year;
- Unregulated small quantity generator used oil could have greater potential for coming into direct human contact than other small quantity generator wastes because such a large volume is burned in the residential market.

Thus, the Agency sees important distinctions between small quantity generator used oil and other small quantity generator hazardous waste. This reasoning also applies to regulating recycled oil in today's final rule—prior to recycled oil being a hazardous waste—without regard for quantity generated. (The Agency is not reaching the question of whether, assuming there was no difference between small quantity generator used oil and other small quantity generator hazardous waste, other hazardous waste generated in volumes of 0–100 kg per month should be regulated.)

[49] Although most used oils have a flash point greater than 200 °F, 26% of the used oil samples had a flash point less than 140 °F. *Source:* Franklin Associates Ltd., *Composition of Used Oil*, p. 3-56.

[50] Although used oil may contain high levels of lead, arsenic, cadmium, chromium, or barium, oil does not often exhibit the characteristic of EP Toxicity for these metals. In addition, these metals are present in used oil almost invariably as a result of the oil's use, not as a result of adulteration with hazardous waste. Nevertheless, since these metals can pose a hazard when used oil is burned for energy recovery, the specification for used oil that may be burned in nonindustrial boilers limits levels of arsenic, cadmiu, chromium, and lead. Barium levels are not considered to pose a substantial health hazard and, thus, barium is not included in the specification. (See section IV.C in the text.)

[51] Except that mixtures of small quantity generator hazardous waste and used oil are subject to regulation as used oil, as discussed above.

specification used oil) provides a level of environmental protection analogous to that provided by the rules for burning hazardous waste fuels. Neither hazardous waste fuel nor off-specification used oil fuel may be burned in nonindustrial boilers. The only area where the classification as used oil results in less regulation is with respect to storage and transportation of off-specification used oil. Although not regulated by today's rule, storage and transportation of off-specification used oil is addressed in the Used Oil Listing/Management Standards soon to be proposed. The purpose of today's rule is to begin regulation of blending and burning activities by prohibiting burning of hazardous waste and contaminated used oil in nonindustrial boilers. Other rulemakings will propose comprehensive regulations under section 3014 for storage and transportation of used oil, and for the actual burning of off-specification used oil and hazardous waste fuels in industrial boilers and industrial furnaces. Thus, the primary purpose of today's final rule is met by regulating low flash point oils as off-specification used oil rather than as hazardous waste, while decisions on appropriate controls (and impacts) for storage and transportation of off-specification used oil are left to the rulemaking specific to used oil that will be proposed under section 3014.

Commenters asked whether used oil known to be mixed with a characteristic hazardous waste is regulated as used oil fuel or hazardous waste fuel if the mixture exhibits a characteristic. As discussed above, used oil mixed with hazardous waste is regulated as hazardous waste fuel.[52] It is only when we are uncertain that mixing has occurred that we give the benefit of doubt (e.g., low flash point used oil and used oil containing less than 1000 ppm total halogens) and do not presume that mixing has occurred. Thus, when used oil has been mixed with a characteristic hazardous waste, the mixture is regulated as hazardous waste fuel if it continues to exhibit a characteristic. If the resultant mixture no longer exhibits a characteristic of hazardous waste, it is regulated as used oil.[53] This is merely a statement of the "mixture rule" in § 261.3.

Some used oils may exhibit a characteristic of hazardous waste but meet the specification for used oil fuel exempt from regulation.[54] Examples are used oil fuel with a flash point less than 140 °F, the hazardous waste characteristic, but greater than 100 °F, the specification level, and (much less frequently) used oil fuel with metals levels (particularly lead) greater than the EP toxic characteristic levels, but less than the specification levels. Although such used oils are exempt from regulation and may be burned in nonindustrial boilers, the specification ensures that such burning would not pose significantly greater risk than burning virgin fuel oil.

C. The Specification for Used Oil That May Be Burned in Nonindustrial Boilers

The Agency has developed a specification for used oil fuel that may be burned without regulation (i.e., burned without regulation in nonindustrial boilers as well as other boilers or industrial furnaces). Given that oil meeting specification parameters may be burned in nonindustrial facilities like apartment and office buildings, the specification is intended to be protective under virtually all circumstances.

In this section of the preamble, we discuss comments on EPA's risk assessment, the basis for selecting specification parameters and levels, and explain the changes made in the specification in response to comments. We also explain why we rejected certain commenters' arguments that off-specification used oil should not be blended to meet the specification and that all burning of used oil in nonindustrial boilers should be prohibited. Finally, we provide guidance on analytical procedures and testing frequency to determine conformance with the specification and the rebuttable presumption of mixing hazardous halogenated solvents.

1. *Comments on EPA's Risk Assessment.* EPA considered regulating any contaminant typically found in used oil in higher concentrations than in virgin oil, and which also was determined to pose a significant risk to human health and the environment when burned. Some commenters argued that EPA's risk assessment approach is overly conservative resulting in unnecessarily stringent regulations, while others argued that the assessment did not adequately consider all risks.

The Agency believes the PEDCo risk assessment[55] adequately indicates the potential for substantial risk from burning used oil in uran areas. The risk assessment, with one exception, is used to indicate potential risk, not to actually set specification levels based on some qualification of risk.[56] We used the risk assessment to identify those constituents that may pose increased risks at levels that are cause for concern given the large number of exposed individuals in urban areas. When those constituents are typically found in used oil at levels greater than in virgin fuel oils (i.e., the 95th percentile level in No's. 2–6 fuel oils), they were included in the specification at their 95th percentile levels in virgin fuel oils. We reasoned that higher levels could pose substantial risk, and levels lower than found in virgin fuel oil would not provide protection of human health and the environment if used oil is replaced (as it would be) by virgin oil.

The PEDCo risk assessment is fully documented in a published report, a copy of which is in the public docket. The assessment is also summarized in some detail in the proposal. See 50 FR 1693–1700. The primary inputs to the emissions models were actual data (e.g., composition of used oil based on hundreds of analyses; emissions were modeled for the New York City urban area considering actual meteorological conditions and projections of used oil burning based on actual density and location of multi-family dwelling units). Boiler emissions were projected assuming 97% destruction of organics and a 75% emission rate for metals. The Agency considers the 97% destruction efficiency for organics reasonable but conservative given that test burn data indicate that very small boilers can achieve 99% to 99.99% destruction efficiency for hard-to-burn chlorinated compounds.[57] Although data on metals emissions rates are very limited, the available data indicate that metals emissions rates average 31 to 75%, with chromium having the lowest rate and lead the highest.[58] We thus consider a

[52] Except that mixtures of small quantity generator hazardous waste and used oil are subject on an interim basis to regulation as used oil (although classified as hazardous waste fuel).

[53] It should be noted that mixing a characteristic hazardous waste with another material to render the waste nonhazardous constitutes treatment of hazardous waste subject to applicable standards under 40 CFR Parts 264–265 and 270, and the notification requirements of section 3010 of RCRA.

[54] We have noted above that the rule provides the same level of protection for burning hazardous waste fuel and for burning used oil exhibiting a characteristic of hazardous waste that also is off-specification used oil fuel. This is because neither hazardous waste fuel nor off-specification used oil fuel may be burned in nonindustrial boilers.

[55] PEDCo Environmental Inc., *A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters*, August 1984.

[56] For lead, the risk assessment is used to estimate the high end of the proposal specification range. See 50 FR 1697–1699 (January 11, 1985).

[57] GCA Corp., *Environmental Characterization of Waste Oil Combustion*, May 1984, pp. 16 and 20.

[58] PEDCo Environmental Inc., *Risk Assessment of Waste Oil Burning*, January 1894, pp. 3–17 and 3–20.

75% emissions rate for metals to be a realistic, but reasonably conservative assumption.

The two air dispersion models used to estimate ground level concentrations of contaminants are routinely used by EPA for that purpose. Estimated ambient levels were used to project the increased risk from carcinorganic compounds and to determine whether levels of other compounds that have a safe or threshold level of exposure (i.e., thershold compounds) would be likely to cause substantial adverse health effects. The compounds considered to be carcinogenic and their potency factors were obtained from EPA's Carcinogen Assessment Group. To determine whether chronic exposure to the estimated ambient levels of threshold compounds would pose a health hazard, Environmental Exposure Limits (EEL's) were calculated. EEL's are based primarily on workplace threshold limit values (TLV's) published by the American Conference of Governmental Industrial Hygienists. The TLV's are adjusted mathematically for use in assessing enviromental exposure by considering a number of factors including: exposure duration, population susceptibility, and the nature and conditions of the experimental health effects data. TLV's are typically used by the Agency to project safe levels of exposure when more appropriate animal health effects data are not available. The limitations of using TLV's to determine EEL's are well documented by PEDCo[59].

Although some assumptions were necessary as with any risk assessment, and it can be argued that those assumptions were too conservative or too lenient, the Agency does not believe (and commenters did not show) that the use of alternate, but reasonable, assumptions would affect the outcome of the assessment.

Specific comments on particular aspects of the risk assessment are discussed below.

2. *Specification Parameters.* As discussed above, EPA identified typical contaminants of used oil and proposed specification levels for those compounds found in higher concentrations in used oil than in virgin refined fuel oil and which could also pose a significant health risk when burned. (See Table 2 below.) We did not propose specification levels for compounds foud in used oil at the same or lower levels than are found in virgin refined fuel oil because users could simply switch to virgin oil to replace the recycled product without any environmental benefit.

We have added total halogens and deleted PCBs from the specification, as discussed below. We also respond below to comments that a number of other constituents should be added to the specification.

TABLE 2.—USED OIL FUEL SPECIFICATION[1]

Constituent/ property	Proposal allowable level	Final rule allowable level
Arsenic	5 ppm maximum	5 ppm maximum.
Cadmium	2 ppm maximum	2 ppm maximum.
Chromium	10 ppm maximum	10 ppm maximum.
Lead	10–100 ppm maximum [2]	100 ppm maximum.
PCBs	50 ppm maximum	
Total halogens		4000 ppm maximum.
Flash point	100 °F minimum	100 °F minimum.

[1] The specification applies only to used oil that is not mixed with hazardous waste other than small quantity generator hazardous waste.
[2] EPA proposed to a select level from the range of 10 to 100 ppm for promulgation. Lead is limited to 100 ppm by today's final rule.

a. *Total Halogens.* We have added total halogens to the specification because burning fuels with high chlorine levels can have direct and indirect effects on human health and the environment. As noted in background documents to the proposed rule, and as observed by a number of commenters, hydrogen chloride emissions from burning such fuels can increase ambient levels of hydrochloric acid and contribute to acid rain. Equally significant, the chlorine can also accelerate corrosion of boiler components which could decrease combustion efficiency resulting in increased emissions of incompletely burned combustion products. Corrosion of any air emissions control equipment could also be accelerated, reducing control efficiency and directly increasing emissions of pollutants. (See also H.R. Rep. 98–198 at 42 noting this concern.)

We selected a specification level of 4,000 ppm for total halogens [60] based on halogen levels in high chlorine coal. We believe that limiting halogen levels to the highest levels found in fossil fuels will ensure that burning used oils with equivalent or lower halogen levels will not accelerate corrosion rates.[61]

Although used oil normally replaces virgin fuel oil that has very low halogen levels (less than 100 ppm), we do not believe burning used oil with halogen levels found in coal will substantially increase corrosion rates. In fact, many boilers burning fuel oil were originally designed to burn coal and were converted to oil burning to meet air emissions standards.

Used oil fuel (not mixed with hazardous waste) can contain high levels of halogens from two sources. As discussed above metalworking oils are sometimes processed to produce fuel. These metalworking oils can contain extreme pressure additives that are highly chlorinated, but nonhazardous, organic compounds. Total chlorine levels in these used oils can be several percent.

In addition, "light ends" from the distillation (e.g., rerefining) of used oil can contain high levels of halogenated compounds. Although the used oil feedstock entering the distillation process contains less than 1000 ppm of total halogens and is not presumed to be a hazardous waste, the oil can contain insignificant levels of volatile, halogenated compounds (e.g., less than 100 ppm of halogenated compounds listed as hazardous spent solvents). The light ends produced from such oil will contain much higher levels of halogenated compounds due to the concentrating effect of the distillation process. These light ends are a by-product of used oil rerefining to produce recycled lube oil and are often burned on-site as fuel. These light ends are regulated as used oil rather than as hazardous waste even though their total halogen content exceeds 1000 ppm and they contain substantial levels of halogenated compounds listed as hazardous spent solvents. This is because the halogenated compounds are present in significant levels as a result of processing (i.e., they are concentrated), not as a result of mixing with halogenated hazardous waste.[62]

When light ends containing less than 4000 ppm total halogens (but perhaps up to 4000 ppm of halogenated compounds that are listed as hazardous spent solvents) are burned, emissions of

[59] PEDCo Environmental Inc., *A Risk Assessment of Waste Oil Burning*, pp. E-2 through E-15.

[60] It is only by coincidence that this is the same level originally proposed for the rebuttable presumption. The specification parameters apply only to used oil fuel after it has been determined that the used oil is not mixed with hazardous waste (e.g., by applying the presumption of mixing). Thus, the total halogen specification level is based on different principles and is used for different purposes than the total halogen level for the presumption of mixing.

[61] Boiler manufacturers become concerned about excessive corrosion rates when coal chlorine levels exceed 2,500 ppm. A boiler burning used oil containing about 4,000 ppm chlorine would be exposed to the same quantity of chlorine per hour as it would be if it were burning coal containing 2,500 ppm chlorine. This is because the heating value of used oil is higher than that of coal (16,500 vs. 11,000 Btu/lb) and, thus, less used oil is required to provide a given boiler heat input.

[62] Although low levels of halogenated compounds (e.g., less than 100 ppm of tetrachloroethylene) in the used oil feedstock to the distillation process may sometimes result from mixing with hazardous spent solvents, the levels are too low to *presume* such mixing has occurred.

hydrogen chloride or incompletely burned halogenated compounds will not pose a substantial risk to human health and the environment.[63] Light ends with more than 4000 ppm total halogens are regulated under today's rule as off-specification used oil, and as such, cannot be burned in nonindustrial boilers. We are developing permit standards for burning such oil (scheduled to be proposed in 1986) that would consider the hazard posed by the presence of hazardous halogenated constituents. (Permit standards for burning such used oil may in fact be similar to the standards for burning hazardous waste fuels.)

b. *PCBs.* EPA included polychorinated byphenyls (PCBs) in the proposed specification only as a reference to the Agency's rules regulating PCBs. PCBs are regulated under the Toxic Substances Control Act (TSCA) and the rules are codified at 40 CFR Part 761. Those rules include controls for the use and disposal of materials containing PCBs.

PCBs are not included in the final specification promulgated today, however, because commenters indicated that the crossreference caused confusion. Specifically, commenters were concerned that setting a specification level could encourage dilution of PCBs in an attempt to avoid regulation under TSCA. Dilution to avoid regulation is expressly prohibited under the TSCA rules. See § 761.1(b).

If used oil fuel contains PCBs and also does not meet the used oil fuel specification provided by today's rules, then it is subject to the more stringent of the applicable TSCA PCB rules and today's used oil fuel rules.

c. *Other Constituents.* Commenters suggested that other used oil constituents should be included in the specification nothwithstanding our arguments that these constituents either are not likely to pose substantial health risk or that they are not present in used oil at significantly greater levels than virgin oil (and lower specification levels could result in a virgin product displacing the recycled product with no environmental benefit).

(1) *Barium and Zinc.* Although we found that barium and zinc are present in used oil in concentrations 10–100 times greater than in virgin fuel oil, the Agency's risk assessment indicated that the resulting increased levels of barium and zinc would produce insignificant risks to human health and the environment.

Several commenters expressed concern over what they considered the serious health impacts of high levels of barium and zinc, and argued that EPA should err on the overprotective side by prescribing specifications for these metals. EPA continues to believe that the presence of these metals in used oil does not pose significant risk for the reasons discussed below.

EPA's risk assessment indicates that maximum ambient levels of zinc from burning used oil could represent about 2% of the Environmental Exposure Limit (EEL).[64] Thus, zinc does not have a serious impact on air quality near single or multiple sources, or in high-density urban areas.

Although the case is less clear with barium, the Agency concludes that barium likewise does not pose a serious health risk. The PEDCo risk assessment indicates that maximum ambient levels of barium could represent 80% of the EEL (*Id*). Given that the inhalation of barium can cause toxic effects (primarily an increase in muscle excitability, particularly in the cardiac muscle), the Agency specifically asked for comment on whether barium should be added to the specification.

For a number of reasons, however, the PEDCo risk assessment overstates the risk posed by barium. The PEDCo analysis used an early survey of used oil analyses to determine barium levels in used oils. The most recent and expanded data base includes 752 barium analyses compared to the 400 analyses in the data base used by PEDCo. The 90th percentile barium levels used in the risk assessment (based on the 400 analyses) was 485 ppm, while the 90th percentile barium level in the expanded data base is only 251 ppm, about 50% lower. Given that composition data based on the expanded data base are considered more representative, the PEDCo analyses overstates ambient barium levels by a factor of two.

In addition, the PEDCo assessment estimates a safe level for lifetime exposure to airborne barium based primarily on the workplace threshold limit value (TLV). This safe level is called an Environmental Exposure Limit (EEL). See discussion above on EELs. The barium ELL calculated for the risk assessment is more than 50% lower than the safe level calculated from the interim Acceptable Daily Intake set by EPA.[65] The ADI-based safe exposure level is considered more appropriate than the TLV-based EEL because the ADI is based on a comprehensive review of pertinent toxicologic and environmental data. EELs are commonly used for risk assessments only when ADI's have not been determined (or cannot be determined because of inadequate data). Thus, the risk posed by barium has been overstated by more than a factor of two for this reason as well.

In summary, the PEDCo assessment overstates the risk posed by barium by more than a factor of four. When these factors are considered, the maximum ambient levels (assuming clustered boilers with overlapping emission plumes, another conservative assumption) would be 0.18 $\mu g/m^3$ while the ADI-based safe level for chronic exposure is 1 $\mu g/m^3$.[66] When background ambient barium levels are added to the maximum levels from used oil burning, total ambient barium levels could range from 0.18 to 0.43 $\mu g/m^3$.[67] As with lead emissions discussed elsewhere, ambient barium levels thus would not be expected to pose significant risk except in extreme and unique "hot spot" situations (e.g., where boilers are clustered together, and receptors are located directly downwind, very close to the boilers, and at the centerline of the emissions plume), which would occur only very rarely.

(2) *PNAs.* A few commenters indicated the need to set specification levels for polynuclear aromatic compounds (PNAs).[68] A major environmental commenter was critical of EPA's risk assessment in general, and was particularly concerned with EPA's conclusion that specification levels were not needed for PNAs. The commenter argued that data cited by the Agency did

[63] As discussed above, even very small boilers can achieve 99% to 99.99% destruction efficiency for halogenated compounds.

[64] PEDCo Environmental Inc., *A Risk Assessment of Waste Oil Burning*, p. 5–2.

[65] EPA Environmental Criteria and Assessment Office, *Health Effects Assessment for Barium*, June, 1984, p. 13 (Draft), and Peer Consultants, Inc., *Health Effects and Ambient Data for Barium*, October 1984, p. 9 (Unpublished Report).

[66] This comparison still overstates the risk because the PEDCo assessment calculates maximum ambient levels for the month of January when used oil burning is greatest. The ADI-based safe level of exposure, however, assumes constant exposure over a lifetime. Thus, average annual ambient levels (including summer months when little used oil is burned) should actually be used for comparison to the ADI-based safe exposure level.

[67] Op Cit., Peer Consultants, Inc., p. 4. It should be noted however, that it is not clear to what extent the background barium levels already include barium from used oil burning. Thus, adding the so-called background levels to levels from used oil burning also may overstate the risk.

[68] PNAs are a subset of organic compounds known as polyaromatic hydrocarbons (PAHs). PNAs are of particular concern because some are known carcinogens. PAHs are compounds with two or more benzene rings, the basic structure that separates aromatic or "ringed" compounds from aliphatic or "chain" compounds. PNAs are compounds with two benzene rings fused together so that they share two carbon atoms.

not show, as the Agency indicated at proposal,[69] that PNA levels in used oil and virgin fuel oil are comparable, and that PNA emissions from burning used oil and virgin fuel oil are comparable.

We have reviewed the data used to support our decision at proposal and continue to believe that the risk posed by PNAs from burning used oil and virgin fuel oil is comparable. The following data (Table 3) show that levels of benzo(a)anthracene and benzo(a)pyrene, the PNAs typically of concern due to their carcinogenicity, in used oil and virgin fuel oil are comparable:

TABLE 3.—PNA LEVELS IN USED OIL AND VIRGIN FUEL OIL

Compound	Concentration in used oil (ppm) (90th percentile)	Concentration in virgin fuel oil (ppm) (range)
Benzo(a)anthracene	40	18–97
Benzo(a)pyrene	16	29–44

Source: Franklin Associates, Ltd., *Composition of Used Oil*, pp. 1–12 and 5–9.

Although PNA levels in distillate virgin fuels (e.g., No. 2 oil) are much lower than in residual No. 6 oil, it is reasonable to compare used oil levels in No. 6 oil because used oil frequently (indeed, most often) displaces No. 6 oil.

In addition both Recon and GCA [70] reported that they could not find detectable levels of benzo(a)pyrene (BaP) in used oil emissions during a total of 13 test burns. The BaP detectable levels ranged from 6–9 $\mu g/m^3$ for the GCA tests. Further, emissions of total PNAs from burning used oil and virgin oil appear comparable. Emissions of PNAs, mostly naphthalene compounds, measured by GCA during a number of test burns at each of six sites averaged 92 $\mu g/hr$ [71]. If virgin fuel oil had been burned rather than used oil and if total PNA emissions were 46 $\mu g/btu$, as reported by PEDCO (See PEDCO, *Risk Assessment of Waste Oil Burning*, p. D–7) as typical for residual fuel oil boilers with capacities less than 250×10^6 btu/hr, PNA emissions from virgin oil burning for those 6 test sites would have averaged about 96 $\mu g/hr$.

Given that it appears that the concentration of PNAs of primary concern are comparable in used oil and virgin fuel oil, and that total PNA emissions from burning used oil and virgin fuel oil are comparable, we have not set specification levels for PNAs.

(3) *Benzene, Toluene and, Naphthalene.* One commenter argued that EPA did not adequately consider the risk posed by emissions of benzene, toluene, and naphthalene. The PEDCo risk assessment concluded that ambient levels of toluene and naphthalene would be less than 1% of the Environmental Exposure Limit (EEL) considering emissions from point sources of various sizes, from point sources clustered very closely together, and multiple point sources located in high density urban areas.[72] PEDCo also concluded that ambient levels of the carcinogen, benzene, would pose an increased risk to the most exposed individual of 2.7×10^{-8} (1:37,000,000).[73] It should be noted that PEDCo's risk assessment is considered conservative in some respects, including the assumption that boilers burning used oil will achieve a destruction efficiency of only 97% although test burn data indicate that even very small boilers when operated properly appear to achieve 99 to 99.99% destruction efficiency. Nonetheless, the commenter suggested that the Agency consider conducting the so-called "hot spot" exposure analysis for those compounds similar to the analysis conducted for lead.[74]

The hot spot analysis considers what may be considered truly "worst case" situations where two sources are located close together, and the receptor (exposed person) is located directly downwind from the sources, very close to the sources (i.e., 25–50 meters from the source), and elevated to the height of the emission plume (i.e., as though the emission plume were blowing into the air intake of a building's ventilation system). We have used this scenario to project ambient levels of benzene, toluene, and naphthalene in those situations. Even under those extreme and very rare situations, and conservatively assuming 97% destruction efficiency, ambient levels of toluene and naphthalene still do not exceed 1% of the EEL for those compounds. Ambient levels of benzene do not exceed levels that would pose an increased risk of 1×10^{-5} (1: 100,000). If the destruction efficiency of benzene were assumed more realistically to be 99% rather than 97%, the increased risk would be less than 4×10^{-6} (1:250,000). Given the remote likelihood that the modeled situations would occur, and that risks are still not very high even under these worst case conditions, we conclude that presence of these compounds does not pose a significant health risk when used oil is burned for energy recovery.[75]

As a final note, although we do not have data on benzene, toluene, and naphthalene levels in virgin fuel oils, we would expect to find high levels of volatile benzene and toluene in distillate oils (e.g., No. 2) and high levels of naphthalene in residual oils (e.g., No. 6). Given that used oil and used oil blends are substituted for all grades of oil (i.e., No's 2–6), the levels of these compounds in used oil are likely to be comparable to levels in virgin oil.

(4) *ASTM Specifications.* A few commenters suggested that EPA include specification parameters such as viscosity and bottom sediment and water set by the American Society for Testing and Materials (ASTM) to ensure proper boiler operation. ASTM specifications vary according to fuel oil grade (e.g., No. 2 distillate oil though No. 6 residual oil). Commenters argued that the ASTM specifications were needed to ensure optimum boiler operation and, thus, optimum combustion of used oil which would minimize emissions of incompletely burned toxic compounds (e.g., PNAs as discussed above).

We understand the issue commenters are raising but do not believe it is, in fact, a frequent problem. We presume that burners purchase fuel, including used oil and blends of virgin oil and used oil, specified by the standard fuel oil grade that their boilers are designed to burn. Further, we presume that fuel oil, whether virgin or containing used oil, must meet the ASTM specifications for the designated grade or be in breach of contract. Thus, the marketplace already should ensure application of the ASTM specification. We will, however, reconsider this point if during implementation of today's rule enforcement officials determine that misrepresented used oil is frequently being sold and existing laws are inadequate to prevent abuses and we

[69] See 50 FR 1695 (January 11, 1985).

[70] Recon Systems, Inc., and ETA Systems, Inc., *Used Oil Burned as Fuel*, 1980, p. 4–6; and GCA Corp., *Environmental Characterization of Waste Oil Combustion*, pp. 19, 120, 126, 132, 138, 144, and 150. Both of these reports were part of the Agency's record at proposal.

[71] Tests are cited in previous note. One test at one site had 5 times the average PNA emissions at that site during unstable combustion conditions. (The contractor deliberately induced these conditions as part of the test program.) Results from that test are not included in calculating the 92 $\mu g/hr$ average. When the results from that test are included, the average PNA emissions increase to 106 $\mu g/hr$. See GCA Corp., p. 120.

[72] PEDCO Environmental Inc., *Risk Assessment of Waste Oil Burning*, p. 5–2.

[73] Id., p. 5–6.

[74] Id., pp. 4–39 through 4–43.

[75] Although believe that the levels of toluene, benzene, and naphthalene do not present a hazard when used oil is burned (and thus specification levels are not needed), these toxicants may still present a significant hazard when used oil is stored and transported. We, therefore, consider these hazards when we will soon propose to list used oil as a hazardous waste.

determine that the practice can result in substantial increases in emissions of toxic compounds at levels that pose a significant risk to human health and the environment.

Another reason we are not addressing this potential problem in today's rule is that there does not appear to be a simple remedy. We cannot require that all used oil meet the ASTM specifications for a particular fuel oil grade because different boilers are designed to burn different grades. To address the problem, the responsible burner must simply now that the used oil (or virgin/used oil blend) he is purchasing meets the grade his boiler is designed to burn. This could be accomplished, perhaps, by requiring that the invoice or bill of sale indicate the grade of fuel, and if necessary, a statement that the oil meets the ASTM specifications for that grade. On the other hand, the burner who is trying to save on his fuel costs may try to burn lower grade (or ungraded) used oil provided that his increased maintenance costs do not off-set his fuel savings. He is not concerned about emissions of incompletely burned compounds. If this were the problem, a solution would be to require that the marketer determine the grade of his oil by ASTM specification and sell the used oil only to a burner with a boiler designed to burn that grade of oil. Similar requirements could be placed on burners (i.e., they could burn only that fuel oil grade the boiler is designed to burn). We believe that it is clear that the implementation and enforcement of provisions such as these would be a massive undertaking and would intrude substantially on the marketing and use of what is essentially a commercial product—used oil meeting the specification established in today's rule. Before seriously considering any such remedies, we would need to much better define the "problem".

(4) *Other Compounds.* A few commenters suggested that the following compounds also be included in the specification: nickel, beryllium, mercury, sulfur, nitrogen, and phosphorous. None of these compounds are included for the reasons discussed below.

Nickel is not included in the specification because the 90th percentile nickel level in used oil is lower than the level found in virgin residual fuel oil (40 ppm).[76] Although limited, data on beryllium in virgin fuel oils indicate that beryllium levels average much less than 1 ppm, while analyses of 263 used oil samples indicate that the 90th percentile beryllium level in used oil is less than 0.3 ppm. (Ibid.) Similarly, limited data on mercury indicate that levels can range from 0.005 to 0.4 ppm in virgin fuel oils and are less than 0.1 ppm in used oils. (Ibid.) Clearly, beryllium and mercury are not found in used oils at levels of concern, and nickel emissions (and any health risk posed) or lower from burning used oil than virgin fuel oil.

Levels of sulfur and nitrogen are somewhat higher in virgin fuel oil than in used oil.[77] Thus, sulfur and nitrogen oxide emissions from burning used oils would not be higher. Although we do not have data on phosphorous levels in used oils and virgin fuel oils, phosphorous is neither a designated hazardous waste constituent on Appendix VIII of Part 261 nor does it interfere with boiler efficiency at the levels found in used oil.

3. *Specificaton Levels.* A number of commenters provided suggestions on specification levels for the metals for which EPA proposed a specification level and for flash point. The basis for the specification levels for these parameters is discussed below.

a. *Lead.* EPA proposed to select a specification level for lead from the range of 10–100 ppm, and specifically requested comments on an appropriate level. As discussed in the preamble to the proposal (see 50 FR 1697–1699 (January 11, 1985)), levels higher than 100 ppm could result in ambient lead levels exceeding the National Ambient Air Quality Standard (NAAQS) for lead in densely populated areas where boilers are clustered together and receptors may be close to the sources. Although 100 ppm appears to be protective with respect to the NAAQS, that level may not be protective because health effects data available since the lead NAAQS was established indicate that lead causes serious, but apparently noncancerous, health effects at any level of exposure (i.e., lead appears to be a "nonthreshold" pollutant). EPA is considering these new health effects data in its current efforts to determine whether the existing lead NAAQS is adequately protective. In addition, because of the new health effects data, EPA believes that it is resonable to reduce preventable sources of lead exposure. This policy led to the Agency's phasedown of lead in gasoline—by January 1, 1986, lead levels in "leaded" gasoline must be reduced to less than 10% of the levels previously allowed. For these reasons, we believe that a lead specification level should be considered that is lower than that which ensures the current NAAQS would not be exceeded. Thus, we proposed a level of 10 ppm at the low end of the range, which is the 95th percentile lead level in virgin fuel oil. A lower level was not proposed because used oil could be displaced with virgin oil with higher lead levels with no environmental benefit.

We also discussed in the proposal our concern that a specification level lower than 100 ppm could result in used oil currently burned as fuel being diverted to incineration, or perhaps being dumped, because the cost of blending used oil to meet a stringent specification could be prohibitive and because of the difficulty of finding new industrial (and utility) markets for oil that exceeds the specification. If lowering the lead specification level below 100 ppm diverted used oil currently burned as a fuel to incineration, the environmental benefits of that policy are questionable. It is not clear that metals emissions from incineration would be adequately controlled given that many hazardous waste incinerators use wet scrubbers that may not control lead emission efficiently.[78]

We therefore indicated that in considering a specification level lower than 100 ppm, the benefits from reduced lead emissions from used oil burned as fuel must be balanced against the probability of (and adverse effects from) dumping and the diversion of used oil from use as a fuel to incineration.

We also specifically solicited comments on three other points (in addition to an appropriate specification level): (1) Whether factors other than those we considered need to be considered in determining the lead level that would ensure that the lead NAAQS is not exceeded; (2) whether a two-tiered specification, with a lower limit for more populous areas and a higher level for less urban locations, would be

[76] Sources: Franklin Associates Ltd., *Composition of Used Oil*, Appendix A; TRW Environmental Engineering Division, Emissions *Assessment of Conventional Stationary Combustion Systems: Volume III, External Combustion Sources for Electricity Generation*, November 1980, p. 134; US EPA, *Listing Waste Oil As Hazardous Waste*—Report to Congress, January 1981 (SW–909); Yen, T.F., *The Role of Trace Metals in Petroleum*, Ann Arbor Science Publishers, Ann Arbor, Michigan, 1975, P. 107; Valkovic, Vlado, *Trace Elements in Petroleum*, Petroleum Publishing Company, 1980, p. 91; and American Petroleum Institute, *Task Force on Utilization of Waste Lubricating Oils*, October 1975, pp. 21–33.

[77] PEDCO Environmental Inc., *A Risk Assessment of Waste Oil Burning*, p. 3–18.

[78] The Agency intends to control metals emissions from boilers and industrial furnaces burning off-specification used oil and hazardous waste under the permit standards to be proposed in 1986. Once that rulemaking is initiated, the Agency intends to consider whether metals emissions from hazardous waste incinerators are adequately controlled.

appropriate; and (3) whether specification levels for arsenic, cadmium, and chormium would be necessary if a low level is promulgated because used oil that fails the specification levels for these other metals would also be expected to exceed a low lead specification level.

A large number of comments were received concerning the lead specification. They are discussed below.

(1) *Selecting a Level from the Proposed Range.* Most commenters argued that EPA's proposed range of 10 to 100 ppm is too stringent. Commenters stated that it would be difficult for used oil to pass a lead specification of less than 100 ppm, which, they asserted, would not only severely restrict used oil burning, but lead to illegal dumping. It was also suggested (by a State commenter with substantial experience in regulating used oil burning) that a lead specification of 100 ppm would be unlikely to cause an exceedance of the lead NAAQS.

Some commenters concurred with EPA's selected range, favoring the high end of the range. A specification of 100 ppm should be acceptable in all but the most densely populated areas, according to these commenters.

Selection of a relatively low level from the range, such as 10 or 20 ppm, was recommended by a few commenters. Some opposed allowing any lead at all in used oil, except in *de minimis* quantities.

(2) *Phase-in a Lower Specification Level as Gasoline Lead Levels are Lowered.* The majority of commenters recommended that EPA set an initial specification for lead at a relatively high level, and then phase in lower levels in incremental steps, tied to the EPA mandated lowering of lead concentration in gasoline which was promulgated on March 7, 1985 (see 50 FR 9386 and 9400). Commenters argued that it would be illogical and unfair for EPA to require lead to pass low specifications in used oil, since most of the lead in used oil originates from the lead in gasoline. Suggested initial levels ranged from the lead in gasoline. Suggested initial levels ranged from 500–1,000 ppm. Commenters also suggested that EPA build a time-lag into such a phasedown program, in which a certain minimum time after the effective date of the March 7, 1985 standards would be allowed to elapse before EPA would effect a lower level for used oil. Such a time-lag would accommodate the delay between the actual use of the lowered lead in gasoline being sold and burned in automobiles, and changing of the oil.

(3) *Risk-Based Specification Level.* Several commenters urged EPA to base its specification for lead primarily, if not solely, on health effects data and risk from lead exposure, rather than on the current lead NAAQS or the 95th percentile concentration in virgin fuel oil. These commenters argued that regardless of typical contamination levels of lead in virgin fuel oil, EPA is not justified in allowing the burning of used oil with lead levels that may cause serious health effects. Raised blood lead levels in young children and the danger of lead poisoning to pregnant women were cited. Commenters emphasized that lead is bioaccumulative, meaning that repeated intake over time results in additive levels in the body.

(4) *Two-Tiered Approach.* Only a few commenters addressed the suggested two-tiered approach to regulating lead. Commenters stated that it would only cause cleaner, nonurban areas to become more polluted.

(5) *The Need to Regulate Arsenic, Cadmium, and Chromium if a Low Lead Specification Level is Selected.* Most commenters recommended that arsenic, cadmium, and chromium be regulated, even if a low lead level is promulgated. In general, commenters argued that it has not been shown that the level of these metals varies proportionately with lead. Used oil could conceivably have a low concentration of lead, but higher levels of one or more of these three metals. Restrictions for arsenic, cadmium, and chromium were suggested as a safeguard.

(6) *Response to Comments.* After evaluation of these comments, we have decided to promulgate a lead specification of 100 ppm, but to delay the effective date by six months. (The other specification parameters are effective 10 days after the date of publication.) As discussed at proposal, we believe that this level will ensure that nonindustrial boilers do not cause ambient levels to exceed the current NAAQS except in unique and truly extreme scenarios. See 50 FR at 1698 (January 11, 1985). Moreover, we are concerned that promulgation of a level lower than 100 ppm at this time could cause major disruptions to the used oil recycling industry resulting in diversion of oil or dumping with uncertain and potentially adverse environmental trade-offs. (Similar concerns were raised by the House Energy and Commerce Committee in their report on the RCRA amendments. See H.R. Rep. No. 98–198 at 66.)

The 100 ppm lead specification level promulgated today is intended as an interim measure. The Agency believes that this lead level may not be as protective as reasonably possible given the new health effects data mentioned above. On the other hand, until we know more about the impacts of the other two rules affecting management of used oils (the soon-to-be proposed recycled oil management standards and the permit standards for boilers and industrial furnaces that will be proposed in 1986) on the used oil industry and, ultimately, on used oil flows, we are concerned that a lower level may cause impacts that could result in dumping or incineration of used oil with uncertain environmental trade-offs. Therefore, the Agency will evaluate the risks and costs of a lower lead level in conjunction with the third rule of the series—permit standards for boilers and industrial furnaces—scheduled to be proposed in 1986. Thus, the Agency's final position on the lead specification will be included in the permit standards rulemaking.[78a]

In response to commenters' concerns that a lead specification level as low as 100 ppm could cause major disruptions of the industry and could result in dumping, the effective date of the lead specification is delayed six months. By that time, the Agency's gasoline lead phase-down standards will result in lowered lead levels in used crankcase oil so that a major disruption of the industry will be avoided, as discussed below.

On March 7, 1985, EPA promulgated standards restricting lead levels in gasoline (see 50 FR 9386 and 9400). The standards require that lead be reduced from the previous limit of 1.1 grams/gallon to 0.5 g/gal by July 1985, and to 0.1 g/gal by January 1986. This reduction of lead in gasoline should result in a

[78a] We note that the Regulatory Impact Analysis (RIA) developed to support the recycled oil management standards soon to be proposed includes a preliminary analysis of the cost and benefits of lower lead levels. The analysis was initiated before the Agency decided to select 100 ppm as an interim lead specification and to make its final decision on the lead specification in the permit standards rulemaking. In addition, that RIA attempts to predict used oil flows, and thus regulatory impacts of the proposed rule, assuming all three rulemakings are in place. Thus, the RIA makes the best assumptions possible at the time on the cost of compliance with anticipated controls for boilers and industrial furnaces burning off-specification used oil fuel. Nonetheless, that preliminary analysis appears to indicate that lead specification levels lower that 100 ppm would be cost-effective. The Agency intends to review that analysis, up-date assumptions on permit standards and "flow" changes as necessary, and to include a comprehensive analysis of the cost and benefits of lower lead specification levels in the RIA for the permit standards rulemaking. In the interim, the RIA for the recycled oil management standards will be in the public docket for that rulemaking once it is proposed. Comments received on that portion of the RIA dealing with cost and benefits of lower lead specification levels will be considered in developing the Agency's position on this issue in the permit standards rulemaking.

concomitant reduction in lead levels in used oil. We have analyzed the potential impacts of imposing the 100 ppm specification either immediately along with the other specification parameters or in the Spring of 1986, roughly six months after promulgation.[79] Using a data base of 143 used oils sampled in 1983, we extrapolated resulting lead concentrations to the 1985–86 and 1986–87 heating seasons. Based on the July 1985 reduction of lead in leaded gasoline to 0.5 g/gal, we assumed an average lead concentration (for leaded and unleaded gasoline) of 0.2 g/gal for gasoline affecting used oil to be burned in the 1985–86 heating season. Similarly, based on the January 1986 reduction of lead in leaded gasoline to 0.1 g/gal, we assumed an average lead concentration (for leaded and unleaded gasoline) of 0.05 g/gal for gasoline affecting used oil that would be burned in the 1986–87 heating season. The average lead levels in gasoline were estimated assuming a ratio of 40% leaded to 60% unleaded gasoline consumption for the 1985–86 heating season, and a ratio of 37.5% leaded to 62.5% unleaded gasoline consumption for the 1986–87 heating season. (We also assumed that lead levels in all used oils would decrease because of the gasoline lead phasedown.)

This analysis demonstrates that delay of the implementation of the specification will provide time for the lead phasedown in gasoline and, consequently, in used oil. Significantly more used oil can pass the lead specification in May 1986 than today. The table below illustrates the drop in lead levels in used oil as the lead is reduced in gasoline.

TABLE 4.—PROJECTED CHANGES IN LEAD CONCENTRATION IN USED OIL AS LEAD IS REDUCED IN GASOLINE (PPM)

Percentile	1983	Late 1985	May 1986
35	114	69	39
40	177	115	44
50	490	217	67
75	856	337	95
80	940	367	104
95	1,417	546	248

Source: Franklin Associates Ltd., *Effects of Delay in the Implementation of a Lead Specification on the Ability of Used Oil to Pass the Specification*, June 4, 1985.

As shown, only about 40% of the used oil can pass the lead specification of 100 ppm now. Delay for six months increases the total quantity passing the lead specification to about 80%.

[79] Franklin Associates, Ltd., *Effects of a Delay in the Implementation of a Lead Specification on the Ability of Used Oil to Pass the Specification*, June 4, 1985.

Delaying the effective date of the lead specification has a corresponding effect on the amount of used oil that can pass the specification levels for all of the metals (i.e., lead, arsenic, cadmium, and chromium). As shown in the table below, we estimate that the amount of unblended used oil that can meet the metals specification levels more than doubles if the effective date of the lead specification is delayed six months to May 1986 (i.e., 20% vs. 46%).

TABLE 5.—EFFECTS OF DELAYING THE EFFECTIVE DATE OF THE LEAD SPECIFICATION ON THE PERCENT OF SAMPLES THAT PASS THE SPECIFICATIONS FOR ALL METALS

Percent of samples passing metals specifications assuming—	Nov. 1985 (percent)	May 1986 (percent)
Unblended used oil	20	46
75 pct Virgin/25 pct used oil	59	69
90 pct Virgin/10 pct used oil	91	91

Source: Franklin Associates, Ltd., *Effects of a Delay in the Implementation of a Lead Specification on the Ability of Used Oil to Pass the Specification*, June 4, 1985.

Although the effect of delaying the lead specification is much less significant when used oil is blended with virgin oil (e.g., 59% of used oil blended 75%/25% with virgin oil (75% virgin oil) could meet the metals specification in November 1985 while 69% could pass in May 1986), the Agency is uncertain whether substantial quantities of used oil will be blended with high percentages of virgin oil in the future. We believe that "virgin oil" distributors historically have done much of the blending at the higher ratios (e.g., 90% virgin and 10% used oil) in order to sell the mixture to the nonindustrial market as virgin oil. It is not clear, however, whether these distributors will continue to handle used oil given that they would have to comply with the notification (and other) requirement(s) of today's rules, which would make their used oil management activities public knowledge. Although blending used oil with high percentages of virgin oil to meet today's specification may be economical in the future in some cases, especially by persons currently considered primarily used oil processors, we are concerned that it may take some time for these heretofore (primarily) processors to increase their blending capacity and to find markets for used oil blended with high percentages of virgin oil. (Such "processors" would essentially become fuel oil distributors as well.) Thus, substantial quantities of used oil may not be blended with high percentages of virgin oil in the near term (if ever). Consequently, delaying the effective date of the lead specification is expected to substantially increase the quantity of used oil that can meet the metals specification levels.

In summary, we believe that a six-month delay in implementing the lead specification is more responsible than making it effective immediately, and may, in fact, result in greater environmental benefit than immediate implementation.

With regard to other lead specification issues, we have decided against development of a two-tiered lead specification level for urban versus rural areas in this rulemaking. Commenters did not support the approach, it would be difficult to develop, support, and implement, and it would encourage burning of dirty fuels in areas with clean air.

Specification levels for arsenic, cadmium, and chromium are also retained. As stated in the proposal, we are concerned that once lead levels in used oil begin to drop, oil will increasingly fail the specification because of one of these other metals. Without the lead specification, burning of these oils would not be controlled.

b. *Arsenic, Cadmium, and Chromium.* In the preamble to the proposal, EPA stated that widespread, unrestricted burning of used oil in boilers can result in a substantial increase in ambient levels of the metals arsenic, cadmium, and chromium since 30–75% of the metals in the fuel can be emitted. Because these metals are carcinogenic, and thus, have no known threshold or safe level of exposure, these increased ambient concentrations would cause an increased risk of cancer to exposed individuals. Specification levels were based on levels of these metals found in dirty virgin fuel oil (i.e., 95th percentile metals levels) because we argued that: (1) Higher levels could result in substantial risk (i.e., 10^{-4}) given that large numbers of persons in urban areas are exposed to emissions from nonindustrial boilers; and (2) lower levels could result in dirty virgin fuel oil displacing used oil without environmental benefit. (See 50 FR at 1697 (January 11, 1986).)

Several comments specifically questioned EPA's rationale for setting specification levels based on the 95th percentile level of those contaminants in virgin fuel oil. A few commenters stated that because these metals can cause serious health problems, specification levels should be based directly on risk to health rather than on concentration in virgin oil. Other commenters (including a major environmental group), however, supported our decision to use the 95th percentile of virgin fuel oil as a reference point. A few respondents

argued that the specification levels selected on the basis of the 95th percentile in virgin oil were too stringent, and that EPA was being overly conservative in assuming that there are no safe levels of exposure for these metals. Workplace threshold limit values (TLVs) and safe drinking water standards were cited as more reasonable for use as specification levels.

These arguments are unpersuasive. For the reasons discussed in the preamble to the proposed rule and summarized above, we continue to believe that limiting levels of these metals to 95th percentile levels in virgin fuel oil is appropriate.

Several commenters also disagreed with the assumptions used to assess risk from chromium (i.e., that all chromium is emitted in its carcinogenic, hexavalent state and, thus, can cause increased cancer risk to exposed individuals). These commenters protested EPA's assumption that chromium is emitted in the hexavalent form following combustion. Comments ranged from assertions that EPA had no data or informtion to make such an assumption to theoretical arguments that when combusted, trivalent chromium would not be converted to hexavalent chromium. In general, these commenters suggested that EPA defer specifying a level for chromium until the Agency conducts studies to definitively determine what happens to chromium when burned in boilers.

We agree that only the hexavalent form of chromium has been proven to be carcinogenic, although it is a very potent carcinogen. The data are inadequate to classify the trivalent chromium compounds as to their carcinogenicity.[80] However, we believe that assuming all chromium compounds emitted from burning used oil in boilers are hexavalent chromium is a conservative, but reasonable assumption. Ibid. Although it is likely that a mixture of the two forms is emitted, information is not adequate to specify the form or the relative quantities of each. Ibid. EPA has initiated an extensive study to better understand the amount of hexavalent chromium and total chromium being emitted from major sources including coal and oil fired boilers and municiple incinerators. In addition, EPA has formally called for information on issues pertinent to the risk posed by airborne chromium emissions including: (1) Are there adverse health effects associated with exposure to trivalent chromium?; (2) does trivalent chromium transform in the atmosphere or in the environment to hexavalent chromium and vice versa?; and (3) what is the relative quantity of hexavalent and trivalent chromium emitted from chromium sources? Ibid.

The Agency, however, cannot postpone regulatory action, given especially that used oil contains significantly higher chromium levels than virgin fuel oil. Until more information is available on these issues, the Agency will therefore continue to assume that chromium emissions are in the hexavalent form.[81]

c. *Flash Point.* Used crankcase oils can be contaminated with highly ignitable constituents of gasoline such as benzene, toluene, and xylene from engine blow-by. Used oils can also be mixed after use with gasoline or other highly ignitable nonhalogenated solvents such as xylene. Even low levels of contamination with these low flash point compounds can reduce the flash point of used oils, normally greater than 200°F, to levels lower than 100°F. Nearly 7% of 650 used oil samples had a flash point below 100°F.[82]

EPA proposed a specification of 100°F because it is the American Society for Testing and Materials' (ASTM) minimum flash point specification level for virgin fuel oils. EPA reasoned that burners are not accustomed to handling such fuels and so used oils with a lower flash point may present significant hazards during handling and storage. Thus, such low flash point oils need to be controlled. EPA specifically requested comment on whether such low flash point used oils should be regulated as off-specification used oil fuel as proposed, or as hazardous waste fuel.

One commenter argued that low flash point used oil should be subject to regulation as hazardous waste fuel to provide adequate controls during storage and transportation. While share the commenter's concerns, we have decided that low flash point oil should be regulated as off-specification used oil, not hazardous waste fuel. This final rule is therefore the first step in the Agency's efforts to regulate the blending and burning of hazardous waste and used oils fuels. Storage and transportation controls for used oil, including off-specification used oil burned for energy recovery, are soon to be proposed and controls (i.e., permit standards) on the actual burning of hazardous waste and off-specification used oil fuels are scheduled to be proposed in 1986. Thus, we believe it may be confusing to the regulated community and may preempt regulatory options in these future rulemakings to subject in piecemeal fashion used oil off-specification only for flash point to regulation as hazardous waste fuel. As a matter of fact, the recycled oil management standards propose that used oil, including off-specification used oil fuel, be subject to the same substantive storage and transportation controls for hazardous waste in many situations.

As a final note on this point, low flash point used oil cannot be presumed to be hazardous waste under the mixture rule (i.e., because the oil is mixed with ignitable hazardous waste). As explained in section IV.B.3 above, the low flash point may be attributable to low flash point constituents of gasoline (e.g., benzene, toluene, or xylene) added to crankcase oil during use.

Several commenters argued that a specification level of 100 °F is inconsistent with the definition of ignitable hazardous waste that uses a flash point of 140 °F or below to define ignitability. See 40 CFR 261.21. We explained at proposal the basis for the difference. See 50 FR 1699, n. 58. The 140 °F flash point limit defining an ignitable waste was based primarily on the hazard posed during land disposal. Given that virgin fuel oils can have a flash point as low as 100 °F, we believe that used oils with flash points of 100 °F to 140 °F pose no greater hazard than virgin fuels (provided they meet the other specification limits).

D. Comments on Allowing Blending to Meet the Specification

The Agency received a large number of comments for and against allowing blending of used oil to meet the used oil fuel specification. Operators of used oil rerefineries and some State environmental officials argued against allowing blending primarily because: (1) Blending does not reduce the total quantity of metals emitted from used oil burning in an urban area—blending limits the emissions from individual sources but allows (in theory) a larger number of sources to burn blended oil so that the same quantity of used oil is burned annually in a given area (and the same quantity of metals are emitted); and (2) allowing blending creates an economic disincentive to remove metals from used oil by rerefining to produce lube oil (and a low-metal content fuel

[80] See EPA's public notice of "Intent to List Chromium or Hexavalent Chromium as a Hazardous Air Pollutant (50 FR 24317-19 (June 10, 1985)).

[81] See also: U.S. EPA, *The Air Toxics Problem in the United States: An Analysis of Cancer Risks For Selected Pollutants*, May 1985.

[82] Franklin Associates Ltd., *Composition of Used Oil*, Appendix A.

by-product)[82] because blending for marketing as fuel is often more profitable than substantial processing.

On the other hand, processors and blenders argued that blending should be allowed because it results in a used oil fuel product that, in general, poses no greater health risk than virgin fuel oils. They argued further that grossly contaminated used oil cannot be economically blended to meet the specification and will go to rerefiners for production of lube oil or to industrial boilers and industrial furnaces for use as a fuel.[83]

Processors and blenders also argued that without blending, alternate markets may not be available to handle the used oil diverted from burning potentially leading to adverse environmental effects (see section IV.C.3 above). Industrial boilers and industrial furnaces may not be able or willing to burn off-specification used oil given the Agency's plans to regulate such burning (beginning with the notification and other administrative controls provided by today's rule). Further, rerefiners cannot be presumed to be an unlimited outlet for used oil. Although many rerefineries are operating below capacity today, and could perhaps double their capacity within a few years to handle the increased supply if blending were prohibited, profitability of rerefining depends on more than an available supply of used oil. Marketing factors such as demand for recycled lube products and price fluctuations in virgin lube products (resulting from fluctuations in crude oil prices or other factors) are also critical. These marketing factors may have played as large a role historically in limiting the viability of used oil rerefining as has the problem of inadequate supply of used oil feedstock due to competition from the largely unregulated used oil fuel market. Thus, processors and blenders believe that without blending, neither the industrial fuel market nor the rerefining market would be able to handle the used oil that would exceed the specification.

The Agency agrees with points made by both sides. The rule does potentially encourage blending, blending creates a disincentive to remove metals by rerefining, and blending *per se* does not reduce (in theory) mass emissions of metals in an urban area. However, we believe that some highly contaminated used oils cannot be economically blended and will go to rerefining or to industrial boilers or industrial furnaces that control metal emissions (either currently, or eventually under rules the Agency will propose in 1986). In addition, as discussed above, it is not clear that rerefineries and the industrial fuel market would have the capacity to handle the used oil exceeding the specification if blending were not allowed. In that case, used oil diverted would be incinerated or dumped, with uncertain environmental trade-offs (i.e., compared to allowing blending). Although blending does not reduce (in theory) mass-emissions in an urban area, blending of used oil to meet the specification reduces the risk to the most exposed individuals. Finally, and most significantly, we believe that blending results in a product that can pose no greater hazard than dirty virgin fuel oil.

For these reasons, today's final rule allows blending. It should be noted, however, that this rule is only the first of three rules that will significantly affect the used oil recycling industry. As we develop these rules, we will examine "flow changes" caused by the regulations (e.g., increase in rerefining, decrease in road oiling, etc.). At that point, we will be better able to determine whether our rules only serve to promote dilution versus removal of metals (e.g., by rerefining or by burning in devices with adequate emissions control equipment). We cannot, at this time, conduct such an assessment, and for the reasons cited above, can find no basis to prohibit blending.

E. Consideration of a Total Ban on Burning Used Oil in Nonindustrial Boilers

At proposal, EPA requested comments on whether all used oil burning in nonindustrial boilers should be banned. See 50 FR 1693–94. EPA was primarily concerned that used oil could be mixed with hazardous waste and illegally marketed as used oil fuel meeting the specification.

Several commenters argued for banning all used oil burning in nonindustrial boilers. These commenters were concerned that used oil would be illegally adulterated with hazardous waste once the used oil is outside the regulatory system (i.e., once a collector, processor, or blender documents the used oil meets the specification). These commenters reasoned that illegal adulteration is inevitable given the current practice, particularly in the Northeast, of mixing hazardous spent solvents with used oil for marketing as virgin fuel oil (usually after blending with virgin oil),[84] given the nature of the used oil and waste management industry (again, particularly in the Northeast),[85] and given the profitability of illegal adulteration. It should be noted that the issue these commenters raise here is whether the proposed regulatory scheme (i.e., allowing burning of unregulated used oil meeting the specification in nonindustrial boilers) can be adequately enforced, not whether the specification itself, in conjunction with the rebuttable presumption of mixing halogenated wastes, is protective *per se*.

Other commenters opposed an outright ban on burning used oil in nonindustrial boilers. These commenters were concerned that a ban could lead to illegal dumping or incineration of used oil with adverse or uncertain environmental trade-offs. For reasons discussed above, rerefinery capacity and the industrial fuel market may be inadequate to handle used oil diverted from nonindustrial boilers under a ban.

Today's rule therefore allows burning of used oil meeting the specification in nonindustrial boilers (or any other boiler or industrial furnace) for a number of reasons. We continue to believe that the specification, in conjunction with the rebuttable presumption of mixing, will detect and control used oil illegally adulterated with hazardous waste. See 50 FR 1693, n. 28. In addition, these rules have been developed with an understanding of the current practices of the industry and should result in cost-effective enforcement. Specifically, the controls are focused primarily on the several hundred marketers of these fuels rather than the potentially thousands of burners. These marketers must determine whether they are handling hazardous waste fuel, off-specification used oil, or unregulated used oil that meets the specification, and must manage the fuel accordingly. The rebuttable presumption of mixing hazardous chlorinated waste with used oil, and the use of oil fuel specification will enable both marketers and

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[82] Once used oil is processed to remove metals, it is considered more profitable to further process the oil to produce lube oil rather than to market it as fuel oil.

[83] Potential hazards posed by burning of off-specification used oil in these devices should be temporary. The Agency intends to propose permit standards for burning off-specification used oil fuel (and hazardous waste fuel) that will require that the owners and operators of all boilers and industrial furnaces burning these fuels limit metal emissions.

[84] National Enforcement Investigations Center, *U.S. EPA, Summary of Waste Oil Recycling Facility Investigations*, October 1983.

[85] *Proceedings of the New York State Assembly Standing Committee on Environmental Conservation Public Hearing on the Unlawful Disposal of Solid and Hazardous Wastes:* September 24–26, 1984 at the New York Chamber of Commerce and Industry, New York (Volumes I, II, III B, and III C), and September 19–21, 1984 at the Orange County Government Center, Goshen, New York (Volume I, II, and III).

enforcement officials to make a clear, objective determination of the type of fuel in question, and thus, the applicable controls. Further, the tracking system for fuel shipments, used oil analysis requirements, and recordkeeping requirements are intended to foster efficient and effective enforcement.

It should be noted that, in response to commenters' concerns about enforceability and tracking of used oil that meets the specification, today's rule expands the recordkeeping requirements for used oil meeting the specification. In addition to records of analysis required by the proposed rule, the person who first claims used oil fuel meets the specification must also keep a record of pertinent information regarding the shipment of the used oil including: name and address of the receiving facility, date of shipment, and quantity shipped. See § 266.43(b)(6)(i). This will enable enforcement officials to track movements one step beyond the initial marketer. We considered applying recordkeeping requirements to all subsequent marketers (e.g., distributors) until the used oil fuel is ultimately burned. We decided not to, however, given that the used oil fuel poses no greater risk than virgin fuel oil and, once it enters the commercial fuel oil market, should not be regulated differently than virgin fuel oil. (We note, however, that subsequent adulteration with hazardous waste or off-specification used oil makes specification used oil subject to regulation as either hazardous waste fuel or off-specification used oil fuel.)

Moreover, in response to commenters' concerns discussed above, we reasoned that hazardous waste could be illegally mixed with *virgin* fuel oil, as well as with used oil fuel, and sold to nonindustrial boilers. (Comments of the State of New Jersey illustrate that this type of illegal mixing is presently occurring.) Thus, the risk of adultering legitimate fuels with hazardous waste is not unique to used oil. In light of these considerations, there is no compelling reason to further regulate specification used oil fuel by additional recordkeeping or by a ban on burning in nonindustrial boilers.

F. Analytical Testing to Demonstrate Compliance with Specification Levels and the Rebuttable Presumption

At proposal, EPA indicated that general guidance on sampling and analysis is provided in EPA, *Test Methods for Evaluating Solid Waste*, July 1982, SW–846 (U.S. GPO). See 50 FR 1705. EPA indicated further that the Agency is revising digestion procedures recommended by SW–846 for organic liquids prior to determination of metals concentrations. We were aware that the digestion procedures specified by Methods 3030 and 3050 do not result in good recovery of metals in some oily matrices. Finally, EPA indicated at proposal that it was verifying the accuracy and precision of two field tests for total chlorine that are quick and inexpensive—an adaptation of the Beilstein flame colormetric test, and a field test kit using chemical colormetric procedures.

A number of commenters requested that EPA specify acceptable analytical procedures for halogens, metals, and flash point, and to prescribe acceptable testing frequency. Several commenters also indicated that the Beilstein chlorine test is neither quantitative nor reliable (because of interferences with contaminants) and, thus, not a useful test.

The following sections specify recommended analytical procedures and discuss the Agency's position on sampling procedures.

1. *Chlorine.* EPA's test methods manual, SW–846, does not include an analytical technique for determining total halogens (reported as total chlorine) in oil. Until a total halogen technique for oils is formally added to SW–846 as an approved test, EPA recommends the broadly accepted ASTM D808–81 method (i.e., oxygen bomb followed by titrimetric halogen determination.

The Agency is also evaluating automated halogen determinators and believes that they may prove to be acceptable in many situations. In addition, the Agency is continuing to evaluate the flame and chemical colormetric field tests and believes that the chemical colormetric test in particular may prove to be acceptable in many situations.

The Agency anticipates it will formally propose in early 1986 to add the ASTM D808–81 chlorine determination method to SW–846 as an approved test. The Agency will also decide at that time whether information is adequate to propose to add either field test or the automated determinators to SW–846 as approved tests.

2. *Metals.* EPA is aware that digestion procedures specified by SW–846 for sedimentaceous oils prior to metals determinations (i.e., methods 3030 and 3050) do not result in complete digestion and release of metals in some oily matrices. EPA is evaluating revised digestion procedures and anticipates proposing revisions to the procedures in early 1986. In the interim, EPA recommends using digestion method 3050 followed by the determination method appropriate for specific metals (see Table 6). For non-sedimentaceous oils, however, the solvent dissolution procedures of method 3040 may be used in lieu of digestion method 3050.

TABLE 6.—RECOMMENDED ANALYTICAL PROCEDURES

Parameter	Method		Source
Total halogens	D808–81		ASTM.
Flash point	1010		*SW–846 and Proposed Test Methods for Evaluating Solid Waste*[2].
	Preparation	*Determination*	
Arsenic	3040*/3050	7060	*SW–846 and Proposed Test Methods for Evaluating Solid Waste*[2].
Cadmium	3040*/3050	6010 7131 7131	Do.
Chromium	3040*/3050	6010 7191 7191	Do.
Lead	3040*/3050	6010 7420 7421	Do.

Notes:
*Recommended only for non-sedimentaceous oils.
[2]SW–46 (*Test Methods for Evaluating Solid Waste*) is available from the U.S. Government Printing Office. *Proposed Test Methods for Evaluating Solid Waste* is available from NTIS under order No. PB8–103–026.

3. *Flash Point.* Procedures for flash point determinations are provided by Method 1010 in SW–846. Method 1010 uses the Pensky-Martens closed cup tester.

4. *Frequency of Testing.* Many commenters asked EPA to prescribe a minimum testing frequency that would eliminate the liability associated with the question of how much testing is enough to demonstrate that the halogen level for the rebuttable presumption of mixing or the specification is not exceeded. Commenters were also concerned that EPA consider the cost and practicability of testing when establishing a minimum testing frequency. A few commenters requested that generators, collectors, and processors be allowed to certify that the used oil meets the specification and has not been mixed with hazardous waste in lieu of testing.

We address the certification question first and then the issue of specifying frequency of testing.

a. *Certification in Lieu of Testing.* Testing is not specifically required to demonstrate conformance with the rebuttable presumption of mixing hazardous halogenated wastes. Thus a, certification passed from party to party stating that hazardous waste has not been added to the used oil appears to be a prudent business approach. Nonetheless, the certifications would

not lessen the burden to rebut the presumption of mixing if in fact the used oil were found, for example by EPA enforcement officials, to contain more than 1000 ppm of total halogens. Given the profitability of mixing hazardous waste with used oil (i.e., charging generators for waste disposal and selling the waste, after blending with oil, as a fuel), the nature of the industry (see note 85), and past practices of illegal mixing of hazardous waste with used oil (see note 84), the Agency will not necessarily accept any claim or certification from any party. Nor would such an approach be consistent with other long-established hazardous waste rules. See, e.g., 40 CFR 262.11 (generators must determine if their wastes are hazardous and are in violation of regulations if their determination is erroneous). We think that the rebuttable presumption promulgated today provides an objective means of distinguishing between used oil and hazardous waste whenever a question exists and we plan to use the presumption routinely during inspections of used oil facilities.

When a person first claims used oil fuel meets the specification, today's rule requires that he obtain an analysis or other information to support the claim. Thus, testing is not specifically required to demonstrate compliance with the specification. (Ordinarily, however, we expect that testing will be used to demonstrate compliance.) The "other information" could include personal, special knowledge of the source and composition of the used oil [86] or a certification from a generator to the processor claiming the oil meets the specification. As explained above, however, if a person who claims used oil fuel meets the specification based on "other information" and the determination is found to be erroneous (i.e., if testing reveals that the oil fails the specification), he is in violation of the regulations.

It should be noted further that if a marketer claims used oil fuel meets the specification when in fact it does not when analyzed by EPA or State enforcement officials at any point until ultimately burned, it is not a defense that the recipient (or subsequent recipients) reasonably believed the oil met the specification. (Again, this approach is identical to that used for hazardous waste.)

EPA and State enforcement officials also have the authority under RCRA section 3007 to enter the premises of a person believed to be handling used oil fuel (including trucks in the process of transport) and to collect samples of fuel oil, irrespective of whether the person reasonably believes his used oil fuel meets the specification, for the purposes of determining compliance with the marketing requirements of today's rule. Thus, a person may not deny access because he believes the used oil fuel he manages meets the specification and is no longer subject to regulation.

b. *Frequency of Testing.* The frequency of testing necessary to ensure conformance with today's rules will vary from situation to situation depending on factors including: (1) Type of, and changes in, sources of used oil; (2) historical results of tests; (3) tank filling and drawdown practices; and (4) tank capacities. Although today's rule does not necessarily require that each incoming shipment of used oil be analyzed for conformance with the presumption of mixing, or that each outgoing shipment of specification used oil fuel be analyzed for conformance with the specification (or that testing be conducted at all), the marketer must be satisfied that each such shipment so conforms. In short, testing must be conducted as often as necessary, and the burden is necessarily on the marketer to determine how often is often enough. (This is comparable to a generator's responsibility to determine whether the wastes he generates are hazardous. See 40 CFR 262.22.) Therefore, we believe it is not practicable to prescribe a testing frequency that is appropriate for all situations.

IV. Regulation of Combustion Residuals

Some commenters asked whether residuals (e.g., fly ash, bottom ash) from burning hazardous waste or used oil for energy recovery are subject to regulation as hazardous waste. Unless specifically excluded from regulation as hazardous waste as discussed below, such residuals are hazardous waste if: (1) The residuals (from burning either hazardous waste or used oil) exhibit a characteristic of hazardous waste; or (2) the residuals result from burning listed hazardous waste and the residual has not been "delisted" under petitioning procedures of § 260.20 (see § 261.3(c)(2)).

These are not new requirements (and are not being revised in any manner by today's rules). These residuals have been subject to regulation as hazardous waste since the RCRA standards were promulgated in 1980. Although the actual burning for energy recovery is a type of recycling currently exempt from RCRA regulation, the exemption does not extend to solid waste generated by recycling.

RCRA Section 3001 temporarily excludes specific combustion residuals from regulation as hazardous waste. The exclusion is codified at § 261.4(b)(4) and applies to residuals from combustion of primarily fossil fuels. The Agency has temporarily interpreted this exclusion to mean that the following solid wastes are not hazardous wastes: "fly ash, bottom ash, boiler slag and flue gas emission control wastes resulting from (1) the combustion solely of coal, oil, or natural gas, (2) the combustion of any mixture of these fossil fuels, or (3) the combustion of any mixture of coal and other fuels, including hazardous waste or used oil fuels, up to a 50 percent mixture of such other fuels." Thus, until the boiler and industrial furnace rules address this issue in 1986, residuals from burning the fossil fuels oil or gas with any quantity of hazardous waste fuel or used oil fuel are not excluded from regulation under § 261.4(b)(4). Residuals from burning coal and up to 50% hazardous waste fuel, however, are excluded.[87, 88, 89]

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[85] Repeated testing may not be warranted in every situation. For example, a generator who burns on-site his used oil that testing shows meets the specification may elect to eliminate or reduce the frequency of testing if, for example, the processes that generate the oil do not change. In this case, the generator is using "other information" in lieu of testing. Nonetheless, if his determination is erroneous, he is in violation of the regulations, as explained in the text.

[87] Taken from correspondence from Gary N. Dietrich, Associate Deputy Assistant Administrator for Solid Waste, EPA to Paul Emler, Jr. Chairman, Utility Solid Waste Activities Group, dated January 13, 1981. Mixtures of coal and up to 50% of other fuels are excluded from regulation (at this time) because any contaminants from the other fuels (e.g., hazardous waste) would be largely diluted by the coal combustion residuals. This may not be the case with oil or gas combustion given the low volumes of bottom and fly ash generally produced from combustion of these fuels.

[88] These residuals may in fact contain only minimal levels of toxic organic compounds in situations where boilers (and industrial furnaces) are operated to achieve maximum combustion efficiency. The Agency is considering during development of the permit standards for boilers and industrial furnaces modifying the derived-from rule to exempt noncharacteristic residuals in cases where we are certain that residuals do not contain significant levels of toxic organics.

[89] We note that the exclusions (from regulation as hazardous waste) for certain large volume wastes produced by facilities under the "mining waste" exclusion of § 261.4(b)(7) may apply to certain industrial furnaces burning hazardous waste or used oil. Any such exclusions apply (pending development of the boiler and industrial furnace permit standards) irrespective of whether the devices burn hazardous waste or used oil for energy recovery given the likely effect of dilution of any contaminants attributable to the hazardous waste or used oil. Similarly, the exclusion for cement kiln dust provided by § 261.4(b)(8) applies irrespective of whether the kiln burns hazardous waste or used oil for energy recovery.

EPA also is providing that residues from burning hazardous waste fuels that are exempt from regulation under § 261.6(a)(3)(v)-(ix) (i.e. hazardous waste fuels derived from petroleum industry wastes, petroleum coke derived from certain petroleum industry hazardous waste, and coke and coal tar derived from steel industry decanter tank tar sludge) are not covered by the derived from rule. With respect to burning petroleum industry fuels derived from petroleum industry wastes, these fuels may be no different in composition than virgin fuels (at least when low volumes of wastes are introduced into the refining process). See sections III.C.1 and 2 above. Under these circumstances, wastes from burning these fuels also would be no different than from burning virgin fuels, so the derived-from rule should not apply.

EPA is exempting from the derived-from rule wastes from burning petroleum coke to further Congressional intent that the coke is subject to regulation only if it exhibits a characteristic of hazardous waste. RCRA section 3004(q)(2)(A). Thus, consistent with § 261.3 (c)(2) and (d)(1), wastes from burning the coke should only be considered hazardous when they exhibit a hazardous waste characteristic. With respect to the iron and steel coke and coal tar, EPA has found that these waste-derived fuels are not significantly different than the virgin fuels for which they substitute (and that the organic toxicants in these fuels are likely destroyed by burning as well). Thus, the derived-from rule should not apply to the wastes from burning, which also would be comparable to the wastes from burning virgin coke and coal tar.

V. Consideration of Special Requirements for De Minimis Quantities Burned On Site

Several commenters suggested that EPA establish a *de minimis* quantity of off-specification used oil fuel and hazardous waste fuel that could be burned without regulation. Although commenters suggested various quantity levels to qualify for an exemption, the majority recommended a limit of 0.5–1% of the total fuel consumption of the boiler or industrial furnace. Some commenters also urged EPA to institute a permit-by-rule program for facilities burning small quantities of hazardous waste fuel or off-specification used oil fuel that are generated on-site.

Section 3004(q)(2)(B) of RCRA explicitly allows EPA to exempt facilities that burn *de minimis* quantities of waste as fuel, provided that the wastes are generated on-site, are burned for energy recovery, and are burned in a device with sufficient destruction and removal efficiency not to present a significant risk to human health and the environment. EPA is presently examining the issue of *de minimis* burning in developing the Phase II permit standards for owners and operators of boilers and industrial furnaces. Although we may propose to exempt *de minimis* quantities from the Phase II permit standards, the basic administrative controls promulgated today (e.g., notification) would probably still apply to on-site burning.[90] Therefore, today's rule does not provide a *de minimis* quantity exemption since, for industrial burners, the rule only addresses these administrative controls.

A few commenters argued that hazardous waste fuel and off-specification used oil fuel burned on-site should not be subject to regulation *irrespective of quantity*. These commenters argued that storage of hazardous waste fuels is adequately controlled by State and local governments and that burning of either hazardous waste fuels or off-specification used oil fuel is adequately controlled by State or local air pollution permits. We find these arguments without merit. The hazards posed by handling and burning hazardous waste fuels and off-specification used oil fuels are substantial and essentially the same irrespective of whether the fuels were generated at that site. EPA has made this finding for years with respect to other hazardous wastes, and no arguments have been presented distinguishing hazardous waste fuels from all other hazardous wastes managed on site. The commenters' argument also was rejected in the legislative history to the HSWA. See S. Rep. 98–284, 98th Cong. 2nd Sess. at 38. Moreover, the storage of hazardous waste fuels and the burning of either hazardous waste fuel or off-specification used oil fuels can pose much greater risk to human health and the environment than storage and burning of virgin fossil fuels. State and local controls on storage and burning of virgin fuels are not intended to provide the level of control of releases of toxic constituents from storage facilities or from boilers or industrial furnaces that EPA's regulations will provide, starting with today's final rule.

[90] It should be noted that today's rule does not regulate storage of used oil fuel. Although storage of hazardous waste fuel is regulated by today's rule, special (i.e., reduced) standards are already provided for on-site storage in tanks and containers of hazardous waste by generators (see § 262.34). Further, small quantity generators are already exempt from storage standards under § 261.5.

PART THREE: COMBUSTION DEVICES THAT ARE REGULATED

I. Overview

In this section, we identify boilers and industrial furnaces subject to regulation and distinguish between nonindustrial boilers and industrial or utility boilers. We also explain the basis for regulating nonindustrial boilers immediately in advance of controls for industrial boilers and industrial furnaces. In addition, we discuss how these nonindustrial boilers can continue burning hazardous waste when they operate under permit standards for hazardous waste incinerators. Finally, we discuss controls for used oil space heaters and EPA's intent to provide additional controls for these devices in the rulemaking proposing permit standards for burning in boilers and industrial furnaces scheduled for 1986.

II. Regulation of Boilers

A. Basis for Regulating Boilers by Boiler Use

Today's rule prohibits the burning of hazardous waste and off-specification used oil fuel in nonindustrial boilers (e.g., located in apartment and office buildings, schools, hospitals) and, for the time being, continues to allow burning of such fuels without substantive controls in industrial and utility boilers (and industrial furnaces). As EPA stated at proposal, the rule singles out nonindustrial boilers because burning hazardous waste fuels and off-specification used oil fuels in these boilers can pose the most significant and immediate health risks. See 50 FR 1687–1688 and 1701, n. 63. Nonindustrial boilers are typically very small and may not achieve complete combustion of toxic organics (e.g., 99.99% destruction) because of inadequate controls to maintain optimum combustion conditions when firing fuels the boiler is not designed to burn. Further, virtually no nonindustrial boilers are equipped with emissions control equipment that would control (at least to some extent) metals emissions, while many industrial furnaces and some industrial boilers are so equipped. The risks from emissions of incompletely burned toxic organic compounds and toxic metals from nonindustrial boilers is compounded because these boilers are typically located in urban areas where sources are frequently clustered closely together. Thus, emission plumes from numerous sources can overlap and increase ambient concentrations of toxic compounds. Further, individuals can be exposed to high ambient levels of emitted toxicants because they can be

located close to the sources and exposed to the even higher toxicant levels above-ground (e.g., if the individual is exposed to above-ground air through a window in a multi-story apartment or office building).

EPA also stated at proposal that there may be many situations where industrial (and utility) boilers and industrial furnaces can burn hazardous waste fuel or off-specification used oil fuel without posing significant risks. See 50 FR 1688. For example, large boilers or industrial furnaces may be operated by trained operators and equipped with combustion controls sophisticated enough to maintain peak combustion efficiency when burning fuels the unit is not designed to burn.

Further, many industrial furnaces and some boilers are equipped with particulate control equipment that may adequately control emissions from metal-bearing waste fuels. The Agency has recently completed a testing program to determine under what operating conditions boilers and industrial furnaces can burn waste fuels without posing significant health risks. As a result of that effort, EPA plans to propose technical, permit standards for burning hazardous waste fuels and off-specification used oil fuels in boilers and industrial furnaces in 1986 taking into account when and how these wastes can be burned safely in these devices.

One commenter questioned whether burning hazardous waste fuels in a nonindustrial boiler is prohibited if the boiler can comply with the permit standards for hazardous waste incinerators. Other commenters suggested that criteria other than boiler use (e.g., boiler size) should be used to identify those boilers subject to the prohibition. These issues are discussed below.

1. *Conditional Exemption for Nonindustrial Boilers Burning Hazardous Waste Fuel.* EPA explained at proposal that there may be particular nonindustrial boilers that may burn hazardous waste fuels (we know of one location) effectively due to the unit's operating conditions, type of hazardous waste fuel, etc. To allow such burning to continue, EPA said that the owner or operator must comply with the hazardous waste incinerator standards of Subpart O of 40 CFR Parts 264 or 265. See 50 FR 1688. The owner or operator must also comply with the requirements for burners in today's rule (e.g., storage standards). See § 266.35. We are making a conforming amendment to Subpart O to make clear that this possibility exists.

Owners and operators of nonindustrial boilers currently burning hazardous waste fuel are eligible for the interim status incinerator standards of Part 265 because they first become subject to those regulations today. Those interim status standards will reduce the hazards posed by these operations by prohibiting burning during start-up and shut-down and by applying the general facility standards (e.g., closure, financial requirements) for hazardous waste management facilities.

The Regional Administrator has the discretion to permit these facilities under Part 264, Subpart O (and applicable storage provisions) by calling in their Part B permit applications. We do not expect, however, that nonindustrial boilers that continue to burn hazardous waste fuel under the interim status standards of Subpart O of Part 265 will be formally permitted under Part 264, except in exceptional circumstances. Rather, we expect that any such nonindustrial boilers would be ultimately permitted under the permit standards for boilers and industrial furnaces to be proposed in early 1986. Those permit standards will likely control emissions of toxic organics, toxic metals, and hydrogen chloride. We believe the standards would be protective when applied to any device—e.g., industrial or nonindustrial boilers. Moreover, those boilers and industrial furnace standards will be equally or more protective than the incinerator standards under Subpart O of Part 264 (e.g., the Agency may propose direct control of metals emissions from boilers and industrial furnaces while particulate controls are used for incinerators to indirectly control metals).

2. *Consideration of Other Criteria for Identifying Boilers Subject to the Prohibitions.* At proposal, EPA explained why the prohibitions on burning hazardous waste fuel and off-specification used oil fuel would apply to boilers based on boiler use—the prohibitions would apply to nonindustrial boilers. Burning these fuels in nonindustrial boilers can pose substantial and immediate risks for the reasons discussed above. EPA explained further that it plans to propose permit standards in 1986 for industrial and utility boilers and industrial furnaces. Nonetheless, EPA specifically requested comments on whether small industrial boilers should also be prohibited from burning hazardous waste and off-specification used oil fuels, given that very small boilers, whether industrial or nonindustrial, may typically be equipped with less sophisticated combustion controls and may be less rigorously operated and maintained to achieve peak combustion efficiency.

Many commenters said that large nonindustrial boilers can burn hazardous waste fuel as efficiently as large industrial boilers and should not be prohibited from doing so. These commenters apparently did not understand that EPA said as much in the preamble to the proposal and said that these boilers may continue burning hazardous waste fuel if they comply with the standards for hazardous waste incinerators, until we promulgate permit standards for boilers as discussed above. We believe that it is reasonable to require such nonindustrial boilers to comply with the incinerator standards now and postpone regulation of industrial boilers until we promulgate permit standards for boilers because nonindustrial boilers as a class are likely to pose greater risks because they are more likely to be located within densely populated areas. (Although industrial boilers are frequently located in urban areas, nonindustrial boilers are almost always so located.)

Many commenters argued for and against prohibiting burning small industrial boilers using the issues EPA discussed in the preamble to the proposal. See 50 FR at 1700–1701. Today's rule does not prohibit burning in small industrial boilers. Although it can be argued that nonindustrial and industrial boilers of the same size are likely to burn hazardous waste fuel with similar destruction efficiency, we believe that nonindustrial boilers as a class pose a greater hazard for the reasons given above. Thus, as discussed above and at 50 FR 1687–1688, it is reasonable to require nonindustrial boilers to comply with the incinerator standards now and postpone regulation of industrial boilers until we promulgate permit standards for boilers.

Several commenters recommended that EPA prescribe design and operating conditions, or performance standards, or consider boiler location rather than prohibiting burning in particular devices. The permit standards for boilers that we plan to propose in 1986, in fact, would use performance standards, or alternative operating conditions, to permit burning of hazardous waste fuel in *any* boiler. However, until those standards are promulgated, nonindustrial boilers will be subject to the conditional prohibition for the reasons given above.

Boiler location has been considered in supporting immediate regulation of nonindustrial boilers—they are typically located within highly populated areas. Persons in less densely populated areas would have a lower exposure; thus, we could use site-specific risk assessments

to support alternative, reduced controls. Given the complexity of quantitative risk assessments (i.e., assessments that are used to support particular controls for particular facilities) and the number of boilers that burn off-specification used oil fuel and hazardous waste fuel, a regulatory program based on site-specific risk assessment would be difficult to implement with current and foreseeable resources. Thus, we have not included a variance procedure based on risk assessment in today's rule.

B. Definition of Industrial Boiler

Today's rule, like the proposal, uses the terms industrial boilers, utility boiler, and industrial furnace to identify combustion devices that are not nonindustrial boilers subject to the prohibition. We believe it is less confusing to define the devices that are not subject to the prohibition than to attempt to define and identify the various types of nonindustrial boilers (e.g., residential, commercial, institutional).

EPA defined the term "industrial boiler" at proposal as any boiler that produces electric power, steam or heated or cooled air, or other gases or fluids for use in a manufacturing process. Further, EPA has defined "boiler" as an enclosed device using controlled flame combustion and having specific characteristics including' (1) The combustion chamber and primary energy recovery section must be of integral design (e.g., waste heat recovery boilers attached to incinerators are not boilers); (2) thermal energy recovery efficiency must be at least 60% and (3) at least 75% of recovered energy must be "exported" (i.e., not used for internal uses like preheating of combustion air or fuel, or driving combustion air fans or feedwater pumps). See 50 FR at 661 (Jan. 4, 1985).

Some commenters requested that EPA include in the definition of industrial boiler those boilers which are physically located on the premises of a manufacturing facility but which recover energy solely for space heating rather than manufacturing. Commenters argued that these boilers are often the same size and are operated no differently than other boilers at the facility producing energy used for actual manufacturing. Further, such boilers are often located in industrially zoned areas, thus reducing the probability of large numbers of persons being close to the source and being exposed to above-ground level concentration as would be typical of many nonindustrial boilers. Thus, commenters argued that since the burning characteristics and risks are similar for all boilers located at manufacturing facilities, the boilers should be regulated in the same manner. EPA agrees and has amended the regulations accordingly. Section 266.31(b)(2)(i) has been modified from proposal to define an industrial boiler as any boiler located on the site of a manufacturing facility.

Although we believe this definition of industrial boiler will enable the vast majority of boiler owners and operators to clearly catagorize their boilers, there may be situations where it is not so clear. If an owner or operator is not sure whether his boiler meets today's definition of industrial boiler, he should contact the Regional Administrator for a determination.

C. Definition of Utility Boiler

EPA defined utility boilers at proposal as boilers used to produce electric power, steam, heat or cooled air, or other gases or fluids for sale. Owners and operators of utility boilers are burners regulated in the same way as owners and operators of industrial boilers.

We identified utility boilers separately from industrial boilers only as an indirect means of identifying nonindustrial boilers subject to the prohibitions (i.e., it is less confusing to identify boilers *not* subject to the prohibitions than to define nonindustrial boilers subject to the prohibitions). Clearly, utility boilers are not nonindustrial boilers and have never been identified as such.

A few commenters requested that EPA distinguished between industrial and utility boilers on the basis that utility boilers achieve good combustion efficiency and have emission control equipment thereby leading to safe and efficient burning of off-specification used oil fuel. The commenters, however, did not specify what practical regulatory distinctions should be made.

Any special design, operation, or emissions control features that utility boilers may have that will reduce risk posed by burning used oil will be considered during development of the permit standards for burning hazardous waste fuel and off-specification used oil fuel in boilers and industrial furnaces scheduled to be proposed in 1986. EPA can see no reason why utility boilers should not be subject to the rules promulgated today.

D. Nonindustrial Boilers

In the proposal, EPA explained that nonindustrial boilers include those located at: (1) Single or multifamily residences; (2) commercial establishments such as hotels, office building, laundries, or service stations; and (3) institutional establishments such as colleges, hospitals, and prisons.. To avoid the problem of providing a clear, encompassing, and unambiguous definition of nonindustrial boiler, we have identified and defined those devices not subject to today's prohibition: industrial boilers, utility boilers, and industrial furnaces.

E. Marine and Diesel Engines

Used oil may be burned in other devices such as diesel or marine engines. These devices may not meet the definition of a boiler and are not listed as industrial furnaces under § 260.10. See 50 FR at 661 (January 4, 1985). Used crankcase oil from diesel engines is frequently blended with virgin diesel fuel and burned in diesel engines (e.g., tractor-trailer engines). In addition, used oil is sometimes used as fuel for ship engines. Although such burning is for the purpose of energy recovery (i.e., the used oil provides substantial, useful heat energy, and in fact replaces virgin fuels), the burning of used oil in these devices was not considered during development of the proposed rule. Given that it is not clear that diesel and marine engines meet the definition of a boiler, that EPA has not taken comment on whether such devices meet the definition, and that today's rules apply to used oil that is burned in a boiler (or industrial furnace) for energy recovery, today's rules do not apply to marketers and burners of such used oil. Thus, the used oil fuel specification and the invoice and certification recordkeeping system do not apply to such used oil.[91]

With respect to notification requirements, we have determined that owners and operators of these devices need not notify the Agency (this type of exemption if expressly allowed under Section 3010(a)). We do not think it serves any practical purpose for owners and operators of marine engines (many of which are under foreign ownership) or other diesel engines such as the thousands of diesel trucks [92] to notify of

[91] It should be noted that if a person markets off-specification used oil fuel exempt from today's rules because it is burned in marine diesel engines, that person has the burden of proof to demonstrate that in fact, such exempt used oil will be burned in those devices. See 50 FR 1692 (January 11, 1985) and 50 FR 642 (January 4, 1985). Ordinarily, invoices that track a shipment of off-specification used oil to the end user (i.e., marine or diesel engine owner or operator) will be required to carry this burden.

[92] Further, even if such used oil burned in diesel trucks were subject to today's used oil fuel specification, the oil would not likely exceed the specification as burned. As will be discussed in some detail in the used oil listing/management standards rulemaking that will soon be proposed, used diesel crankcase oil is typically mixed with

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their used oil burning activities at this time, and EPA does not need such information to assess what rules may ultimately be appropriate.

Marketers of used oil that is burned in marine or diesel engines, on the other hand, must comply with the notification requirement. EPA needs to know who these marketers are to be able to investigate whether these marketers are mixing hazardous waste with used oil. Hazardous waste, including used oil mixed with hazardous waste, cannot be burned in maring or diesel engines unless the devices are permitted as hazardous waste incinerators. (Devices that burn hazardous waste by means of controlled flame combustion and that are neither boilers nor industrial furnaces are considered to be incinerators for regulatory purposes. See §260.10 in 50 FR 661 (January 4, 1985).) Thus, used oil marketed for use as fuel in marine and diesel engines is (like other used oils) subject to the presumption of mixing hazardous waste established by today's rule.)

It should also be noted that although the used oil fuel specification and the invoice and certification recordkeeping system established by today's rule do not apply to used oil marketed for use as fuel in marine or diesel engines, such used oil would be subject to the transportation and storage controls for recycled oil that will soon be proposed. When promulgated, those controls will supersede today's rules for used oil fuels and will apply to all recycled oils.

III. Regulation of Industrial Furnaces

EPA has defined "industrial furnace" as those devices specifically listed by the Administrator as enclosed devices that are integral components of a manufacturing process and that use a controlled flame to accomplish recovery of materials or energy. See 50 FR 661 (January 4, 1985). The Agency has also identified criteria for listing other devices as industrial furnaces. To date, the list of industrial furnaces includes cement kilns, lime kilns, aggregate kilns (including asphalt kilns), blast furnaces, and smelting, melting and refining furnaces.

Owners and operators of these industrial furnaces are subject to today's rules for burners (see § 266.35) when they burn hazardous waste or off-specification used oil for energy recovery or for both energy recovery and another recycling purpose (see section II of this preamble).

IV. Regulation of Used Oil Space Heaters

As proposed, today's rule provides a conditioned exemption from the prohibition on burning off-specification used oil fuel in used oil space heaters. EPA stated at proposal (see 50 FR at 1700) that it is deferring regulation of these devices until it better understands the risk they pose and evaluates regulatory options to address any such hazards. EPA stated further that it would address regulation of these devices in future rulemakings. In the interim, these space heaters may continue to burn off specification used oil fuel provided that they vent the heater to the outdoors and burn only used oil they generate or receive from do-it-yourself oil changes.[93]

As EPA explained at proposal, used oil space heaters are very small heaters frequently used in service stations and auto repair shops. The units typically burn 1 to 2 gallons of used crankcase oil per hour. NInety percent (90%) of the heaters are the vaporization type where the oil is vaporized from a pan at the base of the heater while metals and heavy, low volatility compounds remain in the pan (and are cleaned out periodically). The other heaters are the atomization type where the oil is sprayed into the combustion chamber. Vaporization units appear to have low metals emissions rates—5 to 15% of the metals are emitted. This is comparable to (or lower than) the metals emission rate from larger boilers (industrial or nonindustrial). Atomization units, however, appear to have relatively high metals emissions rates—75% to 95%. EPA concluded that vaporization units probably do not pose a health risk while it is not clear whether atomization units pose significant risks given the small size of the units.

Most commenters supported the exemption and believed that no further regulation is necessary. Supporters argued that vaporization units comprise 90% of the units in operation and emit only low levels of metals. Supporters of the exemption were silent with respect to atomization units.

Opponents to the exemption used various arguments and proposed various regulatory alternatives. Many commenters were concerned that the risk from metals and toxic organic emissions could be significant given that these space heaters are frequently operated in residential areas. They argued that it would be premature to grant an exemption until further risk assessment is conducted.[94] Some opponents suggested that atomization heaters be banned entirely and others suggested application of emissions standards to both atomization and vaporization units. In addition, some commenters suggested that an exemption would actually cause a proliferation of space heaters since they could be viewed as a cheap, easy method of providing heat as well as getting rid of used oil. Thus, EPA should consider "grandfathering" existing space heaters rather than granting a blanket exemption. Commenters were also concerned that space heaters could provide a loophole for disposal of hazardous waste generated at service stations and auto repair shops by mixing with the used oil to be burned.

EPA continues to believe that atomization space heaters may pose significant risk in unique situations (e.g., where multiple atomization units burning used oil with high levels of metals are clustered together, and persons are located close to the sources) while the much more prevalent vaporization units probably do not pose significant risks. Thus, we do not believe there is a compelling reason to take the extreme measure at this time of virtually banning the use of these devices which would result if they were not exempted from the prohibition on burning off-specification used oil fuel. We intend to include regulations for these devices, as deemed necessary, when we propose permit standards for all boilers and industrial furnaces in 1986. Thus, we can ensure that controls on burning in these devices are consistent with controls, particularly for metals emissions, on other boilers and industrial furnaces. In addition, by that time, we will have proposed the comprehensive management standards for recycled oil which would regulate generators and collectors, as well as the marketers and burners (except for permit standards for burning) regulated by today's rule. At that time, we can consider the regulatory impact on generators, as

95% virgin diesel fuel before use as a diesel fuel. The blended fuel is likely to meet the used oil fuel specification. Thus, owners and operators of such engines would be burning a used oil that meets the specification and that would be exempt from regulation.

[93] The exemption is also conditioned on the unit having a capacity of less than 0.5 million Btu/hr. This encompasses all used oil space heaters in use today and prevents operators of larger boilers from claiming they operate used oil space heaters.

[94] Harvard University submitted information about research they have been conducting regarding the effect of emissions from used oil on mammalian lung tissue. Various dosages were applied in a short-term inhalation study utilizing hamsters. Harvard reported results showing lung damage from metals and other toxic constituents from both vaporization and atomization heaters, and recommended further study to develop rational risk estimates.

required by RCRA section 3014(c), of regulating used oil space heaters in conjunction with the entire regulatory scheme for recycled oil.

As a final note, a few commenters suggested that proposed § 266.41(b)(4)(i) be revised to conform with explicit preamble language that allows the owners or operators of exempted space heaters to burn used oil received from "do-it-yourself" oil changers as well as used oil they generate. We agree and have modified that provision in the final rule at § 266.41(b)(2)(iii).

PART FOUR: ADMINISTRATIVE AND STORAGE STANDARDS

I. Administrative Standards

A. Overview

Hazardous waste fuels and off-specification used oil fuels are subject to certain administrative requirements, including a one-time notification to identify waste-as-fuel activities and to obtain a U.S. EPA Identification Number. Even if an individual has previously notified the Agency, and already has a U.S. EPA Identification Number he must renotify to identify his waste-as-fuel activities (although his Identification Number remains the same). Other administrative requirements include compliance with a manifest system (for hazardous waste fuels), or an invoice system (for off-specification used oil fuel) and recordkeeping. In addition, persons receiving shipments of hazardous waste fuel or off-specification used oil fuel must certify to the shipper that they have notified EPA of their waste-as-fuel activities, and that they may legally burn the fuel. These controls make it possible to administer and enforce the prohibitions against burning in nonindustrial boilers, and provide for proper tracking of the materials.

The administrative requirements apply to both marketers and burners of hazardous waste fuel and off-specification used oil fuel. Generators of hazardous waste or used oil who send their waste directly to an individual who burns those wastes are considered to be marketers and are subject to these controls. Conversely, generators who send their hazardous waste or used oil to an individual who does not burn the waste for energy recovery are not considered to be marketers, even if the waste is burned later for energy recovery by another person. (Such generators of hazardous waste, however, are subject to 40 CFR Part 262 as ordinary hazardous waste generators.)

Hazardous waste fuel transportation is subject to the full set of Part 263 requirements. This rule regulates for the first time transporters of hazardous waste fuel that is neither a listed waste nor a sludge. These hazardous wastes are currently exempt from regulation under § 266.36 (see 50 FR 667 (January 4, 1985)), a provision that is superseded by today's new Part 266 standards. Used oil transportation is exempt from the administrative requirements in order to avoid piecemeal regulation of used oil transporters.[95] If used oil fuel transporters are regulated while other used oil transporters are not, transporters could avoid complying by claiming that the used oil is intended for other purposes. EPA will address regulation of transporters in its recycled oil management standards scheduled to be proposed later this year.

The following table summarizes the controls required under today's rule:

TABLE 7.—CONTROLS FOR WASTE FUELS

	Hazardous waste fuel	Off-specification used oil fuel
Generator[1]	Part 262[2]	Exempt.
Marketers[1]	N,RN,P,M,C,R,S	N,RN,P,I,C,R.
Transporters	Part 263[3]	Exempt.
Burners	N,RN,P,M,C,R,S	N,RN,P,I,C,R.

Note:

[1] Hazardous waste and used oil generators are not regulated as marketers unless they market directly to a burner.

[2] Hazardous waste generators who send their waste to a hazardous waste fuel marketer are subject to Part 262 standards as ordinary generators. See §266.32(a). Generators who market their hazardous waste fuel to burners are subject to the Part 262 generator standards as well as today's hazardous waste fuel marketer requirements. See § 266.32(b).

[3] Hazardous waste fuel transporters are subject to regulation as ordinary hazardous waste transporters. Thus, they are not required to notify or re-notify for their waste-as-fuel activities. However, they must notify for their hazardous waste transportation activities if they have not notified already.

Key

N—Notification and identification number.
RN—Renotify for waste-as-fuel activities.
P—Prohibitions on marketing to, or burning in, nonindustrial boilers.
M,I—Compliance with manifest (M) or invoice (I).
C—Provide or receive certification of compliance with standards for burning.
R—Recordkeeping.
S—Storage Standards.

B. Notification Requirements

1. *Purpose of Notification.* Notification is necessary because EPA must be able to identify those persons who engage in waste-as-fuel activities in order to ensure that waste fuels are managed properly and not routed to nonindustrial markets. The special waste-as-fuel notification is mandated under RCRA section 3010(a), as amended. A U.S. EPA Identification Number will be assigned to those facilities subject to RCRA regulation for the first time.

2. *Who Must Notify.* The following persons must notify either EPA or an authorized state [96] to identify their waste-as-fuel activities: (1) Marketers of hazardous waste fuel or off-specification used oil fuel (e.g., third-party processors, blenders, and distributors, and generators marketing directly to burners); (2) burners of hazardous waste fuel or off-specification used oil fuel, except generators who burn their oil in space heaters under § 266.41(b)(2)(iii); and (3) marketers (or burners) who first claim used oil fuel meets the specification and so is exempt from subsequent regulation. If any of these individuals has previously notified the Agency of any hazardous waste management activities and obtained a U.S. EPA Identification Number, they must renotify, and may use the revised notification form to do so (see discussion below).

EPA explained at proposal that the following persons need not comply with the waste-as-fuel notification requirement: (1) Hazardous waste generators who neither burn their wastes for energy recovery nor market their wastes for energy recovery directly to a burner, because they may not know the end use of their waste; (2) hazardous waste fuel transporters, for the same reason given for generators; [97] and (3)

[95] Many used oil transporters (collectors) pick up used oil from several small generators and aggregate the oil at satellite storage facilities prior to shipment in larger tankers to used oil processors or rerefiners. These transporters are not considered marketers unless: (1) They ship used oil directly to a person who burns the oil for energy recovery; or (2) they process used oil to produce a fuel at the storage facility. Any blending of used oils resulting from accumulation in the transporter's storage tanks is incidental to the primary function of accumulation and is not considered to be blending or processing in this rule.

[96] EPA is allowing notifiers to notify either EPA or States authorized to operate the hazardous waste program even though amended section 3010(a) requires that *both* EPA and authorized States be notified. EPA is deviating from the statutory provision for practical reasons. EPA and authorized States have developed a system for handling section 3010 notifications that heretofore could be submitted to either EPA or the State. Under that system, the State automatically forwards notifications it receives to EPA for processing and assignment of an identification number. If waste-as-fuel notifications were submitted to both EPA and the authorized State, a facility could inadvertently be assigned two identification numbers. Thus, simultaneous notifications to both EPA and States not only will not further environmental protection, but could be counter-productive. In addition, the requirement that persons notify both EPA and States was to provide that regulations implementing the HSWA take effect immediately even in authorized States, a concern later addressed directly by amended section 3006(g). By amending section 3006(g), Congress eliminated the need for dual notification.

[97] Hazardous waste generators and transporters are nonetheless subject to the notification (and other requirements) of Parts 262 and 263 as ordinary generators and transporters. Thus, the significance of the discussion in the text is that generators and transporters need not *renotify*.

used oil generators and transporters (unless they also market directly to a burner).[98]

Notification also does not apply to owners and operators of boilers or furnaces, including but not limited to nonindustrial boilers, who burn used oil fuel that meets the specification.

3. *Use of the Hazardous Waste Notification Form.* Persons required to file notifications (or renotify) with EPA or authorized States because of their waste-as-fuel activities may use EPA Form 8700–12 (revised 11/85): "Notification of Hazardous Waste Activity." See the appendix to today's regulation. This form is a revision of the existing notification form which was modified to include waste-as-fuel notification requirements. The Agency made minor changes to the proposed form to make it clear that persons who first claim that the used oil fuel they market meets the specification are subject to the requirements (including notification, used oil analysis, and recordkeeping) provided under § 266.43. See preamble discussion in section IV.E of Part Two.

The revised notification form provides EPA with the number and location of facilities involved in processing, blending, marketing, and distributing of waste fuels, and the number, type, and location of burners. These data will be used to develop a general profile of the waste fuel industry and assist in future regulatory development.

Several commenters suggested revisions to the proposed notification form. One commenter argued that language requiring the signer of the form to be personally familiar with and responsible for the veracity of the responses places an undue burden on managers of facilities who may not be aware of all operations of their facility on a day-to-day basis. This requirement has been in place since the notification form was first used for the RCRA hazardous waste program in 1980. It is not a special requirement pertaining to notification of waste-as-fuel activities. EPA sees no compelling reasons to modify its longstanding position that one person must ultimate take responsibility for a facility's operation and compliance with federal regulations.

Another commenter suggested that the reference to "listed infectious waste" on the proposed form be dropped, since no such category exists. This was an oversight on EPA's part, and has been deleted from the final form.

4. *Notification Procedures and Implementation.* As EPA indicated at proposal, it estimates that there are, at most, 20,000–30,000 persons that may be required to file notifications. While EPA does not intend to carry out a mass mailing to potentially affected parties, the Agency will widely announce the notification requirements of these rules through the press and trade journals.

Persons required to notify under today's rule should consider this **Federal Register** notice their final notice to submit a notification. To obtain a notification form, you should contact your authorized State hazardous waste agency or your U.S. EPA Regional Office. Each requester will receive a complete notification package, including a form and accompanying instructions, to assist him in filing his notification.

EPA will return to each notifier an acknowledgment of receipt of the notification, and will issue a U.S. EPA Identification Number if one was not previously assigned. This acknowledgement in no way constitutes an endorsement by EPA of the adequacy of the notification or of the notifier's business practices; rather, it serves as a confirmation that EPA received the notification.

5. *Legal Significance of Notification.* EPA is promulgating the notification requirement for hazardous waste fuels and off-specification used oil fuels under the authority of Section 3010(a) of RCRA, as amended. The notification is a prerequisite for RCRA interim status (see RCRA section 3005(e)(2)) for owners and operators of hazardous waste fuel storage facilities. See H.R. Rep. No. 98–198 at 41, likewise specifying that notification of management of hazardous waste fuels serves as a prerequisite for interim status.)

C. Transportation Controls

As proposed, EPA is adopting today a system to track movement of hazardous waste fuel and off-specification used oil fuel from the initial marketers (e.g., processors, blenders, distributors, or generators who market to burners through intermediaries (e.g., transporters, distributors) to the industrial users who burn the fuel for energy recovery.[99] This tracking system allows regulatory officials to track a hazardous waste fuel or off-specification used oil fuel from point of processing, blending, or other treatment to point of burning, thus making the prohibition on burning in nonindustrial boilers enforceable. Equally important, the tracking document (either a manifest or an invoice) alerts persons who handle these materials that they are receiving a hazardous waste or off-specification used oil.

Consequently, EPA today is finalizing its proposal that all shipments of hazardous waste fuel be accompanied by a manifest. Hazardous waste fuel marketers are subject to the transportation (and pre-transport) requirements of 40 CFR Part 262 and transporters are subject to the requirements of 40 CFR Part 263.

We are requiring a slightly different system for off-specification used oil fuel, whereby marketers (e.g., processors, blenders, distributors, and generators who market to burners) offering off-specification used oil fuel for sale must prepare and send an invoice to the fuel buyer, but do not have to have the invoice physically accompany each shipment. (Transporters thus will not have to comply with any invoice requirement.) This distinction (i.e., invoice in lieu of a manifest) is needed to avoid piecemeal regulation of used oil transporters, as explained at proposal. See 50 FR 1704 n. 76.

The invoice must include the shipment initiator's name, address and identification number, the receiving facility's name, address, and identification number and the quantity of off-specification used oil fuel shipped. All of this information is currently required in the standard EPA hazardous waste manifest.

As EPA stated at proposal, in a situation where an off-specification used oil fuel goes from a processor or blender to an intermediate distributor, the distributor must reinstitute a new invoice to accompany any fuel it sells that is produced from or otherwise contains the used oil (unless the used oil fuel now meets the specification). This requirement is consistent with those found in other parts of the RCRA regulations whereby intermediate storage facilities must reinitiate a manifest. See, e.g., 40 CFR 264.71(c) and 262.10(f).

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[98] As noted at proposal, however (see 50 FR 1702, n. 68), used oil generators and transporters who send used oil to marketers that burn some used oil are not considered to be marketing used oil fuel directly to a burner for purposes of today's rule. Thus, these generators and transporters are not regulated (and not required to notify) as marketers. This is because the burning at the marketers' facility is considered incidental to the primary function of the marketers' facility: processing and marketing of used oil fuel.

[99] The system is already in place for certain hazardous waste fuels—namely listed wastes and sludges when sent directly from the generator to a burner. See Subpart D of Part 266 in 50 FR 667 (January 4, 1985). Today's rule expands the system to *all* hazardous waste fuels managed by *all* marketers and burners, except those specifically exempted under § 261.6(a)(3) as revised in today's rule.

As described in the proposal, the Hazardous and Solid Waste Amendments of 1984 amended RCRA to require producers, distributors, and marketers of hazardous waste fuels to include a warning label on the invoice or bill of sale for the fuel. The requirement became effective in February 1985, but is superseded by today's rule. The Agency believes that the requirement for an invoice or a manifest achieves the same purposes as a warning label—to alert the user or distributor that he is receiving hazardous waste fuel. The manifest also notifies the transporter that he is handling hazardous waste because the manifest must accompany the shipment. No comments disagreed with the Agency's conclusion that an invoice or manifest is an adequate replacement for the statutory warning label.

Several comments were received on the proposed invoice/manifest requirement. Commenters suggested that transfer of waste fuels from site to site within the same company should be exempt from the invoice and manifesting requirements. Commenters pointed out that such transfers are routine; thus, they reasoned that invoices or manifests are unnecessary. At the very least, commenters requested that EPA consider a simplified manifest or invoice for such transactions.

EPA believes that the manifest requirement for hazardous waste fuels serves essentially the same purpose as the current manifest requirement for other hazardous waste—to alert transporters (and emergency response officials) as well as facility operators (e.g., burners) of the fire and explosion hazards posed by the shipment and to establish a paper trail that will enable enforcement officials to implement and enforce the regulations. Given similar purposes and that off-site, but intracompany, shipments of other hazardous waste are subject to full manifest requirements, EPA sees no compelling reason to modify manifest requirements specifically for hazardous waste fuel. See also 50 FR 28724–28725 (July 15, 1985) where the Agency adopted the same position with regard to the warning label required by RCRA section 3004(r)(1).

D. Notice and Certification Requirements

To enforce the prohibition on burning hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers, the prohibition applies not only to the boiler owner and operator, but also to the waste fuel marketer. Thus, a marketer (a processor, blender, distributor, or a generator marketing directly to a burner) may not sell hazardous waste fuels or off-specification used oil fuel to a person who burns it in a nonindustrial boiler but must ensure that they market these fuels only to persons in (and, thus, aware of) the regulatory system: persons who have notified EPA of their waste-as-fuel activities. In addition, marketers are responsible for determining whether their waste fuel is subject to regulation (i.e., whether their product fuel contains hazardous waste or is off-specification used oil).

As EPA explained at proposal, to comply with these requirements, marketers need to know whether the person receiving a shipment of hazardous waste fuel or off-specification used oil fuel has notified EPA of his waste-as-fuel activities and whether he intends to burn the fuel only in a utility boiler or industrial boiler or industrial furnace. Thus, the rules include a provision requiring that a marketer of hazardous waste fuel or off-specification used oil fuel receive a certification from the fuel purchaser stating that the purchaser has notified EPA of his waste-as-fuel activities and will burn the fuel only in unrestricted boilers or furnaces. This certification is a one-time notice and is required before sending the initial shipment. Similarly, the purchaser is required to send the certification before receiving the first shipment from a marketer. This will ensure that the recipient is aware of the regulations applicable to waste fuels and of his responsibilities as a burner (or intermediary). Hazardous waste and used oil generators (and transporters receiving waste from generators) who market their waste to a person who is not a burner are not subject to this (or any other) requirement for marketers and a recipient of the generator's hazardous waste or used oil is not required to provide the generator with a certification notice. (Hazardous waste generators and their transporters are, however, subject to regulation as ordinary hazardous waste generators and transporters under 40 CFR Parts 262 and 263 respectively.)

E. Used Oil Analysis Requirements for Marketers

Marketers who first claim used oil meets the specification and is essentially exempt from further regulation [100] must document by analyses or other information that the oil in fact meets the specification. Although the proposal required testing for documentation, the final rule allows the use of other information to show that the oil meets the specification. See previous discussion in Part Two, section IV.F. This is consistent with a generator's requirements under 40 CFR 262.11(c) to use testing or other information to determine whether his solid waste is hazardous waste. Ordinarily, however, we expect that testing will be used to demonstrate compliance. If a person's determination that used oil meets the specification is found to be erroneous, he is in violation of the regulations regardless of intent.

Persons required to obtain analyses (or other information) to demonstrate that their used oil fuel meets the specification include processors and blenders (and burners) who treat used oil known to be off-specification to produce specification used oil fuel and persons who market or burn as specification used oil fuel used oil received directly from generators or collectors. (Used oil received directly from generators or from collectors who receive oil from generators is presumed to be off-specification unless demonstrated otherwise.) EPA explained at proposal that such analyses and recordkeeping are required to enable the Agency to enforce the prohibitions on those persons who first claim that used oil fuel meets the specification.

Persons who obtain analyses of used oil to demonstrate compliance with the specification must ensure that representative samples are obtained and that appropriate analytical procedures are used. Sampling and analysis of used oil is discussed above in section IV.F.

F. Recordkeeping Requirements

The recordkeeping requirements are limited requirements designed primarily to keep track of the movement of hazardous waste fuels and off-specification used fuels. The substantive prohibitions as well as the various administrative requirements would not be enforceable without these recordkeeping requirements. As proposed, marketers and burners must keep a copy of the manifest or invoice (for used oil) that accompanies or that applies to each fuel shipment. In addition, marketers and burners are

[100] As discussed in the text in Part Two, section IV.E, such marketers must keep records of the initial shipment of specification used oil. Also, as discussed in section IV.F, EPA and State enforcement officials have the authority to enter the premises of a person believed to be handling used oil fuel and to collect samples of fuel oil, irrespective of whether the person reasonably believes his used oil fuel meets the specification, for the purposes of determining compliance with today's rule.

required to retain copies of certification notices that they initiate or receive.

EPA also proposed that marketers of used oil fuel who first claim the oil meets the specification are required to obtain analyses of their used oil fuel product to document that it meets the specification. Copies of the analyses must be retained for three years. As discussed above, today's final rule allows the use of other information to document that used oil meets the specification. Such other information must also be retained for three years.

In response to commenters' concerns about the enforceability of the proposed rule, the final rule includes additional recordkeeping requirements for persons who first claim used oil fuel meets the specification. See section IV.E of this preamble. Today's rule requires these persons to also keep records on initial shipments of specification used oil fuel. Subsequent shipments (e.g., by distributors) are not subject to regulation.

As proposed, all records must be retained at the facility for three years, except that certification notices must be kept for three years from the date a person last engages in a waste fuel marketing transaction with the person who sent or received the certification notice. These records must be available for inspection by an officer, employee, or representative of EPA (see RCRA section 3007).

II. Storage Requirements for Hazardous Waste Fuel

As explained at proposal, today's rule expands existing requirements for storage so that *all* storage of *all* hazardous waste fuels is subject to regulation. Under previously existing provisions of 40 CFR 261.6, and continued under the solid waste definition rulemaking at Subpart D of Part 266 (see 50 FR 667 (January 4, 1985)), hazardous wastes that are listed wastes or sludges are subject to the storage standards of Parts 262, 264, and 265, when stored prior to use as a fuel and prior to use to produce a fuel. Nonsludge wastes that are hazardous only because they exhibit a characteristic of hazardous waste, and hazardous waste fuel produced by an off-site marketer by processing, blending, or other treatment of hazardous waste, were exempt from regulation prior to today's rule. All hazardous waste used to produce fuel and all hazardous waste fuel so produced are subject to today's storage requirements for the reasons given below.

A. Which Hazardous Wastes Are Subject to Storage Requirements

The Agency is today regulating the storage (and transportation) of any hazardous waste used to produce a fuel and of any hazardous waste fuel so produced. We are thus eliminating the current distinction between listed wastes and sludges on the one hand and unlisted spent materials and unlisted byproducts on the other. As explained at proposal, these distinctions are not environmentally justifiable, and exist only because of the Agency's initial uncertainty (in 1980) about an appropriate regulatory regime for recycled wastes. See 48 FR 14475 (April 4, 1983). It is now our view that a hazardous waste classification as sludge, by-product, or spent material, or listed vs. unlisted (characteristic) hazardous waste has no relation to the type of hazard the waste poses when stored, and therefore, that storage of all of these should be regulated uniformly. *Id.*

B. Eliminating the Exemption for Storage of Hazardous Waste Fuel Produced by Persons Who Did Not Generate the Waste

As proposed, today's rules subject all hazardous waste fuels to storage (and other) controls. This includes storage by the initial marketer (e.g., processors, blenders), storage by subsequent marketers (e.g., distributors), and storage by burners. (Hazardous waste storage by ordinary generators whose waste is destined to be burned for energy recovery, but who do not market directly to burners, is also subject to regulation.)

The present regulatory regime provided by Subpart D of Part 266 (see 50 FR 667 (January 4, 1985)) whereby hazardous waste fuel produced by a person who neither generated the waste nor burns the fuel is exempt from regulation was intended only as an interim measure and cannot be defended on environmental grounds. The argument that hazardous waste fuels function as valuable inventory in a burner's hands and so will be stored safely does not appear tenable, and already has been rejected by the Agency. See 50 FR 617–618, 632, 643 (January 4, 1985). Hazardous waste fuels in many cases do not command substantial economic value; in some situations, burners are even paid to accept these materials. In addition, the fact that a hazardous waste fuel is being stored as a commodity is insufficient to prevent substantial risk. There have been many damage incidents from product and raw material storage, examples being spills from underground and above-ground product storage tanks, including fuel storage tanks. See 49 FR 29418 (July 20, 1984). Indeed, the Agency has found that leaks and spills from hazardous waste tank storage is very likely, and that this risk is substantial and requires regulatory control. See also Section 601 of the Hazardous and Solid Waste Amendments of 1984 requiring EPA to regulate underground storage tanks storing products. The Agency also has been told by State regulatory officials and used oil fuel dealers that hazardous waste fuels are suspected of causing a number of fires in the New York City and New Jersey areas. Another commenter described a "major accident at a cement kiln using waste-derived fuels." The Agency thus does not see any reason to regulate this type of hazardous waste storage differently from other hazardous waste storage.

Today's rule subjects all storage of all hazardous waste fuels to the storage standards provided by 40 CFR Parts 262 (for short-term accumulation of fuels by a generator who burns his waste on site or who markets directly to a burner), 264, and 265, with one exception. As proposed, we are not subjecting hazardous waste fuel storage by an existing burner to the final permitting standards of 40 CFR Part 264 at this time for several reasons. Because we intend to regulate most burning of hazardous waste fuels in a manner that would require some form of permitting, we do not want to issue a permit to a burner for storage and then have to issue a second permit in the near future for burning. We thus plan to delay adopting final permitting storage standards for existing burners until a single permit proceeding can address both burning and storage. Thus, existing burners will be subject only to the storage standards for tanks and containers contained in Part 265.

In addition, as proposed, a permit is not presently required to store off-specification used oil fuel. EPA is not imposing storage requirements on used oil fuel at this time because the Agency wishes to avoid the piecemeal regulation of used oil storage which would result were we to regulate used oil fuel storage in advance of other types of used oil storage. Storage requirements will be proposed when the Agency proposes comprehensive regulations for recycled oil on the next future.

Hazardous waste fuels stored by a marketer are subject to regulation. Thus, as explained at proposal, storage of both incoming hazardous waste and outgoing hazardous waste fuels are regulated.

Many marketers are already subject to regulation as storage facilities because they store incoming listed wastes and sludges, and may be operating under interim status standards. These marketers need to amend their Part A storage applications to seek an authorization to expand their interim status operations to include the waste fuel storage area. See § 270.72.

Numerous comments were received on the proposed storage requirements. Many commenters opposed compliance with the storage standards for industrial boiler owners and operators because they believed they were unnecessary since industrial boiler owners and operators are well aware of the hazards of storage and handling of hazardous waste. Compliance with the storage standards would cause them to incur large costs for little reason, they argued. We disagree. We have noted above that burner storage facilities have been exempt from regulation only as an interim measure and the exemption cannot be defended on environmental grounds. See also 50 FR 643 (January 4, 1985) where the Agency discussed why it was unable to eliminate any requirements from Part 265 (or 264) storage standards for recycled hazardous wastes.

Other commenters suggested class permitting of storage facilities. EPA will consider issues concerning permitting of burner storage facilities when the permit standards for existing burners (and storage) are proposed in 1986. Today's rule applies only the interim status Part 265 standards to existing burner storage facilities (the predominant class of storage units affected by this rule).

III. Examples of How These Regulations Operate

The following hypothetical examples illustrate how the rules operate:

1. Generator G generates a hazardous waste and sends it to burner B who stores it in a tank prior to burning in an industrial boiler for energy recovery.

G is a hazardous waste fuel marketer because he markets directly to a burner. Assuming that G is a large quantity generator (and EPA is unaware of situations where small quantity generators send hazardous wastes directly to burners), he must comply with the requirements for marketers, including the manifest and storage requirements, and notification as a hazardous waste fuel marketer. Prior to sending the first shipment, he must also obtain a certification from B that B has notified EPA of his waste-as-fuel activities and that he will burn the fuel only in unrestricted units (i.e., industrial boilers, industrial furnaces and utility boilers). B is a hazardous waste fuel burner and a RCRA storage facility. Assuming he already is engaging in hazardous waste management activities as a facility, he must comply with the interim status standards for storage (including submitting a Part A permit application). If B is a new storage facility (i.e., is not in existence as a facility at the time these rules become effective), he must obtain a storage permit prior to storing the hazardous waste fuel. He must also notify EPA of his waste-as-fuel activities and provide G with the certification discussed above prior to receiving the first shipment. B will have one identification number for storage and burning.

2.A. Generator G, a large quantity generator, generates a hazardous waste but sends it to an intermediate processor P, who mixes it with other wastes and sells the mixture to a burner B who stores it in a tank prior to burning in an industrial boiler for energy recovery.

G is subject to regulation under Part 262 as a generator and must comply with the manifest system and applicable storage requirements. He is not subject to the requirements for marketers. P is a marketer. He must obtain a storage permit to store the hazardous wastes received from the generator. The blended mixture is hazardous waste fuel and is subject to the storage controls under Parts 264 and 265. P and B must notify EPA of their waste-as-fuel activities, and must comply with the certification requirements. B is a hazardous waste fuel burner who has a RCRA storage facility subject to the interim status controls of Part 265 (assuming the facility is in existence at the time the rule is effective).

2.B. G, a large quantity generator, generates a hazardous waste and mixes it with used oil. The mixture is sent to P, who does further blending with used oil, and then sends the mixture to B where it is burned as in the previous example.

The controls operate in this situation just as in the previous example. A mixture of large quantity generator hazardous waste and used oil is subject to regulation as hazardous waste.

2.C. G is a small quantity generator who generates a hazardous waste and mixes it with used oil, as in example 2.B. G sends the mixture to processor P, who processes the material further and sells processed oil as fuel. The fuel meets the specification for used oil. It then is sold to retail fuel dealers and to industrial and nonindustrial users.

In this situation (i.e., where a small quantity generator mixes its hazardous waste with used oil), the mixture is exempt (for the time being) from regulation as hazardous waste under the provisions of 40 CFR 261.5 but (for the time being) is subject to regulation as used oil when obtained by a used oil fuel marketer, P. Thus, G (who incidentally is not a marketer) may send his used oil to P without an invoice. P is a marketer of used oil fuel. He must notify EPA of his waste-as-fuel activities and obtain a U.S. EPA Identification Number. He also must document with analyses (or other information) that the used oil fuel he markets meets the specification since he receives used oil from a generator (or from a transporter who receives oil from a generator) and markets used oil fuel as specification used oil fuel. In addition, he must keep records of the shipment and the person to whom the oil is first sent. The used oil fuel is exempt from further regulation and may be sent to burners or retail fuel dealers (i.e., distributors) who do not have EPA identification numbers, and who may sell the fuel on an unrestricted basis.

If, as is more likely, P determines that the used oil fuel does not meet the specification, P can only send it to persons who have certified to him that they have notified EPA of their waste-as-fuel activities and will burn the fuel only in industrial boilers, utility boilers, or industrial furnaces. P would have to prepare and send invoices for the off-specification used oil fuel. The retail fuel dealers (i.e., distributors) who receive the off-specification used oil fuel are marketers and cannot send the fuel to nonindustrial users unless it is processed further to meet the fuel specification (and they document with analyses or other information that the fuel meets the specification and keep records of the shipment and the person to whom the oil is first sent). Marketers and burners must keep records of invoices and certifications sent and received and fuel analyses (or other information) documenting compliance with the fuel specification (where required).

3.A. P is a used oil processor who receives used oil from a variety of sources and blends them to make fuels. The used oil is not mixed with hazardous waste. The blended fuel that P produces is off-specification for lead. P sends this fuel to R, a retail fuel dealer. R blends the fuel further so that it meets the lead specification. R then sells the fuel to industrial and nonindustrial users.

P is a marketer of used oil fuel. Because the used oil fuel is off-specification, it can be sent only to a person (e.g., R) who has certified to P that he has notified EPA of his waste-as-

fuel activities (and obtained a U.S. EPA Identification Number), and P must send an invoice to R. R is also a marketer because he receives off-specification used oil fuel. Since R markets the used oil fuel as specification fuel (by marketing to industrial boilers without complying with the invoice, notification, and other requirements), he must document with analyses or other information that the fuel meets the specification. R must also keep records of the shipment and the person to whom the specification used oil fuel is first sent. Marketers and burners must keep records as discussed previously.

3.B. Processor P receives used oil from different generators, and also receives spent halogenated solvents that are listed as hazardous waste. P blends the hazardous solvents with the used oil. Some of the spent halogenated solvents were generated by large quantity generators. The mixture contains less than 1000 ppm total halogens and meets the specification for all other constituents and parameters. P sells this blended fuel to R, as in example 3.A.

P is a marketer of hazardous waste fuel because he has mixed hazardous waste with used oil. There is no need to invoke the presumption of mixing with hazardous waste (based on total halogen levels) because it is known on these facts that hazardous waste and used oil have been mixed. (As explained in section IV–B of Part II of this preamble, it is not always certain when used oil is mixed with hazardous waste. In those cases, EPA is employing a rebuttable presumption of mixing with halogenated hazardous waste when halogen levels exceed 1000 ppm.) Finally, the used oil fuel specification does not apply to hazardous waste and, thus, does not apply to the mixture.

4.A. Petroleum refinery G generates API separator sludge (Hazardous Waste K052) and reintroduces it to the refining process upstream from distillation.

All resulting fuels (including petroleum coke) from the refining process are exempt from regulation at this time because the API separator sludge is a hazardous waste from petroleum refining which is introduced to refining process. The API separator sludge is not automatically exempt from regulation until it is reintroduced.

4.B. Petroleum refinery G generated API separator sludge, and sends it to a different refinery where it is reintroduced to the refining process upstream from distillation.

All resulting rules are exempt for the same reason as in 4.A. The API separator sludge is not automatically exempt until it is reintroduced.

4.C. Petroleum refinery G generates API separator sludge and sends it to fuel processor P who processes the sludge along with used oil in a process that accepts crude oil but does not include distillation as a process step. The resulting fuels meet the used oil fuel specification.

The fuels produced by processor P are not subject to regulation (aside from P maintaining a record of the first person to whom the fuels are sent). They would be subject to regulation as hazardous waste fuels if they failed to meet the fuel specification. In addition, processor P needs a storage permit or interim status to store the API separator sludge.

5.A. Same facts as in 4.A. above, except that refinery G reclaims oil from the API separator sludge and reintroduces the recovered oil to the refining process.

Both the reclaimed oil (which is to be refined) and the resulting fuels are exempt from regulation.

5.B. Same facts as in 4.B. above, except that reclaimed oil (i.e., oil reclaimed from the API separator sludge) is sent to the other refinery.

Both the reclaimed oil and the resulting fuels are exempt from regulation.

5.C. Same facts as in 4.C. above, except that reclaimed oil is sent to fuel processor P.

Here, the reclaimed oil is *not* automatically exempt, because it is not being refined (since the fuel processor is not using distillation as a process step). The resulting fuel is exempt (aside from a recordkeeping step for P) if it meets the used oil fuel specification.

6. Processor P obtains contaminated used oil which it processes via distillation to produce a fuel. Oil-bearing hazardous wastes from petroleum refining are also used in the process. The resulting fuel meets the used oil fuel specification.

The fuel is exempt because it meets the used oil fuel specification. See § 261.6(a)(3)(viii)(A). If the used oil fuel did not meet the fuel specification, it would be considered hazardous waste fuel and be subject to full regulation. This situation should be distinguished from one where oil-bearing hazardous wastes from refining are reintroduced to a *refining* process. The process here is *not* considered to be refining, in spite of the use of distillation, because it does not produce products from crude oil.

PART FIVE: ADMINISTRATIVE, ECONOMIC, AND ENVIRONMENTAL IMPACTS, AND LIST OF SUBJECTS

I. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including issuing permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule, with respect to hazardous waste fuels, (40 CFR 266.30–266.35) is promulgated pursuant to section 3004(q), a provision added by HSWA. Thus it is being added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and thus are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

The used oil fuel standards adopted today at 40 CFR 266.40–266.44 also are applicable in all States, although for a different reason. Used oil fuel is not presently regulated as a hazardous waste under section 3001. Instead, today's regulations are promulgated pursuant to the Used Oil Recycling Act (codified as section 3014(a) of RCRA) which directs EPA to regulated recycled used oil even if used oil is not a hazardous waste. Section 3014(a) requirements apply in all States as Federal law and operate independently of sections 3001 through 3006. EPA, however, is about to propose to list used oil as a hazardous waste pursuant to authority contained in section 3014(b) of RCRA, a provision added by HSWA. Should EPA adopt this listing as a final rule, all rules regarding management of recycled used oil thus would be applicable in all States by virtue of section 3006(g) as well as section 3014. At that point, authorized States would be required to revise their programs to adopt these rules as discussed below.

B. Effect on State Authorizations

As noted above, the hazardous waste fuel rules promulgated today are effective in all States. Thus, EPA will implement the standards in nonauthorized States and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization to administer and enforce the hazardous waste fuel rules under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program revisions under section 3006(b) are described in 40 CFR 271.21. See 49 FR at 21678 (May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year from today if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until a State program revision is submitted and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

II. Regulatory Impacts

A. Results of Regulatory Impact Studies

1. *Executive Order 12291.* As defined by Executive Order 12291, today's regulation is not a "major rule". Therefore, no Regulatory Impacts Analysis (RIA) is required. This rule will not have an annual impact on the national economy greater than $100 million. The estimated maximum costs of today's rule are an initial (one-time) expenditure of $6 million and annual costs of $20.9 million. The majority of affected facilities will incur less than $1000 in additional costs with the maximum expenditure for any one facility expected to be approximately $7000 per year. In addition, these regulations will not significantly affect competition, employment, productivity or innovation.

This rule was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

2. *Regulatory Flexibility Act.* We have determined that today's rule will not have a significant impact on a substantial number of small businesses and that, therefore, no Regulatory Flexibility Analysis (RFA) is required under the Regulatory Flexibility Act. Although a large number of small businesses managing used oil will be affected by some parts of the rules, we estimate that the maximum costs that could be imposed will be less than 5% of product price and will not cause a 5% closure rate. Cost of compliance data presented at proposal (see 50 FR 1708–1712) indicate that the rules may increase the cost of a marketer's used oil fuel by 1 to 3 cents per gallon. EPA does not consider this a significant increase given that generators are paid 15 to 25 cents per gallon for their used oil, and marketers charge burners 50 to 75 cents per gallon for used oil fuel.

3. *Paperwork Reduction Act.* The requirements of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et. seq., were considered in developing these regulations. We believe that the reporting and recordkeeping required by today's rules are the minimum necessary to implement and enforce the regulations.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2050–0028 (notification), 2050–0009 (storage permits), 2050–0039 (manifest shipping papers, and 2050–0047 (invoice shipping papers, certification, and used oil analysis).

B. Impacts on the Recycling Industry

1. *Used Oil Fuel.* In the proposal, we stated that we did not believe that these regulations would discourage the recycling or recovery of used oil. The rules only restrict used oil entering the nonindustrial fuel market. EPA stated in the proposal that any used oil not sold to this market could be sold to industrial users or used as rerefining feedstock.

Many comments were received on the subject of the impact of the rules, as proposed, on the used oil industry. Most of the parties who commented were concerned that the Agency underestimated costs and impacts. Commenters related impacts to decreased value of used oil and the absence of viable markets for displaced used oil. The Agency maintains that the costs and impacts presented in the proposed rulemaking (50 FR 1707–1714) are generally complete and reasonable projections. We predict that today's rule will have minimal impacts on net recycling because significant alternative markets exist.[101]

The Agency also received a number of comments stressing the need to maintain viable recycling markets, particularly for used oil. Commenters frequently discussed impacts on their particular industry or practices. EPA maintains that this proposal will not reduce net

[101] It should be noted that the effective date of the lead specification is delayed six months expressly to avoid major disruption of the used oil recycling industry that could result in dumping. As shown in Table 5 in the text, delaying the effective date of the lead specification is expected to more than double the amount of (unblended) used oil that can meet the specification for metals.

recycling. This proposal does not restrict combustion of hazardous wastes or recycled oil in industrial devices. Nor does it restrict other recycling, such as used oil rerefining and solvent reclamation. We recognize that the regulation will cause some market shifts, but maintain that net recycling will not decrease. Commenters confused impacts of this proposal with those of more extensive regulations of the Phase II standards that include industrial burners—which this rule does not address. Many commenters apparently presumed that recycled oil was banned from industrial boilers. The Agency may apply a similar specification to recycled oil burned in boilers under the Phase II regulations. The costs and impacts of that rule, however, will be presented when that rule is proposed. Those costs and impacts are not part of today's rule. We maintain that today's regulation does not impose major impacts that require an RIA.

2. *Hazardous Waste Fuel.* Commenters suggested that permits for small hazardous waste storage facilities may cost $25,000, not the $10,000 we suggested in the proposal.[102] EPA estimated a $10,000 expenditure because we utilized the cost of amending an existing Part B permit in our cost estimate, not the cost of obtaining a new permit. The rule requires Part B storage permits only for facilities marketing hazardous waste fuels (and for new hazardous waste fuel burner facilities). We have assumed virtually all hazardous waste fuel contains listed hazardous waste. Thus, the marketer's feedstock tanks (i.e., tanks for incoming wastes) are already subject to regulation, the marketer's facilities affected by today's rule would already have RCRA permits.

In the proposal, the Agency applied unit costs to represent the total incremental costs of these requirements above current requirements and practices. The costs related to this regulation are not the total investments, revenues, or value of products of associated businesses, as some commenters suggested. We estimate that this regulation will impose direct costs of up to $21 million per year (annualized). This is one of the reasons why this regulation is not a major rule and does not require an RIA.

[102] It should be noted that these storage facility cost estimates do not include the cost of providing secondary containment (or alternate equivalent controls), a requirement EPA recently proposed for hazardous waste storage facilities. See 50 FR 26444–26504 (June 26, 1985).

III. Explanation of Compliance Dates

At proposal (see 50 FR 1714), EPA expressly requested comment on staggering the compliance dates for the regulatory requirements to make them effective as soon as practicable during the 1985–86 heating season. Although commenters did not indicate that the compliance dates were unreasonable, we have decided that the proposed 30 day compliance date for notifications may not give notifiers enough time to request and receive notification applications from their State hazardous waste agency, and to complete and submit the form. Thus, the final rule allows notifiers two months after today to notify regarding their waste-as-fuel activities.

We are making a corresponding change to the compliance date for the manifest (or invoice) system. Given that marketers and burners must include their U.S. EPA Identification Number (assigned after receipt of notification) on manifests and invoices, and that it may take as long as two months after receipt of an application to apprise a notifier of his Identification Number, (if he is not renotifying to identify waste-as-fuel activities) the compliance date for the manifest (or invoice) system is four months after today. (The proposed compliance date was 90 days after publication.)

Compliance dates for the prohibitions (i.e., 10 days after today) and for the storage controls (i.e., six months after today) are adopted as proposed.

The compliance date for each regulatory requirement is shown in the "DATES" section at the beginning of this preamble.

IV. List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. Section 261.3 is amended by adding to paragraph (c)(2)(ii) the following (B):

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Wastes from burning any of the materials exempted from regulation by § 261.6(a)(3) (iv), (vi), (vii), or (viii).

* * * * *

3. Section 261.5 is amended by revising paragraph (b) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), (h), and (k) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the regulations of paragraphs (f), (g), (h), and (k) of this section.

* * * * *

4. Section 261.5 is amended by adding a new paragraph (k) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(k) If a small quantity generator's hazardous wastes are mixed with used oil, the mixture is subject to Subpart E of Part 266 of this chapter if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other

treatment is also so regulated if it is destined to be burned for energy recovery.

5. Section 261.6 is amended by revising paragraphs (a)(2)(iii), and (a)(3)(iii), and adding new paragraphs (a)(3) (viii) and (ix). Although only the above changes are made under this rulemaking, the entire § 261.6, including provisions not affected by today's rules, is printed here for the reader's convenience.

§ 261.6 Requirements for recyclable materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through G of Part 266 of this chapter and all applicable provisions in Parts 270 and 124 of this chapter:

(i) Recyclable materials used in a manner constituting disposal (Subpart C);

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of this chapter (Subpart D);

(iii) Used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of this chapter (Subpart E);

(iv) Recyclable materials from which precious metals are reclaimed (Subpart F);

(v) Spent lead-acid batteries that are being reclaimed (Subpart G).

(3) The following recyclable materials are not subject to regulation under Parts 262 through Parts 266 or Parts 270 or 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed;

(ii) Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(iii) Used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

(iv) Scrap metal;

(v) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

(vii) Coke and coal tar from the iron and steel industry that contains hazardous waste the iron and steel production process;

(viii) (A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under § 266.40(e) of this chapter and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under § 266.40(e) of this chapter; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under § 266.40(e) of this chapter; and

(ix) Petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in Part 261, Subpart C.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Parts 262 and 263 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section.

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 266, 270, and 124 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

7. Section 264.340 is amended by revising paragraph (a)(2) to read as follows:

§ 264.340 Applicability.

(a) * * *

(2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this subpart.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

8. The authority citation for part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6924, and 6925).

9. Section 265.340 is amended to revise paragraph (a)(2) to read as follows:

§ 265.340 Applicability.

(a) * * *

(2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any

recycling purpose and elect to be regulated under this subpart.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF WASTE MANAGEMENT FACILITIES

10. The authority citation for Part 266 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

11. Subpart D is revised to read as follows:

Subpart D—Hazardous Waste Burned for Energy Recovery

Sec.
266.30 Applicability.
266.31 Prohibitions.
266.32 Standards applicable to generators of hazardous waste fuel.
266.33 Standards applicable to transporters of hazardous waste fuel.
266.34 Standards applicable to marketers of hazardous waste fuel.
266.35 Standards applicable to burners of hazardous waste fuel.

Subpart D—Hazardous Waste Burned for Energy Recovery

§ 266.30 Applicability.

(a) The regulations of this subpart apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or 265 of this chapter, except as provided by paragraph (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel". Fuel produced from hazardous waste by processing, blending, or other treatment is also hazardous waste fuel. (These regulations do not apply, however, to gas recovered from hazardous waste management activities when such gas is burned for energy recovery.)

(b) The following hazardous wastes are not subject to regulation under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter. Such used oil is subject to regulation under Subpart E of Part 266 rather than this subpart; and

(2) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(v)–(ix) of this chapter, and hazardous wastes that are subject to the special requirements for small quantity generators under § 261.5 of this chapter.

§ 266.31 Prohibitions.

(a) A person may market hazardous waste fuel only:

(1) To persons who have notified EPA of their hazardous waste fuel activities under section 3010 of RCRA and have a U.S. EPA Identification Number; and

(2) If the fuel is burned, to persons who burn the fuel in boilers or industrial furnaces identified in paragaraph (b) of this section.

(b) Hazardous waste fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(ii) Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

(c) No fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics) unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.

§ 266.32 Standards applicable to generators of hazardous waste fuel.

(a) Generators of hazardous waste that is used as a fuel or used to produce a fuel are subject to Part 262 of this chapter.

(b) Generators who market hazardous waste fuel to a burner also are subject to § 266.34.

(c) Generators who are burners also are subject to § 266.35.

§ 266.33 Standards applicable to transporters of hazardous waste fuel.

Transporters of hazardous waste fuel (and hazardous waste that is used to produce a fuel) are subject to Part 263 of this chapter.

§ 266.34 Standards applicable to marketers of hazardous waste fuel.

Persons who market hazardous waste fuel are termed "marketers", and are subject to the following requirements. Marketers include generators who market hazardous waste fuel directly to a burner, persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes, and persons who distribute but do not process or blend hazardous waste fuel.

(a) *Prohibitions.* The prohibitions under § 266.31(a);

(b) *Notification.* Notification requirements under section 3010 of RCRA for hazardous waste fuel activities. Even if a marketer has previously notified EPA of his hazardous waste management activities and obtained a U.S. EPA Identification Number, he must renotify to identify his hazardous waste fuel activities.

(c) *Storage.* The applicable provisions of § 262.34, and Subparts A through L of Part 264, Subparts A through L of Part 265, and Part 270 of this chapter;

(d) *Off-site shipment.* The standards for generators in Part 262 of this chapter when a marketer initiates a shipment of hazardous waste fuel;

(e) *Required notices.* (1) Before a marketer initiates the first shipment of hazardous waste fuel to a burner or another marketer, he must obtain a one-time written and signed notice from the burner or marketer certifying that:

(i) The burner or marketer has notified EPA under Section 3010 of RCRA and identified his waste-as-fuel activities; and

(ii) If the recipient is a burner, the burner will burn the hazardous waste fuel only in an industrial furnace or boiler identified in § 261.31(b).

(2) Before a marketer accepts the first shipment of hazardous waste fuel from another marketer, he must provide the other marketer with a one-time written and signed certification that he has notified EPA under section 3010 of RCRA and identified his hazardous waste fuel activities; and

(f) *Recordkeeping.* In addition to the applicable recordkeeping requirements of Parts 262, 264, and 265 of this chapter, a marketer must keep a copy of each certification notice he receives or sends for three years from the date he last engages in a hazardous waste fuel marketing transaction with the person who sends or receives the certification notice.

(The notification requirements contained in paragraph (b) of this section were approved by OMB under control number 2050–0028. The storage requirements contained in paragraph (c) of this section were approved by OMB under control number 2050–0009. The manifest and invoice requirements contained in paragraph (d) of this section were approved by OMB under control numbers 2050–0039 and 2050–0047, respectively. The certification requirements contained in paragraph (e) of this section

were approved by OMB under control number 2050-0047. The recordkeeping requirements contained in paragraph (f) of this section were approved by OMB under control number 2050-0047.)

§ 266.35 Standards applicable to burners of hazardous waste fuel.

Owners and operators of industrial furnaces and boilers identified in § 266.31(b) that burn hazardous fuel are "burners" and are subject to the following requirements:

(a) *Prohibitions.* The prohibitions under § 266.31(b);

(b) *Notification.* Notification requirements under section 3010 of RCRA for hazardous waste fuel activities. Even if a burner has previously notified EPA of his hazardous waste management activities and obtained a U.S. EPA Identification Number, he must renotify to identify his hazardous waste fuel activities.

(c) *Storage.* (1) For short term accumulation by generators who burn their hazardous waste fuel on site, the applicable provisions of § 262.34 of this chapter;

(2) For existing storage facilities, the applicable provisions of Subparts A through L of Part 265, and Parts 270 and 124 of this chapter; and

(3) For new storage facilities, the applicable provisions of Subparts A through L of Part A 264, and Parts 270 and 124 of this chapter;

(d) *Required notices.* Before a burner accepts the first shipment of hazardous waste fuel from a marketer, he must provide the marketer a one-time written and signed notice certifying that:

(1) He has notified EPA under section 3010 of RCRA and identified his waste-as-fuel activities; and

(2) He will burn the fuel only in a boiler or furnace identified in § 266.31(b).

(e) *Recordkeeping.* In addition to the applicable recordkeeping requirements of Parts 264 and 265 of this chapter, a burner must keep a copy of each certification notice that he sends to a marketer for three years from the date he last receives hazardous waste fuel from that marketer.

(The notification requirements contained in paragraph (b) of this section were approved by OMB under control number 2050-0028. The storage requirements contained in paragraph (c) of this section were approved by OMB under control number 2050-0009. The certification requirements contained in paragraph (d) of this section were approved by OMB under control number 2050-0047. The recordkeeping requirements contained in paragraph (e) of this section were approved by OMB under control number 2050-0047.)

12. Subpart E is added as follows:

Subpart E—Used Oil Burned for Energy Recovery

Sec.

Subpart E—Used Oil Burned for Energy Recovery

§ 266.40 Applicability.

(a) The regulations of this subpart apply to used oil that is burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or Part 265 of this chapter, except as provided by paragraphs (c) and (e) of this section. Such used oil is termed "used oil fuel". Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment.

(b) "Used oil" means any oil that has been refined from crude oil, used, and, as a result of such use, is contaminated by physical or chemical impurities.

(c) Except as provided by paragraph (d) of this section, used oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under Subpart D of Part 266. Used oil containing more than 1000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of this chapter).

(d) Used oil burned for energy recovery is subject to regulation under this subpart rather than as hazardous waste fuel under Subpart D of this part if it is a hazardous waste solely because it:

(1) Exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter, provided that it is not mixed with a hazardous waste; or

(2) Contains hazardous waste generated only by a person subject to the special requirements for small quantity generators under § 261.5 of this chapter.

(e) Except as provided by paragraph (c) of this section, used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this subpart unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Used oil fuel that meets the specification is subject only to the analysis and recordkeeping requirements under §§ 266.43(b) (1) and (6). Used oil fuel that exceeds any specification level is termed "off-specification used oil fuel".

USED OIL EXCEEDING ANY SPECIFICATION LEVEL IS SUBJECT TO THIS SUBPART WHEN BURNED FOR ENERGY RECOVERY *

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash Point	100 °F minimum.
Total Halogens	4,000 ppm maximum.*

* The specification does not apply to used oil fuel mixed with a hazardous waste other than small quantity generator hazardous waste.

* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 266.40(c). Such used oil is subject to Subpart D of this part rather than this subpart when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

§ 266.41 Prohibitions.

(a) A person may market off-specification used oil for energy recovery only:

(1) To burners or other marketers who have notified EPA of their used oil management activities stating the location and general description of such activities, and who have an EPA identification number; and

(2) To burners who burn the used oil in an industrial furnace or boiler identified in paragraph (b) of this section.

(b) Off-specification used oil may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter; or

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that:

(A) The heater burns only used oil that the owner or operator generates or used oil received from do-it-yourself oil

changers who generate used oil as household waste;

(B) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

(C) The combustion gases from the heater are vented to the ambient air.

§ 266.42 Standards applicable to generators of used oil burned for energy recovery.

(a) Except as provided in paragraphs (b) and (c) of this section, generators of used oil are not subject to this subpart.

(b) Generators who market used oil directly to a burner are subject to § 266.43.

(c) Generators who burn used oil are subject to § 266.44.

§ 266.43 Standards applicable to marketers of used oil burned for energy recovery.

(a) Persons who market used oil fuel are termed "marketers". However, the following persons are not marketers subject to this Subpart:

(1) Used oil generators, and collectors who transport used oil received only from generators, unless the generator or collector markets the used oil directly to a person who burns it for energy recovery. However, persons who burn some used oil fuel for purposes of processing or other treatment to produce used oil fuel for marketing are considered to be burning incidentally to processing. Thus, generators and collectors who market to such incidental burners are not marketers subject to this subpart;

(2) Persons who market only used oil fuel that meets the specification under § 266.40(e) and who are not the first person to claim the oil meets the specification (i.e., marketers who do not receive used oil from generators or initial transporters and marketers who neither receive nor market off-specification used oil fuel).

(b) Marketers are subject to the following requirements:

(1) *Analysis of used oil fuel.* Used oil fuel is subject to regulation under this subpart unless the marketer obtains analyses or other information documenting that the used oil fuel meets the specification provided under § 266.40(e).

(2) *Prohibitions.* The prohibitions under § 266.41(a);

(3) *Notification.* Notification to EPA stating the location and general description of used oil management activities. Even if a marketer has previously notified EPA of his hazardous waste management activities under section 3010 of RCRA and obtained a U.S. EPA Identification Number, he must renotify to identify his used oil management activities.

(4) *Invoice system.* When a marketer initiates a shipment of off-specification used oil, he must prepare and send the receiving facility an invoice containing the following information:

(i) An invoice number;

(ii) His own EPA identification number and the EPA identification number of the receiving facility;

(iii) The names and addresses of the shipping and receiving facilities;

(iv) The quantity of off-specification used oil to be delivered;

(v) The date(s) of shipment or delivery; and

(vi) The following statement: "This used oil is subject to EPA regulation under 40 CFR Part 266";

Note.—Used oil that meets the definition of combustible liquid (flash point below 200 °F but at or greater than 100 °F) or flammable liquid (flash point below 100 °F) is subject to Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 100–177.

(5) *Required notices.* (i) Before a marketer initiates the first shipment of off-specification used oil to a burner or other marketer, he must obtain a one-time written and signed notice from the burner or marketer certifying that:

(A) The burner or marketer has notified EPA stating the location and general description of his used oil management activities; and

(B) If the recipient is a burner, the burner will burn the off-specification used oil only in an industrial furnace or boiler identified in § 266.41(b); and

(ii) Before a marketer accepts the first shipment of off-specification used oil from another marketer subject to the requirements of this section, he must provide the marketer with a one-time written and signed notice certifying that he has notified EPA of his used oil management activities; and

(6) *Recordkeeping*—(i) *Used Oil Fuel That Meets the Specification.* A marketer who first claims under paragraph (b)(1) of this section that used oil fuel meets the specification must keep copies of analysis (or other information used to make the determination) of used oil for three years. Such marketers must also record in an operating log and keep for three years the following information on each shipment of used oil fuel that meets the specification. Such used oil fuel is not subject to further regulation, unless it is subsequently mixed with hazardous waste or unless it is mixed with used oil so that it no longer meets the specification.

(A) The name and address of the facility receiving the shipment;

(B) The quantity of used oil fuel delivered;

(C) The date of shipment or delivery; and

(D) A cross-reference to the record of used oil analysis (or other information used to make the determination that the oil meets the specification) required under paragraph (b)(6)(i) of this section.

(ii) *Off-Specification Used Oil Fuel.* A marketer who receives or initiates an invoice under the requirements of this section must keep a copy of each invoice for three years from the date the invoice is received or prepared. In addition, a marketer must keep a copy of each certification notice that he receives or sends for three years from the date he last engages in an off-specification used oil fuel marketing transaction with the person who sends or receives the certification notice.

(The analysis requirements contained in paragraph (b)(1) of this section were approved by OMB under control number 2050-0047. The notification requirements contained in paragraph (b)(3) of this section were approved by OMB under control number 2050-0028. The invoice requirements contained in paragraph (b)(4) of this section were approved by OMB under control number 2050-0047. The certification requirements contained in paragraph (b)(5) of this section were approved by OMB under control number 2050-0047. The recordkeeping requirements contained in paragraph (b)(6) of this section were approved by OMB under control number 2050-0047.)

§ 266.44 Standards applicable to burners of used oil burned for energy recovery.

Owners and operators of facilities that burn used oil fuel are "burners" and are subject to the following requirements:

(a) *Prohibition.* The prohibition under § 266.41(b);

(b) *Notification.* Burners of off-specification used oil fuel must notify EPA stating the location and general description of used oil management activities, except that owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of § 266.41(b)(2) are exempt from these notification requirements. Even if a burner has previously notified EPA of his hazardous waste management activities under Section 3010 of RCRA and obtained an identification number, he must renotify to identify his used oil management activities.

(c) *Required notices.* Before a burner accepts the first shipment of off-specification used oil fuel from a marketer, he must provide the marketer a one-time written and signed notice certifying that:

(1) He has notified EPA stating the location and general description of his used oil management activities; and

(2) He will burn the used oil only in an industrial furnace or boiler identified in § 266.41(b); and

(d) *Used oil fuel analysis.* (1) Used oil fuel burned by the generator is subject to regulation under this subpart unless the burner obtains analysis (or other information) documenting that the used oil meets the specification provided under § 266.40(e).

(2) Burners who treat off-specification used oil fuel by processing, blending, or other treatment to meet the specification provided under § 266.40(e) must obtain analyses (or other information) documenting that the used oil meets the specification.

(e) *Recordkeeping.* A burner who receives an invoice under the requirements of this section must keep a copy of each invoice for three years from the date the invoice is received. Burners must also keep for three years copies of analyses of used oil fuel as may be required by paragraph (d) of this section. In addition, he must keep a copy of each certification notice that he sends to a marketer for three years from the date he last receives off-specification used oil from that marketer.

(The notification requirements contained in paragraph (b) of this section were approved by OMB under control number 2050–0028. The certification requirements contained in paragraph (c) of this section were approved by OMB under control number 2050–0047. The analysis requirements contained in paragraph (d) of this section were approved by OMB under control number 2050–0047. The recordkeeping requirements contained in paragraph (e) of this section were approved by OMB under control number 2050–0047.)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for Part 271 is revised to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

13. Section 271.1(j) is amended by changing the table heading and by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the FEDERAL REGISTER	Title of regulation
• • • • •	
Nov. 29, 1985	Standards for the Management of Specific Wastes and Specific Types of Facilities.
• • • • •	

Appendix—Form—Notification of Hazardous Waste Activity

EPA Form 8700–12 (Revised 11/85)

(This form will not appear in the Code of Federal Regulations.)

BILLING CODE 6560-50-M

Please print or type with ELITE type *(12 characters per inch)* in the unshaded areas only.

Form Approved. OMB No. 2050-0028. Expires 9-30-88.
GSA No. 0246-EPA-QT

United States Environmental Protection Agency
Washington, DC 20460

EPA Notification of Hazardous Waste Activity

Please refer to the *Instructions for Filing Notification* before completing this form. The information requested here is required by law *(Section 3010 of the Resource Conservation and Recovery Act)*.

For Official Use Only

Comments

C C

Installation's EPA ID Number | Approved | Date Received *(yr. mo. day)*

C F | T/A C 1

I. Name of Installation

II. Installation Mailing Address

Street or P.O. Box

C 3

City or Town | State | ZIP Code

C 4

III. Location of Installation

Street or Route Number

C 5

City or Town | State | ZIP Code

C 6

IV. Installation Contact

Name and Title *(last, first, and job title)* | Phone Number *(area code and number)*

C 2

V. Ownership

A. Name of Installation's Legal Owner | B. Type of Ownership *(enter code)*

C R

VI. Type of Regulated Waste Activity *(Mark 'X' in the appropriate boxes. Refer to instructions.)*

A. Hazardous Waste Activity

- ☐ 1a. Generator ☐ 1b. Less than 1,000 kg/mo.
- ☐ 2. Transporter
- ☐ 3. Treater/Storer/Disposer
- ☐ 4. Underground Injection
- ☐ 5. Market or Burn Hazardous Waste Fuel *(enter 'X' and mark appropriate boxes below)*
  - ☐ a. Generator Marketing to Burner
  - ☐ b. Other Marketer
  - ☐ c. Burner

B. Used Oil Fuel Activities

- ☐ 6. Off-Specification Used Oil Fuel *(enter 'X' and mark appropriate boxes below)*
  - ☐ a. Generator Marketing to Burner
  - ☐ b. Other Marketer
  - ☐ c. Burner
- ☐ 7. Specification Used Oil Fuel Marketer (Or On-Site Burner) Who First Claims the Oil Meets the Specification.

VII. Waste Fuel Burning: Type of Combustion Device *(enter 'X' in all appropriate boxes to indicate type of combustion device(s) in which hazardous waste fuel or off-specification used oil fuel is burned. See instructions for definitions of combustion devices.)*

☐ A. Utility Boiler ☐ B. Industrial Boiler ☐ C. Industrial Furnace

VIII. Mode of Transportation *(transporters only — enter 'X' in the appropriate box(es))*

☐ A. Air ☐ B. Rail ☐ C. Highway ☐ D. Water ☐ E. Other *(specify)*

IX. First or Subsequent Notification

Mark 'X' in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA ID Number in the space provided below.

☐ A. First Notification ☐ B. Subsequent Notification *(complete item C)*

C. Installation's EPA ID Number

ID — For Official Use Only			
C		T/A	C
W			1

IX. Description of Hazardous Wastes *(continued from front)*

A. **Hazardous Wastes from Nonspecific Sources.** Enter the four-digit number from 40 *CFR* Part 261.31 for each listed hazardous waste from nonspecific sources your installation handles. Use additional sheets if necessary.

1	2	3	4	5	6
7	8	9	10	11	12

B. **Hazardous Wastes from Specific Sources.** Enter the four-digit number from 40 *CFR* Part 261.32 for each listed hazardous waste from specific sources your installation handles. Use additional sheets if necessary.

13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30

C. **Commercial Chemical Product Hazardous Wastes.** Enter the four-digit number from 40 *CFR* Part 261.33 for each chemical substance your installation handles which may be a hazardous waste. Use additional sheets if necessary.

31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48

D. **Listed Infectious Wastes.** Enter the four-digit number from 40 *CFR* Part 261.34 for each hazardous waste from hospitals, veterinary hospitals, or medical and research laboratories your installation handles. Use additional sheets if necessary.

49	50	51	52	53	54

E. **Characteristics of Nonlisted Hazardous Wastes.** Mark 'X' in the boxes corresponding to the characteristics of nonlisted hazardous wastes your installation handles. *(See 40* CFR *Parts 261.21 — 261.24)*

☐ 1. Ignitable *(D001)* ☐ 2. Corrosive *(D002)* ☐ 3. Reactive *(D003)* ☐ 4. Toxic *(D000)*

X. Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Signature	Name and Official Title *(type or print)*	Date Signed

EPA Form 8700-12 (Rev. 11-85) Reverse

BILLING CODE 6560-50-C

IV. Line-by-Line Instructions for Completing EPA Form 8700-12

Type or print in black ink all items except Item XI, "Signature," leaving a blank box between words. When typing, hit the space bar once between characters and three times between words. If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Items I–III—Name, Mailing Address, and Location of Installation:

Complete Items I–III. Please note that the address you give for Item III, "Location of Installation," must be a physical address, *not a post office box or route number.* If the mailing address and physical facility location are the same, you can print "Same" in box for Item III.

Item IV—Installation Contact:

Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item V—Ownership:

(A) *Name:* Enter the name of the legal owner(s) of the installation, including the property owner. Use additional sheets if necessary to list more than one owner.

(B) *Type:* Using the codes listed below, indicate the legal status of the owner of the facility:

FF = Federally Owned, Federally Operated
FC = Federally Owned, Operated By A Private Contractor to the Federal Government
FP = Federally Owned, Privately Operated
PF = Privately Owned, Constructed For Use By The Federal Government and Operated By The Federal Government
PL = Privately Owned, Leased And Operated By The Federal Government
PI = Privately Owned, Indian Land
FI = Federally Owned, Indian Land
C = County
D = District
M = Municipal
P = Private
S = State

Item VI—Type of Regulated Waste Activity:

(A) *Hazardous Waste Activity:* Mark the appropriate box(es) to show which hazardous waste activities are going on at this installation.

(1) *Generator:* (a) If you generate a hazardous waste that is identified by characteristic or listed in 40 CFR Part 261, mark an "X" in this box.

(b) In addition, *if you generate less than 1000 kilograms of non-acutely-hazardous waste per calendar month, mark an "X" in this box.*

(2) *Transporter:* If you move hazardous waste by air, rail, highway, or water then mark an "X" in this box. All transporters must complete Item VIII. Transporters do not have to complete Item X of this form, but must sign the certification in Item XI. Refer to Part 263 of the CFR for an explanation of the Federal regulations for hazardous waste transporters.

(3) *Treater/Storer/Disposer:* If you treat, store or dispose of regulated hazardous waste, then mark an "X" in this box. You are reminded to contact the appropriate addressee listed for your State in Section III(C) of this package to request Part A of the RCRA Permit Application. Refer to Parts 264 and 265 of the CFR for an explanation of the Federal regulations for hazardous waste facility owners/operators.

(4) *Underground Injection:* Persons who generate and/or treat or dispose of hazardous waste must place an "X" in this box if an injection well is located at their installation. An injection well is defined as any hole in the ground, including septic tanks, that is deeper than it is wide and that is used for the subsurface placement of fluids.

(5) *Market or Burn Hazardous Waste Fuel:* If you market or burn hazardous waste fuel, place an "X" in this box. Then mark the appropriate boxes underneath to indicate your specific activity. *If you mark "Burner" you must complete Item VII —"Type of Combustion Device."*

Note.—Generators are required to notify for waste-as-fuel activities only if they market directly to the burner.

"Other Marketer" is defined as any person, other than the generator marketing his hazardous waste, who markets hazardous waste fuel.

(B) Used Oil Fuel Activities: Mark an "X" in the appropriate box(es) below to indicate which used oil fuel activities are taking place at this installation.

(6) Off-Specification Used Oil Fuel: If you market or burn off-specification used oil, place an "X" in this box. Then mark the appropriate boxes underneath to indicate your specific activity. *If you mark "Burner" you must complete Item VII—Type of Combustion Device."*

Note.—Used oil generators are required to notify only if marketing directly to the burner.

"Other Marketer" is defined as any person, other than a generator marketing his or her used oil, who markets used oil fuel.

(7) Specification Used Oil Fuel: If you are the first to claim that the used oil meets the specification established in 40 CFR Part 266.40(e) and is exempt from further regulation, you must mark an "X" in this box.

Item VII—Waste-Fuel Burning: Type of Combustion Device:

Enter an "X" in all appropriate boxes to indicate type(s) of combustion devices in which hazardous waste fuel or off-specification used oil fuel is burned. (Refer to definition section for complete description of each device.)

Item VIII—Mode of Transportation:

Complete this item only if you are the transporter of hazardous waste. Mark an "X" in each appropriate box to indicate the method(s) of transportation you use.

Item IX—First or Subsequent Notification:

Place an "X" in the appropriate box to indicate whether this is your first or a subsequent notification. If you have filed a previous notification, enter your EPA Identification Number in the boxes provided.

Note.—When the owner of a facility changes, the new owner must notify U.S. EPA of the change, even if the previous owner already received a U.S. EPA Identification Number. Because the U.S. EPA ID Number is "site-specific," the new owner will keep the existing ID number. If the facility moves to another location, the owner/operator must notify EPA of this change. In this instance a new U.S. EPA Identification Number will be assigned, since the facility has changed locations.

Item X—Description of Hazardous Waste:

(Only persons involved in hazardous waste activity (Item VI(A)) need to complete this item. Transporters requesting a U.S. EPA Identification Number do not need to complete this item, but must sign the "Certification" in Item XI.)

You will need to refer to Title 40 CFR Part 261 (enclosed) in order to complete this section. Part 261 identifies those wastes that EPA defines as hazardous. If you need help completing this section please contact the appropriate addressee for your state as listed in Section III(C) of this package.

Section A—If you handle hazardous wastes that are listed in the "nonspecific sources" category in Part 261.31, enter the appropriate 4-digit numbers in the boxes provided.

Section B—If you handle hazardous wastes that are listed in the "specific industrial sources" category in Part 261.32, enter the appropriate four-digit numbers in the boxes provided.

Section C—If you handle any of the "commercial chemical products" listed as wastes in Part 261.33, enter the appropriate four-digit numbers in the boxes provided.

Section D—Disregard, since EPA has not yet published infectious waste regulations.

Section E—If you handle hazardous wastes which are not listed in any of the categories above, but do possess a hazardous characteristic, you should describe these wastes by their hazardous characteristic. (An explanation of each characteristic found at Part 261.21–261.24.) Place an "X" in the box next to the characteristic of the wastes that you handle.

Item XI—Certification:

This certification must be signed by the owner, operator, or an authorized representative of your installation. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). *All notifications must include this certification to be complete.*

V. Definitions

The following definitions are included to help you to understand and complete the Notification Form:

Act or RCRA—means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 *et seq.*

Authorized Representative—means the person responsible for the overall operation of the facility or an operational unit (i.e., part of a facility), e.g., the plant manager,

superintendent or person of equivalent responsibility.

Boiler—means an enclosed device using controlled flame combustion and having the following characteristics:

(1) The unit has physical provisions for recovering and exporting energy in the form of steam, heated fluids, or heated gases;

(2) The unit's combustion chamber and primary energy recovery section(s) are of integral design (i.e., they are physically formed into one manufactured or assembled unit);

(3) The unit continuously maintains an energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(4) The unit exports and utilizes at least 75 percent of the recovered energy, calculated on an annual basis (excluding recovered heat used internally in the same unit to, for example, preheat fuel or combustion air or drive fans or feedwater pumps).

Burner—means the owner or operator of a utility boiler, industrial boiler or industrial furnace that burns waste-fuel for energy recovery and that is not regulated as a RCRA hazardous waste incinerator.

Disposal—means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Disposal Facility—means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

EPA Identification (I.D.) Number—means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

Facility—means all contiguous land, and structures, other appurtenaces, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

Generator—means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

Hazardous Waste—means a hazardous waste as defined in 40 CFR Part 261.

Hazardous Waste Fuel—means hazardous waste and any fuel that contains hazardous waste that is burned for energy recovery in a boiler or industrial furnace that is not subject to regulation as a RCRA hazardous waste incinerator. However, the following hazardous waste fuels are subject to regulation as used oil fuels:

(1) Used oil fuel that is also a hazardous waste solely becasue it exhibits a characteristic of hazardous waste identified in Subpart C of 40 CFR Part 261, provided it is not mixed with hazardous waste; and

(2) Used oil fuel mixed with hazardous wastes generated by a small quantity generator subject to 40 CFR Part 261.5.

Industrial Boiler—means a boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

Industrial Furnace—means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame combustion to accomplish recovery of materials or energy: cement kilns, lime kilns, aggregate kilns (including asphalt kilns), phosphate kilns, coke ovens, blast furnaces, smelting furnaces, refining furnaces, titanium dioxide chloride process oxidation reactors, and methane reforming furnaces (and other devices as the Administrator may add to this list).

Marketer—means a person who markets hazardous waste fuel or used oil fuel. However, the following marketers are not subject to waste-as-fuel requirements (including notification) under Subparts D and E of 40 CFR Part 266:

(1) Generators and initial transporters (i.e., transporters who receive hazardous waste or used oil directly from generators including initial transporters who operate transfer stations) who do not market directly to persons who burn the fuels; and

(2) Persons who market used oil fuel that meets the specification provided under 40 CFR 266.40(e) and who are not the first to claim the oil meets the specification.

Off-Specification Used Oil Fuel—means used oil fuel that does not meet the specification provided under 40 CFR 266.40(e).

Operator—means the person responsible for the overall operation of a facility.

Owner—means a person who owns a facility or part of a facility, including land owner.

Specification Used Oil Fuel—means used oil fuel that meets the specification provided under 40 CFR 266.40(e).

Storage—means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

Transportation—means the movement of hazardous waste by air, rail, highway, or water.

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 waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

Used Oil—means any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities. Wastes that contain oils that have not been used (e.g., fuel oil storage tank bottom clean-out wastes) are not used oil unless they are mixed with used oil.

Used Oil Fuel—means any used oil burned (or destined to be burned) for energy recovery including any fuel produced from used oil by processing, blending or other treatment, and that does not contain hazardous waste (other than that generated by a small quantity generator and exempt from regulation as hazardous waste under provisions of 40 CFR 261.5). Used oil fuel may itself exhibit a characteristic of hazardous waste and remain subject to regulation as used oil fuel provided it is not mixed with hazardous waste.

Utility Boiler—means a boiler that is used to produce electricity, steam or heated or cooled air for sale.

Waste Fuel—means hazardous waste fuel or off-specification used oil fuel.

[FR Doc. 85-27903 Filed 11-27-85; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 260, 261, 266, 270, and 271

[SWH-FRL 2873-5]

Hazardous Waste Management System; Recycled Used Oil Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 3014 of RCRA, as amended, requires EPA to establish standards for used oil that is recycled, or "recycled oil." Pursuant to this directive, EPA is today proposing standards for generators and transporters of recycled oil, and owners and operators of used oil recycling facilities. The standards would include tracking requirements when used oil is shipped off-site for recycling, and facility management requirements when used oil is stored prior to recycling. Recycled oil used as fuel would be subject to certain regulations, except that fuel meeting a specification for toxic contaminants and flashpoint would be exempt from regulation. Uses of recycled oil that constitute disposal would be regulated as land disposal, but road oiling would be prohibited outright.

This proposal is closely related to the proposed listing of used oil as a hazardous waste, also in today's **Federal Register**. The rules proposed today for used oil that is recycled would only apply to used oil covered by the listing, (except that household generated used oil would also be regulated when aggregated or accumulated for recycling).

DATES: EPA will accept public comments on this proposal until January 28, 1986. Public hearings will be held to obtain public comments on this proposal *and* the proposal to list used oil as a hazardous waste (appearing elsewhere in this **Federal Register**) on January 8, 10, and 16 of 1986. The locations for the public hearings are provided below; for additional information on the public hearings, see Part Four, Section III of this preamble.

ADDRESSES: EPA will hold public hearings at the following locations:

- *January 8, 1986*—Holiday Inn, North Park Plaza, 10650 North Central Expressway, Dallas, Texas 75231 (Phone: 214/373-6000)
- *January 10, 1986*—Ramada Renaissance, 55 Cyril Magnin Street (One block north of 5th & Market), San Francisco, California 94102 (Phone: 415/392-8000)
- *January 16, 1986*—Department of Health and Human Services, North Auditorium ("C" Street entrance), 330 Independence Ave., SW, Washington, DC 20201

Comments on this proposal should be mailed to the Docket Clerk (Docket No. 3014, Standards of Recycled Oil), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, call toll free at (800) 424-9346 or at (202) 382-3000. For technical information, contact Michael Petruska, Environmental Protection Specialist, Waste Management and Economics Division, Office of Solid Waste, (WH-565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-7917. Single copies of the proposal may be obtained by calling the RCRA Hotline at the number above.

SUPPLEMENTARY INFORMATION:

Overview

This preamble discussion is organized into four major Parts. Part One summarizes the legal authority for today's proposal, explains how this proposal follows from previous EPA rulemakings, and includes a statement as to the general policy EPA has followed in developing today's proposal. Part Two goes through the proposed rules section-by-section. For each section, the provision is explained and the rationale for the provision is presented. Part Three summarizes the impacts of this proposal, if adopted as proposed today, on State hazardous waste programs, on the used oil recycling industry, on the economy in general, and on small businesses. Part Four includes a general request for public comment on this proposal, lists the titles and where applicable the NTIS number of the major background documents used by EPA in developing the proposal, and provides information on the upcoming public hearings.

Note.—This proposal is one of three regulatory actions being taken this month by EPA concerning used oil. In today's issue of the **Federal Register**, this proposal for recycled oil is accompanied by a separate proposal to list used oil as a hazardous waste. Further, EPA has promulgated in final form its "Phase I" rules for the burning and blending of used oil (and hazardous waste) fuels. [Proposed January 11, 1985 at 50 FR 1684.] At this writing, it appears likely that the final Phase I rule will appear in the same **Federal Register** as the proposals for recycled oil and for listing used oil as hazardous waste. For that reason, this preamble refers to the final Phase I rule as having been "recently promulgated," but does not refer to **Federal Register** pages in the citations.

Preamble Outline

PART ONE—INTRODUCTION AND BACKGROUND

I. Legal Authority

A. General

Subtitle C of the Resource Conservation and Recovery Act (RCRA or "the Act") as amended by the Hazardous and Solid Waste Amendments of 1984, requires EPA to identify wastes that may pose a substantial hazard to human health or the environment, and to regulate hazardous waste from initial generation through end disposition.

The Congress, in passing the Used Oil Recycling Act of 1980 (Pub. L. 96-463), and the Hazardous and Solid Waste Amendments of 1984 ("the 1984 Amendments"), supplemented the basic requirements for regulation of hazardous waste with certain special requirements for used oil. These requirements are found in section 3014 of the Act.[1] Section 3014(a) retains the language of section 7(a) of the Used Oil Recycling Act:

> . . . The Administrator shall promulgate regulations . . . as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil.

Section 242 of the 1984 Amendments also added the following phrase to the above paragraph, "consistent with the protection of human health and the environment," to make it clear that protection is of prime concern under section 3014, and that certain recycling practices may indeed be discouraged by regulation if necessary to ensure an adequate level of protection. [See H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 114 (1984).]

B. Listing as Hazardous Waste

Section 3014(b) requires the Administrator to propose whether to list or identify used crankcase oil as a hazardous waste under section 3001 of RCRA by November 8, 1985. A final determination as to listing all used oils is required a year later. As explained in detail in the Federal Register notice accompanying this one, EPA is proposing that used oil be listed as a hazardous waste under section 3001 of the Act.

[1] Prior to the 1984 Amendments, the used oil requirements were found in section 3012 of the Act.

C. Generation and Transportation Prior to Recycling

Section 3014(c) provides special guidance to EPA for promulgation of regulations pertaining to generation and transportation of used oil identified or listed as hazardous waste that is recycled. First, section 3014(c)(1) states that standards promulgated under sections 3001(d) and 3002 of RCRA for generators (including generators of between 100 and 1000 kilograms of hazardous waste per month), and 3003 for transporters of hazardous waste shall not apply to used oil that is recycled. Section 3014(c)(2) requires EPA, by November 8, 1986, to:

> . . . promulgate such standards regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment.

This directive is qualified by the following additional guidance in section 3014(c)(2):

(1) EPA must consider, in promulgating regulations for generators, impacts on "environmentally acceptable types of used oil recycling," and on "small quantity generators" and "generators which are small businesses."

(2) Under certain conditions explained in detail below in this preamble, EPA must not impose manifest requirements for shipments of used oil sent for recycling.

Section 3014(c)(3) requires that any transporter rules promulgated by EPA (for used oil identified or listed as a hazardous waste being taken to recyclers) include, as a minimum, the requirement that the transporter deliver the oil to a facility permitted under section 3005 of RCRA to manage hazardous waste or (as described below) permitted by rule under section 3014(d) to recycle used oil.

EPA has developed the regulations for generators and transporters with the presumption that the existing hazardous waste regulations should apply, except as section 3014(c) provides otherwise. The basis for this presumption is that even though recycled oil is exempt from sections 3001(d), 3002, and 3003 [because of the more specific requirements of section 3014(c)], the ultimate standard in section 3014(c) is to protect human health and the environment, *i.e.*, the same standard as applies under sections 3001(d)-3003.

D. Facility Standards and Permitting for Recyclers

Section 3014(d) of the Act provides that the owner or operator of a facility which recycles used oil identified or

listed as a hazardous waste is "deemed to have a [RCRA] permit" for all such treatment or recycling (and any associated tank or container storage), *provided* that the owner or operator complies with the section 3004 standards promulgated by EPA for hazardous waste facilities. EPA is authorized to permit oil recycling facilities individually when deemed necessary to protect human health or the environment.

II. Preceding Rulemakings

The following summarizes, for the reader's convenience, previous EPA proposals concerning used oil. Persons who submitted comments pursuant to any of these proposals should, if they wish for EPA to consider the comments, re-submit them at this time. [Due to the time that has passed since these proposals appeared in the **Federal Register** and the new supporting data available for today's proposal, EPA will not consider comments previously submitted without re-submittal.]

A. December 18, 1978, Proposal

On December 18, 1978, EPA proposed regulations to protect human health and the environment from the improper management of hazardous waste (see 43 FR 58946–59028). The proposed regulations included: (1) Criteria for identifying and listing hazardous wastes, and a hazardous waste list; (2) standards applicable to generators and transporters of hazardous waste to ensure proper recordkeeping, reporting, labeling, containerization, and use of a transport manifest for these wastes; and (3) performance, operating, and design standards applicable to persons who treat, store, or dispose of hazardous waste. In the proposed rules, EPA would have listed all used oils as hazardous waste.

The proposed rules contained special provisions which exempted from regulation most recycled hazardous wastes. However, there were two exceptions from this exemption which affected used oil. First, if the material being recycled was reused beneficially in a manner that constitutes disposal and was either a listed hazardous waste or exhibited any of a set of characteristics (i.e., ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity), the material was subject to the hazardous waste regulations. This provision would have subjected to the hazardous waste rules most used oil applied to the land (e.g., used oil used as road oil, dust suppressant, pesticide carrier, etc.). The second exclusion affecting used oil dealt with the reuse of certain oils as fuel. Specifically, the regulations stated that waste lubricating, waste hydraulic, waste transmission fluid, and waste cutting oils when burned or incinerated as a fuel would also be subject to the hazardous waste regulations.

B. The May 19, 1980 Rules

On May 19, 1980, EPA issued final hazardous waste rules for many of the regulations it proposed in 1978. However, the Agency deferred the listing of used oil as a hazardous waste, pending development of standards specific to the transportation, treatment, storage, disposal, and recycling of used oil. [See 45 FR 33094–33095.] Under the May 19 rules, used oil is a hazardous waste only if it exhibits one or more of the characteristics of hazardous waste: Ignitability, corrosivity, reactivity, or EP toxicity (see 40 CFR Part 261, Subpart C). The rules also indicated, however, that only listed hazardous wastes and hazardous sludges would be subject to the hazardous waste rules when recycled. The net effect of these deferrals and exemptions was to subject to the hazardous waste rules only used oil that both exhibits one or more of the above characteristics and is *not* recycled (i.e., is disposed of). Because relatively little used oil meets both of these conditions, most used oil was not brought under the control of the federal hazardous waste program by the May 19 rules.[2]

C. Final "Solid Waste" Rule

On January 4, 1985, EPA promulgated a final rule to amend its existing definition of "solid waste" used in regulations implementing Subtitle C of RCRA. Among other things, this rule dealt with the question of which materials are solid and hazardous wastes when they are recycled; this rule also specified general and specific standards for various types of hazardous waste recycling activities. See 50 FR 614–668. The final solid waste rule is relevant with respect to today's proposal because, as explained below, EPA presumes that except as section 3014 provides otherwise, the existing hazardous waste standards apply. The requirements for recycled hazardous waste (termed "recyclable material") in 40 CFR 261.6, then, are used as a starting point in the determination as to what requirements should apply to recycled oil.

D. Burning and Blending Rules

Section 3004 (q), (r), and (s) of RCRA require EPA to establish regulations for hazardous waste burned for energy recovery by November 8, 1986. Since section 3014(d) of RCRA provides that recycled oil must be managed under the section 3004 standards, EPA has undertaken an effort to regulate hazardous waste and recycled oil fuels simultaneously. [The legislative history of the "burning and blending" amendments states that such an approach was expected. See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 39 (1983).]

On January 11, 1985, EPA proposes "Phase I" of its rules for burning and blending of hazardous wastes and used oil. [See 50 FR 1684–1723.] The rules, as recently promulgated in final form, require that anyone burning or producing a fuel made from used oil notify EPA of their waste-as-fuel activities. The rule also establishes the following fule specification for used oil fuel.

TABLE 1.—USED OIL FUEL SPECIFICATION

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flashpoint	100 °F minimum.
Halogens	4,000 ppm maximum.

Persons producing used oil fuel meeting this specification may market the fuel to any burner or to another processor, provided that he can document that the fuel meets the specification and he complies with certain recordkeeping provisions.[3] Persons producing fuel not meeting the specification are allowed to market the "off-specification" fuel only to owners and operators of industrial boilers and furnaces who have complied with the notification requirement (and certain other administrative requirements) described above. Shipments of "off specification" fuel have to be accompanied by an invoice bearing a

[2] On March 16, 1983, EPA published enforcement guidance to help implement the May 19, 1980 rules. [See 48 FR 11157–11160.] The Agency memorandum that was published provided guidance in determining when a waste being burned was legitimately a "fuel," and so exempt from regulations vs. when a waste is being burned for destruction (disposal), and so subject to the hazardous waste incineration rules in 40 CFR Parts 264 and 265, Subpart O. This is relevant for used oil because used oil is sometimes used to mask the disposal of hazardous spent chlorinated solvents. As explained at 48 FR 11159–11160, mixtures of spent hazardous chlorinated solvents and used oils are generally subject to the hazardous waste rules when burned, unless each spent solvent in the mixture has significant energy value (as-generated).

[3] Burners or processors who receive only specification fuel are not subject to any of the Phase I requirements.

notice that the fuel is subject to EPA regulations.

The Phase I rule is an interim measure. The rules proposed today, and the "Phase II" burning and blending rules (scheduled for proposal early next year) would incorporate parts of and otherwise expand the Phase I rule to cover activities besides burning and blending. Today's proposal would alter the scope or form of some of the final Phase I rules, and these proposed changes are discussed below.

E. New Tank Storage Requirements

EPA's basic storage rules were promulgated on January 12, 1981 at 46 FR 2802–2897. On June 26, 1985 EPA proposed revisions to the tank portion of the storage rules [50 FR 26444–26504]; the Agency cited as its basis for the proposal certain deficiencies in the current rules. [Id. at 26447–48.] These proposed requirements are relevant with respect to today's proposal for recycled oil because:

- As described above and in more detail in later sections of the preamble, the general hazardous waste rules are the proper starting point in determining what requirements should apply to recycled oil; and
- Tank storage is the predominant storage method throughout the used oil recycling industry.

Therefore, changes in the hazardous waste storage regulations will have significant impacts on how EPA regulates used oil storage.

As described in Section III, Part Three of this preamble ("regulatory impacts" section) and in the *Regulatory Impacts Analysis* for this proposal (Chapters V.A. and V.B. in particular), the storage portions of today's proposal account for a large portion of the total costs of the rules, but only a relatively small fraction of the risk reduction or benefits we expect to achieve. This is partly because of the great uncertainty inherent in trying to accurately quantify the many factors that determine the risk posed by various storage methods. [See the *Background Document* for the *Regulatory Impacts Analysis* for a discussion of uncertainties in the analysis.] Nonetheless, other parts of the proposal appear to achieve greater benefits compared to associated compliance costs than do the storage sections.

EPA has considered whether the proposed storage rules could be made more cost-effective. We have, however, only limited flexibility concerning the level of regulation we impose. First, RCRA section 3014 requires that, in general, used oil recycling facilities are to be regulated the same as hazardous waste facilities under section 3004.[4] The recently proposed revisions to the hazardous waste tank standards [50 FR 26444–26504; June 26, 1985] would make the rules more stringent; the cost of these new requirements are included in the cost and regulatory impact studies accompanying today's proposal and in fact account for much of the total costs of today's proposal. We are currently considering comments received on the June 26 proposal, and should we determine that requirements less costly than we proposed are adequate for hazardous waste facilities, the rules for used oil recyclers would be revised accordingly. Also, the Agency specifically solicits comments on whether storage standards for used oil can be based on the interrelationship between engineering, location, and waste-related factors. EPA requested comment on this type of approach for all tank storage situations on June 26 [see 50 FR 26452, "alternative regulatory strategy number 2,"]. We indicated that we have some administrative concerns with this type of approach [Id]; but we remain interested in the possibility of tailoring requirements to match controls with hazard-related factors.

Second, under the special RCRA section 3014(c) authority, EPA has today proposed a special, reduced set of storage standards for recycled oil generators to minimize adverse small business and recycling impacts. We believe that today's proposal accomplishes the section 3014(c) goal of protecting human health and the environment without causing significant adverse impacts on generators. We request comment on whether the proposal strikes the appropriate balance between ensuring protectiveness and minimizing adverse impacts on recycled oil generators. Further, the reader will note that in Section II.B. of Part Two of this preamble, we solicit comments on certain alternatives suggested by the public pursuant to the June 26 proposal; we will consider these suggestions and any submitted per today's proposal to determine whether sufficient protection can be achieved in ways less costly than we propose today.[5]

[4] Section 3014(c) exempts recycled oil from RCRA sections 3001(d) through 3003, but *not* from Section 3004. The House Report [H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 114 (1984)] states that this was to ensure that used oil recycling facilities would be regulated under the same substantive standards as other hazardous waste facilities.

[5] After seeing today's proposal, persons who submitted comments per the June 26 proposal may wish to revise and re-submit comments concerning used oil tank regulations.

III. EPA's Proposed Policy for Regulating Used Oil That Is Recycled

EPA's proposed policy and rationale for regulating used oil that is recycled is as follows:

- Used oil meets the criteria established in 40 CFR Part 261 for listing a waste as hazardous;
- Certain hazardous waste recycling activities have been found to pose hazards and, therefore, need to be regulated; and
- Absent special considerations, i.e., the special requirements of section 3014, used oil that is hazardous and that is recycled requires the same level of regulation as other recycled hazardous wastes.

The Agency's basis and rationale for listing used oil as a hazardous waste is discussed in detail in the **Federal Register** notice that accompanies this one. The next Part of this preamble discusses the requirements proposed for used oil that is recycled. The reader should note that an underlying premise throughout the discussion to follow is the last point above; that is, absent special considerations in Section 3014 (and accompanying legislative history), recycled used oil is to be regulated as are other recycled hazardous wastes. And as a final point, EPA has determined that used oil mixed with other hazardous waste should not be eligible for the special Section 3014 standards, but rather should be regulated under the existing hazardous waste rules.[6] This is discussed in more detail in the next Part of the preamble, as are means the Agency intends to use in distinguishing between used oil and used oil/hazardous waste mixtures.

PART TWO—DETAILED DISCUSSION OF CONTROLS PROPOSED FOR USED OIL THAT IS RECYCLED

I. Applicability and Scope of Part 266, Subpart E

Under today's proposal, the standards for used oil that is recycled would be placed in 40 CFR Part 266, Subpart E.[7] This section explains the applicability and scope of Part 266, Subpart E.

A. Definition of "recycled oil"

Section 1004(37) of the Act defines "recycled oil" as:

[6] This policy would alter the regulatory requirements for certain mixtures from the requirements recently promulgated in the final Phase I burning and blending rule; the reasons for these proposed policy changes are explained in the next Part of the preamble.

[7] The term "used oil" is defined and discussed fully in the **Federal Register** notice accompanying this one *(i.e.,* the used oil listing proposal.

. . . any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed."

EPA is proposing a regulatory definition (40 CFR §260.10) for "recycled oil" as follows:

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is collected, accumulated, stored, transported, or treated prior to recycling.

(1) [Reserved to define specific types of burning considered to be recycling.]

(2) The term include mixtures of recycled oil and other material, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, subpart D of this Chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

1. *Scope of activities:* The statutory and regulatory definitions are similar in terms of the generic used oil recycling activities they include. Used oil that is either re-refined or "reprocessed" is within the scope of the definition. We have used the broad term "reclaimed" to cover all processing or treatment activities where usable materials such as fuels or lubricants are recovered from used oil. ["Reclamation" is the term used in the hazardous waste regulations to describe such activities. See § 261.1(c)(4) and 50 FR 633–634; January 4, 1985.] Burning used oil for energy recovery is also within the scope of the proposed definition. EPA has reserved "paragraph (1)" in the definition to define the specific types of burning that will be considered recycling. In the hazardous waste rules, EPA has used a tripartite division to classify combustion units: incinerators, boilers, industrial furnaces. [50 FR 625–626; January 4, 1985.] Hazardous waste with significant energy (Btu) value, as defined in enforcement guidance published March 16, 1983 at 48 FR 11157–11160, is considered to be recycled when burned in a boiler or industrial furnace (or used to produce a fuel bound for such burning). [See 50 FR 629–633; January 4, 1985.] EPA will be reconsidering this classification scheme with respect to used oil in the Phase II burning proposal, due early next year, because used oil is often burned in devices that do not neatly fit into any of the above three categories (e.g., diesel engines and space heaters) and because used oil may often be burned as a legitimate supplementary fuel in solid and hazardous waste incinerators. Until we can reconsider this policy, the general policy (described above) established for hazardous waste would apply.

Finally, EPA considers used oil that is being managed (e.g., collected, stored) prior to recycling to fall within the scope of "recycled oil." EPA has applied this general principle to hazardous wastes being recycled [see 50 FR 650–651; January 4, 1985], and we believe Congress intended a similarly broad coverage for the term "recycled oil."[8]

2. *Mixtures.* Used oil is often mixed or blended with other materials during collection, storage, or processing. EPA's policy concerning used oil mixtures is contained in the proposed "paragraph (2)" of the recycled oil definition and in certain conforming amendments to Part 261, discussed below. The most important issue with respect to classifying mixtures for regulatory purposes under today's proposal is whether or not the material(s) being mixed with the used oil is a hazardous waste.

a. *Mixing with materials that are not hazardous waste:* When recycled oil is mixed with any material that is not a hazardous waste, e.g., virgin fuel oil, the resultant mixture is considered a recycled oil. Following the general "mixture rule" policy established for hazardous waste (see § 261.3(a)(2)(iv) and (c)), mixtures remain subject to regulation unless and until specifically excluded.[9] [Although the most common situation covered by this policy would be blending of used oil with virgin fuel oil, mixtures of recycled oil and non-hazardous wastes, or with spill control materials, would also be considered recycled oil.]

b. *Mixing with hazardous waste:* Congress, as evidenced by legislative history surrounding Section 3014, is quite concerned about the problems caused by mixing of hazardous wastes with used oil. [See generally H.R. Rep. No. 96–1415, 96th Cong. 2d Sess., at 4–5, (1980), and H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 64–67 (1983).] EPA first dealt with the used oil/hazardous waste mixture problem in the Phase I burning and blending proposal. [50 FR 1691–1692; January 11, 1985.] At that time, and in the recently promulgated final Phase I rule, EPA (citing discretion granted by Congress concerning how such mixtures should be regulated) established that certain mixtures are to be regulated under the used oil fuel rules while others are regulated as hazardous waste. [Id.] EPA also explained, however, that the classification scheme in the Phase I rule is only intended as an interim regime, to be revisited in today's proposed rulemaking (particularly with respect to mixtures of used oil and small quantity generator hazardous waste). [Id.] Today, as explained in detail below, *EPA is proposing that any mixture of used oil and hazardous waste is to be fully regulated as hazardous waste.* This is a central principle of the proposed recycled oil rules, and is based on the following rationale:

- EPA's proposed rules for recycled oil were developed to control hazards associated with recycled oil as a result of hazardous constituents normally found in used oil. When hazardous wastes are mixed with used oil, the nature and severity of hazards posed can be changed and are not necessarily controlled by the proposed recycled oil rules;
- The policy is simple to understand and implement. EPA is concerned that if certain hazardous wastes could be mixed with used oil and others could not be, both industry and enforcement officials would be confused and would have to spend a great deal of time trying to determine what kind of waste was mixed, etc., and
- EPA reasons that Congress intended for used oil recyclers, who would benefit from special provisions in Section 3014 discussed below, to be involved in legitimate processing and upgrading of used oil to recover or produce high quality petroleum products. Blending and mixing of hazardous waste with used oil would not normally improve or upgrade the used oil and in fact may accomplish the opposite. [For example, chlorinated solvents, which are often detected in used oil, have Btu value less than used oil and also make used oil more difficult to re-refine.]

What follows are discussions of the various mixtures covered by the proposed policy and then a discussion of the Agency's main mechanism to be used to detect mixing, the "rebuttable presumption." Comments are requested

[8] As evidence of Congress's intent for a broad reading of the term, note that section 3014(c) includes special requirements for generators and transporters of recycled oil. Obviously, Congress intends for EPA to consider used oil to be "recycled oil" from the time it is generated and stored or accumulated.

[9] The reader should note that EPA has proposed (in the listing proposal accompanying this rule) to amend § 261.3(a)(2)(iv) to exclude wastewater containing *de minimus* amounts of used oil and certain oily wipers from regulation as hazardous waste. Also, as will be discussed below, recycled oil fuel meeting EPA's specifications would also be exempt (such fuel would often be a mixture of used oil and virgin oil).

on the general policy and rationale described above, as well as the specific aspects of the policy discussed next. [See proposed §§ 261.5(j), 261.6(a)(2)(iii), and 266.40(d), as well as the §260.10 definitions of "recycled oil," for the regulatory language that would implement this proposed mixture policy.]

(1) Listed hazardous waste from large quantity generators. When used oil is mixed with a waste that is listed in Part 261, Subpart D and generated by a "large quantity" generator (*i.e.*, a generator not subject to the special requirements of §261.5), the mixture should be regulated as hazardous waste, not recycled oil.[10] Such hazardous wastes (and associated mixtures) were already regulated when Section 3014 was passed, and we see no indication that Section 3014 was meant to reduce regulatory requirements that already apply to those wastes.[11]

(2) Characteristic waste from large quantity generators. Under the final Phase I burning rule, used oil mixed with a waste hazardous only because it exhibits one of the characteristics of 40 CFR 261.21–261.24 is regulated as hazardous waste *only* when the resultant mixture continues to exhibit one of the characteristics; otherwise, the mixture is regulated as used oil. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.3.] This policy is merely a re-statement of § 261.3(a)(2)(iii), which applies to all mixtures of "characteristic only" hazardous waste and *non*-hazardous wastes. The proposed listing of used oil as hazardous waste changes this situation completely, *i.e.*, §261.3(a)(2)(iii) no longer applies. EPA is today proposing that mixtures of used oil and characteristic-only hazardous waste be regulated as hazardous waste (not as recycled oil) regardless of whether the resultant mixture exhibits any of the characteristics. The Agency believes that this is a proper approach for the reasons outlined above and particularly because the addition of characteristic hazardous waste to used oil may change the nature of used oil (by adding unusual constituents or properties) and create hazards not adequately addressed by the recycled oil rules, e.g., reactivity.

A related point concerning hazardous characteristics and used oil is that under the final Phase I rule *and* today's proposal a used oil exhibiting one of the characteristics of §§ 261.21–261.24 but that has *not* been mixed with other hazardous waste would be (when recycled) regulated as recycled oil, not hazardous waste. For example, some used oil has a flashpoint below 140 °F and so is ignitable hazardous waste; we would not presume, however, that the low flashpoint indicates mixing. [See the discussion of this issue with respect to used oil fuels at 50 *FR* 1692–1693 and 1699–1700; January 11, 1985, and in the preamble of the final Phase I rule in Part Two, Section IV.B.3.] If, however, EPA found that used oil being recycled at a particular facility exhibited some characteristic not known to be typically associated with used oil (e.g., corrosivity, reactivity, or E.P. toxicity for a metal such as mercury), we might well begin an investigation to determine whether hazardous waste was being illicitly mixed with used oil.

(3) Hazardous waste from small quantity generators. Under § 261.5, EPA exempts hazardous waste from generators of less than 1000 kilograms per calendar month of hazardous waste from most of the Subtitle C requirements, provided that the § 261.5 conditions are complied with.[12] Under § 261.5, hazardous waste may be recycled without regulatory controls and may be mixed with used oils. In the Phase I burning and blending proposal, EPA requested comment on various approaches for controlling mixtures of used oil fuel and (the normally exempt) § 261.5 hazardous waste. [50 *FR* 1692; January 11, 1985.] In the recently promulgated final Phase I rule, we decided to regulate the mixtures as used oil fuel (not under the full set of hazardous waste rules) *as an interim measure*, pending today's proposal. [In the final Phase I preamble, see Part Two, Section IV.B.2.]

Today, we are proposing that mixtures of used oil and § 261.5 hazardous waste be *fully regulated as hazardous waste* when recycled. [See proposed § 261.5(j)(2)(ii).] We have determined, for the following reasons, that this full level of regulation is necessary to provide adequate control over these mixtures:

- Small quantity generators' hazardous waste may impart unusual constituents and properties to used oil, creating hazards not addressed by the recycled oil rules;
- Congress indicated very strong concerns over adulteration of used oil during collection and transportation. ". . . Used oil is often heavily adulterated before it reaches a recycling facility, and much of his adulteration results from haphazard mixing during transit. This provision of the bill (*i.e.*, section 3014) expressly gives the Agency authority to address these situations." [See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 67 (1983).]
- EPA studies have documented that in fact used oil is adulterated after leaving generators' sites.[13] Since so many used oil generators are "small quantity" generators under § 261.5,[14] regulation of small quantity hazardous waste is necessary to effectively control adulteration; and
- As will be discussed below, the Agency's main enforcement mechanism to detect when mixing has occurred will be the "rebuttable presumption," *i.e.*, a total halogen measurement. The rebuttable presumption only indicates when mixing has occurred; it cannot distinguish which types of generators contributed hazardous waste to the mixture. Enforcement and industry officials would be faced with uncertainty and confusion if small quantity generator hazardous waste could be legally added to recycled oil, while other hazardous waste could not be.

(4) The "rebuttable presumption" of mixing. In the final Phase I burning rule, EPA established that used oil fuel containing in excess of 1000 ppm of total halogens would be presumed to be mixed with chlorinated hazardous waste. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.1.] Today, we are proposing to use this same indicator (and the same "rebuttal" procedures) to detect mixing

[10] The reader should note that on August 1, 1985, per section 3001(d) of RCRA, EPA proposed to amend § 261.5 to provide that only generators of less than 100 kilograms of hazardous waste per calendar month would be exempt as "small quantity generators." [See 50 *FR* 31288.]

[11] At one time, EPA was reluctant to classify any used oil from the automotive service industry as hazardous waste regulated outside the scope of Section 3014 because that might render the legislation meaningless. [See 50 *FR* 1691–1692, footnotes 16 and 24 in particular; January 11, 1985.] As discussed in the final Phase I rule, however, we are now convinced that mixing by automotive generators is quite rare, and so the above-mentioned concern was unfounded. [In the final Phase I rule preamble, see Part Two, Section IV.B.2]

[12] As noted above, EPA has proposed to lower the exclusion limit from 1000 to 100 kilograms of hazardous waste per calendar month. This discussion would apply to any hazardous waste exempted under § 261.5, regardless of the quantity limit ultimately promulgated.

[13] See the report *Composition and Management of Used Oil Generated in the U.S.*, U.S. EPA, November 1984, Section 3.4.3.1. Samples taken from processors are much more contaminated with solvents than samples taken directly from generators.

[14] An estimated 82,500 Vehicle maintenance shops, for example, generate on average 50 kilograms per calendar of hazardous waste (not counting used oil), *i.e.*, mostly spent solvents. See the draft *Regulatory Impacts Analysis for Proposal Regulations for Small Quantity Generators of Hazardous Waste*, February 1985, Exhibits 3–1 and 3–3.

in *any* recycled oil, not just used oil being used as fuel. [See proposed §§ 261.6(a)(2)(iii) and 266.40(d), as well as the proposed definition of "recycled oil."] EPA believes extension of this indicator to all used oils is appropriate because the data and analyses used to develop the presumption were based on samples of all types of recycled oils, not just used oils being used as fuels. That is, the basic premise of the presumption—used oil that contains more than 1000 ppm total halogens has been mixed with one or more hazardous chlorinated solvents—holds for all used oils.[15]

As discussed in the final Phase I burning rule, persons may rebut the presumption by demonstrating to enforcement officials that the used oil does not contain "significant levels" of hazardous chlorinated constituents identified in Appeidix VIII of Part 261.[16] [See the final Phase I preamble, Part Two, Section IV.B.1] EPA is today proposing that this same rebuttal procedure would apply to all used oils found to contain more than 1000 ppm total halogens. EPA believes the procedures are appropriate for all used oils because the question of what constitutes a "significant level" of a hazardous constituent (with respect to indicating whether mixing has occurred) is independent of the recycling method. That is, when individual hazardous solvents are present at very low levels (such as less than 100 ppm), it is difficult or impossible to pinpoint the source of contamination and mixing with hazardous waste cannot be presumed. [Id.] Higher levels of individual hazardous solvents (such as 100–1000 ppm), may or may not indicate mixing, depending on circumstances specific to individual cases. [Id.] Again, these factors would seem to apply to all used oils, not just oil fuels, and this supports our proposal to extend the rebuttable presumption (and rebuttal procedures) to all used oils covered by today's proposal, not just used oil fuels.

In summary, EPA is proposing a mixture policy for used oil as follows:

- Mixtures of recycled oil and non-hazardous wastes or virgin materials would be regulated as recycled oil; but
- Mixtures of used oil and any hazardous waste, including hazardous waste from § 261.5 small quantity hazardous waste generators, would be fully regulated as hazardous waste, not as recycled oil. The Agency's main enforcement mechanism would be the rebuttable presumption, which uses total halogens as an indicator of mixing but which also allows for case-by-case rebuttals.

Comments are requested on today's proposed mixtures policies.

B. Recycled Oil Subject to Part 266, Subpart E

1. *General.* The requirements for recycled oil are proposed in Part 266, Subpart E. The "applicability" section of Part 266, Subpart E identifies those recycled oils that would be subject to the Subpart. [See the proposed § 266.40(a)(1).] First, the Subpart would apply to recycled oil that is hazardous waste.[17, 18] Second, the Subpart would apply to household-generated recycled oil when aggregated at a collection center. Third, the Subpart would apply to recycled oil recovered from wastewater. The latter two points are discussed next.

2. *Household waste, when aggregated.* When EPA made final many of its hazardous waste rules on May 19, 1980, "household wastes" were specifically excluded from being hazardous wastes. [See 40 CFR 261.4(a)(1).] EPA concluded [see 45 FR 33098–33099], based on the legislative history of RCRA, that Subtitle C was not intended to control the management of household refuse, garbage, etc. However, in light of the subsequent enactment of the Used Oil Recycling Act in October 1980, and the more detailed provisions of Section 3014 enacted in November 1984, EPA is proposing to modify this exemption to provide that recycled oil that is household waste *would be* subject to Part 266, Subpart E, *but only* when aggregated or accumulated at "do-it-yourselfer" collection centers such as service stations, auto centers, etc. [See the proposed § 266.40(a)(1)(ii).] EPA is proposing this special approach for recycled oil because:

(1) Section 3014(a) directs EPA to control the hazards of recycled oil regardless of its origin;

(2) A substantial portion of all of the used oil that is generated in the U.S. each year comes from homeowners; [19] and

(3) This homeowner-generated used oil is almost entirely automotive oil. EPA has a great deal of data showing that used automotive oil is contaminated with hazardous constitutents. [20] This oil is collected and recycled along with other automotive oils, and we must presume it poses similar hazards.

Since the household-generated oil presents similar hazards, we are proposing that it be subject to Part 266, Subpart E which aggreated at collection centers.

EPA is not proposing that homeowners themselves be regulated under the rules proposed today. We are proposing that household waste/recycled oil lose its exempt status where aggregated or accumulated for recycling. EPA recognizes that improper practices by homeowners themselves can also pose environmental problems.[21] The Agency does not believe, however, that Congress envisaged Section 3014 applying directly to homeowners. EPA specifically requests comment on non-regulatory means that might be used to encourage homeowners to take their used oil to collection centers. For example, would it be helpful to State agencies in this field if EPA were to publish a document summarizing various educational and informational programs currently in use in the U.S. (and perhaps abroad) to address this problem and the relative successes or problems encountered with the programs? Are there other roles EPA could adopt to aid State agencies in

[15] As discussed in the final Phase I rule, EPA recognizes that metalworking oils and re-refinery "light ends" may contain high levels of halogens but have not been mixed. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.1.] Persons managing these oils can rebut the presumption under the procedures described in the final Phase I rule [Id.], summarized in this section of this preamble.

[16] As also discussed in the final Phase I rule, if a re-refiner can show that the incoming used oil does not exceed 1000 ppm halogens, the presumption would *not* apply to light ends produced at the refinery. [See the final Phase I preamble, Part Two, Section IV.C.2.a.] That is, the Agency recognizes that certain processes concentrate low boiling point materials in a light end stream, and the presumption was not developed for this type of recycled oil.

[17] Today's proposal would amend § 261.6(a)(2)(iii) to provide that recycled oil would be not subject to the full set of regulations that normally apply to recycled hazardous wastes [*i.e.*, 40 CFR Parts 262–265.] but rather would be subject to Part 266, Subpart E. As explained in the rest of this part of the preamble, Part 266, Subpart E would incorporate some, but not all, of the requirements in the existing hazardous waste regulations.

[18] The reader should note that some recycled oils (under the statutory definition) are not solid and hazardous wastes under today's proposal. Under §261.2 materials that have been reclaimed and that are then used as commercial products (but *not* as a fuel and *not* in a manner constituting disposal) are not solid wastes, and so are not hazardous wastes. Examples of recycled oils that are not solid nor hazardous wastes are reclaimed oils that are not solid nor hazardous wastes are reclaimed lubricants and asphalt roofing material containing recycled oil. The reader should further note that under §§ 260.30 and 260.31, EPA may grant requests for variances from a material's being classified as a solid waste, and under §§ 260.30 and 260.22, from a solid waste's being classified as a hazardous waste.

[19] *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associates, Ltd., November 1984; p. 1–8. Approximately 200 million gallons of used oil are generated by "do-it-yourselfers," e.g., homeowners, of the total of 1.2 billion gallons generated each year.

[20] Id., p. 3–27.

[21] A study for the U.S. Department of Energy, *Analysis of Potential Used Oil Recovery from Individuals*, by Market Facts, Inc., July 1981, found that 40% of homeowners poured their used oil on the ground, while another 21% placed it in the trash. Only 14% took the oil to a center for recycling. (See page 42.

addressing to "do-it-yourselfer" problem?

3. *Oil recovered from wastewater.* In the listing proposal elsewhere in today's **Federal Register**, EPA proposes to amend the § 261.3 "mixture rule" to exclude from the definition of hazardous waste oily wastewaters containing *de minimus* amounts of used lubricating, hydraulic, or transformer oils from machine drippings, line spillage, etc.[22] [See proposed § 261.3(a)(2(iv)(F).] In order to recover the oil (or to comply with Clean Water Act discharge limits) most industrial facilities treat oily wastewater to separate some portion of the oil. Used oil recovered from wastewater is likely to contain hazardous constitutents at levels comparable to other used oils, and therefore to pose similar hazards when managed (or mismanaged). For this reason, EPA has proposed to limit the scope of the exclusion so that used oil recovered from wastewaters remains a hazardous waste.[23] If this used oil is recovered for recycling or reuse, it would be recycled oil subject to Part 266, Subpart E. A person who recovers oil from exempt wastewater containing used oil (for recycling) would be a "generator," subject to either § 266.40(c) or § 266.41 of today's proposal. To make this point clear, we have proposed §266.40(a)(1)(iii).

C. Conditional Exemptions for Certain Recycled Oils

EPA has determined that certain types of recycled oil should be exempt from further regulation when specified conditions are met. [The proposed §266.40(a)(2) identifies the recycled oils eligible for the exemption and the proposed §266.40(b) contains the conditions.]

1. *Specification fuel.* Recently, EPA made final (the final "Phase I" burning rule) a specification for fuels made from used oils. [See Table 1, above, and in the preamble of the final Phase I rule, see the discussion in Part Two, Section IV.C.] Fuels meeting this specification would be exempt from the Phase I burning rule's notification and tracking requirements and its prohibition on burning used oils in non-industrial boilers. [Id.] EPA is today proposing to simply carry forward the exemption for specification fuel. Based on the following rationale, we can see no need to impose regulations on specification fuel, or to add any new parameters to the specification. Comments are requested on the discussion that follows.

a. *Rationale for exemption:* EPA believes that fuel meeting the specification would pose hazards not significantly greater than virgin fuel oil during handling and when burned and that therefore regulation of the used oil would not accomplish any environmental purpose. [Id.][24] The specification levels for three of the constituents, arsenic, cadmium, and chromium, were, in fact, selected to be equivalent to virgin fuel oil levels.[25] The specification selected for lead was 100 ppm. This is about ten times greater than lead levels found in virgin fuel oils, but as we explained in the final Phase I rule, the 100 ppm level is intended only as interim measure. When EPA proposes its Phase II burning rules early next year, we will re-visit the lead specification for used oil fuels and we may well establish a more stringent level. In the meantime, we do not think it appropriate to regulate fuels meeting the 100 ppm specification.[26]

The reader may also note that in the final Phase I rule EPA declined to set specification levels for certain toxic constituents. However, the parameters for which levels are not established were either found to be present in used oils at levels comparable to virgin fuel oil (and so would pose hazards no greater than virgin fuel oils when handled prior to burning) or the constituents just are not very toxic. Our conclusions concerning the need for a specification limit for individual parameters were of course based primarily on hazards posed by inhalation; we have considered whether specifications should be established for some parameters of low inhalation toxicity based on potential storage hazards. A parameter worthy of this special additional consideration is barium. Ten percent of the used oil analyses reviewed by EPA showed barium levels at or above 250 ppm.[27] While this is about 100 times greater than levels found in virgin fuel oil, the reader should note that it is only two and one-half times greater than the E.P. toxicity level of 100 ppm. [§261.24(b), Table 1, *i.e.*, "D005."] Given that the E.P. is intended for leachate analysis and that it is very unlikely that all of the barium would leach from the oily matrix, we do not expect used oil to exhibit E.O. toxicity for barium.[28] To more directly assess the potential for groundwater contamination by improper used oil storage, EPA evaluated numerous storage scenarios.[29] In all of the various scenarios evaluated, the predicted groundwater concentration of barium was below 1 milligram per liter, the standard established by EPA under the Safe Drinking Water Act. Therefore, we do not expect significant hazards to be posed by used oil high in barium, even if stored improperly, and we have not proposed any new specification for barium.

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[22] "*De minimus*," as used in this context, is defined in the listing proposal elsewhere in today's **Federal Register**.

[23] The reader should note that this discussion only applies to wastewater contaminated with *used oil*. For example, wastewaters from petroleum refineries also contain recoverable oil, but do not necessarily contain used oil.

[24] The reader should note that EPA considers the fuel specification to constitute a standard under 3004(r) for hazardous waste fuels. The specification is issued under the joint authorities of sections 3014 and 3004(q), and as provided by section 3004(r), supersedes the otherwise applicable labeling requirement. The specification limits the composition and associated hazards of recycled oil fuel, and therefore, it in itself fulfills the informational and warning functions of the label.

[25] Also, the proposed flashpoint specification, a minimum of 100 °F is the same as allowed under ASTM specifications for commercial ("number 2") fuel oils. Further, the Phase I preamble explained that we did not propose specifications for certain constituents (such as benzene and toluene) in part because levels in used oil are likely to be equivalent to levels found in virgin fuel oils. [See the final Phase I preamble, part Two, Section IV.C.3.]

[26] A preliminary assessment of storage hazards of used oil containing lead indicates that even with a specification of 100 ppm, serious hazards from leaks are unlikely. A computer simulation of some 9000 storage situations was conducted where lead was assumed to be released to the environment. [See the *Background Document* for the *Regulatory Impact Analysis*, EPA Office of Solid Waste, November 1985, Chapter IV.G.] Of the 9000 simulations, only 28 exceeded the lead standard of 0.05 mg/1 promulgated under the Safe Drinking Water Act, *i.e.*, less than 1 percent of the cases. [This analysis is conservative in that many of the cases simulated assumed a lead content higher than the final specification of 100 ppm.] The reader should note that EPA is continuing to improve its methods for assessing storage risks, and preliminary results presented here are simply the best information currently available. Should new and better information be developed in the future, we may re-consider the storage risks posed by specification fuel.

[27] See the report *Composition and Management of Used Oil Generated in the U.S.*, U.S. EPA, November 1984, p. 1–12. The data base included 752 samples analyzed for barium: 83% of the samples contained detectable levels of barium.

[28] Also, barium is an additive used in formulation used automotive engine oil. It seems unlikely, given that automotive oils contain a variety of contaminants regulated by the specification, that used oil would meet the specification but yet still have high barium levels. Ibid at pp. 3–6 to 3–10 and p. 3–27.

[29] See the *Background Document* for the *Regulatory Impact Analysis*, EPA Office of Solid Waste, November 1985, Chapter IV.G. As discussed above for lead, this analysis included a computer simulation of some 9000 storage situations. Although only preliminary analysis, it seems unlikely that used oil can pose serious soirage hazards because of its barium content.

Finally, under the approach proposed today where used oil with over 1000 ppm total halogens is presumed to be mixed with hazardous waste, the reader may note that it is conceivable for specification fuel to contain up to 1000 ppm of a hazardous spent solvent and yet not "trigger" the rebuttable presumption. EPA was concerned that such levels of solvents, although not hazardous with respect to burning, could pose groundwater hazards if used oil was stored improperly. We therefore conducted a storage assessment for used oil containing various spent solvents, *i.e.*, as we did for barium.[30] The individual solvent posing the highest risk level was found to be tetrachloroethene, with a mean or average cancer risk level of 7×10^{-6}, or 7 cancers per 1 million exposed population. Risk levels this high can be considered significant, but EPA notes that some 96% of the scenarios evaluated had risk levels lower than this. Additionally, the storage scenarios evaluated here concerned all used oils, while specification fuel is a special subset of used oil because, by regulatory definition, it must contain low concentrations of several toxic contaminants. We expect that specification fuel, because it will often be produced by treatment or blending, will typically contain solvent levels far below 1000 ppm; in fact, it is likely that specification fuel will often contain less than 100 ppm of any solvent.[31] Used oil containing such low levels of solvents would pose risks about one order of magnitude lower than the levels discussed above, *i.e.*, the risk of cancer would generally be less than 1 per 1 million exposed population. Such low risk levels do not appear to warrant additional controls, and we are therefore proposing no specification levels for individual solvents.

. In summary, we are proposing no changes to the specification and no additional requirements for the management of specification fuel because we do not see the need for additional controls. Comments on this proposed policy are requested.

b. *Conditions for the exemption.* Persons producing specification fuel would be, under today's proposal, subject to § 266.40(b)(1). The fuel producer would have to document through analysis that the oil meets the specifications, and that it is used as fuel. To document the latter point, the person would have to keep records of the name and address of the receiving facility, the quantity of oil shipped, the date of shipment, and a cross-reference to the oil analyses performed. These requirements are carried forward from the final Phase I burning rule. [They are currently in § 266.43(b)(6); today's proposal would move the requirements to § 266.40(b)(1).]

Documentation that the fuel in fact meets the specification would normally entail analysis. Sampling and analytical procedures are part of a facility's permitting requirements discussed in later sections of this preamble.[32] Of particular relevance here, the person producing specification fuel would have to have a plan at his facility specifying the sampling and analysis procedures to be used in documenting that the oil meets the specification. Records of sales, use, or shipment would have to be kept at the facility as well. Of course, EPA reserves the right to inspect facilities producing specification fuel, to take samples of the oil, and if necessary, to check to ensure that the product produced is actually being burned or is entering the commercial fuel oil market.[33]

c. *Diesel crankcase oil:* As a final point concerning the production of specification fuel, EPA requests comment on whether it is necessary to require a different kind of documentation (or any documentation at all) than described above for those generators that blend used diesel crankcase oil with diesel fuel for use in their own vehicles. The data available to EPA (Table 2) suggest that used diesel engine crankcase oils are quite low in contaiminants as-generated. Given our limited data base, commenters are invited to submit additional data to confirm or refute this conclusion.

TABLE 2.—CONCENTRATIONS OF TOXIC METALS IN USED DIESEL ENGINE CRANKCASE OILS

Metal	Number of samples		Concentration range (ppm)		
	Analyzed	Contaminant detected	Low	Median	High
Arsenic	5	1	<5.0	<5.0	5.9
Cadmium	5	3	<0.5	0.9	1.4
Chromium	5	5	0.9	1.5	3.8
Lead[1]	5	4	<5.0	13.0	78.0

[1] Some "diesel" samples may actually be contaminated with small amounts of gasoline engine crankcase oil, accounting for the presence of lead.

Source: Composition and Management of Used Oil Generated in the U.S., by Franklin Associates, Ltd., November 1984, p. 3-38.

EPA is also aware that manufacturers of diesel engines generally recommend that diesel crankcase oil be blended into diesel fuel at a maximum rate of 5% (i.e., a 19–1 virgin fuel to recycled oil dilution.)[34] Since diesel fuel is itself typically low in toxic metals,[35] a 19–1 dilution would seem to ensure the resultant blended fuel would meet the proposed specification (even if the limit for lead was ultimately set as low as 10 ppm). Should EPA, then, specifically state in the regulation that anaylsis is *not* necessary when diesel crankcase oil is blended by generators at or below 5% to produce diesel fuel?

2. *Asphalt paving material.* EPA is proposing that asphalt paving material containing certain types of recycled oil be exempt when certain conditions are met. [See the proposed § 266.40(a)(2)(ii) and § 266.40(b)(2).] EPA is basing the proposed exemption on § 266.20(b) of the existing hazardous waste regulations, which provides:

> Products produced for the general public's use that are used in a manner constituting disposal and that contain recyclable materials [*i.e.*, hazardous waste] are not presently subject to regulation if the recyclable materials have undergone a chemicial reaction in the course of producing the product so as to become inseparable by physical means.

As discussed on January 4, 1985, EPA asserts jurisdiction over these materials but has deferred regulation pending studies of how the materials are appropriately regulated. [See 50 FR 627–629 and 646–647.] EPA has determined that asphalt paving material containing either of the two following types of

[30] Id. We assessed risks posed by used oil containing three common de-greasing solvents: tetrachloroethene; 1,1,1-trichloroethane; and trichloroethene.

[31] For example, see the report *Composition and Management of Used Oil Generated in the US*, EPA, November 1984, p. 5–15. Concentrations for various constituents are projected for used oil blended at a 10% ratio with virgin fuel oil. The average concentration of tetrachloroethene here is 121 ppm, and 90% of the projected cases would contain no more than 170 ppm of that solvent.

[32] As stated above, recycled oil remains subject to Part 266, Subpart E, in its entirety until § 266.40(b) is fully complied with. In particular, § 266.43(b), discussed below, includes certain sampling and analysis requirements for persons producing specification fuel.

[33] The burden for determining and documenting that certain recycled oil should be exempt as specification fuel falls on the person claiming the exemption. When recycled oil is burned, sent off-site, or otherwise managed, it is subject to regulation under Part 266, Subpart E, absent documentation as discussed above. This proposal would incorporate the analysis requirements into the general analytical requirements for used oil recycling facilities of proposed § 266.43(b).

[34] See, for example, the bulletins by: *Catepillar*, September 1974, *Racor*, undated, *International Harvester*, February 1974 (I–H recommended up to 6.5%).

[35] See the report, *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associated, Ltd., November 1984, p. 5–10. Diesel fuel is essentially "Number 2" or "distillate fuel."

recycle oil[36] meet the criteria of § 266.20(b) and therefore are presently exempt from regulation:

- Residues (bottoms) from distillation re-refining; or
- Air pollution control residue from fabric filters (*i.e.*, baghouse dust) where used oil is burned as a fuel.

EPA is currently studying the practice of incorporating these materials into asphalt. Preliminary results indicate that the recycled oils described here substitute for virgin materials in asphalt production (*i.e.*, they add desired properties to the paving material) and that at least the bottoms are typically purchased by asphalt producers at prices near those of their nonwaste ("virgin") counterparts.[37] Therefore, we conclude that the incorporation of these materials into asphalt is a legitimate recycling practice and not merely a disposal method for the residues.

EPA is currently assessing the environmental hazards that may be associated with these asphalt products to determine what kinds of controls, if any, may be necessary.[38] Eventually, EPA might establish standards pertaining to amounts of recycled oil that could be in asphalt paving material (e.g., a maximum percentage), or we might require some form of leaching test (similar to the Extraction Procedure in 40 CFR 261.21 and Part 261, Appendix II) as a demonstration that no adverse effects are likely. For example, we might exempt asphalt of which the residues constitute less than 3% (by weight or volume)—this appears to represent current industry practice—while the use of asphalt containing greater than this amount might be regulated as land disposal or subject to some type of leach testing. Under today's rule, however, the person producing the asphalt product (and claiming the exemption) would only have to maintain adequate documentation that the recycled oil is being treated so that it is an inseparable part of the asphalt product[39] [See 50 FR 646–7; January 4, 1985, for a discussion of these terms. Most asphalt products, we expect, would qualify for the exemption.]

Comments and information are requested on the hazards and need for controls for asphalt products containing recycled oils. As a final point on this subject, we have been unable to identify any other recycled oils that meet the § 266.20(b) criterion for exemption. Therefore, when other recycled oils besides the residues and asphalt mixtures described above are placed on the ground, the product would be subject to regulation (discussed below). Comments are requested on whether any other recycled oils meet the § 266.20(b) criterion discussed above, and that therefore should be included in the proposed § 266.40(a)(2)(ii).

D. Overview of Standards and "Burden of Proof" Issues

Sections II, III, and IV of this Part of the preamble explain the requirements for generators, transporters, and owners and operators of facilities that manage recycled oil. In general:

- A person who generates or accumulates up to 1000 kilograms per month would be subject to § 266.40(c) but to no other requirements in the Subpart;
- A person who generates (in a month) or accumulates over 1000 kilograms of recycled oil would be subject to § 266.41;
- A person who initiates an off-site shipment would be subject to § 266.41(d);
- A person who transports recycled oil would be subject to § 266.42;
- An owner or operator of a facility that recycles or stores recycled oil would be subject to § 266.43;
- A person who burns recycled oil would be subject to § 266.44; and
- A person who applies or places recycled oil (or a product containing recycled oil) on the ground would be subject to § 266.23.

As explained above and in the next sections of the preamble, certain recycled oils are exempt from regulation and persons who otherwise fit into a regulatory category may be exempt from some generally applicable requirements.[40] The person claiming such an exemption is responsible for providing documentation that the exemption applies, otherwise, EPA presumes the rules apply. This is consistent with the § 261.2(f) provisions for recycled hazardous waste and merely re-states a well-established legal principle. [See 50 FR 642–643, January 4, 1985, for a full discussion of the principle and cases where the principle was upheld.]

E. Authorization to Manage Recycled Oil

As with any hazardous waste, recycled oil must be managed at an "authorized" facility.[41] We are using "authorized" as a term of convenience to include any of the following [see proposed § 266.40(e)(3)]:

- A facility permitted to manage hazardous waste under Part 270, Subpart A–E; [42] or
- A facility permitted to manage hazardous waste by a State with an EPA-approved hazardous waste program;[43] or
- A facility meeting the special permit-by-rule requirements proposed today for used oil recycling facilities (see proposed § 270.60(d)); or
- A facility in interim status, as defined by Section 3005(e) of RCRA and the requirements of Part 270, Subpart G.[44]

F. Definitions and General Provisions

Terms used in proposed Part 266, Subpart E have the same meanings as provided in § 260.10 and §§ 261.1–261.3 of the hazardous waste rules. Also, the requirements of Part 260 pertaining to availability and confidentiality of information, use of number and gender, references, and rulemaking petitions apply throughout Part 266, Subpart E. [See proposed § 266.40(e).]

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[36] Both materials discussed here are residues from treating used oils. As discussed in the Federal Register notice that accompanies this one (the listing proposal), residues derived from used oils are considered used oils. And as discussed above in this preamble, used oils (not mixed with hazardous waste) that are recycled are recycled oils.

[37] See the draft report by Research Triangle Institute, *Used Oil Recycling Evaluation: Incorporation of Residues into Asphalt and Asphalt-Containing Products*, June 1985, pages 24–29.

[38] Id. Samples of the recycled oils are being analyzed to measure concentrations of hazardous constituents (40 CFR Part 261, Appendix VIII) present, and how those concentrations compare to the virgin materials they replace. Extraction testing for toxic metals is also being conducted.

[39] The person incorporating the bottoms or baghouse dust into the asphalt would be subject to § 266.43 of today's proposal, the standards for used oil recycling facilities, discussed later in this preamble.

[40] A person may also fall into more than one regulatory category. In this case, the person is subject to more than one set of requirements.

[41] As explained in Section I.B. above, specification fuel and asphalt containing certain recycled oil residues are exempt under § 266.40(e)(2), provided that the conditions of § 266.40(b) are complied with. No authorization is necessary to manage recycled oil exempted under these provisions.

[42] The reader should note that a facility that has already been permitted under Part 270, Subparts A–E can only manage a newly-listed hazardous waste through a permit modification under §§ 124.5 and 270.41.

[43] See 40 CFR Part 271 (and Section I of Part Three of this preamble) concerning EPA approval of State hazardous waste programs.

[44] An interim status facility may only accept a newly-listed hazardous waste under the provisions of § 270.72, pertaining to changes during interim status.

II. Standards for Generators of Recycled Oil

A "generator" is ". . . any person, by site, whose act or process produces hazardous waste . . . or whose act first causes a hazardous waste to become subject to regulation." [See § 260.10.] In the case of used oil, generators include:

- Service stations, auto repair shops, and other establishments that service vehicles or that accept oil from ("do-it-yourselfer") households;
- Maintenance garages that service vehicle fleets;
- Mine and construction operators where vehicles are serviced in the field; and
- Industrial facilities such as metalworking shops, steel mills, etc., that use oils to cut, grind, or work with metal or that remove spent hydraulic fluids or greases from machinery.

These are generators of *recycled oil* when they recycle the used oil themselves, or accumulate it for shipment to an off-site recycler.

Section 3014(c)(2)(A) requires EPA to regulate generators of recycled oil ". . . as may be necessary to protect human health and the environment." In promulgating these regulations, EPA is directed to take into account the effects of regulations on:

- Environmentally acceptable types of used oil recycling;
- Small quantity generators; and
- Generators which are small businesses.[45]

The requirements proposed today were developed using as a starting point the general standards for hazardous waste generators issued under Section 3002 of RCRA. Those requirements were, however, modified to take into account the special Section 3014 mandate. A major similarity between the approach proposed today and the approach used by EPA to regulate other generators of hazardous waste is to distinguish between the classes of generators by the amount of waste they generate. The discussion that follows first centers on "small quantity recycled oil generators" subject to special, limited standards and then on other (large) generators of recycled oil, who would be subject to more extensive requirements.

A. Small Quantity Recycled Oil Generators

EPA is proposing a limited set of requirements for generators of up to 1000 kilograms (about 300 gallons) of recycled oil per month.[46] [See the proposed § 266.40(c).] The requirements would include:[47]

- A prohibition on road oiling;
- Standards pertaining to installation of storage tanks; and
- A provision that states that if more than 1000 kilograms is accumulated, the generator moves into the next "generator" category for regulatory purposes.

Generators in the less than 1000 kilogram category are termed "small quantity recycled oil generators."

The remainder of this section explains the requirements that would apply; the proposal that a separate small quantity limit be established for recycled oil; the rationale for the 1000 kilogram limit; and the proposed policy under which recycled oil from these generators would be subject to more extensive regulation when collected.

[For the reader's convenience, the discussion below notes similarities and differences between §§ 266.40(c) and 261.5. The reader should not confuse the § 266.40(c) regulatory category with § 261.5, which includes special requirements for hazardous waste generated by "small quantity generators." The two regulatory categories are similar in that the generators in each category are subject to only minimal requirements; but there are important differences, including different quantity cut-offs and the regulatory status of waste once it leaves the generator's site.]

1. *Requirements.*[48] Generators of no more than 1000 kilograms per month of recycled oil would be exempt from full regulation under the proposed Part 266, Subpart E, provided that the generator either sends the oil off-site for recycling or recycles it himself under the following requirements:

a. *On-site management:* (1) Road oiling is prohibited. Section 3004(1) of RCRA prohibits the use of hazardous waste as a dust suppressant. [See 50 FR 28718; July 15, 1985.] No exemption is provided for small quantity generators; the prohibition would become effective the day the final rule listing used oil as a hazardous waste becomes effective.

(2) *Proper installation of tank systems.* EPA is incorporating into these regulations, under the authority of section 3014, tank installation requirements similar to those required by section 9003(g) or RCRA, the latter termed the "interim prohibition." Section 9003(g) prohibits any person from installing an "underground storage tank" [as that term is defined in section 9001(1)] unless the tank and connected piping satisfy certain requirements, including that they prevent releases due to corrosion or structural failure for the operational life of the tank and that the lining or construction of the tank and piping be compatible with the substance being stored.[49]

Congress established this interim prohibition as the minimum requirement for underground petroleum tanks installed after May 7, 1985 until EPA can develop standards as mandated by section 9003(e) of RCRA. EPA believes that since the provisions of Subtitle I apply to "petroleum" (see section 9001(2) of RCRA) and used oil is a subset of petroleum, Congress intended for the provisions of Subtitle I (including the interim prohibition) to apply to used oil to provide a baseline level of control for used oil storage. Where the specific recycled oil provisions of section 3014 result in regulations more stringent than provided by Subtitle I, we presume that Congress intended for the more stringent requirements to apply.

EPA is proposing tank installation requirements that amount to a modified version of the Subtitle I interim prohibition in the small quantity generator provisions of today's rule for two reasons. First, since the interim prohibition is a minimum standard already required by Subtitle I, its inclusion in this rule puts used oil generators on notice of already applicable requirements. [This purpose is less important with respect to other parties subject to today's proposal because they generally would face requirements more stringent than the interim prohibition. As stated above, in such a case the more stringent requirement applies.] Second, EPA believes that the tank installation requirements proposed today provide a level of control that reflects the section 3014 mandate to protect human health and the environment, considering the impacts of regulation on recycled oil generators.

Finally, the reader should note that the tank installation requirements we

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[45] Section 3014(c)(2)(B) contains specific directions on how off-site shipments are to be regulated. This is discussed below.

[46] Used oil accepted from households ("do-it-yourselfer" oil) would be counted in this determination.

[47] Eventually, requirements for on-site burning may also be promulgated, but as discussed below this issue is to be addressed in the Phase II burning and blending proposal later this year.

[48] The requirements discussed here are proposed in § 266.40(c). The requirements are very similar, but not identical to the requirements of § 261.5 (f) and (g) for small quantity generators of hazardous waste.

[49] Section 9003(g) does provide a limited exception for the corrosion protection requirements for tanks installed at sites where soil resistivity is 12,000 ohm-cm or more. [These requirements are codified in 40 CFR 280.1 and 280.2. See 50 FR 28734-35; July 15, 1984.]

are proposing today for small quantity recycled oil generators, although based in substance on the interim prohibition, would apply to a broader range of tanks than would be the case under section 9003(g). The broader applicability of today's proposal is brought about because instead of using the term "underground storage tank" to define coverage of the provision [defined in section 9001(1) and § 280.1], we have proposed to use the broader term "tank system." [50]

We intend for § 266.40(c)(1)(iv) to apply to all tank systems, *i.e.*, "above-ground," "inground," and "underground." (Id.) EPA believes this broader coverage, corresponding to the scope of Subtitle C, is called for by Section 3014. That is, Section 3014 directs EPA to regulate the hazards associated with recycled oil, and recycled oil is stored in all types of tanks.[51]

Comments are requested on EPA's proposed approach for regulating small quantity recycled oil generators' tanks, described above. As a final note on the subject, as EPA develops controls for underground storage tanks under Subtitle I, we will consider whether additional controls should be applied to small quantity recycled oil generators' tanks.

(3) *Accumulation of over 1000 kilograms.* If at any time a generator accumulates over 1000 kilograms of recycled oil, he would be subject to the more extensive generator requirements discussed later in this section of the preamble.[52] The reader should note, however, that recycled oil that is mixed with nonhazardous waste would continue to be subject to the limited requirements discussed here even if the 1000 kilogram limit is exceeded (as long as the recycled oil portion of the mixture does not exceed 1000 kilograms).[53] [See the proposed § 266.40(c)(3).] The rationale here is that the limits proposed are meant to apply to recycled oil and the mixing of recycled oil with non-hazardous waste does not change the quantity of, or the hazard associated with, recycled oil involved.[54]

(4) *On-site burning.* The reader will note that EPA has reserved a paragraph in proposed § 266.40(c)(1) for controls on on-site burning. For the most part, this burning involves use of used oil space heaters by service stations or blending of diesel crankcase oil into vehicles' diesel fuel. The former case has been addressed on an interim basis under the final Phase I burning and blending rule [See Part Three, Section IV of the final Phase I preamble.] As we said in that final rule, we will re-visit the need for controls on these units in the Phase II burning rules. [Id.] Any requirements for space heaters would eventually be codified in § 266.40(c)(1). At a *minimum*, we intend to ensure that space heater flue gases are properly vented. The case of diesel blending was discussed in an earlier section of this preamble pertaining to specification fuel. As described in that section, the data available to EPA indicate that this kind of blending produces specification fuel, and we are considering what type of documentation if any should be required. Comments are requested on what documentation, if any, should apply to small quantity recycled oil generators who blend diesel crankcase oil into their own diesel-fueled vehicles.

b. *Shipments off-site:* Small quantity recycled oil generators would be allowed to send recycled oil off-site for recycling without any formal tracking or recordkeeping requirements.[55] [The reader should note that, as is discussed later in this Section and then below in Section III. E. 2., transporters who collect from small quantity recycled oil generators must keep records of pick-ups and must ensure delivery to an authorized used oil recycling facility.]

2. *The separate small quantity limit for recycled oil.* Under today's proposal, recycled oil would have its own "small quantity" limit of 1000 kilograms per month; that is, recycled oil counting against the recycled oil limit would *not* also count against the § 261.5 limit for hazardous waste.[56, 57] Therefore, under our proposed approach, a generator could be subject to the "small quantity" provisions of both 40 CFR 261.5 and 266.40(c), or subject to one of the provisions but not the other one. EPA believes this approach offers the following benefits:

(1) Impacts on small quantity generators and generators who are small businesses would be reduced. Without the separate small quantity generator limits for recycled oil and other hazardous wastes, a generator of, for example, small amounts of spent hazardous solvents could have to manage his solvents under the 40 CFR Part 262 standards for hazardous waste generators because of the recycled oil he generates. This seems inappropriate because, as discussed in this **Federal Register** notice, EPA is proposing to regulate recycled oil under a special set of Part 266 standards, not the general hazardous waste standards. It also would have the effect of subjecting perhaps tens of thousands of generators of recycled oil to the hazardous waste rules (for the small quantities of other hazardous waste they generate). As described throughout this section of the preamble, EPA is attempting to minimize the adverse impacts of regulation on small quantity generators and generators who are small businesses.

(2) Segregation of wastes would be encouraged, and this facilitates recycling. The separate small quantity limits should provide an incentive for generators to segregate used oil from other hazardous wastes they generate because, as described above, mixtures of used oil and hazardous waste would be subject to full regulation as a hazardous waste, not the special "recycled oil" standards.[58] Segregation of used oil away from other hazardous waste facilitates used oil recycling. In particular, when used oil is contaminated with chlorinated solvents, the resulting mixture:

- Has a reduced BTU content and correspondingly reduced fuel value; and

[50] As proposed on June 26, 1985, a "tank system" is comprised of a tank(s) and its ancilliary equipment (e.g., pipes, valves) [See 50 FR 26455]. The section 9001(1) definition of "underground storage tank" also includes ancilliary equipment such as pipes, but only applies when 10% or more of the system is beneath ground surface.

[51] The reader should also note that Subtitle I includes certain special exemptions [sections 9009(d) and (e)] for residential/farm motor fuel tanks and heating oil tanks. These exemptions are not relevant for Subtitle C, and we have not proposed any such exemptions today for recycled oil. Although we are today proposing to regulate certain recycled oil tanks, described above, that are not presently regulated under the section 9003(g) interim prohibition, we note that the extent of regulation (in most cases some form of corrosion protection) would cause insignificant cost impacts, typically in the range of $200 per affected generator. [See the EPA report, *Estimated Costs of Compliance with Proposed RCRA Regulations for Hazardous Waste Storage, Treatment, and Accumulation Tank Facilities* (March 1985), for a cost estimate of corrosion protection.]

[52] A similar provision applies to hazardous waste small quantity generators. See § 261.5(f).

[53] A similar provision applies to hazardous waste small quantity generators. See § 261.5(h).

[54] As described above, a mixture of used oil and *hazardous* waste is *not* recycled oil, and would not be subject to the requirements discussed here. Such a mixture would be subject to regulation as hazardous waste. [See proposed §§ 261.5(j)(2)(ii), 261.6(a)(2)(iii), and 266.40(d).]

[55] We have not proposed any time limit to accompany the 1000 kilogram accumulation limit. A time limit seems unnecessary since used oil is typically picked-up frequently by collectors. H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 67 (1983).]

[56] Congress envisaged the possibility of such an approach, as evidenced by the legislative history of Section 3014.

[57] See proposed §§ 261.6(a)(2)(iii), § 261.5(c) and § 261.5(j)(2)(i), where recycled oil is exempted from counting towards the § 261.5 quantity limit for determining "small quantity generator" status under the hazardous waste rules.

[58] That is, a generator who segregates his hazardous waste from his used oil might remain a small quantity generator under § 261.5, while a generator who mixes wastes would thereby lose his small quantity generator status and become subject to the Part 262 hazardous waste generator standards for the entire mixture. [See proposed § 261.5(j)(2).]

• Is difficult to reuse as a lubricant because the solvent reduces viscosity (i.e., "thins" the oil).[59]

(3) The separate small quantity limits proposed today would encourage environmentally acceptable types of recycling of used oils vs. disposal. This is one of the factors EPA is directed to consider in regulating recycled oil generators. Used oil, when disposed of, would count against the § 261.5 limit along with a generator's other hazardous waste. [See proposed § 261.5(j)(1).] A generator who recycles his used oil, therefore, would be eligible for the special, reduced requirements for small quantity recycled oil generators while one who disposes of his oil would be subject to the Part 262 hazardous waste generator standards. [For example, a generator of 500 kilograms of used oil who sends the oil to land disposal would exceed the § 261.5(a) limit and would therefore become subject to Part 262; however, if that generator recycled the oil, he would be covered only by proposed § 266.40(c).]

EPA requests comment on the separate small quantity limit approach described above. Do the separate limits cause undue confusion that might negate the benefits identified?

3. *Selection of 1000 kilogram as the limit.* EPA has proposed a 1000 kilogram monthly generation limit [60] to define a "small quantity recycled oil generator." [See the proposed § 266.40(c).] As Table 3 illustrates, this limit would bring the majority of the recycled oil generated within today's proposed regulatory system, while most generators would be small quantity recycled oil generators and thus exempt from the more burdensome elements of that system. Before deciding to propose the 1000 kilogram limit, EPA considered limits that would be both more and less stringent. EPA requests comment on the range of options discussed below:

a. *100 kilogram limit:* EPA considered a small quantity limit of 100 kilograms, *i.e.*, the same limit proposed on August 1, 1985 for hazardous waste in general. [50 FR 31278.] This would establish regulatory control over the great majority of the used oil generated starting at the site of generation [see Table 3]. As noted above, however, Section 3014 of RCRA specifically directs EPA to consider the impact of its regulations on small quantity generators, and small businesses, and on environmentally acceptable means of recycling. Under a 100 kilogram limit, at least 274,000 generators would be subject to regulation. EPA is concerned not only with the unwieldy size of this universe, but also with the potential impacts of regulation on the small establishments within the universe. The great majority of used oil generators are small businesses,[61], operated in large part by individuals without the technical knowledge or financial resources necessary to operate a waste management facility of any sophistication. Also, since these establishments do not generate large amounts of recycled oil, regulatory requirements can impose disproportionate costs, *i.e.*, high costs per gallon. The Agency's main concern with these small establishments is to ensure: (1) That they collect the used oil generated at their sites for recycling and not let it drain into sewers or otherwise dispose of it; and (2) that they continue to accept household-generated used oil.

TABLE 3.—NUMBER OF USED OIL GENERATORS AND QUANTITIES OF USED OIL GENERATED ANNUALLY

	Number of establishments	Size categories (kilograms generated per month)		
		<100	100–1,000	>1,000
Industrial	358,000	258,000	76,100	24,300
Non-industrial	295,000	121,000	150,000	24,000
Total	653,000	379,000	226,100	48,300
Quantities generated (millions of gallons per year) by size category:				
Industrial	456	22.5	84	350
Non-industrial	488	24.2	300	164
Total	944	46.7	384	514

Source: These estimates were derived from the draft report, *Characterization of Industrial Used Oil Generators*, by Franklin Associates, Ltd., (October 22, 1984), and the memorandum from Temple, Barker, and Sloane (August 8, 1984) titled "Non-Industrial Generators."

Notes:
1. These estimates do not include 167 million gallons of used oil disposed of each year by "do-it-yourselfer" oil changers, *i.e.*, homeowners.
2. Additionally, an estimated 2.4 million farms generate some 44 million gallons of "non-industrial" (automotive) oil each year. These establishments would fall in the "<100" category.
3. The "non-industrial" category includes automotive service establishments, while "industrial" includes metalworking shops, steel mills, and various other industrial concerns.

EPA considered regulating recycled oil generators of 100–1000 kilograms per month (kg/mo) under the set of requirements proposed on August 1, 1985 for hazardous waste generators of 100–1000 kg/mo. [See 50 FR 31278–31306. The proposal would amend the § 262.34 requirements.] As explained in that proposal, we developed the proposed standards for the 100–1000 kg/mo hazardous waste generators taking into account their predominantly small business nature. [Ibid at 31284–86.] EPA is concerned, however, that even though the August 1 proposal would minimize adverse small business impacts, the requirements would still adversely affect used oil recycling. [Under section 3014(c) of RCRA, EPA must, when developing rules for recycled oil generators, not only take small business impacts into account *but also* impacts on "environmentally acceptable recycling." EPA considers any increase in "do-it-yourselfer" oil changes to be, in itself, and adverse impact on recycling because this group traditionally disposes of its used oil. Sewer disposal to avoid regulations is another adverse impact on recycling that concerns EPA, as is any reluctance by establishments to accept household generated ("do-it-yourselfer") used oil.]

We estimate the rules proposed on August 1 would impose annualized costs of $1000–2000, on average, if applied to generators of recycled oil.[62] For a generator of, for example, 110 kilograms of used oil per month, this would mean costs of about $4.80 per gallon of recycled oil generated (and stored). Further, EPA is considering whether any tank system secondary containment standards should apply to generators of 100–1000 kg of hazardous waste per month. [Ibid at 31286–87] The addition of secondary containment requirements could double the costs presented above.[63] Given that recycled oil

[59] Re-refiners must remove the "light ends" (solvents and other low boiling point materials) during processing, reducing the yield of the lubricant production operation.

[60] As described above, the monthly generation limit would be accompanied by a total accumulation limit of 1000 kilograms.

[61] See the *Regulatory Impact Analysis for the Used Oil Rules*, EPA Office of Solid Waste, November 1985, pages V–54 through V–57.

[62] Unless otherwise noted, the results presented here are from the *Regulatory Impact Analysis* US EPA, Office of Solid Waste, November 1985, Chapter V.

[63] As points of clarification, the term "secondary containment" as used in today's proposal refers to the requirements proposed on June 26, 1985 for hazardous waste tank systems. [See 50 FR 26462–26482, and the proposed §§ 264.193 and 265.193.] These requirements are more extensive than, for example, the curbing and diking required for some

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generators are presently paid only 10–40 cents per gallon for their used oil, costs this high would make used oil more of a burden than a recyclable resource. It is difficult to quantitatively assess how generators would respond to regulatory costs this high, but our studies show the following to be probable outcomes:

- Price increases in oil-change services offered to the public. These price increases (we estimate an increase of 10 percent) could lead to an increase in "do-it-yourselfer" oil changes of approximately 12 million gallons per year (an increase of 4 percent);
- A reluctance of service stations and auto repair shops to accept "do-it-yourselfer"-generated used oil; and
- Increased sewage disposal by generators in areas without strict local requirements or sewer discharges.

These are the sorts of outcomes that concerned Congress when it was considering the issue of recycled oil regulation. See, for example, H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 66 (1983):

> Many used oil generators, such as service stations, will be reluctant to collect and recycle used oil if it means incurring excessive regulatory responsibilities. Any regulatory scheme for generators should . . . be structured to avoid this result . . .

For these reasons, EPA sees a clear need to establish a small quantity limit higher than 100 kilograms. A higher limit would minimize the impacts of regulation on the smallest establishments in the generator universe, and most importantly, would reduce adverse impacts on environmentally acceptable types of used oil recycling.

b. *2000 kilogram limit:* EPA considered a limit for small quantity recycled oil generators as high as 2000 kilograms per month (about 600 gallons). We believe a limit this high would exempt from full regulation most, if not all, of the automotive-related establishments. However, we are concerned that a limit this high would not be adequately protective. The same legislative history as cited above concerning the need to minimize impacts on generators goes on to say that EPA's regulations should:

> . . . encourage . . . generators to send used oil to facilities having permits. [And to] . . . regulate generators in a way that discourages unacceptable used oil recycling practices, such as unsafe storage, or potentially hazardous burning or land application. [Id.]

As Table 3 shows, even with a limit of 1000 kilograms, some 336 million gallons of used oil per year (nearly half of the oil in question) would be only minimally controlled at generators sites. Under a 2000 kilogram limit, probably all of the 488 million gallons of "non-industrial" (*i.e.*, automotive) oil and a large portion of the 456 million gallons of used industrial oils generated each year would be only minimally regulated at generators' sites. In essence, this would be virtually equivalent to not having generator regulations. In previous rulemakings concerning (§ 261.5) small quantity generators of hazardous waste, EPA has only considered exempting generators of up to 1000 kilograms per month; [see the discussions at 43 FR 58969–58971, December 18, 1978, and at 45 FR 33102–33105, May 19, 1980], and EPA sees no indication that Congress envisaged an exemption for generators of even larger quantities of recycled oil.

c. *1000 kilogram limit:* EPA has proposed a 1000 kilogram limit (about 300 gallons) to define small quantity recycled oil generators. This would subject approximately 48,000 generators to the regulations discussed later in this section. Some 514 million gallons (about 55% of the total generated each year, not counting household-generated oil) would be subject to Part 266, Subpart E, starting at the site of generation.[64] Under a 1000 kilogram limit, the vast majority of small establishments such as family farms, service stations, auto repair shops, and small industrial facilities would be subject to the very limited set of requirements discussed above. Generators of over 1000 kilograms are auto dealerships, establishments that offer "quick-lube" services to the public or that service large vehicle fleets, and industrial facilities like steel mills and automotive assembly plants. The establishments in the over 1000 kilogram group can be, but certainly are not always small businesses (e.g., steel and auto plants usually are not). For many of the establishments ("quick-lube" services), lubricant management (purchase, sale, etc.) is a central part of the operation. In these respects the large generators are unlike small auto shops and service stations (who are almost always small businesses and for whom lubricant management is only a peripheral aspect of their operations), and we believe the former are in a better position to absorb regulatory costs.[65]

EPA has determined that the 1000 kilogram limit strikes the best balance between protectiveness and economic impact concerns, as mandated by Section 3014. Comments are requested on the range of options presented. Comments are also requested on whether the limit should be expressed in gallons (*i.e.*, 1000 kilograms is about 300 gallons of used oil). Would this simplify compliance for generators?

4. *Regulation when collected.* EPA is proposing that when recycled oil from small quantity recycled oil generators is collected for shipment to an off-site facility, the oil would *then* become subject to Part 266, Subpart E in its entirety. This is different than the approach in 40 CFR 261.5 for hazardous waste from small quantity generators, where waste is exempt *through subsequent management.* What follows is first the rationale for this proposed departure from previous EPA policy regarding "small quantity" hazardous waste, and then an explanation of how collectors who service small quantity recycled oil generators would be affected by today's proposal.

a. *Rationale:* The reasoning behind today's proposal is based on the quantities of waste involved; the composition and management practices of used oil vs. other hazardous wastes; and the Congressional intent in passing Section 3014. These points are discussed here.

(1) A significant amount of used oil is generated in quantities less than 100 kilograms per month (kg/mo). Table 4 contrasts the generation pattern for used oil and other hazardous wastes.

Table 4.—Generation of Used Oil vs. Other Hazardous Wastes by Generator Category

[In thousands of tons per year]

Waste type	Generator Size Categories (kilograms per month)			
	<100	100–1000	>1000	Totals
Used oil	340	1,440	1,927	3,707
Hazardous waste other than used oil	180	760	264,000	264,940

Sources:

1. See Table 3, above. [Gallons converted to tons at 7.5 lbs per gallon of oil. Farmers' oil is included in "<100 kg/mo" category.]
2. Hazardous waste—The proposal at 50 FR 31265; August 1, 1985.

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oil storage areas under EPA's Spill Prevention Control and Countermeasure rules at 40 CFR Part 112.

[64] As explained below, oil from small quantity recycled oil generators would also be regulated under today's proposal when collected for reclamation or other recycling.

[65] The requirements that would apply to large recycled oil generators are discussed in the next section, below.

As Table 4 shows, for used oil, generators of less than 100 kilograms per month (kg/mo) account for 9%, and generators of 100–1000 kg/mo for 39%, of the total generated each year. In contrast, for other hazardous waste, generators of less than 100 and 100–1000 kg/mo, respectively, account for only 0.07 and 0.3 percent of the total generated. The significant difference between used oil small quantity generators as contrasted to hazardous waste small quantity generators is also evident in terms of the absolute volumes generated by the two groups. For example, used oil generators of less than 100 kg/mo generate 340,000 tons per year, or 88% more waste, than their hazardous waste counterparts (who only generate 180,000 tons per year).

(2) "Small quantity-generated" used oil is similar to "large quantity" used oil in composition and management practices. Used oil from the less than 100 kg/mo generators is primarily used automotive oils, and can be expected to contain the same hazardous constituents (at the same levels) as found in any used automotive oil.[66] Moreover, much of this small quantity-generated oil is potentially available for off-site recycling, such as fuel use. If EPA were to exempt from regulation used oil generated in quantities less than 100 kg/mo, tens of millions of gallons of contaminated used oil could be recycled each year in unsound ways, such as being sold as residential heating oil. [If this oil was exempt from regulation, it would not be subject to the fuel specification promulgated in the final Phase I rule. See Table 1, above, for the specification. So therefore it could be contaminated with toxic constituents.] We believe it is quite conceivable that tens or even hundreds of thousands of people could be exposed to elevated levels of toxic air pollutants if used oil generated in quantities less than 100 kg/mo was exempt from regulation.[67, 68]

(3) Congress provided for recycled oil to be regulated under a unique framework. Section 3014 exempts recycled oil from the requirements of sections 3001(d), 3002, and 3003 (the Sections of RCRA guiding regulation of hazardous waste generators and transporters) and EPA is to regulate recycled oil as necessary, while minimizing adverse impacts *on generators*. The proposal to begin full regulation of small quantity recycled oil generators' oil when collected has the advantage of imposing only minimal requirements on the generators (as described above) without allowing the oil, when collected, to go completely unregulated. The proposal would allow EPA to concentrate its resources on points where larger quantities of recycled oil were being aggregated and accumulated for recycling.

Comments are requested on the proposal to regulate small quantity-generated recycled oil, and the rationale explained above.

b. *Collectors:* Under today's proposal, small quantity recycled oil genrators' oil becomes subject to full regulation under Part 266, Subpart E upon collection. [See proposed § 266.40(c)(2)(ii).] We have proposed special requirements for transporters who collect from small quantity recycled oil generators [see proposed § 266.42(e)(2)(iii)] under which the transporter would assume, in lieu of the generator, the responsibility for ensuring that the collected oil is delivered to an authorized facility. In this sense, the collector assumes certain generator-like responsibilities.[69] EPA reasons that this approach would help ensure sound management of small quantity recycled oil generators' oil, while minimizing the requirements (and costs) imposed policy for regulating collected "small quantity" recycled oil, including the proposed § 266.42(e)(2)(iii) transporter requirements.

B. Large Generators

1. *Applicability.* Generators who fail to meet the conditions for "small quantity recycled oil generators" would be subject to the generator standards of § 266.41 of today's proposal. These are "large generators" of recycled oil, or just "generators."[70] The reader should note that owners and operators of facilities would be subject to those portions of the generator rules pertaining to initiation of off-site shipments of recycled oil (even though they do not generate the recycled oil per se).[71] The proposed requirements for generators are discussed next.

2. *Identification numbers.* EPA is proposing that generators comply with 40 CFR 262.12 of the hazardous waste rules, which requires generators to notify EPA and obtain EPA identification numbers, and allows a generator to offer his waste only to transporters and facilities who have EPA identification numbers.[72] [See proposed § 266.41(b).] The notification provides EPA with the location and other information on generators. The identification number helps establish a line of accountability for waste management, starting at the site of generation.

3. *On-site management.* EPA is proposing requirements for on-site recycling by generators, and storage or accumulation prior to recycling. [See the proposed § 266.41 (a)(4) and (a)(5), and § 266.41(c).]

a. *On-site burning:* Generators who burn recycled oil on-site would be subject to the same standards as off-site burners. [Today's proposal does not establish standards for burning, but § 266.44 is "reserved" for the burner standards.]

b. *Used constituting disposal:* Generators who use recycled oil in a manner constituting disposal [73] would be subject to the same standards as persons using hazardous waste in this manner. [See § 266.23.]

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[66] See the EPA report, *Composition and Management of Used Oil Generated in the U.S.*, November 1984, p. 3–33, for composition of used automotive oils.

[67] Even if only one-half of all the used oil from generators of less than 100 kg/mo enters the commercial fuel oil market (through an exemption by EPA similar to § 261.5), *i.e.*, about 45 million gallons per year, this is enough fuel for *about 4000 residential boilers*. [This is assuming that on average, a residential boiler consumes 5 gallons of oil per hour, for 2190 hours per year, and the used oil is burned without blending. In practice, we believe the used oil would be diluted with virgin fuel oil at ratios ranging from 2/1 to 9/1, so the actual number of boilers potentially affected could range from 8000–36000.]

[68] We do not think these same high exposure scenarios would result when used oil is *disposed* of. When disposed, used oil would pose hazards similar to other hazardous waste managed under § 261.5 and for the reasons explained at 45 *FR* 33104–5 (May 19, 1980), we do not see a need for regulation of waste managed in this way. See proposed § 261.5(j)(1), which provides that used oil being disposed of would simply count along with other hazardous waste to determine § 261.5 regulatory status.

[69] The collector or transporter is *not*, however, subject to generator requirements. We have proposed § 266.41(a)(6) to clarify this point. The collector *would* be subject to the transporter requirements. See proposed § 266.42(a)(1)(i).

[70] In proposed § 266.41–266.44 and the remainder of this preamble, the term "generator" means those generators who would be subject to § 266.41, *not* small quantity recycled oil generators subject to the special requirements of § 266.40(c).

[71] As discussed later in this preamble, transporters may also be subject to the generator requirements under certain circumstances.

[72] A generator who already has an EPA identification number need not re-notify.

[73] "Used in a manner constituting disposal" means the recycled oil is applied to or is placed directly on the land or contained in products that are applied to or placed directly on the land (in either case the "product" itself remains a waste). As discussed in an earlier section of this preamble, products produced so that the recycled oil is inseparable by physical means are currently exempt. [See § 266.20 and proposed § 266.40(b)(2).]

c. *On-site reclamation:* EPA has proposed no standards for reclamation of used oil by generators. [On-site reclamation may precede reuse of used oil as a lubricant, reuse as a fuel, or shipment off-site.] Note that EPA does not presently regulate the actual reclamation of any hazardous waste, although facilities that only reclaim (without storage) are subject to RCRA Section 3010(a) notification requirements and, for off-site facilities, to the §§ 265.71, 265.72, and 265.76 manifest requirements. [See § 261.6(c)(2), and 50 FR 652; January 4, 1985.] EPA, however, would tend to view any claimed "reclamation" of used oil in a surface impoundment to be storage or even disposal, subject to regulation as described below. [Id., footnote 44; ". . . impoundments are rarely considered to be an integral part of the . . . recycling process . . ."] This policy would not, however, apply to recovery of oil from oily wastewater containing only *de minimus* amounts of oil, because such wastewater would be exempt from regulation under proposed § 261.3(a)(2)(iv)(F). As explained above, a person recovering oil from this exempt wastewater is considered, by the act of recovery itself, a generator of used oil. [If the generator then subsequently further reclaims the recovered oil, he would then be subject to the policy proposed above.]

d. *On-site storage:* EPA is proposing special standards for generators who accumulate (store) for a relatively short time under certain conditions. Generators who meet these conditions would not be subject to the storage facility regulations (discussed in a later section of this preamble) for used oil recycling facilities. A generator who fails to meet any of these conditions would be regulated as a used oil recycling facility under the proposed § 266.43 standards.[74, 75] [See the proposed § 266.41(c), introductory text.]

Each condition is discussed next. [See § 266.41(c) (1) through (6) of the proposal for the conditions.]

(1) Storage must be in a tank or container. Recycled oil, because its value is decreased when contaminated by water or dirt, is nearly always stored in a tank or container. Storage in a surface impoundment poses inherently greater risks than tank or container storage, and the greater risks call for full regulation, not reduced standards.

(2) Accumulation time must not exceed 90 days. The 90 day time limit was adopted from the hazardous waste regulations. [See § 262.34(a), introductory text.] EPA presently has no information indicating that generators of recycled oil need a longer period of time to arrange for recycling of their oil.[76] Comments are requested on this point. Is the proposed 90 day limit adequate for recycled oil generators? Are there circumstances where a longer time period is needed[77] to facilitate proper recycling?

(3) Containers and tanks must be labeled. EPA is proposing that containers or tanks used to accumulate or store recycled oil be labeled with the term "RECYCLED OIL" to clearly identify the generator's storage area. A similar provision applies to hazardous waste generators under § 262.34(a)(3).

(4) Container standards. EPA is proposing most of the same requirements for recycled oil stored in containers that apply to generators of hazardous waste under § 262.34 (which references Part 265, Subpart I):

- Containers must be maintained in good condition; and if a container leaks, the contents must be removed and transferred to a good container (or managed in some other way, according to the proposed § 266.41 rules);
- Containers holding recycled oil must be kept closed, except when it is necessary to add or remove oil;
- Containers must not be handled in a way that would cause leaks, spills, or ruptures;
- The generator must conduct a weekly inspection of the storage area to spot signs of leakage or corrosion; and
- Ignitable recycled oil (i.e., recycled oil with a flashpoint below 140° F) must be kept at least 50 feet away from the property line.[78]

EPA is not proposing that §§ 265.172 and 265.177 of the hazardous waste rules apply to recycled oil. These sections deal with hazards related to compatibility of wastes and materials, and co-management of incompatible wastes. Used oil is compatible with virtually any material so these controls are not relevant.[79] EPA has also not proposed a date marking requirement (to document compliance with the 90 day time limit) for recycled oil containers as is required for hazardous waste generators under § 262.34(a)(2). Elsewhere in today's proposal, we discuss certain recordkeeping requirements for generators. Basically, generators would have to record the date of each off-site shipment of recycled oil. Since we are attempting to minimize the administrative burdens of today's proposed recycled oil generator rules, and since most generators (*i.e.*, those who ship off-site) would be subject to this other recordkeeping requirement, we see no need to additionally require a date-marking requirement. EPA solicits comments on its proposal to not include the above requirements as part of the generator requirements.

(5) In order to meet the statutory mandate to effectively regulate recycled oil while minimizing adverse impacts on generators, EPA is proposing a tiered approach for recycled oil tank systems. [See the proposed § 266.41(c)(5).] First, all tanks would be subject to the Part 265, Subpart J standards that apply to hazardous waste generators under § 262.34(a)(1). These requirements include:

- A "freeboard" or overflow protection requirement for open-top tanks;
- A requirement that continuous-feed tanks be equipped with a shut-off or by-pass system;
- Inspection requirements for drainage, cut-off, and by-pass systems (daily), for monitoring equipment (if any, daily), for the visible portions of the tank (daily) and the area around the tank (weekly) to detect signs of leakage or corrosion;
- Buffer zone requirements for when ignitable (flashpoint below 140 ° F) oil is stored, from the NFPA code; and
- Requirements to remove and properly manage oil, residues, and

[74] Hazardous waste generators are regulated in a similar fashion. See the § 262.34 "90 day accumulator" rule. The rules proposed for recycled oil generators were developed using § 262.34 as a starting point; certain modifications are proposed pursuant to the special Section 3014 mandate discussed above.

[75] A generator who conducts on-site recycling, such as burning or reclamation, is still eligible for these special storage requirements.

[76] The vast majority of recycled oil generators either store in drums or in tanks less than 600 gallons in capacity. [See the report, *Waste Oil Storage* by Franklin Associates, Ltd., January 1984, pp. 2–3.] Since the generators subject to the requirements discussed here generate over 1,000 kilograms (300 gallons) per month, it seems apparent that on-site storage is typically much less than 90 days.

[77] Under § 262.34(b) of the hazardous waste regulations, the EPA Regional Administrator may grant an additional 30 days for "unforeseen, temporary, and uncontrollable circumstances." If EPA receives information indicating that a time period longer than 90 days is appropriate for recycled oil, we would likely specify the alternate time period in the rule itself (rather than having a provision for case-by-case extensions) by the Regional Administrator.

[78] On June 5, 1984, EPA proposed to use portions of the NFPA code as a more flexible "buffer zone" requirement. [See 49 FR 23290.] We are considering comments received. If we do adopt the more flexible approach, it would of course apply to used oil as well as other ignitable wastes.

[79] If incompatible or reactive hazardous waste was stored at a generator's site along with used oil, such waste would of course remain subject to §§ 265.172 and 265.177.

contaminated equipment when the tank is closed.

These standards have been established through previous rulemakings as necessary for tank storage to protect human health and the environment. [See 46 FR 2802–2896, January 12, 1981.] With respect to today's proposal, there are two points requiring some discussion and clarification. First, the proposed requirements would apply to recycled oil "tank systems." This term is broader than "tank" in that it includes a tank's ancillary equipment (e.g., valves, pipes, etc.). [See 50 FR 26455; June 26, 1985.] Second, the inspection requirements [proposed § 266.41(c)(5)(iii) (D) and (E)] would apply only to *above-ground* portions of tank systems. [The current hazardous waste rules do not make this explicitly clear (§ 265.194), but we have indicated that inspections of underground tanks are not expected. [See 46 FR 2832; January 12, 1981, and 50 FR 26487; June 26, 1985.] This is particularly relevant to the present discussion since most recycled oil generators store in underground tanks.[80]] These very basic requirements would impose costs less than $1,000 per year for all affected generators and would cause adverse impacts on small businesses or on used oil recycling.[81] Comments are requested on these proposed requirements.

Beyond the requirements described above, EPA is proposing additional requirements for new tank systems (*i.e.*, tank systems installed after the regulations become effective) pertaining to secondary containment systems and closure and post-closure requirements. Also, EPA is proposing special requirements for tank systems that are found to be leaking or otherwise unfit for use. The additional requirements described here are being proposed as part of the Agency's program to improve its hazardous waste storage regulations. On June 26, 1985 EPA proposed revisions and additions to the hazardous waste tank requirements of § 262.34(a), Part 264, Part 265, and the corresponding permit requirements of Part 270. [See 50 FR 26444.] As described in the June 26 proposal, EPA has determined that in certain respects, the current tank standards are incomplete and unworkable. [Ibid. at 26447.] The finding was made by EPA that additional regulations are needed to adequately control hazardous waste tank storage, particularly hazards to ground water. [Id.] For the reasons set forth in the June 26 preamble, EPA proposed new requirements for generators and owners and operators storing hazardous waste in tanks. EPA considered proposing all of these same requirements for recycled oil tank systems. We are not proposing all of the new requirements for recycled oil generators,[82] however, because pursuant to the section 3014(c) directive to consider impacts, we have found that the new requirements would adversely affect recycled oil generators who are small businesses and could discourage environmentally acceptable types of used oil recycling.[83] We estimate that the new tank system requirements, if applied *in toto*, could impose annualized costs for generators of about $1,200–$3,600 per year. For a generator of, for example, 1100 kilograms per month (about 3600 gallons per year), this would mean costs as high as $1.00 per gallon of used oil generated and stored. EPA is concerned that costs this high, if imposed throughout the recycled oil generator universe, could induce the following kinds of adverse impacts:

- Increased disposal of used oil in sewage systems;
- Reluctance by generators to accept "do-it-yourselfer" (household-generated) used oil; and
- A price increase in oil-changes services offered to the public (and a corresponding increase in do-it-yourselfer oil changes).

EPA is therefore proposing a gradual, phased approach, that reduces impacts on small businesses and on recycling by requiring stringent controls on tank systems when they are installed (*i.e.*, "new" tanks) and by requiring leaking tanks to be closed, repaired, or replaced, with the latter two actions triggering the new tank requirements.[84]

Since we estimate only about 10% of generators' tank systems are presently leaking [85], most generators would not be immediately affected by the new, additional requirements proposed here. All generators would, of course, be affected eventually as they replace old tanks.

(a) *Standards for new tank systems.* EPA is proposing that *new* tank systems (*i.e.*, tanks installed after these rules are in effect) would have to comply with basically all of the same standards as would hazardous waste generators under the proposed § 262.34(a), as it would be amended per the June 26 proposal. [See 50 FR 26456.] The new requirements pertain to secondary containment, closure, and post-closure of tank systems. We have "reserved" paragraphs in the proposed § 266.41(c)(5)(vii) of the recycled oil rule for the new tank standards. For the reader's convenience we are presenting the proposed requirements here in Figures 1 and 2.

Figure 1—Proposed Requirements for New Tank Systems

Paragraphs (b) and (c) from the proposed § 265.193, secondary containment: [See 50 FR 26485–86; June 26, 1985.]

(b) Full secondary-containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil or ground water or to surface water at any time during the intended life of the tank system; and

(2) capable of detecting and collecting any waste or leak and accumulated liquids until the collected material can be removed.

(c) To meet the requirements of paragraph (b) of this section secondary-containment systems must be a minimum:

(1) Constructed of or line with materials that are compatible with the wate(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary-containment system and resistance to pressure gradients above and below the system owing to settlement, compression or uplift;

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[80] See the *Regulatory Impacts Analysis, US EPA, Office of Solid Waste*, November 1985, Chapter V.

[81] Ibid. Most generators with underground tanks would incur virtually no costs under this proposal. Cost of the proposed requirements for generators with above ground tanks would be in the range of 25 cents per gallon of used oil generated and stored. The reader may note that above, EPA concluded that costs in the range of $1,000–$2,000 per year for small quantity recycled oil generators *would* be associated with adverse impacts on used oil recycling. However, the reader is reminded that for the small quantity recycled oil generators costs of $1,000–$2,000 per year can mean costs of $2.40 to $4.80 per gallon of used oil generated and stored, and these higher costs per gallon are what concern EPA (with respect to recycling impacts).

[82] That is, for those generators who meet the proposed § 266.41(c) conditions. For example, if a generator stores longer than 90 days, he would not be eligible for the special requirements being discussed here but rather would be regulated as a used oil recycling facility.

[83] Unless otherwise noted, the discussion here is from the *Regulatory Impacts Analysis, US EPA, Office of Solid Waste*, November 1985, Chapter V.

[84] Also, as described in the preceding section of the preamble, we are proposing only minimal requirements for generators of less than 1000 kilograms per month of recycled oil; *i.e.*, we are regulating larger generators more stringently than smaller ones.

[85] See the *Regulatory Impacts Analysis, EPA Office of Solid Waste*, November 1985, p. IV–46.

(3) Provided with a leak-detection system that is designed or operated so that it will detect the presence of any release of hazardous waste or accumulated liquid in the secondary-containment system within 24 hours of entry of the liquid into the containment system;

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accoumulated precipitation must be removed from the secondary-containment system in as timely a manner as is possible but no later than 24 hours after the detection of the release;

(5) Designed or oprated to contain 110 percent of the design capaicty of the largest tank within its boundary;

(6) Designed or operated to prevent run-on or infiltration of precipitation into the secondary-containment system unless the collection system has sufficient excess capacity in addition to that required in paragraph (c)(5) of this section to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25 year, 24 hour rain storm.

Figure 2—Proposed Requirements for New Tank Systems

Paragraphs (a) and (b) from the proposed § 265.197, closure and post-closure care. [See 50 FR 26483–84, and 26487; June 26, 1985.]

(a) At closure of a tank system, the owner or operator must remove or decontaminate all hazardous waste residues, contaminated containment system components (liners, etc.), contaminated soil, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination or contaminated components, soils, structures, and equipment as required in paragraph (a) of this secion, the owner or operator finds that not all contaminated soils can be practicably removed or decontaminated, he must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 264.310).

The rationale for these proposed requirements is discussed fully in the June 26 proposal. [See 50 FR 26456 and 26462–82.] We estimate the requirements in Figures 1 and 2 would impose average annualized costs of approximately $1200–3600 per year for a generator installing a new tank.[86] Although this would mean costs in the range of $0.35–$1.00 per gallon, of used oil we do not think that today's proposal would cause significant adverse impacts on generators, based on the following rationale:

- Of the 48,000 generators potentially subject to the requirements (*i.e.*, generators over 1000 kilograms per month), we expect that about 41,000 would incur annualized costs less than $1600 per year, that is, less than $0.45 per gallon, and costs this high are not likely to cause adverse impacts;
- The 7000 or so generators that would potentially incur larger costs (*i.e.*, up to $3600 per year) are industrial operations, and given their overall cost structures these operations would not be adversely affected by costs in this range;[87] and
- Because the requirements would be phased-in, generators would have, in most cases, years to set aside funds for new tank installation.

The last point is of particular importance. The proposed secondary containment requirements would require fairly large initial expenditures (e.g., about five times greater than the annualized costs presented above). Most recycled oil generators are small businesses and could have difficulty obtaining financing. Phasing-in the requirements not only minimizes impacts on the generator universe as a whole (and therefore on the nationwide "flow" of used oil) by spreading-out the impacts over time, but also would allow each generator to make financing arrangements suitable to his own cash flow situation.

The June 26 proposal also discussed certain alternatives to secondary containment that the Agency has considered, but did not propose. [See 50 FR 26451–53 for a full discussion of these alternatives.] These include:

- A combination of secondary containment *and* ground-water monitoring;
- National risk-based standards;
- Minimum national standards with a variance from containment requirements based upon risk;
- Minimum performance standards;
- A ban on underground tanks; and
- Forced retirement of underground tanks.

The public may comment on these requirements as they would apply to recycled oil generators as alternatives to Figures 1 and 2. Also, with respect to standards for new underground tank systems, EPA considered (in lieu of today's proposal) application of the "interim prohibition" from section 9003(g) of RCRA. As described in the previous section of this preamble, this requirements, which amounts to corrosion protection, is the Congressionally-mandated minimum level of control for underground tank systems (storing petroleum and other hazardous substances) and as the reader will note, we have proposed a modified version of the interim prohibition for small quantity recycled oil generators.[88] The Agency has concluded, however, that for hazardous waste tank systems corrosion protection alone is not as protective as full secondary containment. [See 50 FR 26450; June 26, 1985.] Since, as we discussed above, EPA intends to require secondary containment for other hazardous waste tank systems under Subtitle C and since the proposal to phase-in secondary containment requirements for recycled oil generators would not cause significant adverse impacts, we do not see a basis for proposing less stringent requirements for recycled oil tank systems within the framework of section 3014(c).

Comments regarding the adequacy (*i.e.*, protectiveness) and costs of all of the options discussed above for new tank systems are requested.

(b) Standards for leaking tank systems. For the reasons described above (*i.e.*, adverse impacts), EPA has not proposed secondary containment requirements for all recycled oil generators. Therefore, even under today's proposal some tank systems will fail and leak. EPA has proposed that (see § 266.41(c)(5)(vi) of the proposal) as soon as a generator is aware that his tank system is leaking (or otherwise unfit-for-use), he must take the following actions: [89]

- Stop the flow of oil into the tank;
- Remove the oil from the tank (to prevent continued release and allow inspection);
- Contain visible contamination; and
- Report the event to the Regional Administrator within 24 hours after discovering or confirming the release.

Tanks taken out of service as described here would either have to be closed (with the removal of contaminated soil or equipment), repaired, or replaced.

[86] See the *Regulatory Impact Analysis* Rules, EPA Office of Solid Waste, November 1985, Chapter V.A. This includes the cost of secondary containment plus, for above-ground tanks, the inspection requirements proposed above for all recycled oil tank systems. The reader should also note that under today's proposal the closure requirements for new tank systems would be expanded as per the June 26 proposal. [50 FR 26483–84.] We do not discuss this part of the proposal in depth because it mainly is a conforming change made necessary by the proposed secondary containment requirements and because the cost impacts are insignificant; *i.e.*, an estimated $82 at closure for residue removal. [Id.]

[87] Ibid. Chapter IV-C. and D.

[88] Further, as we explained above, the section 9003(g) interim prohibition *currently* applies to all underground petroleum tanks, including used oil tanks. [See 40 CFR 280.1 and 280.2.] This requirement will remain in effect until the rules proposed today, when promulgated in final form, become effective.

[89] These requirements are taken from the proposed new § 265.192, proposed on June 26, (50 FR 26485) for hazardous waste tank systems.

When a tank is repaired or replaced, we would consider it a "new" tank, subject to the standards proposed above (Figures 1 and 2). EPA views this latter aspect of the proposal (*i.e.*, tanks returned to service being considered as "new" tanks) to be a crucial aspect of the proposal to phase-in secondary containment for recycled oil generators. In this way, tank systems posing the greatest hazards (*i.e.*, those that are leaking) would be replaced with tank systems that are not likely to pose any significant hazards, and therefore the hazards posed by the national universe of generators' tanks would be reduced overall.[90]

We do not expect the proposal (for replacement tanks to comply with secondary containment) to cause significant adverse impacts for the following reasons:

- We estimate that nationwide, only about 10% of the used oil tanks are presently leaking, so therefore most of the recycled oil generator universe would not be immediately affected by the proposal;
- Of the approximately 4500 generators thought to have leaking tanks, we estimate over 3500 would incur initial costs less than $6,000, and annualized costs less than $1600 per year; and
- Generators with leaking tanks would have the option of closing the tank system and storing the oil in some other way, for example in containers.

Finally, the reader may note that we have not at this time proposed any leak detection requirements for recycled oil generators. That is, the proposed requirements for leaking tanks have no "trigger" mechanism. EPA considered requiring a one-time "assessment and certification" provision for recycled oil generators' tank systems similar to the requirements proposed on June 26, 1985 for hazardous waste interim status facilities. [See 50 FR 26484–85, and proposed § 265.191.] This would include, among other things, leak testing for the underground portions of a tank system. [Id.] We have not proposed this requirement because we are still evaluating various leak detection schemes for petroleum materials, both in terms of their effectiveness and (as required by Section 3014(c) for recycled oil) their cost impacts.[91] At this time, the Agency does wish to specifically solicit public comment on the following suggestions made to EPA pursuant to the June 26, 1985 proposal for hazardous waste tank systems:[92]

- Observation wells (installed in the backfill material) for both new and existing tank systems;
- Inventory monitoring.

On the latter point, EPA has indicated that we believe inventory monitoring is, for several reasons, inaccurate and largely ineffective. [50 FR 26448–49; June 26, 1985.] With respect to recycled oil, we are also concerned that inventory monitoring would impose time-consuming and costly administrative burdens on generators (*i.e.*, small amounts of used oil are constantly added to storage tanks, changing the oil level with each addition). We continue to believe inventory monitoring holds little promise for controlling hazardous wastes tanks, including used oil tanks. We welcome, however, any new information on this point.

Observation wells, by contrast, may be more effective. EPA is interested in the extent to which wells are presently employed for used oil tanks, the costs of installation (particularly for retro-fitting), any technical difficulties experienced with wells, and sensitivity of wells as a leak detection mechanism. Comments are requested on observation wells and other leak detection schemes. EPA will continue its evaluation through the public comment period and we may, at some later date, propose leak detection requirements to accompany the rest of today's proposal.

(6) Standards for facility management. EPA is proposing that generators must comply with the following requirements pertaining to facility management [see proposed § 266.41(c)(6)]:

- The establishment would have to have on-site a telephone, an appropriate number and types of fire extinguishers, and spill control material (such as saw dust);
- At all times, an "emergency coordinator," (E.C.), *i.e.*, someone familiar with these requirements, must be on-site (or on call). The E.C. can also designate someone to act in his place;
- The generator must request an inspection by the local fire department to make sure the department personnel know where oil is stored, that the appropriate type and number of extinguishers are present, etc.;
- The generator must post certain information next to the telephone, including: the name and phone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or where oil reaches surface water or adjoining shoreline the generator would have to file a report with the EPA Regional Administrator; and
- The generator must ensure that his employees are familiar with these requirements.

EPA has determined that the above requirements would ensure sound facility management (or "good housekeeping"), without adversely affecting generators. The reader should make note of certain points concerning these proposed requirements. First, absorbent materials soaked with used oil (e.g., such as machine drippings) and used oil spill clean-up materials would both, via the "mixture" policies discussed above in section I.A.2. of this Part of the preamble, be subject to RCRA regulation.[93] When such materials are disposed of, they are subject to full regulation as hazardous waste under Parts 261–265, 124, and 270.[94] When recycled, the material would be considered recycled oil, subject to all applicable requirements proposed today (and if burned for energy recovery, to the final Phase I burning rule). Second, when generators train their personnel regarding the recycled oil requirements proposed today [proposed § 266.41(c)(6)(vi)], the Agency would also expect that employees be made aware (or reminded) of EPA's Chemical Advisory on the potential hazards associated with prolonged skin contact with used motor oil.[95]

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[90] See the *Regulatory Impacts Analysis*, US EPA Office of Solid Waste, November 1985, Chapter V-E and the *Background Document* for the *RIA*, November 1985, Chapter IV, for the discussion of the environmental benefits anticipated under today's proposed storage rules.

[91] Under today's proposal, State or local agencies could conduct leak testing at generators' sites or could specify test methods within their areas of jurisdiction. In any case, when as a factual matter a leak is detected, the proposed requirements for leaking tank systems [proposed § 266.41(c)(5)(vi)] would then come in to play.

[92] Another suggested approach was to require only corrosion protection (*i.e.*, the "interim prohibition") for new tank systems in lieu of secondary containment. We discussed this issue at some length above and so here focus only on suggestions concerning leak detection.

[93] A generator who uses absorbent materials to clean-up spills or machine drippings would *not*, due to that activity, lose eligibility for the special reduced requirements for "90 day" recycled oil generators (i.e., the proposed § 266.41(c)).

[94] Note that in the listing proposal that appears elsewhere in this **Federal Register**, we propose an exemption for certain "oily wipers."

[95] EPA found that mice dermally exposed to used motor oil exhibited a significantly increased incidence of cancer. EPA recommends that to prevent cancer, personnel working with automobiles should regularly wash with soap and water and avoid unnecessary prolonged contact with used motor oil. See the *Notice of Potential Risk: Used Motor Oil* (Chemical Advisory, issued under the Toxic Substances Control Act), February 1984.

The reader may note that generators of hazardous wastes, under § 262.34(a), must comply with certain requirements from Part 265 pertaining to general facility management. These include Part 265, Subpart C (preparedness and prevention) and Subpart D (emergency procedures), and § 265.16 (personnel training).

These requirements are intended to ensure that the generator's personnel are properly prepared to manage waste and respond to any emergencies that are likely to arise. EPA considered applying these same requirements *in toto* to generators of recycled oil, but we are concerned that these requirements are: (1) Written in a manner designed to cover the multitude of hazards that may arise at any kind of generator site (*i.e.*, not specific to recycled oil); and (2) that the requirements are costly (about $1000 per facility) and, when considered along with the proposed storage requirements (above), could have adverse impacts on small businesses and sound recycling practices. Because of these concerns, we have developed a simpler set of requirements that we believe will be adequately protective and yet that would also be less costly and better-suited to the small business nature of most recycled oil generators.[96] Comments are requested on today's proposal.

4. *Shipments off-site.* Section 266.41(d) of today's proposal would establish certain requirements for used oil sent off-site for recycling.[97, 98] These requirements are based on the existing standards for hazardous waste generators in 40 CFR Part 262, taking into account the special requirements of RCRA Section 3014(c) (2) and (3) for recycled oil generators.

(1) Pre-transport requirements. Today's proposal would require that recycled oil generators comply with certain requirements for packaging (§ 262.30), labeling (§ 262.31), marking (§ 262.32), and placarding (§ 262.33) that apply to hazardous waste generators under 40 CFR Part 262. [See § 266.41(d)(1) of today's proposal.] These requirements reference standards of the U.S. Department of Transportation in 49 CFR Parts 172, 173, and 178. Further, under the proposal, generators could only offer their recycled oil to transporters with EPA identification numbers. [See the proposed § 266.41(b), which references § 262.12 of the hazardous waste rules pertaining to "identification numbers."] This is to help establish a line of accountability for shipments sent off-site, *i.e.*, to initiate a tracking system.

(2) Manifest exemption for recycled oil. Under 40 CFR Part 262, generators of hazardous waste must initiate a hazardous waste manifest, which begins the "cradle to grave" tracking system of Subtitle C. Congress, however, mandated a different approach for tracking recycled oil in section 3014(c)(2)(B). This section of the Act provides that EPA must not impose manifest requirements if a generator meets the following conditions.

- He must make arrangements to have the used oil collected and recycled at a permitted facility (either his own facility or a facility he contracts with), including those facilities deemed to have a permit under section 3014(d) of RCRA;
- He does not mix other hazardous waste in with the recycled oil; and
- He complies with whatever recordkeeping requirements promulgated by EPA in lieu of the manifest requirements.

EPA has proposed these conditions in § 266.41(d)(2)(i).[99]

EPA has further added a condition that exports of recycled oil are not eligible for the manifest exemption. As with all hazardous wastes listed or identified under section 3001, the export of such oil will be covered by the provisions of section 3017, which was specifically enacted by Congress to address hazardous waste exports.

The Agency has considered whether section 3014 requires extension of the recycled oil manifest exemption to exports. For the following reasons, we believe it does not. Although section 3014(c) broadly states that the existing Subtitle C standards under section 3001(d), 3002 (manifest requirements), and 3003 shall not apply to recycled oil, the Section also provides that the recycled oil standards must "protect human health and the environment". As explained in Section III of Part One of this preamble (above), since the environmental standard under Section 3014 is identical to that upon which existing Subtitle C hazardous waste regulations are based, the recycled oil regulations in this proposal have been developed on the presumption that Subtitle C requirements apply to recycled oil unless section 3014 specifically provides otherwise. In the case of manifests, section 3014(c)(2)(B) specifically provides that recycled oil generators are exempt from any manifest requirement if, as noted above, they arrange for delivery to a recycling facility authorized to manage recycled oil. Since the manifest exemption is conditioned upon delivery to an authorized facility, it does not extend to exports to foreign facilities, which are not covered by RCRA. This limitation on the application of the manifest exemption is supported by the legislative history of section 3014 which explains that ". . . generators of used oil that is a hazardous waste . . . are exempt from . . . manifest requirements *provided that* such used oil is delivered to one or more permitted used oil recyclers who are in compliance with the special standards adopted pursuant to this legislation" (emphasis added). [H.R. Rep. No. 98-198, 98th Cong., 1st Sess. at 66, (1983).]

This limitation is also consistent with the provisions of Section 3017(a)(1)(c) which provides that a receiving country's written consent be "attached to the *manifest* accompanying each waste shipment," (emphasis added). [Id.]

[96] The reader should note that on August 1, 1985 EPA proposed standards for generators of between 100–1000 kilograms of hazardous waste per month, as required by section 3001(d) of RCRA. [50 FR 31278.] As explained in the proposal, these hazardous waste generators are predominantly small businesses. The requirements proposed for these generators take into account small business impact concerns. [Ibid at 31283–86.] Today's proposal for recycled oil generators, as described above, takes into account similar concerns, and therefore the standards proposed today for recycled oil generators are similar to the standards proposed for the 100–1000 kg/mo hazardous waste generators.

[97] As mentioned above, owners and operators of used oil recycling facilities would also have to comply with this paragraph when sending shipments off-site, for example when one processor sends oil to another processor, or when a fuel is shipped to a burner. For simplicity, the rest of this discussion refers only to generators.

[98] The reader should note that this paragraph would not apply to the marketing of the recycled oils (specification fuel and certain asphalt products) conditionally exempted under the proposed § 266.40 (a)(2) and (b).

[99] EPA has not included the "no mixing" condition in § 266.41(d)(2)(i). As discussed in detail above, Part 266, Subpart E applied only to recycled oil. By definition, recycled oil has not been mixed with any other hazardous waste. Therefore, a similar provision in § 266.41 would be redundant. Also, we consider interim status facilities to be within the scope of "permitted" facilities in the first condition because section 3005(e)(1)(C) of RCRA states that EPA should treat these facilities as having been issued a permit (until action is taken regarding their permit application). See proposed § 266.40(e)(3) pertaining to "authorized" facilities. EPA believes such a reading is necessary because to conclude otherwise would mean that Congress was being more restrictive for generators of recycled oil than for other hazardous wastes generators (*i.e.*, hazardous waste generators can ship to interim status facilities without penalty); section 3014(c), in fact, seems to indicate that Congress's intent was just the opposite.

A generator who meets the above conditions [100] has the option of complying either with the Part 262 manifest requirements, or the special alternate requirements described here.[101] [See the proposed § 262.41(d)(2)(ii).]

(3) Shipping without a manifest.

(a) *Required notices.* Before a generator starts sending used oil to a recycler, he must obtain from the recycler a one-time written notice certifying that his facility is authorized to manage recycled oil. The generator would have to keep records of notices received from each recycler for at least three years from the time he last sends a shipment to the recycler. These requirements are necessary to ensure that the recycled oil, in the absence of the manifest, is being sent to an authorized facility. [See proposed § 266.40(e)(3) for the types of "authorized" facilities.]

(b) *Designated facilities.* The proposal [§ 266.41(d)(ii)(B)] would require that when a generator offers a shipment of recycled oil to a transporter, the generator would have to provide the transporter with a list of the names, addresses, and EPA identification numbers of those facilities who have provided notices to the generator (see above). In practice, transporters collecting from multiple generators are often associated with (or owned by) a recycler, so the "designated facility" is obvious. In other cases, however, an understanding between the generator and the transporter as to the receiving facility is a crucial part of the regulatory approach today. That is, to be exempt from the manifest under this proposal, a contractual relationship must exist to provide for recycling at an authorized facility, so one or more specific facilities must be designated by the generator as eligible to receive the generator's recycled oil.

(c) *Records of shipments.* Today's proposal would require that generators record the following (for example on a log) each time recycled oil is offered for off-site shipment:

- The name, address, and EPA identification number of the transporter accepting the oil;
- The quantity of recycled oil being shipped; and
- The date of shipment.

The generator would have to retain these records for a minimum of three years from the date of shipment. [See the proposed § 266.41(d)(2)(ii)(C).]

This recordkeeping requirement, together with the corresponding requirements for transporters and receiving facilities (discussed in later sections of this preamble), would establish a line of accountability from the generator through to the receiving facility. The records required by today's proposal would include virtually all of the information required on a hazardous waste manifest by 40 CFR 262.21. The approach proposed here is different than the Part 262 manifest requirements in that no document need travel with the shipment and the receiving facility need not send a copy of the manifest back to the generator (as required under 40 CFR 264.71 and 264.42 of the hazardous waste rules), e.g., there is no "return loop." The recordkeeping requirements proposed here, together with the condition that a recycling agreement exist for a generator to be eligible for the special, reduced requirements, serves to ensure that the generator's oil will be delivered to an authorized facility.[102]

5. *Reports.* EPA requires generators of hazardous waste to file a report with the Regional Administrator every even numbered year, describing the types and quantities of wastes generated, and the transporters and facilities used for off-site shipments, if any, during the previous calendar year.[103] [See 40 CFR 262.41, the biennial report.] EPA is proposing that recycled oil generators be exempt from the biennial reporting requirement. Due to the section 3014(c) mandate to consider impacts on small businesses and on used oil recycling, EPA has been very careful in today's proposal to keep "paperwork" to a minimum. The information that would be gathered through the biennial report can be obtained from alternate means. [For example, in support of today's proposal, EPA utilized surveys and contacts with trade associations.] Since we are able to obtain necessary data from alternate means, we have concluded that burdens on generators should be reduced by not requiring the biennial report.[104] Comments are requested on this proposal to not require the biennial report, and all other aspects of the proposed approach for regulating generators.

III. Standards for Transporters of Recycled Oil

A. Applicability

1. *General.* Section 266.42 of the proposal would establish standards for transporters of recycled oil. This section would apply to "collectors" who transport used oil from generators to reclaimers, reprocessors, and re-refiners, and to persons who transport recycled oil between reclaimers and from reclaimers to users.[105] In certain cases, a transporter would also be subject to the generator requirements of § 266.41.[106] First, if a transporter brings used oil into the United States from another country, he is the generator. Second, if he mixes recycled oils of different U.S. Department of Transportation (DOT) shipping descriptions, he would be considered a generator.[107]

2. *Mixture issues.* Several situations could arise where a transporter could have problems with mixtures. For example, generators could add hazardous waste into their used oil tanks without telling the collector. As described in Section I.A. of this Part of the preamble, a mixture of used oil and other hazardous waste is not recycled oil, and the generator is responsible for initiating a manifest for the shipment.[108]

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[100] A generator who fails to meet any of the conditions must comply with the manifest requirements of 40 CFR Part 262 in its entirety.

[101] EPA is proposing this optional approach because some generators may actually prefer to use the National Uniform Hazardous Waste Manifest, or may be required by a State to use the manifest. In either case, we do not believe a generator should have to comply with *both* the manifest *and* the rules proposed here. The manifest alone if adequate.

[102] The reader should note that similar systems are used in various State regulatory programs. See, for example, the letter from Missouri dated July 30, 1984, on "waste oil logs."

[103] The biennial report was originally intended to serve as a summary of manifests from both generators and facilities that could be used as an enforcement tool through comparisons between generator and facility reports; currently its primary function is for data collection.

[104] Authorized States may, of course, require reports from generators within their own boundaries.

[105] Transporters of the recycled oils conditionally exempted under § 266.40(b) (for example a transporter of specification fuel) would not be subject to § 266.42. Further, the transport of household-generated recycled oil would not be subject to regulation because, as explained above, we have proposed that such oil does not lose its exempt ("household") status until aggregated.

[106] Transporters who collect from small quantity recycled oil generators would also be subject to the transporter standards proposed here.

[107] Under 49 CFR 172.101, used oil, as a petroleum material, may either be classified as "combustible" (flashpoint is between 100 °–200 °F) or "flammable" (flashpoint is less than 100 °F). A transporter who is placarded for combustible material and then accepts low flashpoint/flammable oil would have to initiate a new shipping paper under 49 CFR 172.202 and would be subject to the generator requirements of § 266.41 as well as the transporter requirements of § 266.42 of this proposal.

[108] The data available to EPA indicates that most used oil being stored at generators' sites is *not* adulterated with hazardous waste. With respect to the three hazardous wastes most commonly mixed with used oil (1,1,1,-trichloroethane, trichloroethylene, and tetrachloroethylene), samples taken at generator sites do not typically even contain these constituents, and rarely are the

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This problem can often be addressed by contracts between the transporter (or the receiving facility) and the generator that forbid the generator from adding hazardous waste to the used oil. The reader should note that the "rebuttable presumption" of mixing provision proposed today for all used oils (discussed above in Section I.A.4. of this Part of the preamble) would apply to used oil being collected. That is, a truckload of used oil with a total halogen content exceeding 1000 ppm would be deemed to be a hazardous waste (not recycled oil) unless the transporter could demonstrate that mixing had not occurred.[109]

Also, some transporters collect and haul both hazardous waste and used oils. We have not proposed any rule to forbid this practice, but the transporter should be aware that when a container (vehicle) is used to hold or transport hazardous waste, any material subsequently placed in the container is deemed to be a hazardous waste.[110] The exception to this general rule is when the container is cleaned ("emptied") according to 40 CFR 261.7. This section of the regulations defines when a container that has held hazardous waste may be considered "empty," and so therefore when the mixture rule no longer applies.

3. *Storage facilities.* EPA is proposing that except for two types of "transfer facilities" discussed here, transporters who store recycled oil in the course of transportation would be regulated as a recycled oil storage facility under the proposed § 266.43 standards. [The standards for storage facilities are discussed in the next section of the preamble.]

Transporters' transfer facilities [111] meeting the conditions discussed here would be exempt from the facility standards.

a. *Container facilities:* EPA is proposing that storage of recycled oil at a transfer facility in containers meeting the U.S. Department of Transportation (DOT) packaging requirements of 40 CFR Parts 173, 178, and 179 would be exempt from the facility regulations. This exemption is currently provided for hazardous waste transporters. [See §§ 263.12, 264.1(g)(9), and 265.1(c)(12), and the discussion at 45 FR 86966–68, December 31, 1980.] We see no basis to deny recycled oil transporters this special provision, which was instituted to accomodate storage incidental to normal and routine transport and transfer activities [Id.]

b. *Tank facilities:* EPA is proposing that transfer facilities with tanks meeting the § 265.193 secondary containment standards proposed on June 26, 1985 [50 FR 26485–86] would also be exempt from the facility requirements. We have "reserved" paragraphs in the regulation [§§ 266.42(a)(3)(ii)(B) of the proposal] for these secondary containment standards. The proposal standards are presented for the reader's convenience in Figure 1 of this preamble (above, in the "generator" discussion). What follows here are two points relevant to this proposed conditional exemption:

(1) There is presently no exemption for *tank* transfer facilities in the hazardous waste regulations. EPA requested public comment on the need for such an exemption on December 31, 1980 [see 45 FR 86966–68] but since no comments were received at that time, we concluded that the exemption was unnecessary. EPA has determined, however, that tank transfer facilities are in fact the norm within the used oil recycling industry.[112] We therefore believe an exemption is appropriate for this portion (used oil recyclers) of the Subtitle C regulatory universe. In the preamble of the December 31, 1980 proposal, EPA stated its intent to impose 40 CFR Part 265, Subpart J tank standards as a condition should the tank exemption be granted. [Ibid at 86967.] EPA was concerned that the transfer and short-term storage activities conducted at transfer facilities could pose spillage and leakage hazards and that some requirements should apply. [Id.] EPA continues to believe some requirements are necessary for transfer facilities. We considered proposing the current Part 265, Subpart J tank standards for recycled oil tank transfer facilities. The Agency, however, has determined that the existing Part 265, Subpart J tank standards are inadequate in several respects [50 FR 26447–48; June 26, 1985], and as described in the "generator" section above, we have proposed revisions to that Subpart. [Some of the proposed revisions are presented in Figures 1 and 2 above.] We also considered proposing Part 265, Subpart J as it would be amended per the June 26 proposal for recycled oil tank transfer facilities. We are not proposing the revised Part 265, Subpart J in its entirety because we believe the secondary containment portions of the proposed rules (Figure 1, above) would provide adequate protection at transfer facilities.[113]

Comments are requested on applying the Figure 1 secondary containment standards to tank transfer facilities. Comments are also requested on applying:

- The existing Part 265, Subpart J standards;
- Part 265, Subpart J as it would be revised per the June 26 proposal, that is, not only the secondary containment portions of the proposal but also the remainder of proposed Subpart J; and
- The alternatives to secondary containment discussed in the June 26 proposal [50 Fr 26451–53] as they would apply to recycled oil tank transfer facilities.

(2) The proposal would adopt the 10-day time limit in the existing hazardous waste exemption. As EPA explained on December 31, 1980, the 10-day limit was selected:

> . . . to allow short term holding of waste for transfer and to account for such things as scheduling problems, weather delays, temporary closing and other factors which might cause unforseen delays." [See 45 *FR* 86967.]

The Agency determined that this time limit was adequate and would not interfere with normal transportation activities. [Id.] EPA is concerned, however, that a 10-day limit might be unduly restrictive for some used oil collector operations.[114] That is, some

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constituents present in excess of 100 ppm. *Composition and Management of Used Oil Generated in the U.S.* November 1984, pages 3–33 to 3–35.

[109] Transporters may find it desirable to conduct periodic spot checks on generators, using a simple chlorine detection test. EPA is currently assessing the reliability of chlorine field tests that collectors might use.

[110] That is, the residue remaining in the container is hazardous, and any material subsequently added is, via the "mixture rule" in 40 CFR 261.3, also a hazardous waste, except as § 261.3 or § 261.7 provides otherwise.

[111] A "transfer facility" is defined in 40 CFR 260.10 as ". . . any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments . . . are held during the normal course of transportation."

[112] *Waste Oil Storage.* Franklin Associated, Ltd., January 1984, pp. 2–2 through 2–7. A "typical" collector facility has one or two 5,000 gallon aboveground tanks. This storage is short term, and is usually associated with consolidation activities, *i.e.*, transfer of oil into larger vehicles. EPA has concluded that this storage is incidental to transportation.

[113] The secondary containment requirements (Figure 1, above) would provide a level of control equivalent to the conditions that containers meet certain DOT packaging requirements, in the existing exemption [§§ 263.12, 264.1(g)(9), 265.1(c)(12)]. That is, the existing exemption does not require compliance with the Part 265, Subpart I container standards, but rather provides that releases will be minimized through packaging requirements that ensure container integrity. Secondary containment would serve the same purpose for tank facilities, *i.e.*, minimize releases through ensuring tank system integrity. The remainder of Part 265, Subpart J, includes additional requirements necessary for storage facilities, but not, in our view, necessary for transfer facilities.

[114] See the discussion of collector impact issues in the *Regulatory Impacts Analysis* EPA, Office of Solid Waste, November 1985, Chapter V.C.

transporter/collectors may not accumulate enough recycled oil in 10 days for economical shipment to a reclamation facility. EPA does not intend for the 10-day limit to interfere with normal transport and transfer operations, and we are concerned that some small collector operations could even be forced to close due to a 10-day limit.[115] We therefore request comment on what limit would constitute normal used oil transport practice, the extent to which a 10-day limit would restrict normal practice, and whether a 20 or 30-day limit would better accommodate normal practices.

c. *General conditions:* The proposal would adopt certain restrictions or conditions from the existing hazardous waste exemptions for both tank and container facilities. These include:

- The exemption would not apply to reclamation or fuel blending facilities;[116]
- Since the recycled oil held at a transfer facility is considered in transit, the transporter responsibilities pertaining to discharge reporting and clean-up would apply to any releases occurring at the transfer facility. [See § 266.42(c) of the proposal, which references Part 263, Subpart C of the hazardous waste transporter rules]; and
- The time recycled oil is held at a transfer facility counts against the 35-day period allotted for shipments sent from generators to receiving facilities. [See the proposed § 266.42(e)(2), introductory text, for the delivery limit. The 35-day limit applies to hazardous waste transport under §§ 262.42(a) and 263.21.]

These conditions were explained on December 31, 1980 [45 FR 86966–68] for the hazardous waste exemption, and EPA can see no basis for modifying any of these requirements for recycled oil.

Comments are requested on the transfer facility exemption proposed here and supporting rationale, and the specific points raised above. The requirements for transporters are discussed next.

B. Identification Numbers

Under § 266.42(b) of today's proposal, transporters would have to comply with 40 CFR § 263.11, pertaining to the need for an EPA identification number. Under this requirement, transporters would have to notify EPA and obtain an EPA Identification Number. [Transporters who already have an EPA ID number need not re-notify.] The notification and identification number process helps establish a line of accountability for the movement of used oils from generators to recyclers, and between recyclers.

C. Discharges

Section 266.42(c) of today's proposal would require transporters to comply with 40 CFR Part 263, Subpart C, which requires hazardous waste transporters to take appropriate actions in the event of a transportation mishap, including notifying appropriate authorities and cleaning-up material discharged. These requirements are necessary to ensure public safety as hazardous materials are transported.

D. Manifested Shipments

Whenever a generator of recycled oil initiates a manifest, transporters would have to (under § 266.42(d) of the proposal) comply with 40 CFR Part 263, Subpart B, the hazardous waste manifest rules. This situation could occur because the generator failed to meet one of the conditions in § 266.41(d)(2)(i) of the proposal, or even though he may meet the conditions, company or State policy requires the use of the National Uniform Hazardous Waste Manifest. In this situation, the recycled oil transporter is functioning as any other hazardous waste transporter and would be regulated as such.

E. Shipments Without Manifests

As discussed above (in Section II of this Part of the preamble), EPA has proposed that generators who meet certain conditions may, at their option, comply with the special requirements of § 266.41(d)(2)(ii) in lieu of the hazardous waste manifest requirements. Also, transporters may collect from small quantity recycled oil generators under § 266.40(c)(2), and these generators are not subject to the manifest. In either instance, the transporter may accept recycled oil without a manifest and must comply with the proposed § 266.42(e) in lieu of Part 263, Subpart B of the hazardous waste regulations. The proposed § 266.42(e) requirements for transporters would be as follows:

1. *Records of acceptance.* Under § 266.42(e)(1), the transporter would have to record (for example on a log) certain information at each collection stop, specifically:

- The name, address, and when applicable,[117] The generator's EPA identification number;
- The quantity of recycled oil accepted;
- The shipping description required by the U.S. DOT under 49 CFR Part 172; and
- The date the oil is accepted.

These records would help establish a line of accountability for the movement of the used oil to a recycler. Also, the shipping description provides certain information that may be helpful in case of a transportation accident. [In nearly all cases, the description of recycled oil would be: "Waste Oil; NA1270"; and either "combustible liquid" or "flammable liquid." See 49 CFR Part 172. If a generator does not know whether the oil is "combustible" or "flammable," the transporter would be advised to describe the oil as "flammable," (the more stringent category) to be on the safe side.] Finally, the transporter would have to keep these records for at least three years from the date of acceptance.

2. *Delivery.* As required by section 3014(c)(3) of the Act, EPA has proposed in § 266.42(e)(2) that transporters must deliver all recycled oil collected to a facility authorized to manage recycled oil.[118] Also (under the proposed § 266.42(e)(2)(ii)) the transporter would have to deliver the oil to a facility designated by the generator. These "designated facilities" are those which have entered into appropriate agreements with the generator and who have notified the generator [under § 266.41(d)(2)(ii)(B)] that they are authorized to accept recycled oil.[119] Delivery would have to occur within 35 days of acceptance, the same time limit as required under §§ 262.42 and 263.21 for manifested shipments of hazardous waste. The delivery time limit helps ensure that hazardous waste arrives promptly at the generator's intended destination. The Agency determined that 35 days was an adequate period of

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[115] Id.

[116] A facility could conduct incidental settling of bottom sediment and water and still qualify for the exemption. [This type of activity is not considered "reclamation."] Also, different used oils could of course be "blended," *i.e.*, placed in a single tank. Operations that blend used oil with virgin fuel oil, however, are not within the intended scope of the proposed transfer facility exemption.

[117] Small quantity recycled oil generators need not obtain EPA identification numbers under today's proposal.

[118] This would include those facilities permitted-by-rule under the special provisions of section 3014(d) of RCRA. [See the proposed § 270.60(d) for permit-by-rule conditions and requirements.] Facility permitting is discussed later in this preamble. The reader should note that the transporter may also deliver the recycled oil to a facility in interim status under section 3005(e) of RCRA and 40 CFR 270, Subpart G. See proposed § 266.40(e)(3) for the types of facilities authorized to manage recycled oil.

[119] As discussed above in section II.A.4., collectors who accept from small quantity recycled oil generators would be required (in lieu of the generator) to ensure the receiving facility is authorized to accept recycled oil.

time for normal hazardous waste transport, taking into account storage at transfer facilities and any minor delays. EPA believes that since recycled oil collection and marketing is typically local or regional in nature, the 35-day limit would not interfere with normal recycled oil transportation activities. However, the Agency solicits comments on the 35 day time limit; are there circumstances where a longer time period, e.g., 45 days, would be necessary to ensure efficient transportation of recycled oil?

3. *Records of delivery.* When the transporter delivers the oil to the receiving facility, § 266.42(e)(3) would require him to record the following information:

- The name, address, and EPA I.D. number of the facility;
- The quantity of oil delivered; and
- The delivery date.

These records would have to be retained for 3 years from the date of delivery by the transporter, and would serve to provide another link in the line of accountability for the oil as it is recycled.

Comments are requested on all aspects of the approach proposed for regulating transporters.

IV. Standards for Owners and Operators of Used Oil Recycling Facilities

A. Applicability and General Approach to Regulation

Section 266.43 of today's proposal would apply to owners and operators of any facility that recycles or stores recycled oil.[120] The kinds of operators that would be subject to § 266.43 include reclaimers, reprocessors, re-refiners, blenders, and burners. Facilities subject to any § 266.43 requirements are knowns "used oil recycling facilities." With the exception of those generators who accumulate recycled oil under the special "90-day" rule in § 266.41(c)(2) of today's proposal, generators who store, accumulate, or recycle on-site would also be subject to § 266.43.[121] And, as discussed above, with the exception of certain transfer facilities, transporter storage facilities would be subject to § 266.43. Finally, recyclers and reclaimers who do not store would be subject only to identification and notice requirements (§§ 264.11 and 264.12); to waste analysis requirements (§ 266.43(b)(1)–(3)); and to recordkeeping requirements (§ 266.43 (e) and (f)), discussed below.[122] [See the proposed § 266.43(a)(4).]

This last provision is analogous to § 261.6(c)(2) of the hazardous waste regulations. As discussed in the final solid waste rule [see 50 FR 652, January 4, 1985], at present we do not regulate the actual process of reclamation. The proposed § 266.43(a)(4)(ii) does make it clear that this exemption does *not* apply to facilities processing in an impoundment. Such a facility is not exempt because as we stated on January 4, 1985, surface impoundments are rarely considered a legitimate recycling device. [See 50 FR 652.] This is especially true in the case of used oil. Storage in an open impoundment allows petroleum loss through seepage, and water and dirt contamination. Petroleum products, for these reasons, are not typically stored or processed in impoundments. In summary, the coverage of § 266.43 is analogous to the coverage of the standards for hazardous waste recycling (and storage) facilities.

Before discussing the requirements of § 266.43 in detail, EPA must note that as a general policy, any facility storing, treating, or disposing of hazardous waste is subject to the section 3004 standards, *i.e.*, the standards for hazardous waste treatment, storage, and disposal facilities in 40 CFR Parts 264 and 265. Congress did not exempt used oil recycling facilities from this general requirement, as they did for generators and transporters under section 3014(c)(1) with respect to sections 3001(d), 3002, and 3003. [In fact, the Conference Report states that ". . . facilities which recycle used oil will need to comply fully with the standards applicable to owners and operators of any hazardous waste treatment, storage, and disposal facility." See H.R. Conf. Rep. No. 1133, 98th Cong., 2 Sess. at 113 (1984).]

Section 3014(d) also provides that, except for certain kinds of facilities, used oil recycling facilities that comply with the section 3004 standards are deemed to have a RCRA permit. In other words, these facilities would not normally be subject to section 3005 of the Act, nor to section 7004, which specify procedures for permitting of hazardous waste facilities. The § 266.43 standards, therefore, are based on RCRA section 3004 but are intended to be implemented through a special permit-by-rule procedure, discussed in the next section of the preamble.

Section 3014(d), however, also grants EPA the authority to permit used oil recycling facilities individually under section 3005(c) if EPA determines that individual permitting ". . . is necessary to protect human health and the environment." The following kinds of facilities have been determined by EPA to be inappropriate for the permit-by-rule approach, and would be permitted individually:[123]

- Facilities where used oil is stored or treated in a surface impoundment or used in a manner constituting disposal; and
- Facilities that manage other hazardous waste in addition to recycled oil.

The reasons that these kinds of facilities have been deemed not eligible for the section 3014(d) permit-by-rule are discussed in the "permitting" section of the preamble, (the section after this one). A pont that is relevant here is that these facilities would be subject to 40 CFR Part 270 Subpart G, the requirements for interim status hazardous waste treatment, storage, and disposal facilities *as well as* proposed § 266.43. [See proposed § 266.43(a)(5)(i).][124, 125]

What follows is a detailed discussion of the standard proposed for used oil recycling facilities in § 266.43. The reader is referred to 45 FR 33158–33220, May 19, 1980 for an explanation of the 40 CFR Part 264 and Part 265 standards for hazardous waste facilities, and to 46 FR 2802–2897, January 12, 1981, for certain additions to Parts 264 and 265. As discussed above, these standards would, in general, apply to used oil recycling facilities. However, EPA is proposing in § 266.43 some variations to the hazardous waste standards for used oil recycling facilities and these differences are discussed here. [Permitting requirements are discussed in the next section of the preamble.]

These proposed variations would not substantially change the level of protection achieved, but rather are

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[120] The reader is reminded that the term "recycled oils" as used here does not include list exempted from regulation. For example, § 266.40(b) conditionally exempts specification fuel and certain asphalt products from Subpart E. Facilities accepting only these recycled oils would be subject to § 266.43.

[121] Small quantity recycled oil generators who recycle on-site under § 266.40(c)(1) would also not be subject to § 266.43.

[122] The owner or operator may also be subject to § 266.40(b), if he produces one of the conditionally exempt oils; to § 266.41(d), if he ships recycled oil off-site; to § 266.23 if recycled oil is used in a manner constituting disposal; and to § 266.44 if he burns recycled oil. The latter two practices are discussed later in this section.

[123] See § 270.60(d)(1) of today's proposal.

[124] The reader should note that EPA does not grant interim status. The criteria for determining interim status eligibility are specified in RCRA section 3005(e) and 40 CFR Part 270, Subpart G. A facility that does not qualify for interim status and does not have a permit is subject to enforcement action if it continues operation. See § 270.70(b).

[125] For a facility that is already permitted, the permit would have to be modified to allow management of the newly regulated hazardous waste (*i.e.*, recycled oil). See § 270.41 and 124.5 for permit modification procedures.

necessary to implement the special recycled oil permitting (and tracking) system mandated by Section 3014.

B. Waste analysis requirements

Under 40 CFR 264.13, owners and operators of hazardous waste facilities must comply with a general set of requirements to ensure that all of the information needed for proper waste management is available. Sampling and analysis parameters and procedures must be specified in a waste analysis plan, which becomes part of the facility's permit. EPA has determined that in the case of used oil recyclers, much of the waste analysis plan can be specified in the rule itself. The special analytical requirements for used oil recyclers are proposed in § 266.43(b) (1)–(3), and would replace the 40 CFR § 264.13 requirements. The special requirements are equivalent to § 264.13 in protectiveness but are more specific; this should simplify compliance.[126]

1. *Parameters.* All used oil recyclers must develop or obtain information concerning the first two of the parameters below, and many would need information on the third. Only operators of hazardous waste facilities need be concerned with the fourth group of parameters.

a. *Halogens:* As discussed in Section I.A.4. above, we are proposing that any used oil containing in excess of 1000 ppm total halogens will be presumed to have been mixed with hazardous waste (and therefore is not "recycled oil") unless a person successfully rebuts the presumption. Therefore, the owner or operator must determine the halogen content of used oil accepted at the facility. This does not necessarily mean that the used oil must be sampled and analyzed for halogens. Nonetheless, if used oil with over 1000 ppm halogens is accepted at the facility, the owner or operator must either rebut the presumption of mixing (by showing that the used oil has not been mixed with hazardous waste) or manage the oil *as hazardous waste* (not recycled oil). If EPA (or a State agency) samples used oil at a facility and finds total halogens exceeding 1000 ppm and the presumption cannot be successfully rebutted, the owner or operator must be in compliance with all applicable Part 264 or 265 hazardous waste requirements (and the Part 270 permit or interim status requirements), not today's proposed recycled oil standards. Otherwise, the owner or operator is subject to enforcement action for violations of applicable Subtitle C requirements.

EPA expects that some used oil recyclers will, on a routine basis, accept recycled oil that is high in total halogens but that has not been mixed with hazardous waste. The most common such cases are expected to be processors of used chlorinated metalworking oils and re-refiners. In the former case, some metalworking fluids contain high levels of chlorinated extreme pressure additives that are not listed as hazardous constituents in 40 CFR Part 261, Appendix VIII. These processors, we expect, will conduct analysis to document that hazardous constituents are not present at significant levels (e.g., generally less than 100 ppm) in the used oil they accept, and that therefore the 1000 ppm total halogen presumption does not apply. Re-refiners, by contrast, often produce light end streams high in total halogens because low boiling point solvents are present at low levels in incoming used oil, and distillation or dehydration concentrates the "low boilers" in the light ends. In this case, if used oil accepted does not exceed the 1000 ppm total halogen level, the presumption would not apply to the light ends produced.

Finally, in either of the above cases, the reader should note that the recently promulgated final Phase I established a specification for used oil fuels of 4000 ppm total halogens. [See the preamble of the final Phase I rule, Part Two, Sections IV.B. and IV.C.] When a recycler establishes that the 1000 ppm presumption does not apply, he must nonetheless document compliance with 4000 ppm limit in order to market (exempt) specification fuel. [Id.]

b. *Ignitability:* Under Part 264, certain special standards apply to ignitable hazardous waste.[127] [See 40 CFR 264.176, 264.198 and 264.229.] The owner or operator must, therefore, determine if the oil received exhibits the characteristic of ignitability. Alternatively, the owner or operator could simply manage all recycled oil he accepts as ignitable waste. In this case, analysis to determine flashpoint may not be necessary.

c. *Fuel specification:* As discussed in Section I.C. of today's proposal, EPA has proposed to carry forward the exemption for specification fuel (Table 1 above). The owner or operator of a facility producing specification fuel would have to document that in fact the specification is met. [See § 266.40(b)(1) of today's proposal.] Therefore, analysis of the specification parameters—namely, arsenic, cadmium, chromium, lead, halogens and flashpoint—would be necessary.

d. *Additional parameters:* In addition to the analytical requirements described above, the owner or operator of a facility where other hazardous wastes in addition to recycled oil are managed would have to comply with additional requirements. [See § 266.43(b)(1)(iv) of today's proposal.] The owner or operator would have to identify at least one indicator parameter for each hazardous waste managed at the facility. For wastes listed in 40 CFR Part 261, Subpart D, the indicator parameter would normally be one of the constitutents identified in Appendix VII of Part 261 as a basis for listing. Where the Appendix VII constituent is, however, also a normal contaminant of used oil, the EPA permit writer may specify one or more other indicator parameters.[128] Recycled oil managed at facilities along with other hazardous wastes would have to be analyzed for these indicator parameters (along with total halogens) to help document that mixtures of hazardous waste and recycled oil are not being managed under Part 266, Subpart E.[129] [Such mixtures are hazardous waste, subject to 40 CFR Parts 261–266, Subpart D.] As an alternative to the special sampling and analysis requirements discussed above, EPA considered whether hazardous waste facilities should simply be prohibited from handling recycled oil.[130] This would simplify enforcement. The Agency is concerned, however, that many hazardous waste facilities can properly manage recycled oil without mixing, and that it would be unfair not to allow management of both types of

[126] Part of the simplification comes from the fact that used oil is a fairly stable liquid, e.g., it is not reactive nor volatile. Also, used oil is not corrosive. Therefore, the information needed to manage this waste is narrowed as compared to the variety of hazardous wastes some facilities may manage.

[127] An ignitable waste, as defined in 40 CFR 261.21, has a flashpoint of less than 140 °F. Approximately 28% (80 of 289) of the used oil analyses EPA reviewed exhibited this characteristic. See *Composition and Management of Used Oil Generated in the U.S.* by Franklin Associates, Ltd., November 1984; p. 3-56.

[128] As discussed above, a facility managing both recycled oil and other hazardous waste would be permitted individually, not by-rule. Interaction between the owner or operator and the EPA permit writer will therefore be possible in selecting these indicator parameters. EPA is, however, concerned that this provision, because it is not self-implementing, may not work effectively during interim status. This problem is discussed below.

[129] The reader should note that an owner or operator remains subject to §§ 265.13 and 264.13 for any *other* hazardous waste that he manages.

[130] A similar approach would be for EPA to presume that any used oil managed at a hazardous waste facility is mixed with hazardous waste. Under this kind of approach, a person might or might not have the opportunity to rebut the presumption through analysis.

materials. EPA requests comment on this alternative (and on the variations described in footnote 130, below). EPA specifically requests comment on applying the prohibition during interim status. During this period, § 266.43(b)(1)(iv) would not be fully effective because EPA would not yet specify indicator parameters and therefore no direct control beyond the rebuttable presumption would be in place to document the "no-mixing" rule. Should co-management (of recycled oil and other hazardous wastes) be allowed *only* at *permitted facilities*? [Under this approach, the prohibition would supplement, but not replace the proposed § 266.43(b)(1)(iv).]

2. *Analysis plans.* As required for all hazardous waste facilities under § 264.13(b), we are proposing that the owner or operator of a used oil recycling facility must develop and follow a written plan describing his sampling and analysis procedures.[131] Under today's proposal [§ 266.43(b)(2)(iii)], the owner or operator would have to describe the following kinds of arrangements made to comply with the analysis requirements.

a. *Halogens and flashpoint:* The owner or operator may obtain information on halogen content and flashpoint of the oil he accepts by obtaining data, information, or samples from generators, and/or by sampling incoming shipments. The analysis plan would have to describe these arrangements, e.g., which (if any) generators would be providing information on the halogen or flashpoint content of oil they generate, vs. a schedule of sampling incoming shipments. In either case, it is the responsibility of the owner or operator to ensure used oil high in halogen (exceeding the rebuttable presumption) is managed as a hazardous waste and to ensure ignitable used oil is managed under the special requirements for ignitable hazardous waste.

b. *Specification fuel:* The owner or operator would have to describe at what point(s) in his fuel production process the oil would be sampled to document compliance with the fuel specification. For example, he could designate certain tanks "for product only" and test these tanks when near full, or alternately, he could analyze his incoming used oil and the virgin fuel oil used for blending and then blend at a certain ratio designed to meet the specification. (In this case, he may not need to analyze the final product.) In any case, a shipment sent off-site is subject to § 266.41(d) (of the generator requirements) of today's proposal *unless* the requirements of § 266.40(b)(1) for specification fuel are complied with. Whenever a person initiates a shipment without complying with § 266.41(d) (or he burns without complying with § 266.44) because he claims to have specification fuel, he is responsible for obtaining the necessary documentation as required by § 266.40(b)(1), including analysis of the specification parameters.

c. *Frequency:* For all of the analyses described above, the owner or operator would have to specify in the plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements. [See proposed § 266.43(b)(1).] EPA considered whether some minimum frequency should be specified for the various kinds of sampling and analysis required under today's proposal, but we have been unable to develop a schedule that would appropriately take into account the many facility-specific variables that affect sampling and analysis frequency. For example, if weekly sampling and analysis is specified, different size facilities would be affected very differently, e.g., some operations process 100,000 gallons in a week, and others only 10,000 gallons. In some operations where specification fuel is produced, the owner or operator might use a large tank to hold the "product" fuel and test only when the tank is full (which may not mean weekly testing). In other operations, for example where on-site lab facilities are available, daily testing may be feasible.

Comments are requested on the need for a specific sampling and analysis schedule. To encourage public comment on this subject, EPA has included in Table 5 below a schedule adapted from one used by the State of Rhode Island as permitting guidance for used oil burners. Comments are requested on whether this or a similar schedule should be specified by-rule for used oil recycling facilities.

TABLE 5.—EXAMPLE OF A SAMPLING AND ANALYSIS SCHEDULE FOR USED OIL RECYCLING FACILITIES (SAMPLES ANALYZED PER YEAR)

Analysis parameter	Facility throughput (gallons/week)			
	<2,000	2-6,000	6-15,000	15,000+
Lead (and other metals)	4	12	26	52
Halogens	4	12	26	52
Flashpoint	2	4	12	26

Notes:
1. Samples would be analyzed on a regular schedule, e.g., 12 samples per year means one per month.
2. Samples are taken from each load sent off-site and blended into a composite sample, for analysis on a schedule as above.

Source: Adapted from Rhode Island's Air Pollution Control Regulations Number 20, *Burning of Alternative Fuels*, Appendix B. See the letter from Rhode Island Department of Environmental Management, March 29, 1985.

The reader should note that if EPA did promulgate a sampling and analysis schedule like the one in Table 5, compliance with the schedule would be an independently enforceable provision. That is, the owner or operator would still be responsible for ensuring that all applicable requirements pertaining to, for example, producing specification fuel are complied with *as well as* compliance with the schedule itself.

All of the requirements described above for analytical plans would help EPA determine whether a facility has the means and intentions of complying with the proposed standards. Under the proposed § 266.43(b)(3), records of analysis would have to be kept at the facility as part of the operating record for the operating life of the facility.

Comments are requested on the analytical requirements described above.

C. Acceptance of Recycled Oil From Off-Site

An important purpose of EPA's hazardous waste regulations is to establish a line of accountability when waste is shipped from a generator's site to another facility. The requirement for a receiving facility to keep records of wastes they accept from off-site helps complete the tracking system and provides information for owners, operators, and inspection officials concerning the nature of wastes managed at a facility.

1. *Manifested recycled oil.* When receiving manifested recycled oil, the owner or operator must comply with the following requirements from the hazardous waste regulations:

- Section 264.71 requires the owner or operator to sign and date the manifest and return a copy to both the generator and the transporter, and retain a copy for himself for a minimum of three years;
- Section 264.72 requires the owner or operator to reconcile significant manifest discrepancies with the

[131] Acceptable analytical procedures under the hazardous waste regulations (including procedures for oily wastes) are included in the EPA publication SW-846, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*: Second Edition, 1982. See § 260.11, "references."

generator or transporter, and if not able to do so, to file a report with EPA's Regional Administrator; and

• Except as discussed below (pertaining to special arrangements and the manifest exemption) § 264.76 requires that when hazardous waste unaccompanied by a manifest is accepted the owner or operator must file a report with the EPA Regional Administrator.

2. *Unmanifested recycled oil.* As discussed above in Section II.B.4. of this preamble, EPA has proposed that under certain conditions generators may ship recycled oil without using the manifest.[132] Under these circumstances, the owner or operator would comply with § 266.43(e)(2) of today's proposal in lieu of §§ 264.71 and 264.72.[133]

Section 266.43(e)(2) would require that, for each acceptance, the owner or operator would have to record the following:

• The name, address, and EPA identification number of the transporter who delivered the shipment;

• The name, address, and EPA identification number of each generator who contributed to the shipment. [The transporter is required to keep this information and the owner or operator, may, for example, obtain a copy of the transporter's collection log.]

• The quantity of recycled oil in the shipment; and

• The date of acceptance.

These records would have to be kept for a minimum of three years (from the acceptance date). As discussed previously, the recordkeeping requirements proposed today, in conjunction with the condition that a recycling arrangement exists, provides a tracking system virtually as protective as the hazardous waste manifest, while still complying with the directive in section 3014(c)(2)(B) of the Act (to not impose the manifest).

3. *Receipt of hazardous waste mixtures.* EPA is proposing that when an owner or operator receives a shipment of used oil that he believes to have been mixed with other hazardous waste (e.g., when it contains total halogens in excess of 1000 ppm), he must take action as described here. [Proposed § 266.43(e)(3).]

a. *Acceptance of shipment:* Facilities may only accept hazardous wastes specifically described in their RCRA permits.[134] Since mixtures of used oil and other hazardous waste(s) are not "recycled oil," a facility receiving such mixtures would have to be permitted to accept both used oil and the other waste(s) in the mixture (e.g., spent trichloroethylene, etc.). A facility not permitted to accept such mixtures must turn away the shipment.[135] A facility permitted to accept the wastes in the mixture may do so, but the mixture must be managed as hazardous waste (not as recycled oil).

b. *Unmanifested shipments:* In addition to the requirements described above pertaining to acceptance of used/oil hazardous waste mixtures, if the shipment is not manifested an owner or operator must comply with § 264.76 pertaining to "unmanifested waste reporting." That is, the owner or operator must submit a report to EPA within 15 days as specified in § 264.76.

D. Storage in Tanks

We discuss here how tanks used to reclaim or store recycled oil would be regulated under today's proposal first in general, and then taking into account two on-going EPA rulemakings.

1. *General.* EPA is proposing that all owners or operators of used oil recycling facilities be subject to the tank storage standards of Part 265, Subpart J, but only those owners and operators who must obtain individual permits would be subject to Part 264, Subpart J.[136] [See the proposed § 266.43(h)(2).] EPA is not proposing to require all owners or operators to comply with Part 264, Subpart J because we do not believe that § 264.191(a), the "shell thickness" design standard, can be effectively implemented through a permit-by-rule.[137] [See 46 FR 2831–32 for a discussion of the shell thickness rule and the permitting interaction necessary to implement the rule.] The Part 265 standards, by contrast, are designed to be self-implementing and so are more amenable to a permit-by-rule approach.[138]

2. *Revisions to the tank standards.* EPA proposed on June 26, 1985 to revise Part 265, Subpart J, and Part 264, Subpart J to include requirements for secondary containment (among other requirements) for most aboveground, underground, and in-ground tanks used for storing hazardous waste. [See 50 FR 26444.] This proposal is relevant to the present discussion because as stated above used oil recycling facilities are subject to Section 3004, *i.e.*, to Parts 264 and 265. Therefore, amendments to Part 264 or 265 would apply to used oil recycling facilities when final. Figures 1 and 2 above present some of the requirements proposed on June 26. The reader is advised to review the June 26 **Federal Register** proposal in its entirety for a full understanding of the proposed revisions. The public is invited to comment on the proposed tank rules, and alternatives presented at 50 FR 26451–53, as they would apply to recycled oil.[139] Commenters should consider the following in preparing comments:

(1) Used oil recycling facilities are, under Section 3014, to be subject to the Part 264 and 265 requirements. Any regulatory distinction made for recycled oil must be based on technical factors, not adverse economic impacts.[140] Since used oil is very similar to other hazardous wastes stored in tanks (*i.e.*, it is liquid, it contains toxic and carcinogenic constituents), we have proposed that used oil recycling facilities will be regulated the same as hazardous waste treatment and storage facilities. [The reader should note one important difference. As discussed above, specification fuel (a recycled oil low in contaminants) would be exempt

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[132] As described in Section II.A., above, small quantity recycled oil generators need to comply with no requirements when initiating an off-site shipment. [See proposed § 266.40(c)(2).] Large generators may comply with alternate recordkeeping requirements in lieu of the manifest if certain conditions pertaining to recycling contracts are met. [See proposed §§ 266.41(d)(2) and 266.42(e)(2).]

[133] And when recycled oil is accepted under these conditions, the owner or operator would, of course, not be required to file an unmanifested waste report under § 264.76.

[134] Facilities in interim status may accept wastes identified in their "Part A" permit application. [See §§ 270.71, 270.72.] The reader should also note that we are today proposing a special permit-by-rule [See proposed §270.60(d)] for certain facilities managing recycled oil.

[135] In this case, the transporter must take the shipment to an alternate facility, if one is designated by the generator, or return the waste to the generator. [See § 262.20.]

[136] As explained above and in the next section of the preamble, some facilities are not eligible for the permit-by-rule. [See proposed § 270.60(d)(1).] Also, some facilities may be required to obtain individual permits on a case-by-case basis. [See the proposed § 270.60(d)(3).]

[137] Except for the shell thickness requirement, Subpart J of Parts 264 and 265 are virtually identical.

[138] EPA considered requiring all facilities to comply with Part 264, Subpart J, and to obtain individual permits. Since nearly all used oil recyclers store in tanks, however, this would effectively negate the section 3014(d) permit-by-rule Congress envisaged. This would appear contrary to congressional intent, *i.e.*, the language of section 3014(d) specifically includes "tank and container storage" within the scope of the permit-by-rule.

[139] The *Regulatory Impacts Analysis* for today's proposal includes the costs of the proposed new standards.

[140] This in contrast to the requirements for recycled oil generators, where the reader will note that because of RCRA requirements have been reduced to mitigate adverse impacts on generators.

from all requirements, including the storage requirements discussed here.]

(2) Some of the proposed new Part 264 standards would require a great deal of interaction between the permit applicant and the permitting official.[141] [See, for example, the proposed §§ 264.191 pertaining to design of tank systems, and 264.192(e) pertaining to corrosion protection.] Therefore, we would not change the policy proposed above to require Part 264, Subpart J *only* for those facilities that must be permitted individually. We believe the proposed Part 265, Subpart J requirements (see Figures 1 and 2 for some of the requirements) are self-implementing, protective, and amenable to a permit-by-rule approach.

3. *Reclamation in tanks.* Under 40 CFR 261.6(c), EPA regulates the storage of hazardous waste prior to (and in some cases following) reclamation. Further, the Part 264/265 Subpart J tank standards apply to treatment tanks; these standards, however, do *not* apply when hazardous waste is actually being reclaimed in a tank. (See 45 FR 33093, May 19, 1980; and 50 FR 652, January 4, 1985.] Tanks used for "incidental settling," however, are not meant to be exempt from the Subpart J standards. [Id.][142] EPA recognizes that this policy requires specific interpretation as it would apply to used oil recyclers, because virtually all used oil recycling facilities perform at least some minimal amount of reclamation.

First, some devices (which may arguably be "tank-like") such as distillation columns at re-refineries are clearly used for recycling and would not be subject to Subpart J. Many tanks, however, are used for settling and blending, and it may not be obvious whether the tank is used primarily for storage vs. recycling. EPA currently addresses this question on a case-by-case basis. An owner or operator who claims to be exempt from Subpart J because the device is used for recycling bears the burden of proof to document the claim. [See the discussion at 50 FR 642, January 4, 1985, relating to similar exemptions and variances.] EPA requests comment on whether specific criteria should be added to the rules (or whether detailed guidance should be provided) to aid owners, operators and enforcement officials in determining when a tank may be exempted under the above-described recycling policy.

E. Uses Constituting Disposal

On January 4, 1985, EPA promulgated 40 CFR Part 266, Subpart C for hazardous wastes used or reused in a manner constituting disposal. [See 50 FR 627–629.] Under § 266.23, hazardous wastes (or those products which contain hazardous waste) applied to or placed directly on the land are subject to the land disposal standards of Part 264, Subpart A–N, e.g., users of such "products" are fully regulated as land disposal facilities.[143] Further, Part 266, Subpart C was recently revised on July 15, 1985 to incorporate the statutory prohibition (section 213(1) of the Hazardous and Solid Waste Amendments of 1984) on the use of hazardous waste as a dust suppressant. [See 50 FR 28718.] Therefore, when EPA lists used oil as a hazardous waste (proposed today else where in this **Federal Register**), road oiling would be prohibited.

A used oil recycling facility where recycled oil is used in a manner constituting disposal (according to § 266.20) would be subject to the same standards (§ 266.23) as apply to any hazardous waste used is this manner.[144] As described above, recycled oil is not exempt from section 3004, and the requirements of § 266.23 (issued under section 3004) have been deemed necessary by EPA, and in the case of the dust suppression ban, by Congress, for all hazardous wastes used in this manner.

F. Burning for Energy Recovery

Today's proposal does not include air emissions standards pertaining to the burning of recycled oil as fuel. As explained in Section II of Part One of this preamble, EPA recently promulgated Phase I of its Section 3004 burning standards and we plan to propose Phase II (the technical controls) early next year.[145] Today's proposal, however, would impose certain requirements on facilities that produce, market, on burn recycled oil as fuel.[146] These are discussed here.

1. *Facility standards.* Burners of off-specification used oil would be subject to some or all of the requirements for used oil recycling facilities in the proposed § 266.43. Storage of recycled oil at a burner facility poses the same hazards as storage at any other type of recycling facility. Further, in EPA's view, burners are within the scope of section 3014(d) which requires compliance with the section 3004 standards. Finally, generators who burn on-site will be subject to the burning standards of § 266.44 (when promulgated) as well as the § 266.41 generator requirements discussed above.

2. *Fuel transportation.* Under today's proposal, any person initiating a shipment of recycled oil (including off-specification fuel) off-site would be subject to § 266.41(d) of the generator standards.[147] [This provision would eventually replace the requirements for "marketers of used oil fuel" in the Phase I burning and blending rule.] Under § 266.41(d), off-site shipments would either be subject to the hazardous waste manifest or if the recycling agreement conditions of § 266.41(d)(2)(i) are met, to the special recordkeeping requirements of § 266.41(d)(2)(ii). [See the "generator" discussion, above.] We discuss here first, how today's proposal would alter requirements applicable to fuel marketers promulgated in the Phase I burning rule, and second how today's proposal would fulfill the section 3004(r) labeling requirements.

a. *New requirements for marketers:* In the final Phase I burning rule, EPA promulgated § 266.43 requirements for marketers. [In the final Phase I preamble, see Part Four, Section I.] This section includes certain notice, invoice, and recordkeeping requirements to control shipments of off-specification fuel. [Id.] The requirements proposed today pertaining to shipment of recycled oil [proposed § 266.41(d), applicable to owners and operators of used oil

[141] The reader should note that we have proposed to delete the § 264.191 "shell thickness" requirement. [See 50 FR 26458–59; June 26, 1985.]

[142] That is, the tank must actually be an integral component of a recycling system, not merely a storage tank in which some settling happens to occur. The Part 264/265 Subpart J tank standards apply to storage (and treatment) tanks.

[143] As explained in Section I.C., above, § 266.20(b) conditionally exempts hazardous wastes incorporated into commerical products (produced for the general public's use) where the hazardous waste become inseparable from the product. EPA has identified those recycled oils which meet these criteria and included the conditional exemption in the proposed §§ 266.40(a)(2)(ii) and 266.40(b)(2). The controls described here would not apply to these exempt recycled oils. The reader should note the § 266.40(b)(2) products are the *only* recycled oils we have found that meet the § 266.20(b) criteria; therefore, other recycled oils applied to or placed directly on the land would be regulated under § 266.23 as land disposal.

[144] Sections § 266.21 and § 266.22, respectively, include standards for generators, transporters, and storers of hazardous waste used in a manner constituting disposal. These requirements would *not* apply to recycled oil. As explained above, generators, transporters, and storers of recycled oil would be subject to proposed §§ 266.41–266.43.

[145] The reader will note that we have "reserved" § 266.44 for controls on burners. This is where an emissions standard, when developed, would be placed.

[146] The standards discussed here would *not* apply to specification fuel exempted from regulation under §§ 266.40(a) (2) (i) and 266.40(b) (1). For convenience, we will use the term "off-specification fuel" (the same term we used in the Phase I burning rule) to describe recyled oil subject to the regulations discussed in this section.

[147] See the proposed §§ 266.41(a)(2) and 266.43(a)(2)(ii).

recycling facilities under § 266.43(a)(2)(ii)] are different from the recently promulgated marketer standards in the following ways:

(1) Under today's proposal, shipments of recycled oil would be subject to the hazardous waste manifest unless the conditions of proposed § 266.41(d)(2)(i) pertaining to recycling contracts are met. In this case, proposed § 266.41(d)(2)(ii) would require notice and recordkeeping requirements very similar to the current § 266.43 marketer standards. As discussed above (in the "generator" discussion, Section II. B. 4. of this Part of the preamble), this approach is based on Section 3014(c)(2)(B) of the Act. The proposal is different than current § 266.43 in that if the recycling contract conditions are not met, the hazardous waste manifest would apply.

(2) The reader may note that the current § 266.43(b)(4)(vi) of the marketer standards requires a statement on the invoice as follows: "This used oil is subject to EPA regulation under 40 CFR Part 266," while today's proposal does not contain such a requirement. We believe the requirements proposed today render this label unnecessary. This is discussed next in the context of the RCRA Section 3004(r) labeling requirement.

b. *Labeling of fuel shipments:* Section 3004(r) requires that any fuel made from hazardous waste must bear a warning label stating that the fuel contains hazardous waste, and listing the contents contained therein. [See 50 FR 28724–25; July 15, 1985.] Listing used oil as hazardous waste (proposed elsewhere in this **Federal Register**) would trigger this labeling requirement. In fact, EPA recently promulgated the Phase I labeling requirement for off-specification used oil fuel (even though used oil is not currently a hazardous waste) in response to the Congressional concern with persons unknowingly receiving contaminated fuels. [See 50 FR 1704; January 11, 1985.] We believe, for the following reasons, today's proposal renders the warning label requirement unnecessary by fulfilling the same functions as would a label.[148]

(1) For those shipments of off-specification fuel that are manifested, clearly a warning label would be redundant and unnecessary. [Id.]

(2) To be exempt from manifest requirements, the fuel seller and purchaser must have a recycling agreement; further, facilities that receive off-specification fuel (including burners) must be authorized to manage recycled oil and would be subject to the proposed § 266.43 requirements for used oil recycling facilities. In this situation, *i.e.*, where the receiving party would be regulated, a warning label also seems unnecessary.

3. *On-site burning of de minimus quantities.* Section 3004(q)(2)(B) provides that EPA may exempt on-site burning of *de minimus* quantities of hazardous waste (to be defined by the Administrator), provided certain conditions are met. EPA is currently considering whether such an exemption is appropriate for recycled oil generators. Any exemption of this sort would be proposed with the Phase II burning and blending rules early next year.

G. Corrective Measures

Section 3004(u) of RCRA, as amended, requires EPA to develop standards pertaining to corrective action for releases of hazardous waste or hazardous constituents[149] from solid waste units at facilities seeking permits under section 3005(c) (including releases that occurred in the past).[150] EPA amended Parts 264 and 270 to include provisions to implement this requirement. [50 FR 28711–16; July 15, 1985.] The requirements are to be administered during the facility permitting process. These corrective action requirements would apply, therefore, to all used oil recycling facilities that are required to obtain individual facility permits under section 3005(c). [See proposed § 270.60(d)(1), which would exclude certain facilities from the permit-by-rule, and proposed § 270.60(d)(3), which specifies criteria EPA would use in determining on a case-by-case basis when an individual permit is necessary.] In fact, as discussed in the next section of the preamble, one criterion EPA will consider in determining which facilities should be individually permitted is the need for corrective measures at a facility.

V. Permitting of Used Oil Recycling Facilities

This section of the preamble discusses EPA's proposed approach to implement the permitting provisions of section 3014(d) of the Act. Most used oil recycling facilities would, under today's proposal, be permitted-by-rule; in contrast, most other hazardous waste facilities are (usually after an "interim status" period) permitted individually. This special approach is undertaken due to the special section 3014(d) mandate for recycled oil. We discuss next the eligibility criteria for this special permit-by-rule, the requirements that apply to facilities permitted-by-rule, the provisions for modifications to the permit-by-rule, and the duration of the permit-by-rule. Some facilities would not be eligible for the permit-by-rule; the owners or operators of these facilities would have to obtain individual facility permits. We do not discuss procedures for individual facility permitting here as these procedures have been established for hazardous waste facilities through previous rulemakings. [See 40 CFR Part 270, and 48 FR 14228; April 1, 1983.] Finally, we discuss the issue of interim status for used oil recycling facilities, and then some enforcement principles that would apply to all used oil recyclers.

A. Eligibility for Permit-by-Rule

Section 3014(d) provides that owners and operators of used oil recycling facilities[151] are deemed to have a permit for their recycling activities and associated tank and container storage, provided the owner or operator complies with the standards for hazardous waste treatment and storage facilities promulgated by EPA under section 3004.[152] EPA is authorized under section 3014(d) to permit used oil recycling facilities individually as necessary to protect human health and the environment. EPA has proposed to exclude certain kinds of facilities from the permit-by-rule and has proposed

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[148] Today's proposed rules for recycled oil are issued under the joint authorities of sections 3004 and 3014 of RCRA. As such, section 3004(r) allows EPA to supersede the statutory warning label with regulations.

[149] See Part 261, Appendix VIII, for the list of hazardous constituents.

[150] The reader should note that releases of oil and/or hazardous substances trigger certain other EPA requirements as well. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), a person in charge of a vessel or facility having knowledge of a release to the environment from that vessel or facility of a quantity of a hazardous substance at or above the reportable quantity of that substance must report that release to the National Response Center (NRC). In the case of used oil, EPA is proposing a reportable quantity of 100 pounds. See the listing proposal elsewhere in this **Federal Register**. If the discharge of the used oil occurs in a navigable waterway and is sufficient to cause a sheen on the water, then the discharge must also be reported to the NRC pursuant to regulations promulgated by EPA under section 311 of the Clean Water Act. [40 CFR Part 110.]

[151] The term "used oil recycling facility" is used for convenience to describe those facilities subject to § 266.43 of today's proposal, e.g., processors, re-refiners, and burners of off-specification fuel.

[152] The reader is reminded that used oil being disposed of without recycling would be subject to full regulation under 40 CFR Parts 262–265 and facilities disposing of used oil (or storing or treating used oil before disposal) would be permitted individually under Part 270.

criteria for case-by-case determinations for when individual permitting is necessary.

1. *General exclusions from the permit-by-rule.* EPA has determined that permitting-by-rule is inappropriate for the following kinds of facilities:

- Recycled oil is stored or treated in a surface impoundment;
- Recycled oil is used or reused in a manner constituting disposal;

Other hazardous wastes are managed at the facility in addition to recycled oil. [See the proposed § 270.60(d)(1).]

a. *Surface impoundment storage:* Section 3014(d) provides that treatment, recycling, and associated *tank and container* storage may be permitted-by-rule. Storage or treatment of recycled oil in a surface impoundment is not included in the statutory language, and the legislative history indicates the omission was deliberate. [See H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 69 (1983). Surface impoundment storage is used as an example of an activity meant to be permitted individually.]

b. *Uses constituting disposal:* The standards for persons using hazardous waste in a manner constituting disposal (§ 266.23, which references Part 264, Subparts A–N) cannot, in EPA's view, be effectively implemented through a permit-by-rule,[153] but rather must be implemented through individual facility permitting.[154] See, for example, the Part 264, Subpart F ground-water monitoring requirements. The EPA Regional Administrator must specify certain requirements in §§ 264.91(b), 264.93(a), 264.94(a), 264.94(b), 264.95(a), and 264.96(a).

c. *Hazardous waste facilities:* The third group of facilities that would be excluded from the permit-by-rule under today's proposal are facilities that manage other hazardous wastes in addition to recycled oil. These facilities are likely sources of hazardous waste/used oil mixing,[155] and they therefore require the additional scrutiny provided by individual facility permitting.[156, 157] Finally, as discussed in Section IV.B. above, EPA has proposed special analytical requirements for facilities managing both recycled oil and other hazardous wastes [the proposed § 266.43(b)(1)(iv)]. In general, we have made the analytical requirements self-implementing, but the special requirements for facilities managing both recycled oil and other hazardous waste require interaction between EPA and the owner or operator and are best implemented with the significant Agency oversight provided by facility permitting.

2. *Case-by-case exclusions.* In § 270.60(d)(3) of today's proposal, EPA has included provisions under which the Regional Administrator (or the Director of an authorized State hazardous waste program) may require the owner or operator of a used oil recycling facility, on a case-by-case basis, to apply for an individual RCRA permit. The basis for requiring an individual permit would be the receipt of information (through site inspection, or other means) indicating that any of the following situations exist at the facility.[158]

- The owner or operator is not fully in compliance with one of the permitting requirements of § 270.60(d)(2), discussed below; or
- The facility, because of the quantities of recycled oil being managed or the management methods in use, or the facility's location, could pose a substantial potential hazard to human health or the environment; or
- There has been a release of recycled oil, hazardous waste, or a hazardous constituent at the facility and corrective measures taken by the owner or operator are not adequate to protect human health and the environment.

In the first situation, an owner or operator may make a good faith effort to comply with the permit-by-rule requirements of § 270.60(d)(2), discussed below, and believes that he is in compliance. A site inspection by EPA, however, may lead to a determination by EPA that the steps taken by the owner or operator to comply with § 270.60(d)(2) are not adequate, and that additional measures are necessary. In such cases, EPA would either initiate an enforcement action to bring the facility into compliance, and/or could make the determination that the facility in question is more appropriately regulated through an individual permit. For example, a facility may be more appropriately regulated under an individual permit where site-specific conditions exist that require special, individual consideration.

The second situation, where the facility is posting a potential hazard, also requires explanation. Some facilities, in the judgment of the Regional Administrator, may pose at least a potential hazard even though they are technically in compliance with § 270.60(d)(2). An example might be a facility reclaiming, storing, or burning large quantities of recycled oil in a densely populated urban area. In this case, the Regional Administrator would not have grounds to cite the facility for violations of the permit-by-rule conditions. The potential for a hazard, however, may be substantial because of proximity to population centers or to sensitive population groups, such as children. In this case, individual permitting would provide the maximum scrutiny possible under Subtitle C and would also allow for public participation in the permitting and siting process. Finally, as described above, if the Regional Administrator determines that an owner/operator's response to a release is inadequate, he can require the owner or operator to apply for an individual permit to institute the corrective action requirements of Parts 264/270.[159]

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[153] This problem would also exist for surface impoundment regulation and permitting.

[154] EPA could conceivably require compliance with Part 265, not Part 264, for persons using recycled oil in manner constituting disposal and perhaps for surface impoundment storage in that the Part 265 standards are meant to be self-implementing. This is what we have proposed for tanks. [See the discussion in Section IV.D. above.] We have not proposed this approach because Congress has registered a strong concern with land disposal and surface impoundment storage of hazardous waste [see section 1002(b)(7) of RCRA, as amended] indicating a need for maximum scrutiny of these practices by EPA, *i.e.*, individual facility permitting.

[155] See the report, *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associates, Ltd., November 1984, pp. 3–32 through 3–37. It appears obvious that hazardous solvents are commonly introduced either during collection or at facilities during storage or processing. To cite just one example, samples of used automotive oil taken at generator sites had 90th percentile values of trichloroethane, trichloroethylene, and tetrachloroethylene (three hazardous spent solvents) of 16, 11, and 55 ppm, respectively (p. 3–33). The 90th percentile values of these same constituents in "automotive oil" samples at processor facilities ar 6000, 800, and 3000 ppm (p. 3–34).

[156] Since these facilities manage other hazardous wastes, they are presently subject to individual permitting under 40 CFR Part 270. [The most EPA could do under Section 3014(d) would be to permit the recycled oil portion of the facility by-rule.] For those facilities that are permitted before today's rules become effective, a permit modification would be necessary to allow acceptance of used oil or recycled oil. See §§ 124.5 and §270.41 regarding permit modifications.

[157] The reader should note that in Section IV.A., above, EPA has requested comment on whether we should *prohibit* co-management of recycled oil and other hazardous wastes.

[158] A State authorized by EPA to manage its own hazardous waste program under 40 CFR Part 271 could, by its own regulations, require some or all of the used oil recycling facilities within the State to apply for individual RCRA permits. How today's proposed rules would operate in authorized States is discussed more fully in the next part of the preamble.

[159] The reader should note that when an owner or operator is required to obtain an individual permit under § 270.60(d)(3), he must then also comply with the "corrective measure" provisions of § 264.101. [See the proposed § 266.43(a)(5)(iv).] This is because section 3004(u) of RCRA requires any permit issued by EPA to include corrective measures requirements as appropriate.

Under § 270.60(d)(3)(ii) of today's proposal, the Regional Administrator (or State Director) would notify the owner or operator of the determination that an individual RCRA permit is required; the owner or operator would then have 180 days to submit "Part B" to the RCRA permit application.[160]

B. Requirements of the Permit-by-Rule

EPA has proposed requirements for the permit-by-rule in § 270.60(d)(2) for those facilities not excluded from eligibility (as described above). These requirements are based on the statutory provision [section 3014(d)] that the facility must be in compliance with standards promulgated under section 3004.[161] First, the proposed § 270.60(d)(2)(i) provides that the owner or operator comply with §§ 266.43 and 266.44, the standards proposed today for used oil recycling facilities (including burners). These standards are proposed under the joint authorities of sections 3004 and 3014. In the case where these rules are amended or modified, the owner or operator would have to comply with the modified requirement within the time limit as specified in the appropriate Federal Register notice. [This will be particularly important for burners. Today, § 266.44 is reserved for the standards that will apply to burners.]

Paragraphs (ii) through (xvi) of the proposed § 270.60(d)(2) contain requirements that are necessary to ensure compliance with § 266.43 or § 266.44. These requirements apply to EPA issued permits (see § 270.30), and are proposed here under the authority of section 3014 to implement this special permit-by-rule. The conditions are summarized here:

- Paragraph (ii) provides that noncompliance with §§ 266.43 or 266.44 is allowable only under terms of an emergency permit issued under § 270.61;
- Paragraph (iii) provides that it shall not be a defense in an enforcement action to claim that it would have been necessary to halt or reduce a permitted activity in order to maintain compliance with § 266.43 or § 266.44;
- Paragraph (iv) requires that in event of non-compliance, the owner or operator must take all reasonable steps to minimize any impacts on human health or the environment;
- Paragraph (v) provides that the facility's operating equipment must be properly operated and maintained (including adequate staffing and training of personnel, quality assurance procedures, etc.);
- Paragraph (vi) makes it clear that the permit-by-rule conveys no property right or exclusive privilege;
- Paragraph (vii) requires the owner or operator to provide EPA or a State with any information relevant to determining compliance or the need for an individual permit;
- Paragraph (viii) codifies some of EPA's inspection and entry authorities granted by Section 3007 of RCRA;
- Paragraph (ix) provides that any sampling or other measurements taken to comply with the regulations must be representative of the volume and nature of the measured activity;
- Paragraph (x) stipulates specific recordkeeping requirements for any sampling or monitoring performed to comply with the regulations;
- Paragraph (xi) codifies that requirement for a facility to have an operation record [required under § 264.73, reference by the proposed § 266.43(e)(3)];
- Paragraph (xii) stipulates signatory requirements for any reports or information submitted to EPA or a State;
- Paragraph (xiii) requires the owner or operator to notify EPA or the State of any activity that may cause noncompliance;
- Paragraph (xiv) specifies reporting procedures the owner or operator must follow in the event of a serious mishap at the facility;
- Paragraph (xv) specifies procedures for submission of the RCRA biennial report; and
- Paragraph (xvi) requires the owner or operator to promptly submit any relevant information when omissions or mistakes are discovered.

In summary, when an owner or operator meets all of the requirements of § 270.60(d)(2), he is deemed to hold a RCRA permit under the special authority of section 3014(d). The requirements of § 270.60(d)(2) would be applicable to the owner or operator as if he held an individual permit. [See section 3008 of RCRA, federal enforcement authorities.]

C. Modifications to and Duration of the Permit-by-Rule

As discussed above, EPA intends to propose burner standards in the near future (the "reserved" § 266.44). Also, over time, EPA may amend the § 266.43 standards for used oil recycling facilities. Owners or operators would have to comply with the new or revised standards within the time limits specified in the Federal Register. [See the proposed § 270.60(d)(2)(i).] Finally, because of the on-going, continuing nature of a permit-by-rule, the permit is not issued for a fixed term, but rather continues in force as long as the facility meets the eligibility criteria and the requirements are complied with.[162]

D. Interim Status for Used Oil Recycling Facilities

1. *General.* The preceding discussions concerned facilities that would be eligible for the proposed permit-by-rule. For those facilities that meet all of the proposed § 270.60(d)(2) permit-by-rule requirements immediately interim status is not relevant. An issue that requires additional discussion, however, is the question of facilities that are not completely in compliance with the permit-by-rule requirements when the latter become effective. Such a facility is subject to enforcement action under RCRA section 3008 not simply for non-compliance with applicable requirements but *also* for operating an unauthorized hazardous waste facility. Under proposed § 266.40(e)(3), facilities are only authorized to manage recycled oil if they are permitted or in interim status.[163, 164] A facility is not permitted-by-rule *unless* it is in full compliance with proposed § 270.60(d)(2). [This requirement is from RCRA section 3014(d).]

With respect to those facilities that are not in compliance on the effective date of this regulation, EPA believes that the permit-by-rule authority of section 3014(d) should be read in conjunction with the existing interim status provisions of section 3005(e). Pursuant to the terms of these two sections, used oil recycling facilities that fail to meet the § 270.60(d)(2) requirements by the effective date of this regulation (and thus do not qualify for the permit-by-rule) become subject to the section 3005(a) prohibition against operating without a permit and must either shut down or seek interim status authorization under section 3005(e). Owners and operators of used oil

[160] During this time, the owner or operator would remain subject to § 270.60(d)(2). If compliance with those standards cannot be maintained through the permitting process, at a minimum through an interim understanding between the owner or operator and the permitting authority, the facility would have to cease operation. See RCRA section 3008 pertaining to compliance orders.

[161] The reader should note that except for facilities excluded from eligibility from the permit-by-rule under § 270.60(d)(1), owners or operators are subject to § 270.60(d)(2).

[162] Because the permit-by-rule for used oil recycling facilities would be issued under section 3014 and not section 3005 of the Act, section 3005(c)(3) pertaining to "permit terms" does not apply.

[163] This is the general policy for all hazardous wastes. See § 270.1(b), "overview of the RCRA permit program."

[164] As described in Section I.E. of this Part of the preamble, certain recycled oil (e.g., specification fuel) are exempt from regulation and can be managed at facilities without authorization.

recycling facilities should note that under this approach they have a choice. If a used oil recycling facility meets all the requirements of § 270.60(d)(2) on the effective date of this regulation, it is deemed to have a permit under section 3014(d) and, therefore, interim status is not required. However, if there is some doubt as to the extent of a facility's compliance, an owner or operator may wish to consider taking the steps necessary to qualify for interim status to avoid being vulnerable to a possible enforcement action for operating without a permit.

To receive interim status authorization under section 3005(e), a facility must meet three requirements. First, the facility must have been in existence on November 19, 1980 or the effective date of the statutory or regulatory changes that rendered it subject to the requirement to have a permit. Second, it must comply with the notification requirements of section 3010(a). And third, it must submit an application for a permit. On the effective date of this regulation, existing used oil recycling facilities will, by definition, meet the first requirement of section 3005(e). With respect to the second requirement (*i.e.*, notification), many used oil recyclers are presently required to notify the Agency under the Phase I burning rule.[165] [In the final Phase I preamble, see Part Four, Section I.B.] EPA has determined that the third requirement (for permit applications) calls for an approach slightly different than the one that currently applies to hazardous waste facilities; this is discussed next.

2. *Permit applications.* EPA is proposing that the owner or operator of a used oil recycling facility that seeks interim status (because he is not in compliance, or is not sure of whether he is in compliance with proposed § 270.60(d)(2)), must inform EPA that information submitted to the Agency under the RCRA section 3010(a) notification requirement is *also* intended to fulfill the "permit application" requirement of RCRA section 3005(e)(1)(C).[166] [See proposed § 270.10(a)(3).]

EPA considered whether owners and operators should submit full "Part A" RCRA permit applications, as is required for all other hazardous waste facilities under §§ 270.70(a)(2) and 270.10(a)(1). We are not requiring the full Part A submission because much of the Part A information is, for used oil recyclers, not relevant. That is, the Part A submission was intended as the first step in individual facility permitting. [See 45 FR 33322–23; May 19, 1980.] We fully expect, however, that most used oil recycling facilities that seek interim status will eventually come into full compliance with § 270.60(d)(2), and at that point, they will be deemed to have a permit. Therefore, we see no need to require additional information beyond the RCRA section 3010(a) notification requirements. We must require the special "interim status notification" to ensure that the RCRA section 3005(e)(1)(C) "permit application" has been complied with. This special notification to EPA would ensure that a used oil recycling facility, even if subject to enforcement action for being in violation of § 270.60(d)(2), would maintain its legal authorization to operate.

3. *Alternatives considered.* As an alternative to the proposed interim status approach, EPA considered a second approach of extending the permit-by-rule to all recycled oil facilities, regardless of their compliance status, on the effective date of these regulations. Under this approach, the Agency would pursue case-by-case enforcement against those facilities later found to be out of compliance. The major difficulty with this approach is that it is inconsistent with the explicit language of section 3014(d). Congress specifically provided that an owner or operator of a used oil recycling facility "shall be deemed to have a permit under this subsection for all treatment or recycling . . . *if* such owner or operator *comply* with the standards promulgated by the Administrator under section 3004 . . ." (emphasis added). As EPA does not have the information or data on which to conclude that all used oil recycling facilities will come into compliance by the effective date of this regulation, it lacks an adequate basis for implementing this approach.

EPA also considered an approach under which a facility not fully in compliance with § 270.60(d)(2) on the effective date of the requirements would thereby lose eligibility for the permit-by-rule, and would have to seek interim status and a full RCRA individual facility permit as would any hazardous waste facility. EPA did not propose this approach because it could result in outcomes contrary to Congressional intent. Many owners or operators may simply be unsure of their compliance when today's proposed rules become effective, or may make good faith efforts to comply but are still not completely in compliance. To make a blanket determination that all used oil recycling facilities must be permitted individually does not seem in line with Congressional intent that EPA avoid discouraging used oil recycling consistent with protection of human health and the environment. See H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess., at 114 (1984).

Comments are requested on the Agency's proposed interim status approach.

E. Enforcement.

All used oil recycling facilities would be, under today's proposal, subject to § 266.43 (and burners would also be subject to § 266.44). Whether a facility is authorized to operate under interim status, or an individual facility permit, or the proposed permit-by-rule, EPA may take enforcement actions under RCRA section 3008 for violations of applicable requirements. With respect to those facilities that qualify for the permit-by-rule and then later are found in violation of an applicable requirement, EPA would proceed as it does against any permitted facility found in violation. That is, EPA may issue compliance orders and schedules under RCRA section 3008, and in some cases may seek injunction for temporary or permanent facility closure. Our reasoning for treating facilities permitted individually under section 3005(c) and by-rule section 3014(d) in a similar fashion is that permits issued under both Sections serve the same statutory purpose, *i.e.*, implementation of the Section 3004 standards.[167] Regulations issued under each section are designed to provide specific guidance as to what constitutes compliance with those standards. Because of the similarity of these sections not only in their purpose but also in many of the section 3004 requirements they implement, EPA sees no reason for treating noncomplying facilities differently under each

[165] For those facilities not subject to the special "waste-as-fuel" notification of the final Phase I rule, the reader should note that under § 264.11 (referenced by § 266.43(b), introductory text, of today's proposal), facility owners and operators must notify the Agency and obtain EPA identification numbers. Owners and operators who file "waste-as-fuel" notifications need not re-notify under today's proposal, except as discussed next, *i.e.* those facilities who must obtain interim status.

[166] This discussion only applies to facilities that would otherwise be eligible for the permit-by-rule, but are not fully in compliance. Facilities excluded from eligibility by § 270.60(d)(1) must obtain interim status and apply for a full permit under 40 CFR Part 270, as would any hazardous waste facility.

[167] Section 3005(c), however, has a broader scope than does section 3014(d); for example, section 3004(u) corrective action requirements are implemented through section 3005(c) permits.

section.[168] The Agency therefore believes that since a facility's failure to comply with a permit condition does not lead to a loss of authority to operate under RCRA section 3005(c), it should not do so under section 3014(d).

VI. Proposed Effective Dates

This section discusses when various parts of the proposed rules would become effective. The public is invited to comment on the proposed effective dates as well as the substantive requirements themselves.

A. General

Under RCRA section 3010(b), hazardous waste regulations are generally to become effective six months after final rule promulgate for good cause. Except as discussed below, we are proposing that the recycled oil rules would become effective six months after the day they are published in final form in the **Federal Register.**

B. Prohibition on Dust Suppression

As discussed above in Section IV.E. of this Part of the preamble, RCRA section 3004(l) prohibits the use of hazardous waste for road treatment or dust suppression (*i.e.*, road oiling). As discussed elsewhere in today's **Federal Register** used oil would become a hazardous waste six months after the final listing notice appears in the **Federal Register.** Because of the strong concern Congress has registered against using hazardous waste for dust suppression (*i.e.*, the passage of section 3004(l)), EPA considered whether perhaps the prohibition on road oiling should become effective either immediately when, or shortly after (e.g., 30 days) the final listing notice for used oil appears in the **Federal Register.** We have not proposed this action today because of the possible confusion that could result from an early effective date for one particular management practice (*i.e.*, road oiling). Comments are requested on the issue of an early effective date for the road oiling prohibition.

C. Tank System Secondary Containment Standards

EPA proposed that interim status hazardous waste facilities and "90 day" generators have one full year, instead of six months, to comply with tank system secondary containment requirements. [See proposed §§ 265.193(a) and 261.34(a)(2); June 26, 1985.] This same extended effective date would apply to all persons subject to tank system secondary containment requirements under today's proposed rules. In the case of the proposed requirements for recycled oil generators, EPA has proposed secondary containment only for "new" tank systems, including leaking tanks taken out of and then returned to service. [See proposed § 266.41(c)(5) (vi) and (vii), discussed in Section IV.B, above.] Tanks installed during the one year period following publication of the final § 266.41 in the **Federal Register** would not be subject to the secondary containment requirements, but *would* remain subject to the Section 9003(g) "interim prohibition" for all petroleum materials stored in underground tanks. [See §§ 260.1 and 260.2.] After the 1 year period, generators installing new tanks would then be subject to the secondary containment standards, no longer to the interim prohibition.[169]

PART THREE—ADMINISTRATIVE, ECONOMIC, AND ENVIRONMENTAL IMPACTS

I. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. [See 40 CFR Part 271 for the standards and requirements for authorization.] Following authorization EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), provides that new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is authorized to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

It should also be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of a RCRA, States are allowed to impose standards more stringent than those in the Federal program. Under today's proposal, some of the standards for used oil would be less stringent than the requirements that would apply to hazardous wastes in general. Authorized States that have already listed used oil as a hazardous waste and subject used oil to full regulation under the States' analogues to Parts 261–266 would not be required to revise their standards to conform with the special Part 266, Subpart E requirements proposed today (when promulgated in final form). However, those States must apply to be authorized for that aspect of the RCRA program, and after review and acceptance by EPA, a **Federal Register** notice will announce that the State is authorized to run that part of the program.

B. Effect on State Authorizations

Today's announcement proposes standards that would be effective in all States since the requirements are imposed pursuant to section 242 of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus EPA will implement the standards in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State

[168] Indeed, since one of the general objectives of section 3014 is to avoid discouragement of recycling consistent with protection of human health and the environment, the Agency believes that a result which increases rather than decreases the burden and stringency of regulatory requirements for recyclers would generally be consistent with Congress' stated concern to reduce unnecessary impediments to recycling.

[169] Small quantity recycled oil generators would be subject to the proposed modified version of the interim prohibition 6 months after publication of the final rule [proposed § 266.40(c)(1)(iv)]. As with all petroleum materials in underground tanks, the section 9003(g) interim prohibition will continue to apply to recycled oil until Part 266, Subpart E becomes effective.

adoption of these regulations is described in 40 CFR 271.21. [See 49 FR 21678; May 22, 1984.] See also 50 FR 28731; July 15, 1985.

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases. [See 40 CFR 271.21(e)(3).]

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program revision is approved. As a result, the standard proposed in today's rule will apply in all States, including States with existing standards similar to those in today's rule. States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

Finally, we have proposed to amend Part 271, the Requirements for Authorization of State Hazardous Waste Programs, by amending Table 1 of § 271.1(j) to add the citations and the standards for managment of recycled oil to the list of regulations implementing the Hazardous and Solid Waste Amendments of 1984.

II. Relationship of Today's Proposal to Certain Other EPA Programs

This section discusses the relationship of today's proposal to certain other EPA regulatory programs. This discussion is for informational purposes only; no new requirements are proposed here. [Note that in the listing **Federal Register** notice, we propose to alter the CERCLA "reportable quantity" for used oil.]

A. PCB Program

Under section 6(e) of the Toxic Substances Control Act (TSCA), EPA has promulgated regulations on the use, manufacture, processing, distribution in commerce, and disposal of PCB items, including oils containing PCBs. When the rules proposed today become effective in their final form, used oil containing PCBs would be subject to these rules *and* the PCB rules at 40 CFR Part 761. EPA estimates that 18% of the used oil generated and managed in the U.S. currently contain some measureable quantity of PCBs.[170] EPA is currently considering whether, nad how, the TSCA PCB and RCRA Subtitle C regulations should be integrated. Until such a determination is made, hazardous wastes containing PCBs will continue to be subject to both sets of rules. This is necessary for used oil because the TSCA PCB rules do not address hazards associated with toxic metals or flashpoint (as do the rules proposed today). Where both sets of rules are applicable, EPA will apply the more stringent of the two requirements.

B. SPCC Program

Under section 311 of the Clean Water Act (CWA, also known as the Federal Water Pollution Control Act, 33 U.S.C. 1321(j)(1)(c)), EPA has promulgated regulations for the prevention of and response to oil spills into navigable water. These rules (40 CFR Part 112), known as the Spill Prevention Control and Countermeasure (SPCC) regulations, apply to non-transportation-related facilities with underground storage capacity over 42,000 gallons or above ground storage capacity greater than 1,320 gallons. Because the SPCC definition of oil includes "oil refuse" (40 CFR 112.2(a)), persons storing used oil encompassed by today's proposed rule may already be subject to SPCC management regulations.

When the rules proposed today become effective in their final form, used oil stored in tanks or containers meeting the SPCC requirements will be subject to these rules *and* the SPCC rules at 40 CFR Part 112.

EPA is currently considering whether, and how, the SPCC and RCRA Subtitle C regulations should be integrated. Until such a determination is made, stored hazardous waste meeting both SPCC and RCRA requirements, will continue to be subject to both sets of regulations.

C. NPDES Program

Under section 402 of the Clean Water Act, EPA has promulgated regulations regarding its issuance of National Pollution Discharge Elimination System (NPDES) permits. An important part of many permits issued under these regulations is the limit placed on "oil and grease" discharges. When oil is collected in greater than de minimis quantities in order to comply with permit requirements, the collected oil may be subject to the requirements of today's proposed rule. The general relationship between the RCRA and NPDES regulatory programs is discussed more fully at 45 FR 33096–98 and 33171–72; May 19, 1980.

III. Regulatory Impact Analysis—Executive Order 12291

A. Purpose

The Agency conducted analyses to estimate the costs, benefits, and impacts of the proposed regulations. We conducted cost and economic impact studies to determine whether this proposed regulation is a major rule (under Executive Order 12291), and whether this proposed regulation causes significant small business impacts (as required by the Regulatory Flexibility Act). EPA had the additional mandate to study specifically the effects of used oil regulations on recycling (section 3014(a) of RCRA, as amended) and on generators (section 3014(c)).

EPA has determined that the rules proposed today (the listing proposal and the proposed rules for recycled oil, taken together) are "major." This section of the preamble is a summary of the regulatory impact analysis (RIA) documented in U.S. EPA, *Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil*, November 1985. This document is available in the public docket for this rulemaking. The Office of Management and Budget received a copy of the draft RIA, as required by E.O. 12291.

B. Methodology

EPA conducted an assessment of the costs, benefits, and economic impacts of this proposal and major regulatory alternatives.[171] We evaluated, for each,

[170] See the report by Franklin Associates, LTd., *Composition and Measurement of Used Oil Generated in the U.S.*, November 1984, p. 1–12. 142 of 753 samples showed some PCBs present. The median value is 5 ppm, the 90th percentile value is 50 ppm.

[171] In order to provide a more complete, integrated assesament of the used oil system, the RIA includes the aggregate effects on not only today's proposals (i.e., the listing and management standards), but also standards for used oil burners (i.e., proposed administrative burner standards (50 FR 1684) and potential technical burner standards (yet to be proposed)).

costs of requirements, costs to facilities, impacts on businesses and used oil recycling, and changes in potential risks.

1. *Data Collection.* Before initiating its regulatory impact analysis, the Agency collected data on current used oil management practices. These efforts included a survey of used oil handlers and burners, a site visit program, test burns of used oil combustion devices, a used oil sampling and testing program, and discussion with many used oil businesses and experts, including state program officials. EPA's understanding of the used oil system is summarized in U.S. EPA, *Composition and Management of Used Oil Generated in the U.S.*, (by Franklin Associates) November, 1984.

2. *Economic Methodology.* The economic impact analysis involved the following steps. We developed model used oil facilities. We estimated compliance costs for each model facility. We conducted a market, or macro, analysis to estimate changes in prices, changes in used oil supply and demand, and aggregate national costs. We also conducted a financial, or micro, analysis to estimate changes in profits, and closure and employment impacts.

To estimate costs and economic impacts, we first developed thirteen model facilities to represent the used oil recycling system which includes gernerators, collectors, processors, and rerefiners. We also evaluated end user costs, but did not develop end user model facilities. Instead we modeled end users as markets demanding used oil "products."

We separated used oil generators into industrial used oil generators who produce used oil from maintenance of machinery and non-industrial used oil generators who produce used oil from maintenance of vehicles. We also split generators by size. Large generators produce greater than 1000 kilograms (about 300 gallons) per month.

Collectors purchase used oil from generators and transport it to processors and rerefiners. We developed three sizes of collectors: small collectors who handle an average of 125,000 gallons per year, medium collectors who handle 300,000 gallons per year, on average, and large collectors who handle an average of one million gallons per year.

We developed model facilities for used oil processors and rerefiners who produce used oil "products," such as fuels and lubricants, for sale to end users.

We also evaluated end use markets for used oil. These included use as fuel (in boilers and other combustion devices), use as rerefining feedstock, use as road oil, miscellaneous non-fuel uses, and disposal.

Next, for each of the model plants (and end users), we estimated compliance costs. To estimate these costs, we conducted engineering studies of the activities and costs required to comply with the regulatory provisions.[172] These estimates included initial, capital, and annual costs, which we annualized.

For one-time costs, such as many of the capital costs, we assumed that facilities could amortize these costs over 20 years, at a nominal interest rate of 13%.[173] This rate corresponded to real costs of capital, not to an estimate of social discount rates, or social costs. For annual and recurring costs, we converted uneven streams of payments to annualized present values using discounted cash flow calculations. We discounted future costs to current dollars assuming a six percent annual inflation rate and a three percent real discount rate. Finally, we multiplied the model facility incremental costs by the total number of facilities to obtain the national aggregate cost estimates.

Next, for each of the model facilities and end users, we collected information on prices in used oil markets; we estimated costs of production for used oil collectors, processors, and rerefiners; and lastly, we estimated flows of used oil from generators to different end users. We combined all of this information into an economic model to simulate current supply and demand for used oil, and the macro and micro level impacts of regulatory costs on supply and demand. (This model is documented in detail in U.S. EPA, *Background Document: Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil*, November 1985.)

We first conducted a macroeconomic impact analysis using our supply and demand model, and our estimates of regulatory compliance costs for each model facility. We used the model to predict: (1) Changes in supply to and demand for used oil in end use markets, (2) changes in flows through intermediary facilities, and (3) price changes. We also calculated aggregate national costs of the regulation.

Secondly, we conducted a microeconomic impact analysis by evaluating facility finances, using the same model facilities (disaggregated into small, medium, and large facilities), to predict closures and employment effects. For each model facility, we developed income statements using publicly available financial data and data on the used oil industry collected by the Agency. Using these income statements, we calculated current cash flows and net value of the businesses. To these baseline finances, we then imposed net regulatory costs, which included the effect of price changes. First, we estimated how these changes affected the profitability of firms. Next we estimated business closures by comparing the value of the firm after regulation to the value of selling a firm, that is, the "salvage value." If a firm's salvage value was greater than its value after regulation, we predicted closure of that firm.

3. *Benefits Methodology.* To compare the benefits of the proposal and regulatory alternatives, we estimated the changes in potential health risks from used oil practices before and after regulation. We estimated risks of five types of used oil practices:

—Burning in space heaters, asphalt plants, and boilers and other devices;
—Road oiling;
—Disposal in incinerators and landfills;
—Storing in drums, aboveground tanks, and underground tanks; and
—Dumping.

For each practice, we estimated potential releases of and potential exposures of people (and the environment) to constituents in used oil. We estimated benefits as the reduction in potential health risks resulting from management practices after regulation compared to potential health risks from current practices.

To estimate national aggregate health risks from used oil practices, we made a number of simplifying calculations and assumptions. First, based on our sampling data, we calculated mean concentrations of hazardous constituents in different types of used oils (that is, for used oils recycled in different ways). We then designed model practices to represent average practices, such as road oiling and disposal. For these practices, we estimated quantities likely to be released from routine emissions and accidental releases. We then calculated concentrations of hazardous constituents that would result from dispersion and degradation of the releases. By assuming population densities, we estimated exposures. We then estimated health effects using dose-

[172] Most of these cost estimates appear in *Cost of Control Options for Reducing Waste Oil Handling Risks, Draft* (prepared by P.E.I., formally PEDCo), May 1984.

[173] We used 13% to represent the cost of borrowing money at the prime rate plus three percent. (Because few of the regulatory costs are capital costs, assumptions about interest rates are not critical to the conclusions.)

response data for individual constituents, assuming lifetime (seventy year) exposures. (The risk analysis is discussed in detail in the *RIA Background Document.*)

4. *Limitations.* The economic impact analysis depended upon our characterization of current used oil practices and the responses of facilities to regulatory costs and constraints. We presumed that businesses will make economically rational and legal decisions. We modeled used oil markets using accepted macroeconomic assumptions about supply and demand. We also assumed that facilities could finance regulatory compliance expenditures.

The Agency's benefit analysis of the regulatory alternatives also depended upon characterizing model practices. To estimate the regulatory benefits as accurately as possible given our data, we used assumptions, simplified practices, and representative (or average) parameters. Therefore, the benefits results are best used to compare across the alternatives included in the analysis.

Because we recognized variability in the practices, we analyzed the variability in the parameters that determine risks, and changes in risk. The analysis of variance is discussed in more detail in the *RIA Background Document.*

The RIA risk analysis did not capture all benefits of the regulation. In addition to reducing cancer cases, the proposed regulation creates other health benefits (such as reduced lead poisoning) and environmental benefits.

Because we characterized average practices in the benefits analysis, we quantified the health effects of only typical practices. We estimated the effects of hazardous constituents typically found in used oil. When other hazardous constituents are present in used oil they may pose additional risks that we have not quantified—but risks that the regulation does prevent. For example, in the aggregate analysis we did not analyze the risks of road oiling with used oil containing dioxin. The proposed regulation would, however, help prevent such risks. The listing preamble and listing background document cite instances of extreme cases that have caused damages that are not fully captured by the risk assessment.

The regulation also produces environmental benefits that we did not quantify. Improperly managed used oil and its hazardous constituents can create environmental damage. Constituents in used oil are toxic to plants and animals. The physical properties of oils may also affect organisms. Used oil releases can also degrade environmental media, such as ground and surface water.

C. Results

1. *Macroeconomic Impacts.* Table 6 presents our estimate of the aggregate annualized national costs of the proposal. Even though most of the regulatory requirements fall on the intermediary facilities that control the flow and quality of recycled used oil, generators and end-users incur high aggregate costs (almost three quarters of the total), primarily because of their large numbers. Although regulated generator costs average only $650 per year, they incur in aggregate $31 million per year. Annualized intermediary costs range from $4,300 to $356,700 per facility, and total $36 million per year. End user costs total $91 million per year. Major costs by regulatory component include disposal ($10 million), storage ($67 million), testing ($16 million), administrative requirements ($10 million), substitute dust suppressants ($26 million); and off-spec pollution control and test burns ($37 million).

TABLE 6.—AGGREGATE (ANNUALIZED) NATIONAL COSTS OF REGULATION

[Dollar amounts in millions per year]

Model facility/regulatory requirement	Annualized cost
Generators:	
Storage	$26
Administrative	4
Tracking	1
Subtotal	31
Intermediaries:	
Storage	15
Administrative	4
Tracking	1
Testing	16
Subtotal	36
End users:	
Road oil substitutes	26
Storage	26
Administrative	2
Pollution control and test burns	37
Subtotal	91
Disposal costs	10
Total	168

The Agency evaluated how these costs (and regulatory constraints) affect markets and recycling. First, we predicted the effect of the proposed regulation on supply of and demand for used oil in different markets—see Table 7. These predicted changes represent significant changes in recycling. By establishing fuel specifications, the proposal changes the reuse of used oil as a fuel, largely by shifting recycled oil to controlled burners. Use of used oil as a dust suppressant (currently 69 million gallons per year) is banned. The displaced oil flows largely to use as a rerefining feedstock, which increases from 85 to 135 million gallons per year. We estimate that, overall, used oil recycling will increase by about 100 million gallons per year.

TABLE 7.—EFFECT OF REGULATION ON MARKET FLOWS OF USED OIL

[Million gallons per year]

	Baseline	Regulatory impact
Burning:		
Industrial boilers	249	185
Asphalt and cement kilns	94	309
Non-industrial boilers	121	117
Diesel engines	15	15
Space heaters	34	34
On-site boilers	73	48
Total burned	586	708
Rerefining:		
Lube oil	59	101
(total rerefined)	(85)	(135)
Non-fuel industrial	36	40
Road Oiling	69	0
Disposal	405	305
Total	1,155	1,155

2. *Microeconomic Impacts.* Table 8 contains our estimates of the annualized costs of compliance for the model facilities. These estimates are based on our characterization of these facilities, their current practices, and their responses to regulatory requirements. Facility costs vary a great deal, depending on the size of the faility and the regulatory requirements. Processors are larger and face more requirements. Generators and collectors are smaller and face less extensive regulation. As the costs per gallon demonstrate, there are economies of scale for larger facilities.

TABLE 8.—ESTIMATES OF MODEL AVERAGE FACILITY COSTS

Model facility [1]	Annualized regulatory cost (year)	Cost per gallon (cents)
Generators:		
Large industrial	$200 to $3,700	<6-<105
Large automotive	$200 to $1,300	<6-<37
Collectors:		
Small	$4,300 to $9,700	3-6
Medium	$8,500 to $16,300	3-5
Large	$29,400	3
Processors and rerefiners	$17,400 to $356,700	3-9

[1] Model facilities are described in the RIA.

We evaluated also the facility level (or microeconomic) impacts of regulatory costs—measured as changes in prices, reductions in profits, closures, and employment effects. Table 9 presents the price changes we predicted in the markets in which used oil intermediaries purchase and sell used oil. Price changes help processors offset

their regulatory costs by increasing revenues (by as much as fourteen cents per gallon).

TABLE 9.--PRICE CHANGES FOR INTERMEDIARIES

[Cents per gallon]

	Average purchase price			Average selling price			Net gain	Regulatory cost/gallon
	Pre-regulatory	Post regulatory	Change	Pre-regulatory	Post regulatory	Change		
Collectors	21	19	−2	40	36	−4	−2	3-8
Processors	21-24	18-22	−2-(−3)	45-55	55-59	+4-(+11)	+6-(+14)	5-6

We also predicted closures that might result from the resulting changes in profits (or net present value). For small collectors, particularly, profits decrease significantly. Reduced profits may not cause a business closure, if a facility choose to continue operating with reduced profits. Table 10 presents our estimate of facility closures predicted by comparing net present value to salvage value, and considering changes in flows of used oil implied by the market changes presented in Table 7. The discussion below provides a more detailed explanation of impacts on used oil generator, collector, and processor facilities.

TABLE 10.--CLOSURES AND CHANGES IN AVERAGE SIZE CREATED BY FINANCIAL IMPACTS AND FLOW CHANGES

	Ratio NPV/ salvage value [1]	Change in flow (percent change)	Number of predicted closures	Change in average facility size (percent change)
Collectors	2.6-7.9	+17	319	+172
Minor processors	1.5-5.6	−14-(−20)	12	−5-(−20)
Major processors	2.2-6.6	−2-(−4)	3	−10-(+2)
Rerefiners	[2] NC	+59	[3] −6	0
			327	

[1] Ratio of net present value (NPV) to salvage value. Ratios less than one (including negative ratios) imply closure.
[2] NC = not calculated, see discussion in RIA.
[3] Negative closures represent new facilities (or expanded capacity).

For industrial generators, used oil management is generally a very minor part of their production processes. This waste provides revenue when sold to a collector or processor. Once regulated, larger industrial generators may spend as much as $3,700 per year (only $910, on average) to comply with the proposed requirements. Used oil will still be sold to collectors and processors, but for a lower price. Although net revenues from used oil will decrease, these changes will represent an insignificant change in overall production costs for industrial generators.

For non-industrial (automotive) generators, however, regulatory costs are more important. Based on discussions with a number of used oil generators, we have assumed that automotive generators pass through regulatory costs to their customers by increasing the price of their service—oil changes. We have assumed that oil changes will decrease by the same percentage, i.e., the elasticity of substitution equals one. More people will change their own oil, and recycling will decrease since most homeowners dump their used oil, according to our information. Full Subtitle C regulations cause an increase in these homeowner oil changes of twelve million gallons per year. We therefore have tailored used oil regulations to reduce burdens on generators.

The regulations will seriously affect collectors. EPA predicts that it will be uneconomical for 473 small and medium collectors to continue operating as small, independent businesses. Although these small collectors represent about fifty percent of the facilities within the used oil recycling industry, they currently handle only about ten percent of the volume of oil entering the recycling system. EPA predicts that these collectors will close because their annualized regulatory costs will be between $4,300 and $9,700 per year, compared to net earnings before regulation of only $2,500 per year. We also predict, however, that 155 of these smaller collectors will grow or become part of larger businesses, because: (1) The total quantity of used oil flowing through collectors will increase and (2) larger collector (and medium transporter) businesses will be economically viable. Larger collectors will be able to afford the regulations; as will other used oil businesses that handle larger quantities of oil. This is because many costs are fixed, independent of quantities handled. That is, there are economies of scale—the regulatory cost per gallon is three cents for larger collectors, eight cents for small.

Overall, the closure rate for today's proposal is less than one precent. That is, we predict only 327 net closures from over 50,000 establishments that would be subject to regulation. It should be noted that approximately three million establishments would be exempt from regulation under the provision described in Section II, Part Two of this preamble. The closure rate of establishments *potentially* subject to regulation is therefore about one one-hundredth of a percent.

3. *Benefits.* Table 11 presents our estimates of the health effects (cancers) in the U.S. potentially caused by used oil management practices as we have modeled them before and after the proposed regulation. The variation around these point estimates is several orders of magnitude, particularly for risks caused by releases to ground water. The regulation reduces risks by controlling several practices. Most importantly, the fuel specification and burning in controlled devices reduce combustion risks. Cancer risks from burning decrease by almost fifty percent. (The prohibition of unvented space heaters prevents unsafe exposures to lead, which in the baseline cause almost 25 health effects per year.) Requirements for secure disposal of used oil also significantly reduce risks. Disposal risks decrease by seventy percent. Overall, the proposal reduces potential cancer risks by half, in addition to eliminating lead poisoning cases from used oil space heaters. (Calculated without dumping, which the regulations don't address, cancer risks decrease by more than sixty percent.)

TABLE 11.—RIA ESTIMATES OF POTENTIAL RISKS OF AVERAGE USED OIL PRACTICES.[1]

Practice	Risks (cases per year)	
	Baseline	Proposed regulation
Burning	95	50
Dumping	55	55
Disposal	110	30
Space heaters [2]	<1	<1
Storage	5	<5
Road oiling	<5	0
Total	270	135
Percent change		−50

[1] These numbers are most properly used to compare potential risks before and after regulation. The RIA and its background document discuss in detail the limitations of these estimates.

[2] The regulation also prevents lead poisoning from indoor space heater emissions, estimated at 25 cases per year (in the baseline).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires the Agency to evaluate the impacts of regulations on small entities. When a regulation imposes significant impacts on a substantial number of small businesses, the Agency must conduct a regulatory flexibility analysis to evaluate regulatory options to reduce impacts on small entities (consistent with other mandates, such as protection of human health and the environment). Although today's proposal imposes impacts on many small businesses, the total fraction of small businesses significantly affected (less than one percent) is not substantial. Nevertheless, to meet the requirements of section 3014 (to avoid discouragement of recycling, to reduce impacts on generators, and to protect human health and the evironment), the Agency has reduced regulatory burdens to the extent possible. These are documented in the RIA which includes evaluation of the impacts of full Subtitle C regulations, in addition to the impacts of the proposal.

In the used oil system, most establishments are small businesses. We estimate that approximately ninety percent (about 880 of 950) of the intermediary facilities (collectors, processors, and rerefiners) are small businesses. These small businesses employ less than 100 people and have annual revenues less than $1.5 million. Most of these businesses are small collectors employing one or two people. We predict that (net) 318 collectors will close. The increased flow of oil through collectors, however, will mitigate employment impacts.

The proposed regulation reduces small business impacts when compared to Subtitle C requirements. Instead of full hazardous waste facility standards, EPA has proposed a special provision that would expand the transfer facility exemption in the hazardous waste rules to include recycled oil transporter tanks with secondary containment. This would allow most collectors to avoid being a RCRA facility, and would reduce impacts. Costs for small collectors drop from about $9,700 to $4,300 per year—for medium collectors from $16,300 to $8,500 per year. Without tailored standards, we predict that an additional 301 collectors would close. The tailored requirements reduce impacts consistent with environmental protection.

We have not proposed any special requirements to mitigate impacts on processor facilities because Congress did not exempt used oil recylcers from Section 3004. We have proposed to use the permit-by-rule authorized by Congress for most recycling facilities. We estimate that the permit-by-rule reduces costs by $10,000 to $20,000 per facility.

Like the intermediaries, almost all used oil generators are small businesses (based solely on number of employees). Congress exempted generators who recycle used oil from Sections 3001(d) and 3002, and directed EPA to consider small business impacts on generators in promulgating used oil regulations. The proposal includes a limited set of requirements for generators that are less stringent than the standards that apply to hazardous waste generators, and that reduce impacts. Specifically, EPA has proposed (in lieu of Subparts C, D, and § 265.16 of Part 265) simplified and tailored facility management requirements for recycled oil generators (see the proposed § 266.41(c)(6)). As described in section II, Part Two of the preamble, we are proposing these reduced requirements to reduce impacts on recycled oil generators (many are small businesses). Further, we have proposed: (1) limited secondary containment requirements for generator storage tanks, and (2) a conditional exemption for "small quantity" recycled oil generators. These provisions significantly reduce regulatory costs to generators, and substantially reduce the number of generators regulated. Although the intent of these provisions is primarily to mitigate adverse impacts on environmentally acceptable recycling, the reduced standards also serve to mitigate small business impacts.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

This regulation will require collection logs or shipping papers, internal recordkeeping, and facility operation records, including testing records. Table 12 presents our estimates of the numbers of shipping forms the regulation will require.

The purpose of these forms is to bring more accountability to the system, and to provide a means for enforcing against violations. We have reduced the burden of these requirements by proposing alternatives to the analogous Subtitle C requirements of manifesting and full Part B permits.

TABLE 12.—PAPERWORK REQUIREMENTS

(Shipments per year requiring tracking)

Generators: Shipments with collection logs	797,000
Intermediate facilities: Shipments with collection logs	122,000
Total number of shipments requiring tracking	919,000

PART FOUR—PUBLIC COMMENTS, BACKGROUND DOCUMENTS, PUBLIC HEARINGS, AND LIST OF SUBJECTS

This Part provides information that should aid interested parties to understand EPA's rationale and to prepare comments on today's proposal.

I. Solicitation of Public Comments

Today's two notices describe regulatory proposals, and therefore the public may comment on any aspect of or issue related to the proposals. Commenters who have previously submitted comments pursuant to previous EPA used oil proposals and **Federal Register** notices (such as 50 FR 1684, 1/11/85) should re-submit those comments at this time so they may be considered in today's proposal. The Agency will not address comments submitted pursuant to prior **Federal Register** notices unless the comments are re-submitted.

II. Availability of Background Documents

EPA relied on the following primary documents in developing today's proposal. All documents cited in the preamble are available in the public

docket for this rulemaking, located at EPA Headquarters, Room S-212, 401 "M" Street, Southwest, Washington, DC, 20460. The docket is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on holidays. Some of the documents listed below are also available through the National Technical Information Service (NTIS), an agency of the U.S. Department of Commerce, located in Springfield, Virginia (703) 487-4650. (NTIS does charge a fee per-page for documents ordered.)

Composition and Management of Used Oil Generated in the U.S., by Franklin Associates, Limited, November 1984. NTIS #PB/85-180-297.

Listing Background Document for Used Oil, U.S. EPA Office of Solid Waste, November 1985.

Regulatory Impact Analysis of the Proposed Standards for the Management of Used Oil, U.S. EPA, Office of Solid Waste, November 1985.

III. Announcement of Public Hearings

EPA will hold public hearings on the rules (both the listing and management standards) proposed today as follows:

- *January 8, 1986*—Holiday Inn, North Park Plaza, 10650 North Central Expressway, Dallas, Texas 75231 (Phone: 214/373-6000)
- *January 10, 1986*—Ramada Renaissance, 55 Cyril Magnin Street (One block north of 5th & Market), San Francisco, California 94102 (Phone: 415/392-8000)
- January 16, 1986—Department of Health and Human Services, North Auditorium ("C" Street entrance), 330 Independence Ave., SW, Washington, DC 20201

The hearings will begin at 9:30 a.m. (registration at 9:00 a.m.) and will end at 4:30 p.m. unless concluded earlier. EPA encourages all interested persons to attend one of the public hearings. If you would like to present an oral statement at one of the hearings, please notify in writing Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, Washington, DC, 20460.

Oral and written statements may be submitted at the public hearings. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to provide written copies of their complete comments for inclusion in the official record.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 266

Hazardous waste, Recycling.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

For the reasons set out in the Preamble, it is proposed to amend 40 CFR Chapter I as set forth below:

Dated: November 8, 1985.

Lee M. Thomas,

Administrator.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

2. In Part 260, a new definition is added to § 260.10 to read as follows:

§ 260.10 Definitions.

* * * * *

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is accumulated, collected, stored, transported, or treated prior to recycling.

(1) [Reserved to define specific types of burning considered to be recycling.]

(2) The term includes mixtures of recycled oil and other materials, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this Chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this Chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3001, 3002, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, 6922, and 6934].

4. In § 261.5, paragraphs (b) and (j) are revised to read as follows:

§261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(b) Except as provided by paragraphs (e), (f), and (j) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265, 270, and 124 of this chapter, nor to the notification requirements of section 3010 of RCRA, provided the generator complies with paragraph (g) of this section.

* * * * *

(j) *Used oil.* (1) Used oil that is disposed of (and not recycled) is included in the quantity determinations of this section and is subject to the requirements of this section.

(2) Used oil that is recycled is subject to regulation as follows:

(i) Recycled oil is not included in the quantity determinations and is not subject to the requirements of this section, but instead is subject to Part 266, Subpart E of this chapter.

(ii)(A) When hazardous waste that would otherwise be conditionally exempt from full regulation under paragraph (b) of this section is mixed with used oil in the course of recycling (e.g., during collection or storage) the resultant mixture is no longer subject to the reduced requirements of this section but instead is subject to full regulation under Parts 262 through 265, Part 266, Subparts Subparts C and D, and Parts 270 and 124 of this chapter, and to the notification requirements of section 3010 of RCRA.

(B) Used oil containing more than 1000 ppm of total halogens is presumed to have been mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant

concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

5. In § 261.6, paragraph (a)(2)(iii) is revised to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(a) * * *

(2) * * *

(iii) *Recycled oil.* (Subpart E).

Note.—Mixtures of used oil and hazardous waste are not recycled oil and when recycled, are subject to full regulation under this section.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6934].

7. In Part 266, § 266.30(b)(1) is revised to read as follows:

§ 266.30 Applicability.

* * * * *

(b) * * *

(1) Recycled oil is subject to Subpart E of this Part, not to this Subpart.

* * * * *

8. In Part 266, Subpart E is revised to read as follows:

* * * * *

Subpart E—Standards for the Management of Recycled Oil

Secs.

Subpart E—Standards for the Management of Recycled Oil

§ 266.40 Applicability.

(a) *General.* (1) This subpart applies to recycled oil that is:

(i) Hazardous waste, as defined by §§ 261.1–261.3 of this chapter; or

Note: Recycled oil is a subset of used oil, the latter being listed as "F030" in § 261.31 of this chapter.

(ii) Household waste, but only when aggregated or accumulated at service stations, auto centers, or other "do-it-yourselfer" collection centers. The owner or operator of a collection center that accepts household recycled oil is considered a "generator" for the purposes of this Subpart, and is subject either to paragraph (c) of this section or to § 266.41 of this subpart, as applicable; or

(iii) Recovered from only wastewater exempted from regulation under § 266.3(a) (2) (iv) (F) of this chapter. The person who recovers the oil is considered a "generator" for the purposes of this Subpart, and is subject either to paragraph (c) of this section or to § 266.41 of this subpart, as applicable.

(2) *Conditional exemptions.* The following recycled oils, when recycled in compliance with paragraph (b) of this section, are not subject to any further requirements under this subpart:

(i) Fuel meeting the following specification, to be known as "specification fuel:"

RECYCLED OIL FUEL SPECIFICATION

Constituent/Property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Total halogens	4000 ppm maximum.
Flashpoint	100 ppm maximum.

Notes—The specification does not apply to used oil mixed with hazardous waste. Such mixtures must be managed as hazardous waste.

(ii) Asphalt paving material containing either of the following used oil recycling residues:

(A) Distillation bottoms from used oil re-refining; or

(B) Residue (*i.e.*, baghouse dust) from a fabric filter air pollution control device used to control emission from recycled oil combustion.

(b) *Conditions to exempt certain recycled Oils.* Recycled oil is subject to this Subpart until the conditions of this paragraph have been complied with:

(1) *Specification fuel.* In order for fuel to be exempted from regulation under paragraph (a) (2) (i) of this section, the person first claiming the exemption must:

(i) Document through analysis that the recycled oil does meet the specification in § 266.40(a) (2) (i) of this subpart. Analytical procedures must be specified in the plan required by § 266.43 (b) (2) of this subpart; and

(ii) Record the following information for each shipment of specification fuel:

(A) The name and address of the receiving facility;

Note—Since this exemption is for *fuel*, the receiving facility is expected to either burn the recycled oil or use it to produce fuel.

(B) The quantity of specification fuel sent;

(C) The date of shipment; and

(D) A cross-reference to analysis performed under § 266.43 (b) (2) of this subpart (*i.e.*, the documentation that the fuel meets the specification of pargraph (a) (2) (i) of this section).

(iii) Maintain records of analyses and shipments of specification fuel as part of the facility's operating record required under § 266.43(f) of this subpart.

(2) *Asphalt paving material.* In order for asphalt paving material to be exempted from regulation under paragraph (a) (2) (ii) of this section, a person must ensure that the distillation bottoms or baghouse dust that has been incorporated into the paving material has undergone a chemical reaction in the course of producing the material so as to become inseparable by physical means.

(c) *Small quantity recycled oil generators.* A generator of 1000 kilograms or less of recycled oil per calender month need not manage the recycled oil generated in that month under this Subpart, provided the following requirements are complied with. Such a generator is a "small quantity recycled oil generator." Requirements:

(1) *On-site management.* If the recycled oil is managed on-site, the following requirements apply:

(i) The use of recycled oil for road treatment, dust suppression, or road oiling is prohibited;

(ii) [*Reserved for controls on burning.*]

(iii) Small quantity recycled oil generators may accumulate and store recycled oil on-site. If more than 1000 kilograms is accumulated at any time, all of the accumulated recycled oil is subject to the remainder of this subpart, not to the special requirements of paragraph (c) of this section. The generator, when the quantity limitation is exceeded, becomes subject to the generator requirments of § 266.41 of this Subpart.

(iv) A small quantity recycled oil generator must not install a tank system unless the following installation requirements are complied with. Paragraph (c) (1) (iv) (B) of this section does not apply if soil tests conducted in accordance with ASTM Standard G57–78 show that soil resistivity at the site is 12,000 ohm-cm or more. Installation requirements:

(A) Such tank will prevent releases due to corrosion or structural failure for the operational life of the tank; and

(B) Such tank is cathodically protected against corrosion, constructed of non-corrosive material, or designed in a manner to prevent the release of recycled oil; and

(C) The material used in the construction or lining of the tank is compatible with recycled oil.

Note.—Steel and fiberglass are both compatible with most used oils.

(2) *Off-site recycling.* (i) A small quantity recycled oil generator may send his recycled oil off-site for legitimate recycling.

(ii) When a small quantity recycled oil generator sends oil off-site for recycling, it becomes subject to the remainder of this subpart upon collection (*i.e.*, when accepted by the transporter).

Note.—A person who collects recycled oil from small quantity recycled oil generators is subject to the transporter requirements of § 266.42 of this subpart.

(3) *Mixing with non-hazardous waste.* A small quantity recycled oil generator may mix his recycled oil with non-hazardous waste and remain subject to paragraph (c) of this section as long as the recycled oil portion of the mixture does not exceed 1000 kilograms.

(d) *Used oil mixed with hazardous waste.* (1) Used oil that has been mixed with hazardous waste, including waste from generators that would otherwise be subject to the special requirements of § 261.5 of this chapter, is not subject to this Subpart but instead is subject to full regulation under Parts 262 through 265, Part 266, Subparts C and D, and Parts 270 and 124 of this chapter, and to the notification requirements of section 3010 of RCRA.

(2) Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

(e) *Definitions and other general provisions.* (1) The terms used in this Subpart, unless otherwise noted, have the meanings provided in §§ 260.10, 261.1, 261.2, and 261.3 of this chapter.

(2) The following general provisions of Part 260 apply throughout this subpart:

Section 260.2, availability and confidentiality of information;
Section 260.3, use of number and gender;
Section 260.11, references; and
Subpart C, rulemaking petitions.

(3) *Authorized facilities.* When used in this Subpart, the term "authorized facility" means a facility authorized to manage recycled oil under one of the following authorities:

(i) The facility has been permitted by EPA under Part 270, Subparts A through E of this chapter; or

(ii) The facility has been permitted-by-rule under § 270.60 of this chapter; or

(iii) The facility has been permitted by a State with a hazardous waste program approved by EPA under Part 271 of this chapter; or

(iv) The facility is in interim status under section 3005(e) of RCRA and Part 270, Subpart G of this chapter.

§ 266.41 Standards for generators.

(a) *Applicability*—(1) *General.* This section applies to generators of recycled oil, including persons who aggregate household-generated recycled oil and persons who recover used oil from oily wastewater (for recycling), but not to small quantity recycled oil generators who comply with § 266.40(c) of this subpart.

(2) Owners and operators of facilities that recycle or store recycled oil are subject to paragraph (d) of this section in addition to § 266.43 of this subpart when they initiate off-site shipments.

(3) A generator who transports recycled oil off-site is subject to the transporter standards of § 266.42 of this subpart in addition to this section.

(4) A generator who uses recycled oil on-site in a manner constituting disposal as defined by § 266.20 of this chapter is subject to the standards for persons using hazardous waste in a manner constituting disposal of § 266.23 of this chapter in addition to this section.

(5) A generator who burns recycled oil on-site is subject to the burner standards of § 266.44 of this subpart in addition to this section.

(6) A person who collects recycled oil from small quantity recycled oil generators under § 266.40(c) of this subpart is subject to the transporter standards of § 266.42 of this subpart but is not subject to this section.

(b) *Identification numbers.* Generators must comply with § 262.12 of this chapter.

(c) *On-site storage.* Except as provided by this paragraph a generator who stores on-site is subject § 266.43 of this subpart as well as this section. Generators who meet the following requirements are not subject to § 266.43 of this subpart:

(1) The generator only stores recycled oil in either tanks or containers;

(2) Recycled oil is stored on-site no longer than 90 days;

(3) Tanks and containers must be clearly labeled with the term "RECYCLED OIL;"

(4) *Container standards.* Generators storing in containers must comply with the following requirements from Subpart I of Part 265 of this Chapter:

Section 265.171, the condition of containers;
Section 265.173, the management of containers;
Section 265.174, inspections; and
Section 265.176, special requirements for ignitable waste.

(5) *Standards for tank systems.* Generators storing in tanks must comply with the following requirements for tank systems:

(i) *Uncovered tanks* must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a secondary containment structure (e.g., dike or trench) or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank;

(ii) *Continuously fed tanks.* Where recycled oil is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., a waste feed cutoff system or bypass system to a standby tank);

(iii) *Tank system inspection requirements.* The generator must conduct and document an inspection of (where present):

(A) Discharge control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) and leak detection equipment, at least once each operating day, to ensure that the tank system and leak detection system (if any) are being operated according to their design;

(C) For uncovered tanks, the level of recycled oil in the tank at least once each operating day;

(D) The aboveground portions of the tank system, if any, at least once each operating day, to detect corrosion or leaking of fixtures, joints, or seams; and

(E) The construction materials of, and the area immediately surrounding the externally accessible portion of the tank system and secondary containment structure (if any) at least weekly to detect erosion or signs of leakage (e.g., oil spots, dead vegetation).

(iv) *Closure of tank systems.* At closure, all recycled oil and associated residues must be removed from tanks, discharge control equipment, and discharge confinement structures (if present).

Note.—Used oil and associated residues removed at closure are subject to this subpart if recycled. If disposed of (or if mixed with another hazardous waste) the used oil and residues are subject to the hazardous waste regulations of Parts 261–265 of this chapter.

(v) *Special requirements for ignitable recycled oil.* A generator who stores ignitable recycled oil, as defined by § 261.21 of this chapter, must comply with the buffer zone requirements for tanks contained in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquid's Code" 1977 or 1981 [incorporated by reference, see § 260.11 of this chapter].

(vi) *Special requirements for tank systems that are leaking or otherwise unfit-for-use.* A generator with a tank system that is leaking or otherwise unfit-for-use must comply with the following in addition to otherwise applicable paragraphs of this section:

(A) A tank system found to be leaking must be immediately removed from service and the generator must satisfy the following requirements:

(*1*) The flow or addition of recycled oil into the tank system must be stopped immediately;

(*2*) The remaining recycled oil in the tank system (or its secondary containment system, if any) must be removed as quickly as possible and no later than 24 hours after detection of the leak so that no further release of recycled oil is permitted to occur and inspection or repair of the tank system can be performed;

(*3*) Necessary steps must be immediately taken to contain any visible contamination resulting from a release from the tank system that has occurred or is occurring; and

(*4*) The Regional Administrator must be notified within 24 hours after confirmation of the leak.

(B) Tank systems taken out of service in accordance with paragraph (c)(5)(vi)(A) of this section must be (at the option of the generator) either:

(*1*) Closed in accordance with Paragraph (c)(5)(v) of this section; or

(*2*) Repaired; or

(*3*) Replaced.

(C) When the generator repairs or replaces a tank system under paragraph (c)(5)(vi)(B) of this section, he must then comply with the standards for new tank systems in paragraph (c)(5)(vii) of this section.

(vii) *Special requirements for new tank systems.* A generator who installs a tank system after [*reserved for the effective date of these regulations*] must comply with the following requirements in addition to otherwise applicable paragraphs of this section:

(A) [*Reserved for secondary containment standards*]; and

(B) [*Reserved for closure and post-closure requirements*].

(6) *Standards for facility management.* Generators must comply with the following requirements:

(i) *Required items.* The following items must be on-site:

(A) A telephone;

(B) An appropriate number and type of portable fire extinguishers; and

(C) Absorbents (e.g., sawdust) or other spill control material.

Note.—Used oil spill clean-up materials and used oil-soaked absorbents are hazardous wastes. If recycled, the materials are subject to this Subpart. If disposed of, the material is subject to full regulation as hazardous waste under Parts 261–265, 270, and 124 of this chapter.

(ii) *Emergency coordinator.* At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (c)(6)(v) of this section. This is the emergency coordinator.

(iii) *Arrangements with local authorities.* The generator must request an inspection by the local fire department to familiarize the fire personnel with the layout of the facility, where oil is stored, and entrances to and roads within the facility, and to determine that an appropriate number and type of fire extinguishers are present. Where the fire department declines to conduct such an inspection, the generator must document such refusal and keep a record of the refusal at the facility.

(iv) *Posting of information.* The generator must post the following information next to the telephone:

(A) Name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers, spill control materials, and if present, fire alarm; and

(C) Telephone number of the fire department, unless the facility has a direct alarm.

(v) *Emergency procedures.* Either the emergency coordinator or his designee must respond to emergencies as follows:

(A) In the event of a fire, attempt to extinguish it using a fire extinguisher and call the fire department;

(B) In the event of a spill, contain the flow of oil to the extent possible and as soon as practical clean-up the oil and any contaminated materials or soil;

(C) When either the fire department must be summoned or when a spill reaches surface waters or an adjoining shoreline the generator must file a report with the Regional Administrator within 15 days including the following:

(*1*) The name, address, and EPA identification number of the generator;

(*2*) Date, time, and type of incident (e.g., spill or fire);

(*3*) Quantity of oil involved in the incident;

(*4*) Extent of injuries, if any; and

(*5*) Estimated quantity and disposition of recovered materials.

(vi) *Personnel training.* The generator must ensure that all employees are thoroughly familiar with proper handling and emergency procedures under paragraph (c) of this section.

(d) *Shipments off-site.* A generator or an owner or operator who initiates a shipment off-site must comply with the following:

(1) *General.* (i) A generator (or owner or operator) must comply with the pre-transport requirements of §§ 262.30, 262.31, 262.32, and 262.33 of this chapter, and the international shipment requirements of § 262.50 of this chapter.

(ii) Except as provided by paragraph (d)(2) of this section, a generator (or owner or operator) must comply with the manifest requirements of Part 262, Subpart B of this chapter, and the exception reporting requirements of § 262.42 of this chapter.

(2) *Special requirements when a recycling contract exists.* When the conditions of paragraph (d)(2)(i) of this section are met, the generator (or owner or operator) may, at his option, comply with paragraph (d)(2)(ii) of this section in lieu of the manifest requirements of Part 262, Subpart B of this chapter, and the exception reporting requirements of § 262.42 of this chapter.

(i) *Conditions.* The generator (or owner or operator) must either:

(A) Enter into a written agreement for delivery of recycled oil to an authorized facility. The generator (or owner or operator) must keep a copy of each agreement at his site for as long as the agreement is in effect; or

(B) Manage the recycled oil at a facility that he owns and that is authorized to manage recycled oil.

Note.—Section 266.40(e)(3) defines the types of facilities authorized to manage recycled oil.

(ii) *Requirements*—(A) *Required notices.* The generator (or owner or operator), before initiating a shipment off-site, must obtain a one-time written and signed notice from the owner or operator of the receiving facility certifying that the facility is authorized to manage recycled oil, and including the facility's EPA identification number. The generator (or owner or operator) must keep each written notice received

for at least three years from the date recycled oil is last sent to the facility.

(B) *Designated facilities.* When offering a shipment of recycled oil to a transporter, the generator (or owner or operator) must provide the transporter with the names, addresses, and EPA identification numbers of those facilities who have provided the written notice required by pararaph (d)(2)(ii)(A) of this section.

(C) *Records of shipments.* For each shipment off-site, the generator (or owner or operator) must record the following information. The records must be retained for at least three years from the date of shipment. Required information:

(*1*) The name, address, and EPA identification number of the transporter;

(*2*) The quantity of recycled oil being shipped; and

(*3*) The date of shipment.

§ 266.42 Standards for transporters.

(a) *Applicability.* (1)(i) This section applies to transporters of recycled oil, including persons who collect from small quantity recycled oil generators under § 266.40(c)(2) of this subpart;

(ii) This section does not apply to on-site transportation either by generators or by owners or operators of facilities.

(iii) This section does not apply to transportation of the recycled oils exempted under §§ 266.40(a)(2) and 266.40(b) of this subpart, nor to transportation of household-generated recycled oil from households to collection centers.

(2) A transporter is subject to the generator standards of § 266.41 of this Subpart in addition to this section if he:

(i) Transports recycled oil into the United States from abroad; or

(ii) Mixes recycled oils of different DOT shipping descriptions by placing them in the same container.

(3)(i) Except as provided by paragraph (a)(3)(ii) of this section, a transporter who recycles or stores recycled oil at a facility is subject to the standards for used oil recycling facilities of § 266.43 of this subpart.

(ii) Storage of recycled oil at a transfer facility for a period not exceeding 10 days is exempt from § 266.43 of this subpart and from permitting under Part 270 of this chapter, provided the following conditions are met:

(A) Containers used for storage must meet applicable packaging requirements of the U.S. Department of Transportation under 49 CFR Parts 173, 178, and 179; and

(B) [*Reserved for tank system secondary containment standards.*]

(b) *Identification numbers.* Transporters must comply with § 263.11 of this chapter.

(c) *Discharges.* Transporters must comply with Part 263, Subpart C of this chapter.

(d) *Manifested shipments.* When a transporter accepts a shipment of recycled oil accompanied by a hazardous waste manifest he must comply with the manifest and recordkeeping requirements of Part 263, Subpart B of this chapter.

(e) *Shipments without manifests.* A transporter may accept recycled oil from a generator without a hazardous waste manifest under the special conditions of either § 266.40(c)(2) of this subpart pertaining to small quantity recycled oil generators or of § 266.41(d)(2)(i) of this subpart pertaining to recycling contracts. When so accepting unmanifested shipments, the transporter must comply with the following requirements in lieu of Part 263, Subpart B of this chapter.

(1) *Record of acceptance.* For each acceptance, the transporter must record the following information. The record must be retained for at least three years from the date of acceptance. Required information:

(i) The name, address, and (when applicable) EPA identification number of the generator (or the owner or operator) offering the shipment;

(ii) The quantity of recycled oil accepted;

(iii) The proper shipping name of the oil under U.S. Department of Transportation rules in 49 CFR Part 172; and

(iv) The date the recycled oil is accepted.

(2) *Delivery.* Transporters must deliver all recycled oil accepted within 35 days of acceptance to a facility that meets the following conditions:

(i) The facility is authorized to manage recycled oil; and

(ii) Except for recycled oil collected from small quantity recycled oil generators under § 266.40(c) of this subpart, the facility is one of the facilities designated according to § 266.41(d)(2)(ii)(B) of ths subpart; and

(iii) When recycled oil is collected from small quantity recycled oil generators under § 266.40(c)(2) of this subpart, the transporter must, before delivering oil to a facility, obtain from the owner or operator of the facility a one-time written and signed notice certifying that the facility is authorized to manage recycled oil, and including the facility's EPA identification number. The transporter must keep each notice received for at least three years from the date recycled oil is last delivered to the facility.

(3) *Records of delivery.* For each delivery, the transporter must record the following information. The records must be retained for at least three years from the date of delivery. Required information:

(i) The name, address, and EPA identification number of the receiving facility;

(ii) The quantity of recycled oil delivered; and

(iii) The date of delivery.

§ 266.43 Standards for owners and operators of used oil recycling facilities.

(a) *Applicability*—(1) *General.* (i) This section applies to owners and operators of facilities that recycle or store recycled oil, including, but not limited to: Reclaimers, reprocessors, re-refiners, blenders, and burners. A facility subject to any paragraph of this section will be known as a "used oil recycling facility."

(ii) This section does not apply to facilities that only manage recycling oil that has been exempted under §§ 266.40(a)(2) and 266.40(b) of this subpart.

(2) *Generators.* (i) Except as provided by §§ 266.40(c) and 266.41(c) this subpart, generators who recycle or store recycled oil are subject to this section as well as § 266.41 of this subpart.

(ii) Except as provided by the conditional exemptions §§ 266.40(a)(2) and 266.40(b) of this subpart, an owner or operator who initiates a shipment off-site must comply with § 266.41(d) of the generator requirements of this subpart.

(3) *Transporters.* Except as provided by the special provisions of § 266.42(a)(3) of this subpart for transfer facilities, a transporter who recycles or stores recycled oil at a facility is subject to this section as well as § 266.42 of this subpart.

(4) *Recyclers without storage.* (i) Except as provided by paragraph (a)(4)(ii) of this section, the owner or operator of a facility who recycles but does not store recycled oil is subject only to the following requirements from this part or Part 264 of this chapter, as applicable:

Section 264.11, EPA identification numbers;
Section 264.12, required notices;
Section 266.23, standards for uses constituting disposal;
Section 266.41(d), requirements for shipments sent off-site;
Section 266.43(b)(1), (b)(2), and (b)(3), analysis requirements;
Section 266.43(e), acceptance of recycled oil from off-site;
Section 266.43(f), recordkeeping and reporting; and
Section 266.44, the standards for burners.

(ii) The owner or operator of a facility who recycles used oil in a surface impoundment is subject to all applicable paragraphs of this section, not to the reduced requirements of paragraph (a)(4)(1) of this section.

(5) *Additional requirements for certain facilities.* In addition to all other applicable provisions of this Subpart, the following owners and operators are subject to additional requirements as follows:

(i) An owner or operator of any of the following kinds of facilities must comply with Part 270, Subpart G of this Chapter pertaining to requirements for interim status facilities:

(A) A facility where recycled oil is stored or recycled in a surface inpoundment; or

(B) A facility where hazardous waste is managed in addition to recycled oil; or

(C) A facility where recycled oil is managed in a manner constituting disposal (as defined by § 266.20 of this Chapter).

Note.—A facility that has received a permit under Part 270 or Part 271 of this chapter is not eligible for interim status. In order to manage recycled oil, a facility that has received a permit must comply with §§ 124.5 and 270.41 pertaining to permit modifications.

(ii) An owner or operator who uses recycled oil in a manner constituting disposal (as defined in § 266.20 of this chapter is subject to § 266.23 of this chapter.

(iii) An owner or operator who burns recycled oil for energy recovery is subject to § 266.44 of this subpart.

(iv) An owner or operator who is either excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual facility permit under § 270.60(d)(3) of this chapter, must comply with § 264.101 of this chapter pertaining to corrective measures for releases from solid waste management units, as applicable.

(b) *General facility standards.* The owner or operator must comply with Part 264, Subpart B of this chapter, except that in lieu of the analysis requirements of § 264.13 of this chapter, the owner or operator must comply with paragraphs (b)(1) through (b)(3) of this section.

(1) *Analysis requirements.* The owner or operator must perform sampling and analysis as necessary to comply with applicable provisions of this Subpart. At a minimum, the analysis must include the following:

(i) *Halogens.* The owner or operator must determine the total halogen content of used oil managed at the facility. Used oil containing more than 1000 ppm total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume that used oil has been mixed with hazardous waste if it does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

(ii) *Ignitability.* The owner or operator must determine whether recycled oil managed at the facility is ignitable according to § 261.21 of this chapter, unless all recycled oil is managed as ignitable waste under § § 264.17, 264.176, and 264.198 of this chapter;

(iii) *Specification fuel.* An owner or operator who produces fuel he claims is exempt from regulation under § 266.40(a)(2) of this subpart ("specification fuel") must analyze the fuel for arsenic, cadmium, chromium, lead, total halogens, and flashpoint. An owner or operator who produces specification fuel is subject to § 266.40(b)(1) of this subpart as well as this section.

(iv) *Mixing indicator parameters for hazardous waste facilities.* The owner or operator of a facility where hazardous waste is managed in addition to recycled oil must comply with the following in addition to applicable the requirements of paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) of this section:

(A) For each hazardous waste managed at the facility, the owner or operator must identify at least one indicator parameter that is found in the hazardous waste but not normally found in the recycled oil managed at the facility. For wastes listed in Part 261, Subpart D of this chapter, the indicator parameter would normally be the constituent specified in Appendix VII of Part 261, Subpart D of this chapter as the basis for listing; however, the Regional Administrator may, on a case-by-case basis, specify one or more alternate or additional indicator parameters; and

(B) The owner or operator must analyze the recycled oil managed at the facility for the parameters identified in paragraph (b)(1)(iv)(A) of this section to document that no mixing of hazardous waste and recycled oil occurs.

(2) *Analysis plan.* The owner or operator must develop and follow a written analysis plan describing the procedures he will use to comply with paragraph (b)(1) of this section. He must keep the plan at the facility. At a minimum, the plan must specify the following:

(i) The methods used to analyze recycled oil for the parameters specified in paragraph (b)(1) of this section;

(ii) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of Part 261 of this chapter; or

(B) A method shown to be equivalent under §§ 260.20 and 260.21 of this chapter.

(iii) For paragraphs (b)(1)(i) and (b)(1)(ii) of this section, whether samples or other information will be obtained from generators, or alternatively, whether analyses will be performed on incoming shipments of recycled oil;

(iv) For paragraph (b)(1)(iii) of this section, whether recycled oil will be sampled and analyzed prior to or after any blending or treatment in the course of fuel production; and

(v) For all requirements in paragraph (b)(1) of this section, the frequency of sampling to be performed, and whether analysis will be performed on-site or off-site.

(3) *Analysis records.* Records of analyses conducted to comply with this paragraph must be maintained at the facility as part of the facility's operating record.

(c) *Preparedness and prevention.* The owner or operator must comply with Part 264, Subpart C of this chapter.

(d) *Contingency plan and emergency procedures.* The owner or operator must comply with Part 264, Subpart D of this chapter.

(e) *Acceptance of recycled oil from off-site*—(1) *Manifested recycled oil.* (i) When a shipment of recycled oil accompanied by a hazardous waste manifest is accepted, the owner or operator must comply with §§ 264.71 and 264.72 of this Chapter.

(2) *Unmanifested recycled oil.* (i) When recycled oil is accepted without a manifest in compliance with the special provisions of §§ 266.41(d)(2) and 266.42(e) of this subpart, the owner or operator must record the following information for each acceptance. The records must be retained for at least three years from the date of acceptance. Required information:

(A) The name, address, and EPA identification number of the transporter;

(B) The name, address, and (when applicable) EPA identification number of each generator who contributed to the shipment;

(C) The quantity of recycled oil accepted; and

(D) The date of acceptance.

(ii) When recycled oil is delivered without a manifest but arrangements have not been made under §§ 266.41(d)(2) and 266.42(e) of this chapter, the owner or operator must comply with § 264.76 of this chapter pertaining to unmanifested waste reports.

(3) *Hazardous waste mixtures.* When an owner or operator determines through analysis required by paragraph (b)(1)(i) of this section or other means that an incoming shipment (that was expected to be recycled oil but instead) has been mixed with hazardous waste, he must:

(i) Either refuse to accept the shipment, or accept the shipment and manage the mixture as hazardous waste under Parts 262–265, Part 266 Subparts C and D, and Parts 270 and 124 of this chapter; and

Note.—Under §§ 262.20 and 263.21, when a shipment of hazardous waste cannot be delivered to the generator's designated facility, the transporter must take the waste to an alternate facility or return it to the generator.

(ii) If the shipment is not manifested, comply with the requirements of § 264.76 of this chapter pertaining to unmanifested waste reports.

(f) *Recordkeeping and reporting.* In addition to the requirements of paragraphs (b)(3) and (e) of this section, the owner or operator must comply with the following record-keeping and reporting requirements from Part 264 of this chapter:

Section 264.73, operating record;
Section 264.74, availability, retention, and disposition of records;
Section 264.75, biennial report; and
Section 264.77, additional reports.

(g) *Closure, post-closure, and financial requirements.* (i) Owners or operators must comply with Subparts G and H of Part 265 of this chapter.

(ii) The owners or operator of any of the facility types excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual permit under §270.60(d)(3) of this chapter, must comply with Subparts G and H of Part 264 of this chapter as well as Subparts G and H of Part 265 of this chapter.

(h) *Storage requirements*—(1) *Containers.* An owner or operator who stores recycled oil in containers is subject to Part 264, Subpart I of this chapter.

(2) *Tank systems.* (i) An owner or operator who stores recycled oil in tanks is subject to Part 265, Subpart J of this chapter.

(ii) The owner or operator of any of the facility types excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual permit under § 270.60(d)(3) of this chapter, must comply with Part 264, Subpart J as well as Part 265, Subpart J of this chapter.

(3) *Surface impoundments.* An owner or operator who recycles or stores recycled oil in a surface impoundment is subject to Part 265, Subparts F and K and Part 264, Subparts F and K of this chapter.

§ 266.44 Standards for burners.

(a) *Applicability.* (1) *General.* (i) This section applies to any person (by site) who burns recycled oil. A person who burns will be known as a "burner."

(ii) This section does not apply when the special requirements of § 266.40(b)(1) pertaining to specification fuel are complied with.

(iii) This section does not apply to small quantity recycled oil generators who burn on-site in compliance with § 266.40(c)(1) of this subpart.

(2) Generators who burn on-site are subject to § 266.41 of this subpart in addition to this section.

(3) Burners are subject to the standards for used oil recycling facilities in § 266.43 of this subpart in addition to this section.

(b) [Remainder of this section reserved for substantative standards for burners.]

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3005, 3007, 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6901, 6912(a), 6925, 6927, 6934, and 6974] unless otherwise noted.

10. In Part 270, a new definition is added to § 270.2 to read as follows:

* * * * *

§ 270.2 Definitions.

* * * * *

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is accumulated, collected, stored, transported, or treated prior to recycling.

(a) [Reserved to define specific types of burning considered to be recycling.]

(b) The term includes mixtures of recycled oil and other materials, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this Chapter.

* * * * *

11. In § 270.10, paragraph (a) is revised to read as follows:

§ 270.10 General application requirements.

(a) *Permit application.* (1) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73.

(2) Persons currently authorized with interim status shall apply for permits when required by the Director.

Except as provided by this paragraph for used oil recycling facilities, persons covered by RCRA permits-by-rule (§ 270.60) need not apply. The owner or operator of a used oil recycling facility who is not excluded from permit-by-rule eligibility by § 270.60(d)(1) of this part but who is not in full compliance with the permit-by-rule requirements of § 270.60(b)(2) of this Part as of [*insert effective date of the final rule § 270.60(d)(2)*] must provide written notice to EPA, *by [insert effective date of the final rule § 270.60(d) (2)]* that notification information submitted to EPA pursuant to RCRA section 3010 is intended to also satisfy the RCRA section 3005(e)(1)(C) "permit application" requirements for interim status.

(4) Procedures for applications, issuance, and administration of emergency permits are found exclusively in § 270.61.

* * * * *

12. In Part 270, a new paragraph (d) is added to § 270.60 to read as follows:

* * * * *

§ 270.60 Permits by rule.

* * * * *

(d) *Used oil Recycling Facilities.* Except as provided by paragraph (d)(1) or (d)(3) of this section, the owner or operator of a facility that recycles or stores recycled oil, if the owner or operator complies with the requirements of paragraph (d)(2) of this section.

(1) *Exclusions from the permit-by-rule.* Owners and operators of the following kinds of facilities are not eligible for the permit-by-rule, and are subject to individual permitting under this Part:

(i) Recycled oil is stored in a surface impoundment; or

(ii) Recycled oil is used at the facility in a manner constituting disposal, as defined by § 266.20 of this Chapter; or

(iii) Other hazardous wastes are managed at the facility in addition to recycled oil.

(2) *Requirements.* An owner or operator not excluded from permit-by-rule eligiblity by paragraph (d)(1) of this section must comply with the following requirements:

(i) *Standards.* The owner or operator must comply with §§ 266.43 and 266.44 of this Chapter, including amendments or modifications to § 266.43 or § 266.44 of this chapter within time limits as specified in the **Federal Register**;

(ii) *Duty to comply.* The owner or operator must comply with all conditions of § 266.43 and 266.44 of this chapter except that the owner or operator need not comply with the conditions to the extent and for the duration such non-compliance is authorized in an emergency permit as provided by § 270.61 of this Part. Any non-compliance, except under the terms of an emergency permit, constitutes a violation of the Act and is grounds for an enforcement action.

Note.—When there is a violation of § 270.60(d)(2) of this Part, the EPA Regional Administrator may take enforcement action under section 3008 of RCRA. Such action may include compliance orders and schedules, including monitoring schedules, and including revocation of authorization to manage recycled oil, as appropriate.

(iii) *Need to halt or reduce activity not a defense.* It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the requirements of § 266.43 or § 266.44 of this chapter.

(iv) *Duty to minimize.* In the event of noncompliance, the owner or operator must take all reasonable steps to minimize releases to the environment, and must carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(v) *Proper operation and maintenance.* The owner or operator must 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 owner or operator to achieve compliance with § 266.43 or § 266.44 of this chapter. 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.

(vi) *Property rights.* The permit-by-rule of this section does not convey any property rights of any sort, nor any exclusive privilege.

(vii) *Duty to provide information.* The owner or operator must furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for revocation of permit-by-rule authorization or for requiring an individual permit, or to determine compliance with § 266.43 or § 266.44 of this chapter. The owner or operator must also furnish to the Director, upon request, copies of records required to be kept by § 266.43 or § 266.44 of this chapter.

(viii) *Inspection and entry.* The owner of operator must allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law to:

(A) Enter at reasonable times upon the owner or operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under § 266.43 or § 266.44 of this chapter;

(B) Have access to and copy, at reasonable times, any records that must be kept under § 266.43 or § 266.44 of this chapter;

(C) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under § 266.43 or § 266.44 of this chapter; and

(D) Sample or monitor at reasonable times, for the purposes of assuring compliance with § 266.43 or § 266.44 or as otherwise authorized by the Act, any substances or parameters at any location.

(ix) *Representative sampling.* Samples and measurements taken to comply with § 266.43 or § 266.44 of this chapter must be representative of the volume and nature of the sampled or measured activity.

(x) *Recording of monitoring.* The owner or operator must retain records of all monitoring information and copies of all reports required for a period of at least 3 years from the date of the sample, measurement, or report. Records of monitoring must include:

(A) The date, exact place, and time of sampling or measurement;

(B) The individual(s) who performed the sampling or measurements;

(C) The dates analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(xi) *Operating record.* A written operating record must be kept at the facility. The following information must be recorded as it becomes available and maintained in the operating record until facility closure:

(A) A description of and the quantity of recycled oil managed at the facility;

(B) The location of recycled oil stored at the facility and the quantity stored at each location;

(C) Summary reports and details of all incidents that require implementation of the contingency plan;

(D) Records and results of inspections (including the date and nature of any necessary repairs); and

(E) Results of any monitoring performed to comply with § 266.43 or § 266.44 of this chapter.

(xii) *Signatory requirement.* All reports or information submitted to the Director must be signed by a responsible corporate officer [as defined by § 270.11(a)(1) of this part], by a general partner, by the sole proprietor, or by the principal executive officer or ranking elected official, and must include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(xiii) *Anticipated noncompliance.* The owner or operator must give notice to the Director of any planned changes in the facility or activity which may result in noncompliance with either § 266.43 or § 266.44 of this chapter.

(xiv) *24 hour reporting.* (A) The owner or operator must report any noncompliance which may endanger human health or the environment orally within 24 hours from the time he or she becomes aware of the circumstances, including:

(*1*) Information concerning release of any recycled oil or hazardous

constituent thereof that may cause an endangerment to public drinking water supplies; and

(2) Any information of a release or discharge of recycled oil or hazardous constituent thereof or of a fire or explosion from the facility, which could threaten the environment or human health outside the facility.

(B) The description of the occurrence and its cause must include:

(1) The name, address, and telephone number of the owner or operator;

(2) The name, address, and telephone number of the facility;

(3) The date, time, and type of incident;

(4) The name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment outside the facility, if applicable; and

(7) Estimated quantity and disposition of recovered material, if any, resulting from the incident.

(C) A written submission must also be provided with in 5 days of the time the owner or operator becomes aware of the circumstances. The written submission must 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 5 day written notice requirement in favor on a written report within 15 days.

(xv) *Biennial report.* The owner or operator must prepare and submit a single copy of a biennial report to the Director by March 1 each even-numbered year. The report must cover activities of the previous year (odd-numbered year) and must be prepared in accordance with the requirements of § 264.75 of this chapter and submitted on EPA Form 8700–1 3B.

(xvi) *Other information.* When the owner or operator becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Regional Administrator, he or she must promptly submit corrected information or additional facts.

(3) *Individual permits.* (i) The Director may require an owner or operator to apply for and (as a condition of continued operation) obtain an individual RCRA facility permit under this Part if he obtains information through site inspections or other means indicating any of the following conditions:

(A) The owner or operator has not met one of the requirements of paragraph (d)(2) of this section; or

Note.—The EPA Regional Administrator may, in addition to requiring an individual permit, take enforcement action under section 3008 of RCRA for a violation of § 270.60(d)(2) of this chapter.

(B) The facility, because of the type or quantities of recycled oil being managed, or the management methods in use, or the facility's location, or other relevant factors, could in the judgment of the Director, pose a substantial potential or present hazard to human health or the environment and that individual facility permitting under this Part is necessary to provide adequate protection; or

(C) There has been a release of recycled oil, hazardous waste, or a hazardous constituent from a solid waste management unit at the facility to the environment and in the judgment of the Director, the corrective action measures implemented by the owner or operator are inadequate to ensure protection of human health and the environment.

Note.—When an owner or operator is required to obtain an individual RCRA permit, he is subject to § 264.101 of this chapter pertaining to corrective action for releases from solid waste management units, as applicable.

(ii) Within 180 days of notification by EPA that an individual RCRA facility permit is required, the owner or operator must submit Part B of the RCRA permit application under Subpart B of this part. The owner or operator remains subject to paragraph (b)(2) of this section until final disposition is made concerning the individual facility permit.

(iii) If the Director denies the owner's or operator's application for a permit he is not eligible for the permit-by-rule under paragraph (d) of this section.

Note.—The owner or operator of a facility whose permit application is denied is not eligible for interim status under section 3005(e) of RCRA.

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a) and 6926].

14. In Part 271, § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the FEDERAL REGISTER	Title of regulation
* * * * *	
[insert date of publication of the final rule].	Standards for the Management of Recycled Oil
* * * * *	

[FR Doc. 85-27902 Filed 11-27-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 260, 261, 271, and 302

[SWH-FRL-2873-5(a)]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste managment under Subtitle C of the Resource Conservation and Recovery Act (RCRA), by listing used oil as a hazardous waste. EPA has determined that used oil typically and frequently contains significant quantities of lead and other metals, chlorinated solvents, toluene, and naphthalene which would pose a substantial hazard to human health and the environment, if improperly managed. Today's notice also proposes a regulatory definition of used oil and proposes two modifications to the mixture rule to exempt certain mixtures of used oil from regulation. Finally, because used oil will become a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a result of today's listing, EPA is also proposing to adjust the statutory one pound CERCLA reportable quantity (RQ) for used oil to 100 pounds. The effect of today's proposal, if promulgated, would be to control the treatment and disposal of used oil (as well as its transportation, accumulation, or storage prior to treatment or disposal), by subjecting it to full hazardous waste regulation under Subtitle C of RCRA. At the same time, most used oil that is recycled would be subject to the special management standards for recycled oil being proposed in another Section of today's **Federal Register.**

DATES: EPA will accept public comments on this proposal until January 28, 1986. Public hearings will be held to obtain public comments on this proposal *and* the proposed management standards for recycled oil (appearing elsewhere in this **Federal Register**) on January 8, 10, and 16 of 1986. The locations for the public hearings are provided below; for additional information on the public hearings, see Part Four, Section III of the management standards preamble.

ADDRESSES: EPA will hold public hearings at the following locations:

- *January 8, 1986*—Holiday Inn, North Park Plaza, 10650 North Central Expressway, Dallas, Texas 75231 (Phone: 214/373–6000.
- *January 10, 1986*—Ramada Renaissance, 55 Cyril Magnin Street (One block north of 5th & Market), San Francisco, California 94102 (Phone: 415/392–8000)
- *January 16, 1986*—Department of Health and Human Services, North Auditorium ("C" Street entrance), 330 Independence Avenue SW, Washington, DC 20201.

Comments on this proposal should be mailed to the Docket Clerk (Docket No. 3001/Listing of Used Oil), Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S–212, U.S. EPA, 401 M Street SW., Washington, DC, from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, call toll free at (800) 424–9346 or at (202) 382–3000. For technical information, contact Matthew Straus, Chief, Waste Identification Branch, Characterization and Assessment Division, Office of Solid Waste, (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 475–8551. Single copies of the proposal may be obtained by calling the RCRA Hotline at the number above.

SUPPLEMENTARY INFORMATION:

Outline of Today's Proposal

I. Introduction

A. Background

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes and specific rules for the identification and listing of hazardous wastes under Section 3001 of RCRA. See 43 FR 58946. At that time, EPA proposed to list waste lubricating oil [1] and waste hydraulic and cutting oil as hazardous wastes on the basis of their toxicity. In addition, we also proposed to regulate used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and was incinerated or burned as a fuel and waste oils (again, that were hazardous) that were used in a manner constituting disposal.[2] (See proposed § 250.10 where the Agency proposed to define the term "other discarded material" that is used in the definition of "solid waste.")

A large percentage of commenters on the 1978 proposal argued that the Agency should not list waste oil as hazardous because most waste oil was reused and was, therefore, not a waste; in addition, they argued that such a designation would have serious impacts on the recycling industry. Consequently, in its May 19, 1980 regulations, EPA decided to defer promulgation of rules covering the use or recovery of many waste streams, including waste oil, in order to fully consider whether waste- and use- specific standards should be implemented rather than imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. See 45 *FR* 33084. EPA stated in the preamble to those regulations that it intended to address the reuse and recovery of waste oil in the Fall of 1980. Since the Agency had anticipated controlling the recycling of used oil within a short time, is also decided not to list waste oil for disposal in the 1980 regulations in order to deal with the entire waste oil issue at one time. Under the May 19, 1980 regulations, however, used oil that exhibits any of the characteristics of hazardous waste (*i.e.*, ignitability, corrosivity, reactivity, or extraction procedure (EP) toxicity) and is disposed (or accumulated, stored, or treated prior thereto) is hazardous and subject to full regulation under Subtitle C of RCRA.

B. Use Oil Recycling Act (UORA)

In an effort to encourage the recycling of used oil, and in recognition of the hazards posed by its mismanagement, on October 15, 1980, Congress passed the Used Oil Recycling Act (UORA) (Pub. L. 96–463). Among other provisions, the UORA required the Agency to make a detemination as to the hazardousness of used oil and report such findings to Congress together with a detailed statement of the data and other information upon which the determination was based; in addition, the Agency was to establish performance standards and other requirements under Section 7 of the UORA as "may be necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil."

In January 1981, EPA submitted the Used Oil Report to Congress mandated by Section 8 of the UORA [3] indicating in the report that the Agency intended to list both used and unused waste oil as hazardous under section 3001 of RCRA. The Agency based its intention to list both used and unused waste oils on the presence of a number of toxicants that are present in crude or refined oil (*e.g.*, benzene, naphthalene, and phenols) as well as contaminants which are present in used oil as a result of use (*e.g.*, lead, chromium, and cadmium).[4]

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[1] The term "waste oil" includes both used and unused oils which may no longer be used for their original purpose. While the Agency initially considered listing the entire waste oil universe, today's proposed rules apply only to that portion of the waste oil universe comprised of used oils.

[2] "Use in a manner constitution disposal" means the placement of hazardous waste directly onto the land for beneficial recycling or the placement of products which contain certain hazardous waste onto the land for beneficial recycling.

[3] *Report to Congress: Listing of Waste Oil as a Hazardous Waste Pursuant to Section (8)(2), Pub. L. 96–463;* U.S. EPA, 1981.

[4] In detailed comments on the Used Oil Report to Congress submitted to the Agency by the American

Continued

C. Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed the Hazardous and Solid Waste Amendments of 1984 ("1984 Amendments"). These amendments, taken along with the provisions of section 3012 of RCRA (which incorporated section 7 of the UORA), establish the requirements for the regulation of used oil which are now embodied in section 3014 of Subtitle C of RCRA.[5] Section 3014(a) requires the Administrator to:

. . . promulgate regualtions . . . as may be necessary to protect the public health and environment from the hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

These amendments alter EPA's mandate with respect to the regulation of used oil by stipulating that protection of human health and the environment is the prime consideration, even if such regulation may discourage the recovery or recycling of used oil, in some cases.

The comprehensive management standards for recycled used oil mandated by section 3014 are being proposed today in another section of today's **Federal Register**. A more detailed discussion of the background leading to the development of those management standards is contained in the notice.

Of specific relevance to today's proposed listing of used oil as a hazardous waste is section 3014(b) of RCRA which requires the Administrator to propose whether to list or identify used automobile and track crankcase oil as a hazardous waste by November 8, 1985, and to finalize that proposal as well as determine whether other used oil should be listed or identified as hazardous by November 8, 1986. Today's proposal reflects the Agency's determination that petroleum derived and synthetic used oil should be listed as a hazardous waste under Section 3001 of RCRA.

Since a substantial amount of time has elapsed since the 1978 proposal and since the Agency has obtained extensive additional data on the constituents of used oil, the Agency has decided to re-propose the listing of used oil and seek additional public comment, rather than publish the listing as a final rule. Consequently, persons who commented on the 1978 proposal should resubmit their comments or submit new comments for consideration in this rulemaking.

II. Relationship of Use Oil Listing to Section 3014 Management Standards for Recycled Oil

The management standards being proposed in another section of today's **Federal Register** are being issued under the authority of sections 3004 and 3014 of RCRA.[6] Under section 3014 of RCRA, EPA is required to establish standards applicable to recycled used oil that will protect public health and the environment and, to the extent possible within that context, not discourage used oil recycling. Section 3014(c) provides specific guidance to EPA on the standards applicable to generators and transporters of recycled used oil that is identified or listed as hazardous under section 3001. Section 3014(d) provides that the owner or operator of a facility that recycles used oil is subject to the Section 3004 hazardous waste standards but is deemed to have a RCRA permit provided the recycling facility complies with those standards. Section 3014(d) also provides the Administrator with authority to require such owners or operators to obtain an individual permit under section 3005(c) if he determines that an individual permit is necessary to protect human health and the environment.

Today's proposed listing of used oil as a hazardous waste is based simply on EPA's determination that used oil meets the criteria for listing under section 3001 of RCRA. (See 40 CFR 261.11(a)(3).) Therefore, under today's proposed listing, disposal [7] of hazardous used oil will be subject to regulation under 40 CFR Parts 262–265, 124, and 270–271, while recycled used oil that is hazardous will be subject to the recycled used oil rules codified in 40 CFR Part 266.

Persons interested in commenting on this listing and/or on the 3014 standards should note that the scope of today's notice proposing to list used oil as a hazardous waste is different from that of the accompanying notice which proposes specific standards for the management of recycled oil under section 3014. The main issue relevant to the proposed listing of used oil is whether used oil meets the criteria for listing contained in § 261.11 (a)(3). However, other issues addressed in this notice that may also be of interest include the Agency's definition of used oil, modifications to the mixture rule to exempt certain oil mixtures from regulation, and the Agency's proposal to adjust the statutory RQ of used oil.

The second of today's proposals concerning used oil, on the other hand, seeks to address the broader issues concerning the *extent* of regulation that should be imposed on used oil recycling practices in order to protect human health and the environment and, to a lesser degree, the specific impacts of that regulation on the various segments of the recycling industry. The Agency's detailed analyses of the used oil universe, management practices, and regulatory and economic impacts are, therefore, to be found in the accompanying **Federal Register** proposal rather than in this notice.

III. Summary of Proposed Used Oil Listing

This notice proposes to amend 40 CFR Part 261, Subpart D, to add used oil to the list of hazardous wastes. As detailed in the Basis For Listing Section, below EPA has evaluated used oil against the criteria for listing hazardous wastes contained in § 261.11(a)(3) and has determined that it poses a substantial present or potential hazard to human health or the environment when improperly managed. This determination is based on analytical data from approximately a thousand used oil samples that indicate that a number of toxic constituents are typically and frequently present in used oil at levels of regulatory concern, either as a direct result of use or subsequent adulteration. In addition, these toxicants have the potential to migrate from used oil and escape into the invironment. This has been demonstrated in a large number of damage cases where used oil was mismanaged and presented a

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Petroleum Institute (API) in December 1981. API raised several issues relevant to the proposed listing of both used and unused "waste oils." Since the Agency is reproposing the listing of used oil as a hazardous waste, the Agency will not respond to specific comments on previous proposals regarding used oil. API's comments, however, are available for review in the RCRA docket.

[5] Prior to the 1984 Amendments, the used oil requirements were found in section 3012 of RCRA.

[6] EPA recently began the process of regulating used oil burned as a fuel by finalizing the "Phase I" management standards on the actual burning of used oil and administrative controls on persons who market and burn hazardous waste fuel and used oil fuel. The management standards for the recycling of used oil being proposed elsewhere in today's **Federal Register** will supplement the Phase I burning and blending rules as those rules apply to used oil.

[7] For purposes of this rulemaking, the term "disposal" is simply intended to distinguish between the management of used oil under the existing provisions of Sections 3002 thru 3004 versus that used oil which is recycled and subject to the provisions of Section 3014. It does not reflect a rethinking of statutory or regulatory concepts of what constitutes "disposal".

substantial hazard to human health and the environment.[8]

The toxic constituents of concern identified by the Agency include lead, three chlorinated aliphatic hydrocarbons (1,1,1-trichloroethane, trichloroethylene, and tetrachloroethylene), toluene, and naphthalene. EPA also has identified as constituents of concern several metals—cadmium, arsenic, and chromium—which are typically found in used oil at concentrations, which may pose a significant risk when used oil is burned.

A regulatory definition of used oil is being proposed today for inclusion in 40 CFR 260.10. The proposed definition of used oil includes all petroleum-derived or synthetic oils [9] originally used as a lubricant (including engine oils), as a hydraulic fluid, as a metal working fluid (including cutting, grinding, and machining fluids, and rolling, stamping, quenching, and tempering oils), and as an insulating fluid or coolant.[10] Except as provided below, the above used oils will all be considered hazardous wastes when disposed of, when recycled, or when accumulated, treated, stored or transported prior to disposal or recycling.

Excluded from the listing of used oil are crude or fuel oils spilled onto the land or water, and wastes from petroleum refining operations such as API separator sludge. Today's notice also proposes to exclude from the used oil listing re-refined oil used as a lubricant since the Agency has determined that re-refined oil that is used as a lubricant is not a solid waste and thus is not a hazardous waste. In addition, EPA is proposing to amend the mixture rule (§ 261.3(a)(2)) to exclude from regulatory control: (1) wastewaters contaminated with small amounts of used oil; and (2) industrial wipers (*i.e.* "oily rags") contaminated with used oil as a result of being used to clean the face and hands of the user or wipe or clean equipment or machinery.

Finally, EPA is proposing an amendment to 40 CFR Part 302 to list used oil as a CERCLA hazardous substance and is proposing to establish a reportable quantity (RQ) for used oil of 100 pounds.

[8] See the *Background Document for Used Oil* for discussion of damage incidents at used oil facilities.

[9] Synthetic oils are being included in today's listing for the reasons set forth in Section IV.B.

[10] In addition, oil derived from pyrolysis of scrap tires would also be covered by the used oil listing after use and contamination.

IV. Applicability and Scope of Used Oil Listing

A. Authority to List Used Oil as a Hazardous Waste

Section 3001 of RCRA provides the Agency with the general statutory authority under RCRA for identification and listing of hazardous wastes. The 1984 Amendments to RCRA specifically require EPA to excercise this authority and propose whether to list or identify used automobile and truck crankcase oil as a hazardous waste by November 8, 1985, and to finalize that proposal as well as determine whether other used oil should be listed or identified as hazardous by November 8, 1986. (See section 3014(b).)

These amendments also affirm the Agency's authority to regulate, as a hazardous waste, used oil that is recycled, even though such regulation may have a discouraging effect on some recycling. Prior to the 1984 amendments, the Agency was directed to ensure that its regulations did not "discourage the recovery or recycling of used oil." However, the 1984 amendments deleted this language with respect to the listing decision and modified it for the used oil management standards by adding the phrase "consistent with protection of human health and the environment." By doing this, Congress clearly intends for the Agency to regulate recycling activities sufficiently to assure adequate protection while reducing, as much as possible, the impact on the recycling industry as a whole. The conference report accompanying the 1984 amendments specifically notes that " . . . [T]he purpose of the provisions is to clarify the intent of section 3014 in order to assure that EPA's regulations in this area are protective of human health and the environment . . . It was never Congress' intent that protection of human health and the environment be subordinated to the continuation of used oil recycling activities. The Agency can and should prohibit or control used oil recycling practices that it determines will pose a potential hazard to human health and the environment even though such regulations would impede recycling." (See H.R. Conf. Rep. No. 1133, 98th Cong. 2nd Sess. 113 (1984)).

B. Scope of Used Oil Listing

As discussed earlier in this preamble, today's proposed listing applies to used oil when disposed of, recycled, or when accumulated, stored, or treated prior to being disposed or recycled. This section discusses EPA's regulatory definition of "used oil" as well as the special status of re-refined oil. Lastly, this section will explain the amendments to the mixture rule contained in § 261.3(a)(2) that will propose to remove from regulatory control: (1) Wastewaters that are contaminated with small amounts of used oil; and (2) industrial wipers used to clean up small oil spills and wipe or clean equipment, machinery, or the face and hands of the user.

1. *Definition of Used Oil.* EPA is proposing a definition in 40 CFR 260.10 for "used oil" as follows:

> "Used Oil" is petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: i) Lubricant (engine, turbine, or gear); ii) Hydraulic fluid (including transmission fluid); iii) Metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils;) or iv) Insulating fluid or coolant, and which is contaminated through use or subsequent management.

This definition would include those used oils that are contaminated with PCB's. However, it should be noted that the use of used oils containing any concentration of PCBs and the disposal of used oils containing 50 ppm or greater of PCBs are subject to the TSCA PCB rules promulgated under 40 CFR Part 761. Under the current TSCA PCB rules, the use of used oils containing any concentration of PCBs is prohibited and the disposal of used oil containing 50 ppm or greater PCBs is strictly controlled. When today's listing proposal is promulgated, users and disposers of used oils containing PCBs will be subject to both the TSCA and RCRA regulations until the Agency integrates the PCB rules with the hazardous waste rules. Where both sets of regulations are applicable, EPA will apply the more stringent of the two requirements. The Agency, however, solicits information on whether certain used oils containing PCBs should be excluded from the listing because they do not typically contain other toxic constitutents (*e.g. metals*).

Examples of petroleum wastes which are not "used oils" include: crude oil or virgin fuel oil spilled on the land or water; oily sludge in the bottom of crude or fuel oil storage tanks; and wastes from petroleum refining operations such as API separator sludge.

This regulatory definition is drawn partly from the statutory definition of used oil found at section 1004(36) of RCRA. That section defines "use oil" as any oil which has been:

A. Refined from crude oil,

B. Used, and

C. As a result of such use, contaminated by physical or chemical impurities.

The Agency is interpreting the definition of used oil contained in the

statute to include: (1) Used oils which are adulterated subsequent to use as well as those that are contaminated "as a result of such use" (section 1004(36)); (2) synthetic oils, including those derived from coal or shale; and (3) processing residues from the recycling of used oil.[11]

EPA's broad regulatory definition of used oil is based on a combined interpretation of sections 1004(36) and 3014. The proposed definition incorporates both the specific elements of section 1004(36) as well as the factors necessary to meet the related statutory mandate of section 3014. The specific language and legislative history of section 3014 make clear that Congress passed section 3014 to address the wide range of troublesome and difficult problems associated with used oil recycling activities from generation and collection, through treatment and processing, to final end use. This broad objective is reflected in Congress' comprehensive mandate to EPA to "promulgate regulations—as may be necessary to protect public health and environment *from hazards associated with recycled oil.*" Section 3014(a) (emphasis added). As recycled oil is defined in terms of used oil, it is necessary to define used oil in such a way as to ensure that the Section 3014 regulations *do* address the many hazards that can normally and reasonably be expected to be associated with the recycling of used oil. To define the term more narrowly would permit a number of regulatory loopholes and create implementation problems that would run counter to Congress' explicit intent "to reduce the uncertainty and the gaps in the regulatory treatment of used oil." (See H.R. Conf. Rep. No. 1133, 98th Cong. 2nd Sess. 113 (1984).

With respect to oils adulterated subsequent to use, the Agency has concluded, on the basis of extensive sampling and analyses, that used oil typically and frequently contains several contaminants which are found in used oil as a result of intentional or inadvertent mixing *subsequent to use* rather than as a direct result of a particular use. The Agency has found that under existing mismanagement practices, used oil is frequently mixed or blended with other waste liquids which contain toxic contaminants (many of them not yet defined as hazardous under RCRA) either at the generation site or at used oil processing facilities. These contaminants, although not present as a result of actual use, are, nevertheless, present at levels of regulatory concern in most used oil samples tested. Therefore, they are being listed among the constituents of concern which form the basis for today's proposed listing.

The Agency could list these used oils as hazardous (*i.e.*, those which become contaminated with non-hazardous wastes subsequent to use) and not subject them to the special management standards, but rather to the Subtitle C rules. However, we believe that used oils which contain essentially identical constituents and pose essentially the same risk be regulated similarly. In addressing specifically this issue, the Senate Committee on Environment and Public Works, in its report on used oil stated "Under some circumstances, it may be difficult to determine if a waste-derived fuel should be classified as a used oil fuel or a hazardous waste fuel. For example, used oil contains contaminants, such as lead, that may be present either through use of the oil or through deliberate adulteration. Both hazardous waste fuel and contaminated used oil fuel should be regulated in accordance with these new provisions, as necessary, to protect human and the environment. The Agency, however, has some discretion as to how to classify these types of fuel mixtures." Sen. Rep. No. 284, 98th Cong., 1st Sess., 36 (1983). Therefore, we believe the Agency has discretion to expand the difinition of used oil as currently defined in RCRA to include those oils which become contaminated (with non-hazardous wastes) subsequent to use and thus, subject those used oils that are recycled to the special management standards.[12] As stated earlier, we believe that Congress intended the Agency to consider all contaminants typically found in used oil when it directed the Agency to protect the public and the environment from the "hazards associated with recycled oil" (RCRA section 3014).

While section 1004(36) of RCRA appears, on its face, to limit the statutory definition of "used oil" to oil derived from petroleum, we nevertheless are interpreting the definition of used oil more broadly to include synthetic oils derived from shale and coal. EPA believes that in constructing the definition of used oil, Congress did not intend to exclude synthetic oils from control under section 3014, despite the fact that used oil is defined as being derived from crude oil under RCRA. The Agency's rationale for this position is based on three points. First, synthetic oils are used for the same purposes as petroleum derived oils, are usually mixed and managed in the same manner after use, and present as great a hazard as petroleum-based oils due to the fact that these oils are just as likely to be contaminated from use or be adulterated. To condition a used oil regulation on a preliminary determination of whether a particular used oil has been derived from crude oil or whether it is synthetic in origin or whether and to what extent it has been mixed would seriously complicate the Agency's efforts to regulate recycled oil. We do not believe that this is what Congress intended. Second, such a distinction would serve no practical purpose since mixtures of used oil and synthetic oil would be regulated under the Subtitle C rules or the recycled oil rules in any case as a result of the mixture rule. Finally, excluding these oils from the definition of used oil would necessitate a separate listing of synthetic used oils, resulting in regulation of synthetic used oils that are recycled under the full set of hazardous waste regulations while petroleum-derived oils that are recyled would be regulated under tailored standards issued pursuant to Section 3014. Congress clearly did not intend that used oils which contain essentially identical constituents and pose essentially the same risk be regulated differently.

EPA is also proposing to include in the definition of used oil residues or sludges resulting from the storage or processing of used oils although these processing residues are not specifically mentioned in the statutory definition of used oil. These processing residues would, in any case, be hazardous wastes under the 'derived from' rule contained in § 261.3(c)(2) of the regulations. Under that rule, any waste which is derived from a hazardous waste continues to be a hazardous waste unless and until it has been demonstrated to be non-hazardous. Since used oil will be a listed hazardous waste under today's proposal, residues from the processing of used oil would still be hazardous wastes. Thus, if used oil processing residues were not regulated as used oils when they are recycled, they would be subject to the full set of Subtitle C regulations under the derived-from rule. EPA believes, however, that since these residues are similar to used oil in terms of the hazardous constituents that are present, these residues should be

[11] This definition expands upon the regulatory definition of used oil contained in the Phase I burning and blending rule.

[12] As discussed in Section IV.3., when an oil is adulterated with a hazardous waste (*i.e.*, a hazardous spent solvent), the mixture would be fully regulated as a hazardous waste under the general hazardous waste regulations and would not be subject to the special standards for recycled used oil.

regulated under the special management standards for recycled used oil being proposed under section 3014 of RCRA. Such an approach would be environmentally protective and would allow any person who generates or manages used oil or these processing residues to comply with one set of regulations.

2. *Re-refined Oil.* Re-refined oil is defined in section 1004(39) of RCRA as "used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process." Re-refining of used oil to produce a lubricant is the highest form of used oil recyling and, by definition, produces a product-like oil that is virtually free of contamination and essentially the equivalent of virgin oil. Thus, the Agency believes that used oil which is used as a lubricant, once it has been re-refined, no longer meets the definition of a solid waste contained in § 261.2, and is not, therefore, a hazardous waste.[13] Although re-refined oil is not considered to be a solid and hazardous waste under today's proposed listing, the transportation and storage of used oil prior to the actual re-refining process is still subject to regulation under the proposed section 3014 standards. Thus, while the re-refined oil itself is not a solid waste, until such time as the oil becomes a product, it continues to be recycled oil and subject to regulation under section 3014.

The exclusion of re-refined oil from today's listing is consistent with the recent amendments to the definition of solid waste. See 50 *FR* at 634, January 4, 1985. Under those amendments, most materials which are reclaimed from solid wastes and that are used beneficially are not solid wastes and, therefore, are not hazardous wastes provided they are not used as a fuel or used to produce a fuel or are not placed on the land for beneficial use.[14] Used oil which is used as a lubricant that has been re-refined is one such example and is, therefore, deemed to have been reclaimed from solid waste and, thus, is not a solid waste within the meaning of Subtitle C of RCRA.

3. *Mixtures of Used Oil and Other Materials*—a. *Existing Mixture Rule.* Under the existing rule concerning mixtures of hazardous wastes and solid wastes (40 CFR 261.3), when a characteristic or listed hazardous waste is mixed with another solid waste, the entire mixture becomes a hazardous waste subject to 40 CFR Parts 262–265 *except* in the following circumstances: (1) When a waste that is hazardous solely because it exhibits one of the characteristics in Subpart C of Part 261 is mixed with another waste such that the entire mixture no longer exhibits any of the characteristics; (2) when a waste that is exempted under § 261.5 (*i.e.*, wastes from small quantity generators) is mixed with another (non-hazardous) waste, the resultant waste mixture is generally exempt from regulation; and (3) when a waste that is hazardous because it is listed in Subpart D of Part 261 is mixed with non-hazardous solid waste, the entire mixture is hazardous unless it is exempted from regulation under §§ 260.20 and 260.22.[15]

This general policy concerning mixtures has been incorporated into the recycled oil rules (*i.e.*, a mixture of recycled used oil and another hazardous waste will be considered a hazardous waste subject to the full set of the Subtitle C rules). However, the Agency is proposing one major change to the policy described above. In particular, under the general hazardous waste rules, a mixture of small quantitites of a hazardous waste and a non-hazardous waste would be conditionally exempt from regulation (*i.e.*, not subject to the hazardous waste rules). Under today's proposal, however, a mixture of used oil and small quantities of another hazardous waste (as defined in § 261.5) will be fully regulated as a hazardous waste and not a used oil. We believe this change in policy is necessary in order to prevent small quantities of hazardous wastes from being illicitly disposed of by being mixed with recycled oil. (See the proposed management standards for a more detailed discussion of the mixture rule as it applies to used oil.)

Under today's proposed listing, used oil will be a listed hazardous waste subject to all applicable requirements under Parts 262–265 when it is disposed. Consequently, mixtures of used oil and other hazardous wastes (including small quantities of hazardous wastes) will be hazardous wastes subject to full regulation under Subtitle C when that mixture is disposed, except as provided in Sections b. and c., below.

(b) *Mixtures of Wastewater and Used Oil.* EPA is today proposing an amendment to the mixture rule (40 CFR 261.3) in order to avoid regulating certain mixtures as a hazardous waste or a used oil where the Agency believes that such regulation would not be necessary to protect human health and the environment. The Agency is specifically concerned that under today's proposed listing of used oil, otherwise non-hazardous wastewaters contaminated with very small amounts of used oil would be subject to regulation as a hazardous waste under the existing mixture rule.

The wastewater from many industries (*e.g.*, steel manufacturing, railroad yards, etc.) frequently contains small amounts of oil which enters the system from a variety of sources, including drippings from machinery and other processes. The contamination of wastewater with small amounts of oil is virtually impossible to control. EPA believes that such small amounts of oil in wastewater pose no significant hazard when stored, transported, treated, disposed, or reused. Consequently, the regulation of such mixtures as hazardous wastes under RCRA is unwarranted.

Under the existing Subtitle C system, however, such mixtures would nonetheless be considered listed hazardous wastes. The only mechanism presently available to handlers of these mixtures to remove their wastes from regulatory control would be to petition the Agency to exclude (or delist) their waste under the procedures contained in 40 CFR 260.20 and 260.22. Because of the large potential numbers of facilities involved and because the Agency does not consider such mixtures to be hazardous, EPA is proposing a different approach for removing mixtures containing only small amounts of used oil from regulatory control under this listing.[16]

Specifically, EPA is proposing to amend the mixture rule contained in 40 CFR 261.3 to provide that a mixture of a non-hazardous wastewater and used oil caused by a *de minimis* loss of lubricating oil, hydraulic or metalworking fluids, or insulating fluids or coolants due to spills or drippings will not be subject to regulation as a used oil (and hence, as a hazardous waste). As noted above, EPA believes that the concentrations of hazardous constituents that may be present in such

[13] Although re-refined oil is not a solid or hazardous waste under this proposal, re-refined oil would continue to be a used oil within the meaning of section 3014 of RCRA.

[14] Materials that are reclaimed from a solid waste can still be a solid and hazardous waste if: (1) The materials are accumulated speculatively, or (2) the materials have been processed minimally or the materials have been partially reclaimed but must be reclaimed further before recovery is complete (see 50 FR 635, January 4, 1985).

[15] The Agency also has exempted certain other mixtures of hazardous and non-hazardous wastes from the mixture rule. See 40 CFR 261.3(a)(2)(iv); see also, November 17, 1981.

[16] The Agency has made previous modifications to the mixture rule when such mixtures were not considered hazardous (see 46 FR 56582, November 17, 1981).

a mixture will be so small as to pose no significant hazard to human health and the environment.

While the Agency is not proposing a specific concentration limit for such used oil in wastewater, EPA requests comment on whether such a limit should be established, and if so, what that level should be. This exemption would apply only to very small amounts of used oil which are lost in normal operations or when small amounts of oil are lost to the wastewater treatment system during draining or washing operations. The exemption for mixtures of used oil and non-hazardous wastewaters would not apply, however, if the used oil is discarded as a result of abnormal manufacturing operations, (*e.g.*, plant shutdowns or operation malfunctions resulting in substantial spills, leaks, or other releases). In addition, EPA is placing two additional conditions on this exemption.

First, this exemption will not affect the mixture rule as it applies to mixtures of hazardous wastes and other wastes. In other words, a mixture of wastewater (containing used oil) and another hazardous waste would still be a hazardous waste subject to full regulation under 40 CFR Parts 262–265, and 270, 271, and 124. This condition is necessary to prevent the illicit disposal of a hazardous waste by mixing it with an exempted mixture.

The second condition applicable to this amendment applies to oil that is recovered from an exempted mixture. Used oil that is recovered is essentially the same as other recycled oil in terms of the contaminants that may be present as well as the management practices which subsequently may be applied. Consequently, EPA believes it is appropriate to regulate oil recovered from mixtures exempted under this proposed amendment. Hence, when recycled, such oil will be subject to regulation under the rules being proposed today for recycled used oil. Used oil that is recovered from wastewaters and which is disposed will be subject to the general hazardous waste rules rather than the recycled oil rules.

c. *Oil-Contaminated Industrial Wipers (Oily Rags).* EPA is also proposing an amendment to the mixture rule that would exempt from regulatory control industrial wipers that are contaminated with used oil.

Industrial wipers [17] are widely used in a variety of industrial settings to wipe small amounts of oil or other substances from areas or objects needing cleaning or polishing, including machinery, tools, and other objects. A major use of industrial wipers is also wiping the hands and face of the user. According to information provided by Kimberly-Clark in a petition submitted to EPA, industrial wipers are used at some 540,000 industry sites in the United States.[18] Kimberly-Clark estimates that the total quantity of used oil found in all discarded industrial wipers on a yearly basis would not exceed 2.3% of all used oil.[19]

In its petition, Kimberly-Clark argued that industrial wipers do not pose any significant environmental hazards when disposed of as part of the regular, non-hazardous solid waste stream and that regulations of oil-contaminated wipers would not be cost-effective. Specifically, Kimberly-Clark argued that the actual amount of used oil likely to be disposed of at a typical non-hazardous waste landfill or by incineration is insignificant and would likely have a net positive effect in terms of the wipers' ability to absorb additional liquid if placed in a landfill or to combust more completely and provide heat value if incinerated. Kimberly-Clark also argued that requiring users to handle their wipers as hazardous waste would have substantial negative impacts, both economically and from an environmental standpoint.

We have evaluated the petition submitted by Kimberly-Clark and have decided to propose exempting industrial wipers from regulatory control under the mixture rule (*i.e.*, we are proposing to amend the mixture rule to say that a mixture of a used oil and an industrial wiper will not be considered a hazardous waste). However, this exemption would not apply to oily rags which exhibit a characteristic of hazardous waste pursuant to Subpart C of Part 261. It should also be noted that this exemption is not intended to apply to those industrial wipers used to clean up oil spills but only to those wipers used to clean drips or other incidental amounts of oil from machinery or equipment, or the face and hands of the user. EPA generally believes that these wipers (although contaminated with used oil) would contain relatively small concentrations of the hazardous constituents so as to pose no significant hazard to human health and the environment.

EPA is also concerned that regulating industrial wipers contaminated with used oil as a hazardous waste will seriously impact the Agency's implementation of the hazardous waste program by subjecting several hundred thousand otherwise unregulated establishments to the hazardous waste regulations. EPA does not believe that it could effectively extend regulation to this group of hazardous waste generators at this time.

The Agency, however, still has a number of concerns with respect to this exception. In particular, EPA is concerned that, based on data submitted by Kimberly-Clark, a significant aggregate amount of used oil (13.2 million gallons per year) will be disposed of in the environment via industrial wipers. Second, the Agency believes that establishing a concentration limit for used oil in the wiper may be desirable (or necessary) to ensure that significant quantities of used oil and its hazardous constituents are not disposed of intentionally through an exempted mixture. However, the Agency has not yet been able to determine an appropriate concentration level and specifically requests public comment as to what level, if any, would be appropriate.

EPA is also requesting public comment on the issue of exempting oil-contaminated industrial wipers, in general, from regulatory control as hazardous wastes, particularly with respect to possible adverse impacts from such an exemption.

C. Delisting Procedures for Used Oil

The Agency's procedures for excluding wastes at a particular site from the hazardous waste regulations are contained in 40 CFR 260.20 and 260.22. These rules allow any person to demonstrate that a specific waste from a particular generating facility should be "delisted" (*i.e.* not regulated as a hazardous waste) on the basis that their waste is fundamentally different from the waste that was listed in Subpart D of Part 261. In the past, petitioners have been required to demonstrate that their waste does not meet any of the criteria for listing contained in 40 CFR 261.11 (a)(1), (a)(2), or (a)(3) which were relevant to the Administrator's decision to list that waste in the first place.

However, section 222(a) of the HSWA modifies the delisting procedures to require the Administrator to consider factors (including additional

[17] The term industrial wipers includes: *Shop towels* (2.9 billion wipers annually) which are cloth wipers that are generally not discarded but are washed and reused; *rags* (2.9+ billion wipers annually) which are generally disposed of as part of the user's regular solid waste stream; and *disposable wipers* (7.8 billion wipers annually) which are discarded as part of the users regular solid waste stream.

[18] *Exemption of Oil-Contaminated Industrial Wipers from Forthcoming Waste Oil Rules Under RCRA*, Kimberly-Clark Corporation, June 15, 1983.

[19] See Kimberly-Clark petition for detailed calculation.

constituents) other than those for which the waste was listed, if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. In addition, the amendments specifically require the Agency to provide notice and an opportunity for public comment before granting a delisting petition. Under today's listing proposal, generators or other handlers of used oil who wish to petition the Agency to have their specific used oil delisted must follow the same delisting procedures as for any other hazardous waste (*i.e.*, they must submit sufficient data so that the Agency can evaluate their used oil to determine its hazardousness with respect to any toxic constituent that may reasonably be present in the waste).

The Agency recognizes that significant numbers of used oil handlers may wish to petition the Agency for a delisting, especially since non-hazardous used oil will not be subject to regulatory control. Some generators may well, due to their generation and handling procedures, generate relatively clean used oils. While the Agency has sought to exclude from the listing or exempt from regulation under section 3014 those used oils which do not pose a hazard to the environment, the Agency is somewhat concerned that a large number of petitions could unnecessarily overtax the Agency's delisting resources.

EPA considered an approach that would involve setting concentration limits for specific constituents of concern. Used oil that did not exceed these concentration limits would be exempt from regulation as a hazardous waste. However, this approach poses several practical problems concerning the appropriate concentration limits that should be set for which constituents (*i.e.*, used oil can contain any one of the toxic contaminants listed in Appendix VIII of Part 261) and problems relating to implementation. Therefore, the Agency has concluded that such an approach is not feasible at this time and that any person who wishes to delist their used oil will need to submit a petition pursuant to 40 CFR 260.20 and 260.22.[20]

The Agency requests public comment on the issue of delisting nonhazardous used oils and is particularly interested in any particular used oils that should be specifically excluded from the listing of used oil as a hazardous waste.

V. Basis for Listing Used Oil as a Hazardous Waste

A. Criteria for Listing

EPA may list as waste as hazardous if it meets any of the criteria for listing contained in 40 CFR 261.11. Among others, § 261.11(a)(3) provides that the Administrator may list a waste as hazardous if it contains any of the toxic constituents listed in Appendix VIII, unless, after considering certain factors, the Administrator determines that the waste will not pose a substantial present or potential hazard to human health or the environment when mismanaged. The factors that can mitigate such a listing are: (i) The nature of the toxicity presented by the constituent, (ii) the concentration of the constituent in the waste, (iii) its potential to migrate or persist in the environment, (iv) the plausible types of improper management to which the waste could be subjected, (v) the quantities of waste generated and the nature and severity of human health and environmental damage that has occurred, and (vi) any other factors that may be appropriate.

The Administrator has determined that used oil contains highly toxic contaminants in significant quantities, that these contaminants are mobile and persistent in the environment, and that used oil is generated in large quantities. Thus, these wastes may pose a substantial present or potential threat to human health or the environment when improperly transported, treated, stored, recycled, disposed, or otherwise managed.[21]

B. Summary of Used Oil Universe

Based on 1982 automotive and industrial new oil sales of 1,244 and 1,171 million gallons, respectively, it is estimated that 746 million gallons of automotive used oil and 402 million gallons of industrial used oil are generated each year. Approximately 57 percent of the total generated, or about 660 million gallons, are currently managed by collectors, processors, re-refiners, and end-users and will be brought under regulatory control under the special management standards. The remaining 43 percent, or 488 million gallons, result from do-it-yourself oil changers, agricultural and construction machinery operators, and small generators of industrial oils who often dispose of their oils off-site rather than accumulate them or take them to a point of accumulation.

C. Toxic Constituents of Concern

As discussed above, the primary basis for listing used oil as a hazardous waste under 40 CFR 261.11 concerns the presence of certain toxic constituents contained in used oil. Used oil typically contains a number of toxicants listed in Appendix VIII in concentrations well above those necessary to cause substantial harm. These constituents, including lead, trichloroethylene, tetrachloroethylene, 1,1,1-trichloroethane, naphthalene, and toluene, have been measured in used oils in significant concentrations. Based on the Agency's survey of used oil samples, the following contaminant levels were reported at the statistical 90th percentile [22] for the constituents of concern.[23] Lead was reported at 1200 ppm, naphthalene at 990 ppm, tetrachloroethylene at 1300 ppm, 1,1,1-trichloroethane at 3100 ppm, trichloroethylene was reported at 1000 ppm, and toluene at 5000 ppm. The constituents are, therefore, present in used oil at levels ranging from 10^2 to 10^7 higher than any health-based standard (*i.e.*, Ambient Water Quality Criteria or Drinking Water Standards). See Table 1, below. Consequently, only a small percentage of the toxicants would need to migrate from the waste and escape into the environment at levels above the reported health-based standard to pose a substantial hazard to human health and the environment.

These toxicants are known to have carcinogenic, mutagenic, teratogenic, or other chronic or acutely toxic properties. In particular, tetrachloroethylene has been identified by the Agency's

[20] At a minimum, EPA would expect the petitioner to demonstrate that the used oil: (1) Meets the Phase I fuel specifications (50 FR 1710, January 11, 1985), and (2) does not exhibit any of the hazardous waste characteristics. In addition, the petitioner must demonstrate that the used oil is not hazardous for the reason it was listed and must submit sufficient information for the Administrator to determine whether the used oil is hazardous for any other reasons.

[21] Testing of used oil has shown that nearly 20 percent of the samples have flash points below 140° F, with some samples having flash points as low as 72°F. These low flash points generally result from contamination with gasoline, which has an initial boiling point below 100°F. In addition to contamination with gasoline, used oil also contains many other highly flammable light aliphatics and aromatics. Thus, used oil may, at times, exhibit the characteristic of ignitability. However, since only 20 percent of the samples tested exhibited the ignitability characteristic, we are not including it as a basis for listing. Nevertheless, each generator is responsible for determining if his waste exhibits any of the hazardous waste characteristics.

[22] At the statistical 90th percentile, 90% of all of the samples will contain that constituent at that value or lower. See Background Document for Used Oils for mean, median and 75th percentile concentrations of these constituents in used oil samples analyzed.

[23] Franklin Associates, Ltd., *Composition and Management of Used Oils Generated in the United States*, September 1984.

Carcinogen Assessment Group (CAG) as a possible human carcinogen.[24] [25] It is a mutagen in bacterial assays; it is also chronically toxic to dogs, causing kidney and liver damage, and to humans, causing impaired liver function. In mice and rats, tetrachloroethylene has caused toxic nephropathy. The Agency's CAG has also identified trichloroethylene as a potential human carcinogen. In addition, trichloroethylene causes some liver and kidney damage. 1,1,1-Trichloroethane has been shown, in animal studies, to produce adverse effects in the central nervous system, pulmonary system, heart, kidney, and liver. Results of a National Cancer Institute (NCI) carcinogenesis bioasssay also have indicated that oral administration of 1,1,1-trichloroethane produced a variety of neoplasms; however, re-testing of this compound is in progress since a high incidence of premature deaths was observed in this initial study. Toluene is known to cause central nervous system dysfunction and has been linked to reproductive effects in humans. Chronic occupational exposures to toluene also have resulted in neurologic effects, such as impaired performance on tests for intellectual and psychomotor ability and muscular function.

TABLE 1.—USED OIL CONTAMINANT CONCENTRATIONS AS COMPARED TO HEALTH BASED CRITERIA

Constituent	Concentration in used oil [1] (90th percentile, ppm)	AWQCL (ppm)	DWS [2] (Long-term SNARL) (ppm)	Solubility [3] ppm
Lead	1,200	.05	.05	
Tetrachloroethylene	1,300	.008	.02	150
Toluene	5,000	14.3	.343	535
1,1,1-Trichloroethane	3,100	18.4	1	720
Trichloroethylene	1,000	.027	.075	1,000
Napthalene	990	*		

RATIO OF CONCENTRATION TO CRITERIA

Constituent	Concentration/AWQCL	Concentration/DWS	Solubility/AWQCL	Solubility/DWS
Lead	24,000	24,000		
Tetrachloroethylene	162,500	65,000	18,800	7,500
Toluene	350	14,600	37	1,560

[24] U.S. EPA 1985. Health Assessment Document for tetrachloroethylene (perchloroethylene). EPA 600/8-82-005F.

[25] The Agency is presently completing evaluation of two additional positive studies by the National Toxicology Program (NTP) performed by inhalation exposure of rats and mice. This re-evaluation is expected to result in the classification of perchloroethylene as a "B-2" carcinogen (*i.e.*, a probable human carcinogen). See 49 FR 46294.

RATIO OF CONCENTRATION TO CRITERIA—Continued

Constituent	Concentration/AWQCL	Concentration/DWS	Solubility/AWQCL	Solubility/DWS
U,1-Trichloroethane	170	3,100	40	720
Trichloroethylene	37,000	13,300	37,000	13,300
Naphthalene				

Sources:
[1] Background Document for Used Oil.
[2] U.S. EPA, 1980. Health and Environmental Effects Profile. RCRA Subtitle C Background Document, Appendix A. Office of Solid Waste, Washington, D.C.
[3] No health-based standard has yet been developed for naphthalene.

Naphthalene is a systemic poison which bioaccumulates in the skin, liver, brain, blood, muscle, and heart. In particular, chronic exposure to naphthalene produces cataracts, hemolytic anemia, and kidney disease in humans. Finally, lead is a systemic toxicant, causing renal damage, cerebrovascular disease, heart failure, electrocardiographic abnormalities, impaired liver function, impaired thyroid function, intestinal colic, and miscarriages and still births. [For additional information on the toxicity of the hazardous constituents see the Health and Environmental Effects Profile (HEEPs), available from the public docket at the address given above.]

In addition, it is important to note that used oil may contain significant aggregate concentrations of one or more other toxic constituents identified by the Agency. Table 2 details additional constituents which have been found in used oils.

TABLE 2.—TOXIC CONSTITUENTS[1] FOUND IN USED OIL MISMANAGEMENT INCIDENTS

arsenic [2]	naphthalene.
barium	nickel [2].
benzene [2]	nitrobenzene.
beryllium [2]	phenol.
cadmium [2]	PCB's (polychlorinated biphenyls) [3]
carbon tetrachloride [2]	polynuclear aromatic hydrocarbons (several).
chromium total	selenium.
cyanide	2,3,7,8-tetrachlorodibenzo-*p* dioxin [2].
dibromochloromethane	tetrachloroethylene [2].
fluoranthene	toluene.
lead	1,1,1-trichloroethane.
mercury	trichloroethylene.

[1] The majority of these substances are listed in Appendix VIII, Part 261.
[2] Indicates compounds that the U.S. EPA's Carcinogen Assessment Group (CAG) has determined to have evidence of carcinogenicity. The weight of evidence for carcinogenicity varies. For some of these chemicals there is human evidence (epidemiological data) while for others only experimental animal evidence is available. Source: "The Carcinogen Assessment Group's List of Carcinogens." July 14, 1980. Clarification.
[3] PCB's: The manufacture, processing, distribution in commerce, and use of PCB's is prohibited by TSCA § 6(e) unless specifically authorized by PCB regulations under 40 CFR Part 761. PCB's have been demonstrated to have developmental and reproductive effects, and oncogenic potential in animal studies. EPA has found no evidence to suggest that PCB's would not have similar effects and oncogenic potential in humans.

Another factor considered by the Agency as a basis for listing used oil as hazardous concerns the fact that they typically and frequently contain toxic heavy metals which present a particular health hazard when burned. Fuel specifications for the burning of used oil have been defined for arsenic, cadmium, chromium, and lead.[26] The rationale for selecting these constituents is discussed in the Phase I burning and blending proposal (50 FR 1684–1723). All of these constituents have been identified in significant concentrations in used oil samples as is evident from the contaminant levels reported in the Agency's survey of approximately a thousand used oil samples. This survey revealed the following levels at the statistical 90th percentile for the following constituents of concern: Arsenic at 19 ppm; cadmium at 10 ppm; chromium at 30 ppm; and lead at 1200 ppm. These levels have been shown to pose a potential substantial hazard to human health and the environment when burned in an incinerator or boiler. (See Phase I burning and blending proposal for more detailed discussion.)

CAG has identified both arsenic and cadmium as having sufficient evidence of carcinogenicity to categorize them as potential human carcinogens. Hexavalent chromium also demonstrates evidence of carcinogenic potential. Arsenic, cadmium, and hexavalent chromium also demonstrate mutagenic effects and arsenic and cadmium further show teratogenic activity.[27]

D. Waste Constituent Mobility: Environmental Fate and Transport

As stated in 40 CFR 261.11, the Administrator will consider the mobility potential, persistence, and potential to bioaccumulate of toxic constituents in a waste in determining whether to list a waste as hazardous.

1. *Mobility Potential.* The water solubility of a given toxic constituent is indicative of its mobility potential (*i.e.* the likelihood that it will be released from a management site and become dissolved in a water resource of concern). Many of the used oil constituents of concern are highly water soluble and thus characterized by a high mobility potential. Their solubilities are many orders of magnitude greater than their respective Ambient Water Quality Criteria levels and designated Drinking

[26] The Phase I burning and blending proposal also proposed specifications for total chlorine and flashpoint.

[27] See *Subtitle C—Identification and Listing Background Document*, Appendix A—Health and Environmental Effects Profiles; October 30, 1980.

Water Standards. See Table 1. If improperly managed, these toxicants can be expected to migrate from storage or disposal facilities and to become dissolved in drinking water resources at levels exceeding the corresponding health standards.

For example, trichloroethylene is soluble in water at concentrations which exceed the long-term SNARL (Suggested No Adverse Response Level) by a factor of approximately 13,000. If improperly managed, leachate from wastes containing trichloroethylene could migrate to water supplies resulting in concentration levels far in excess of the corresponding long-term SNARL. Tetrachloroethylene is similarly very soluble in water at concentrations exceeding the long-term SNARL by a factor of 7,500. Furthermore, since the used oil itself is a liquid, the potential for these toxicants to migrate from the waste is enhanced. Therefore, these toxicants are likely to escape from the waste and migrate into ground water to present a substantial hazard to human health and the environment.

2. *Persistence.* Many of these constituents are highly persistent in the environment (*e.g.*, 1,1,1-trichloroethane has a half-life of 5–9 months in fresh water and 39 months in sea water and tetrachloroethylene has a residence time of several years or decades in deep soils and ground water). Metals, such as arsenic, cadmium, chromium, and lead will persist in the environment indefinitely.[28]

The Agency considers a material to be persistent if it persists in the environment long enough to be detected since it may also result in exposure to humans in the same period of time. Most of these constituents have been repeatedly detected in ground and surface water surveys conducted by the Agency which provides a further indication of their environmental persistence. For example, in one Agency survey of 969 water systems, 1.4 percent of the tapwater samples exceeded the 50 ppb standard for lead. Similarly, naphthalene has been detected in natural waters and in drinking water supplies.

In nationwide surveys of organic chemicals in the drinking water of representative U.S. communities, toluene was found to contaminate one raw and eleven finished water supplies out of the 133 water supplies surveyed. Toluene has also been detected in sea water and fish obtained near petroleum and petrochemical plants in Japan.

[28] See SPA report entitled, *"Water-related Environmental Fate of 129 Priority Pollutants."* January 1979. EPA–440/4–79029a).

Four Federal surveys used to estimate levels of 1,1,1-trichloroethane in public drinking water supplies in the U.S. reported that 3 percent of the ground-water systems are expected to have between 0.5–5 ppb of 1,1,1-trichloroethane, and that most surface water systems have detectable levels of 1,1,1-trichloroethane. Thus, many of these constituents, including used oil itself, have been found to migrate and present a hazard to human health and the environment at Superfund sites.

The toxicologic properties, environmental mobility, and persistence of these toxicants are described in the corresponding Health and Environmental Effects Profiles. We note further, however, that a consideration of the toxicity of individual waste constituents is likely to understate waste toxicity. This understatement relates to the fact that used oil is a complex mixture of many hazardous constituents. Aggregate toxic effects, whether additive or synergistic, are likely manifestations of exposure.

3. *Bioaccumulation.* Another factor which the Administrator considers in the decision to list a waste as hazardous concerns "the degree to which the constituent or any toxic degradation product of the constituent bioaccumulates in ecosystems." Bioaccumulation is the tendency of a substance to become concentrated in living tissue. Many of the constituents in used oil bioaccumulate in the tissues of living organisms. Naphthalene, for example, can accumulate in living tissues at concentrations up to 186 times those in the contaminated water. Toluene can accumulate in living tissues at concentrations 78 times the concentration in the water. 1,1,1-Trichloroethane, tetrachloroethylene, and trichloroethylene also bioaccumulate at 56 times, 43 times, and 15 times their respective concentrations in water. Thus, only a small fraction of the toxicants present in these wastes need migrate and reach environmental receptors to pose the potential for substantial harm to human health and the environment.

E. Waste Mismanagement Potential

Used oils are capable of causing substantial harm to human health or the environment, if managed improperly. Typical improper management practices include disposal in unlined or inadequately lined land disposal facilities leading to contamination of ground water, surface water, and soil, and improper burning, resulting in exposure to unburned toxicants in the wastes as well as products of incomplete combustion.

Appendix A of the used oil background document provides a summary of approximately 80 major mismanagement incidents and the cost implications of cleanup operations ($10,000 to $5,150,000 per site). The mismanagement issue is not confined to on-site management of used oil, as evidenced by the fact that seventy (70) of these incidents occurred off the generation site. The media affected include surface water (35 sites), ground water (24 sites), drinking water (17 sites), air (8 sites), and soil (25 sites).

Treatment, storage, and disposal of used oils in tank and container storage facilities (25 sites), surface impoundments (36 sites), and other improper disposal facilities (35 sites), burning operations (7 sites), and use of waste oil as a dust suppressant (3 sites) have resulted in the pollution of ground or surface water with lead, chlorinated organics, or aromatic organics from these wastes.

In summary, the Agency has determined that used oil typically contains toxic constituents at concentrations that are of concern, that these constituents are mobile, persistent, and bioaccumulative, and capable of migration in hazardous concentrations, and, therefore, that these wastes are capable of causing (indeed, repeatedly have caused) substantial harm if mismanaged. Consequently, the Agency is proposing to add used oil to the lists of hazardous wastes.

VI. CERCLA and Clean Water Act Impacts: Proposal to Adjust Used Oil Reportable Quantity of 100 Pounds

Today's proposed listing of used oil as a hazardous waste will, upon final promulgation, also result in its classification as a hazardous substance under Section 101(14) of CERCLA. Section 103 of CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantity (RQ) established under CERCLA section 102 immediately notify the National Response Center (NRC) of the release.

Under section 102 of CERCLA, used oil will be automatically assigned an RQ of one pound (after it has been listed as a hazardous waste) until EPA adjusts the statutory RQ. Thus, until adjusted by EPA regulations, persons releasing one pound or more of used oil must notify the NRC. EPA is today proposing to adjust the statutory one pound RQ for used oil to 100 pounds based on the application of its RQ adjustment

methodology. See 50 FR 13456 (April 4, 1985).

The 100 pound RQ proposed today for used oil is based upon the toxicity of its constituents and its ignitability. As a hazardous waste, used oil is a mixture of hazardous substances for CERCLA purposes, and its RQ is based upon the RQs established for each of its hazardous constituents. Because the exact composition of a hazardous waste is usually unknown, the RQ of the waste is normally based upon the lowest RQ established for any of its constituents. However, the composition of used oil is sufficiently well characterized to enable an RQ adjustment to be based upon calculations at the 90th percentile concentrations of each hazardous constituents.

The substances with the lowest RQs at the 90th percentile concentration are lead and tetrachloroethylene and, therefore, the RQ of used oil is based on the RQs of these substances. Because the RQs of both of these substances at that concentration are between 100 and 1000 pounds, the applicable RQ for used oil has been set at 100 pounds. The ignitability of used oil also results in an RQ of 100 pounds. (See Background Document for a more detailed explanation of our basis for setting an RQ of 100 pounds.)

The CERCLA RQ proposed today applies to releases of used oil to all environmental media, including navigable waters, the contiguous zone, and ocean waters. EPA has rejected a media specific RQ approach to avoid confusion, arbitrariness, and inequity in release notification. See 50 FR 13466–13467 (April 4, 1985). However, under the Clean Water Act, the oil sheen has been the RQ for discharges of oil to navigable waters and the contiguous zone since 1970.[29] The sheen test provides a non-quantitive reporting trigger and is not supplanted by today's proposed CERCLA rulemaking.[30]

Unlike hazardous substances under the Clean Water Act, the RQ for oil established under that Act is not automatically altered to correspond to the adjusted CERCLA RQ. See 50 FR 13473 (April 4, 1985). Furthermore, there are important reasons for retaining the oil sheen RQ. The sheen test is generally a more sensitive reporting trigger than the proposed RQ because a sheen may be created by a quantity of used oil less than 100 pounds. The sheen has been a useful trigger because it is easily recognized and does not require the sometimes difficult determination of the volume of spilled oil. Those who implement the current regulation have found it to be successful over the past 15 years in creating an effective early-warning system for oil spills and in improving oil handling techniques. Most importantly, however, it has been supported by scientific studies which have concluded that repeated and low level releases of oil may cause harm to aquatic environments. Moreover, these effects may not be adequately measured by the aquatic toxicity tests used under CERCLA and the Clean Water Act to evaluate individual constituents of hazardous wastes.

Thus, the CERCLA 100 pound RQ for used oil will apply to all environmental media, including surface waters. A release of used oil equal to or greater than 100 pounds must be reported to the NRC under CERCLA whether or not an oil sheen is produced or the waters affected are inside the contiguous zone. If the release of 100 pounds or more is into navigable waters and the contiguous zone, the release is also subject to the reporting requirement of the Clean Water Act but one report to the NRC will satisfy the notice requirements of both statutes. Releases of used oil in amounts less than 100 pounds to navigable waters and the contiguous zone will be subject to reporting requirements under the sheen rule of the Clean Water Act. Such releases must also be reported to the NRC, as provided under that Act.

VII. State Authorization Impacts

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized State at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which EPA regulations implement HSWA since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement proposes standards that would be effective in all States since the requirements satisfy EPA obligations under the Hazardous and Solid Waste Amendments of 1984. Thus, EPA will implement the standards in nonauthorized States and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

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[29] Known as the "sheen rule," the Clean Water Act (Section 311(b)) prohibition and reporting requirement for discharges that "may be harmful" actually includes discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Pursuant to the 1977 amendments to the Clean Water Act, EPA has proposed to extend the sheen test beyond the contiguous zone to discharges into ocean waters "in connection with activities under the Outer Continental Shelf Lands Act or the Deep Water Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)." (Section 33 U.S.C. 1321 (b) and (c)). 50 FR 9776, (March 11, 1985).

[30] Attention should also be given to the reporting requirements prescribed under The Act to Prevent Pollution from Ships, 33 U.S.C. 1901–1911. Those requirements and their applicability are set forth in 33 CFR 151.15 and 151.03, respectively. These requirements would not be affected by today's proposal.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program revisions under section 3006(b) are described in 40 CFR 271.21. See 49 FR 21678 (May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may have a listing similar to that included in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement this listing in lieu of EPA until the State program revision is approved. As a result, the listing proposed in today's rule will apply in all States, including States with an existing listing similar to that in today's rule. States with an existing listing may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

VIII. Request for Comments

The Agency seeks public comment on all of the issues discussed in this notice concerning the listing of used oil as a hazardous waste. The Agency is particularly interested in comments on the proposed amendments to § 261.3 (*i.e.* the exemptions for wastewaters contaminated with small amounts of oil and for industrial wipers) and on vaious approaches which may provide practical relief to used oil recyclers that handle used oils which are low in contamination.

Comments concerning the extent of regulation that should be imposed on various used oil recycling practices should, however, be addressed under the section 3014 proposal.

IX. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The regulatory impact of this proposal, taken together with the recycled oil rules, is major and is addressed in the proposed management standards for recycled used oil, appearing elsewhere in today's **Federal Register**.

X. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The impact of this rule on small entities is addressed in the proposed hazardous waste management standards for used oil, appearing elsewhere in today's **Federal Register**.

XI. Paperwork Reduction Act

The reporting or recordkeeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisons respond to any OMB or public comments.

XII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, confidential business information, hazardous waste

40 CFR Part 261

Hazardous waste, Recycling

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.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: November 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM—GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

§ 260.10 [Amended]

2. Section 260.10 is amended by adding a new definition for used oil to appear alphabetically:

* * * * *

"Used Oil" is petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: i) Lubricant (engine, turbine, or gear); ii) Hydraulic fluid (including transmission fluid); iii) Metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils;) or iv) Insulating fluid or coolant and which is contaminated through use or subsequent management.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

4. Section 261.3 is amended by revising the introductory text of paragraph (a)(2)(iv), by adding a new paragraph (a)(2)(iv)(F); and by adding a new paragraph (e), to read as follows:

§ 261.3 Definition of hazardous waste

* * * * *

(a) * * *

(2) * * *

(iv) Except as provided in paragraph (e) of this section, it is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not

been excluded from this paragraph under §§ 260.20 and 260.22 of this Chapter; however, the following mixtures of solid wastes and hazardous wastes listed in Subpart D are not hazardous wastes (except by application of paragraph (a)(2)(i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

* * * * *

(F) Used oil caused by a de minimis loss of lubricating oil, hydraulic oil, metalworking fluids, or insulating fluid or coolant. For purposes of this paragraph, "de minimis" losses include small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or when small amounts of oil are lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewater.

* * * * *

(e) The following mixture of solid waste and hazardous wastes listed in Subpart D are not hazardous wastes except by application of paragraph (a)(2)(i):

(1) Industrial wipers contaminated with small amounts of used oil. The term industrial wipers includes shop towels, rags, and disposable wipers.

(2) [Reserved]

5. In § 261.31, add the following waste in numerical order:

§ 261.31 Hazardous waste from non-specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * *		
Generic:		
F030	Used oil, including automotive, hydraulic, coolant, insulating and metalworking oils.	(T)
* * * * *		

6. Add the following entry in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * *	
F030	Lead, arsenic, cadmium, chromium, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, toluene, naphthalene.
* * * * *	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

8. § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the Federal Register	Title of Regulation
* * * * *	
[insert date of publication of the final rule].	Listing of Used Oil
* * * * *	

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

9. The Authority citation for Part 302 continues to read as follows:

Authority: Sec. 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

10. It is proposed to amend 40 CFR § 302.4 by amending Table 302.4 by adding the following entry in numerical order, as follows:

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA Waste No.	Final RQ Category	Final RQ Pounds (Kg)
* * * * *				*	*		
F030 "Used Oil" is petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: i) Lubricant (engine, turbine, or gear); ii) Hydraulic fluid (including transmission fluid); iii) Metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils;) or iv) Insulating fluid and coolant and which is contaminated through use or subsequent management..			1*	4	F030	X	100 (45.4)
* * * * *				*	*		

[FR Doc. 85-27901 Filed 11-27-85; 8:45 am]
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Federal Register

Friday
November 29, 1985

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is inviting applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program of NTIA. Congress is expected to appropriate an amount not to exceed $24 million for fiscal year 1986, although the authorized level for the Public Telecommunications Facilities Program has not been established at this date. *Applicants for grants under PTFP must file their applications on or before January 15, 1986.* NTIA anticipates making grant awards in early August 1986.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, et seq. (Act), as amended by the Public Broadcasting Amendments of 1981, Pub. L. 97-35 (1981 Amendments).

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Acting Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377-5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

To be eligible to apply for or receive a grant under the PTFP, an applicant must be:

(A) A public or noncommercial educational broadcast station;

(B) A noncommercial telecommunications entity;

(C) A system of public telecommunications entities;

(D) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(E) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services or;

(F) A State or local government or agency or a political or special purpose subdivision of a State.

II. Closing Date

Pursuant to § 2301.10 of the PTFP Interim Rules (49 FR 36600, 36604, No. 182, Sept. 18, 1984), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. *The closing date selected for the submission of applications is January 15, 1986.*

III. Program Goals and Priorities

The Goals of this program, as stated in Section 390 of the Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following Priorities for the PTFP:

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.

Within this category, we establish two subcategories:

A. Projects Which Include Local Origination Capacity

This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. Projects Which Do Not Include Local Origination Capacity

This category includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the facility is the only public telecommunications facility providing a signal to a geographical area or the only facility with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential facilities. Where an applicant seeks to "improve" basic equipment in its facility (i.e., where the equipment is not "worn out"), or where the applicant is not an essential facility, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Station Facilities

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects To Equip Auxiliary Studios at Remote Locations, or Either To Provide Mobile Origination Facilities

An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studies or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. Projects To Augment Production Capacity Beyond Basic Level in Order To Provide Programming or Related Materials for Other Than Local Distribution

This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases

In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose application, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the agency.[1] All persons and organizations on the PTFP's mailing list have been sent a copy of the current application form and the Interim Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Interim Rules carefully before submitting applications. Applicants whose applications were deferred have been mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate Single Point(s) of Contact on or before January 15, 1986. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

Applicants should note that all PTFP grant recipients are subject to the provisions of Office of Management and Budget (OMB) Circulars A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutions," A–102, A–110, A–122, and A–128. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements to repay the debt which are satisfactory to the Department are made.

Potential PTFP grant recipients may also be required to submit a "Name Check" form (Form CD–346), which is used to ascertain background information on key individuals associated with the potential grantee. The "Name Check" requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

V. Funding Criteria

The funding criteria for construction applications are as follows:

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5 of the PTFP Interim Rules (49 Fed. Reg. 36600, 36604, No. 182, Sept. 18, 1984);

(b) The program purposes set forth in § 2301.20 of the Interim Rules as well as the specific program priorities set forth in Section III above;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area; and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has: (1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service;

(2) Evaluated alternate technologies, the basis upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(3) Provided meaningful documentation of applicant's equipment requirements;

[1] The Office of Management and Budget (OMB) has approved the information collection and reporting requirements contained in NTIA's application as required under the Paperwork Reduction Act of 1980 (OMB Approval No. 0660–0003).

(4) Provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant produces or will produce programs or other materials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned (or controlled) by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations;

(m) The readiness of the Commission to grant any necessary authorization;

(n) The urgency for funding based on justification of needs.

The funding criteria for planning applications are as follows:

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to deter action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5 of the Interim Rules;

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicants would obtain adequate;

(1) Financial, human and support resources necessary to conduct the plan,

(2) Coordination with other telecommunications entities at the local, state, regional and national levels,

(3) Evaluation of alternate technologies and existing services, and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project);

(f) The extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

VI. Matching Requirements

(a) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award documents and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statue.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

VII. Selection Process and Project Period

PTEP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria in Section V listed above. The Agency determines the selection of grantees according to the Priorities listed in Section III above the evaluation of the applications by the various review panels.

The period for which a planning grant may be made is one year, whereas the period for which a construction grant may be made is two years. Although these timeframes are generally applied to the award of all PTFP grants, variances in project periods may be made based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be RECEIVED no later than close of business, January 15, 1986, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue NW., Washington, DC 20230. Applications DELIVERED BY HAND must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business January 15, 1986. Applicants whose applications are not received by close of business January 15, 1986, will not be notified that their applications will be considered in the current competition and will be returned.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before January 15, 1986. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, you are urged to submit it with as much lead time before the PTEP closing date as possible. The greater the lead time, the better the chance your FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 15, 1986.

(Catalog of Federal Domestic Assistance No. 11.550)

Scott Mason,

Chief, Management Division, Office of Policy Coordination and Management.

[FR Doc. 85-28279 Filed 11-27-85; 8:45 am]

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Friday
November 29, 1985

Part IV

Legal Services Corporation

Audit and Accounting Guide for Recipients and Auditors; Final Publication and Limited Request for Comments; Notice

LEGAL SERVICES CORPORATION

Audit and Accounting Guide for Recipients and Auditors; Final Publication and Limited Request for Comments

SUMMARY: This notice provides the final publication of the *Audit and Accounting Guide for Recipients and Auditors* (the *Guide*) the purpose of which is to assist recipients and their auditors in understanding the accounting, reporting, and auditing requirements for contracts and grants entered into with the Legal Services Corporation. The Guide describes the accounting policies, records, and internal control procedures considered adequate to ensure proper financial management of a recipient's program. It also provides standard financial reporting formats to help achieve uniformity among recipients. Comments are requested concerning Appendix VI, Functional Classification of Expenses. This revised Guide supersedes all previous Guides.

DATE: Comments concerning Appendix VI must be received by January 15, 1986.

ADDRESS: Comments may be submitted to the Office of the Comptroller, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Comptroller, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1820.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1984, as amended, (the "Act"), Pub. L. 93–355, 99 Stat. 378, 42 U.S.C. 2996–29961). Section 1009(c)(1) of the Act requires that recipients of financial support from the Corporation provide for an annual financial audit.

On Tuesday, July 30, 1976, the Legal Services Corporation published in the Federal Register its "Audit and Accounting Guide for Recipients and Auditors" (41 FR 29951–29979). Pursuant to section 1008(e) of the Legal Services Corporation Act (42 U.S.C. 2996g(c)), the Corporation thereafter requested (41 FR 32794) and received comment from interested persons on the procedures described in the Guide. The Guide became effective on October 4, 1976.

On July 19, 1977, the Corporation published a notice instructing recipients to use the revised Guide (June 1977) that had been distributed in June of 1977. (42 FR 37077) The instruction was effective immediately upon publication. There were two additional unpublished revisions in September 1979 and September 1981.

The Corporation prepared and distributed, as of February 11, 1985, a further revised Guide for use by recipients and independent certified public accountants or other auditors who perform such audits. Copies of the Guide were available at cost to interested members of the public from the Corporation's Audit Division.

On February 20, 1985, notice of the availability of the Guide was published. (50 FR 7150) The notice established a ninety-day period for the submission of comments. Seventy-three (73) comments were thereafter received and made available to the Board. The comments were from the following sources:

LSC Recipients	50
LSC Staff	6
Subgrantees of LSC Recipients	5
CPAs Associated with LSC Recipients	5
General Public	3
General Accounting Office (verbal)	1
National Legal Aid and Defenders Association and Project Advisory Group (joint statement)	1
Total	73

Following the receipt of the above comments, the Corporation has engaged in an ongoing revision process to the Guide. This process has included extensive telephone and written communication with representatives of the Project Advisory Group (PAG) and several LSC recipients, a governmental accounting expert formerly employed by the General Accounting Office (GAO) and currently employed by Arthur Young & Company, an international accounting and consulting firm, and the appropriate staff of the Corporation. While the comments supported many of the changes proposed in the February 11, 1985 version of the Guide, others were critical of certain changes.

A major new section requires recipients which control or are controlled by other organizations to combine their financial statements. This section was drafted in response to concerns expressed by the Senate Committee on Labor and Human Resources that LSC recipients had transferred funds to organizations which were "mirror corporations" of the recipient to evade Congressional restrictions. The GAO has issued a report urging the Corporation to exercise more oversight in such situations.

The Guide also includes a new requirement that LSC recipients expend their LSC funds on a first in, first out basis. This responds to concerns that certain activities, such as grassroots lobbying, which Congress restricted in 1982, 1983, 1984, and 1985 appropriations measures, would be continued into 1986 and beyond with pre-1982 funds. The Senate has, in fact, adopted an amendment to LSC's 1986 appropriation which would require the expenditure of old grant funds prior to the expenditure of 1986 grant funds.

The Corporation's Board of Directors, at its meeting on October 11, 1985, in Gilford, New Hampshire, adopted a policy which will require the certified annual reports of the Corporation itself and all recipients to include a Functional Statement of Expenses. Both the American Institute of Certified Public Accountants (AICPA) and GAO have provided research indicating significant management information rewards from the practice. The Corporation had recommended that recipients consider adoption of functional accounting in the 1977 *Audit and Accounting Guide for Recipients and Auditors* and in its 1981 revisions. The final revised Guide contains the Board's new policy in its Appendix VI. At the same meeting, the Board directed the staff of the Corporation to meet with representatives of NLADA and PAG and consider additional modifications to the Guide in light of the written and public comments.

Accordingly, the Corporation staff met for seven hours with a representative of PAG and conducted many telephone conversations with representatives of recipient programs. Moreover, during this extended comment period, several written comments were supplied by the NLADA/PAG representative to the Corporation staff and Board of Directors.

Thoughtful consideration of the comments received in this process has taken a significant amount of time. This effort resulted in additional changes to the Guide and resolved certain areas of criticism. The needs of recipients, the Corporation, Congress, and the General Accounting Office have been considered. The final version of the Guide reflects those needs and the resulting decisions of the Board of Directors of the Corporation.

Following public hearings and deliberations by the Board of Directors, the final Guide was adopted at the November 8, 1985 meeting in Anaheim, California.

Because the Corporation recognizes that the functional reporting requirement will entail additional recordkeeping and analysis for many programs, the Corporation is soliciting additional comments on Appendix VI in order to insure that any changes and more detailed specifications of the

requirements necessary to achieve an orderly transition are made after all interested parties have an opportunity to provide any views and relevant factual information.

The Corporation is especially interested in comments regarding:

(1) Ways to minimize the cost of implementation without significantly reducing the benefit;

(2) Possible alternatives to time-keeping by matter and function;

(3) Technical assistance and training requirements;

(4) Computer equipment, software, and related requirements;

(5) Transitional phases and time requirements for orderly implementation;

(6) Need for testing of systems and initial implementation;

(7) Analysis of needs of potential users of functional accounting data, *e.g.*, program managers and boards, Congress, the Corporation, other funding sources;

(8) Analysis of usage and costs and benefits of functional accounting and time record information—by programs and non-profit organizations, law firms, or other entities;

(9) Adjustments in the recordkeeping and reporting requirements based upon the size, specialization, or other characteristics of particular programs; and,

(10) Whether additional funding is necessary to accomplish implementation.

Dated: November 21, 1985.

John H. Bayly, Jr.,

General Counsel.

Legal Services Corporation

Audit and Accounting Guide for Recipients and Auditors

January 1, 1986.

Table of Contents

CHAPTER 1—INTRODUCTION

1-1 Definitions

The following terms are used throughout this Guide and are defined as follows:

• *Act*—Pub. L. 93-355/Pub. L. 95-222 ("The Legal Services Corporation Act, as Amended") enacted by Congress July 25, 1974, amended December 28, 1977. [42 U.S.C. 2996 *et seq.*]

• *AICPA*—American Institute of Certified Public Accountants, the professional organization of CPAs. It currently promulgates auditing standards, and prior to 1973, promulgated accounting standards which members of the profession must follow.

• *Annual Financial Statements*—Recipient's annual financial statements, including a Balance Sheet and a Statement of Support, Revenue and Expenses, and Changes in Fund Balances (Statement of Activity); the accompanying footnotes; and any other statements the recipient and auditor determine are necessary to comply with GAAP or to make the financial statements not misleading.

• *FASB*—Financial Accounting Standards Board, the body designated by Council of the AICPA to establish accounting principles pursuant to Rule 203 of the Rules of Conduct of the AICPA.

• *GAAP*—Generally Accepted Accounting Principles, accounting principles which have substantial authoritative support, as evidenced through the approval by the FASB, the AICPA, or accepted industry practice.

• *GAAS*—Generally Accepted Auditing Standards, auditing standards, promulgated by the AICPA, with which a member must comply before permitting his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant.

• *Guide*—This *Audit and Accounting Guide for Recipients and Auditors*, which is issued by LSC.

• *LSC*—Legal Services Corporation.

• *Monitoring Office*—The Office of Monitoring, Audit, and Compliance, a regional office, or other LSC office specifically delegated authority to ensure a recipient's compliance with the LSC Act and LSC's rules, regulations, and guidelines.

• *Program*—The total activities of an organization, regardless of how those activities are funded.

• *Recipient*—Any recipient as defined in § 1002(6) of the Act *and* any grantee or contractor receiving funds from the

Corporation under § 1006(a)(1)(B) or 1006(a)(3) of the Act.

• *Subrecipient*—Any entity that accepts Corporation funds from a recipient under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

• *Supplemental Letter*—Letter from the recipient's auditor to its board of directors commenting on internal controls and grant/contract compliance and other significant matters. This letter is to be submitted to LSC under separate cover, along with the annual financial statements.

1–2 Purpose

The purpose of this Guide is to assist recipients and their auditors in understanding the accounting, reporting, and auditing requirements for contracts and grants entered into with LSC. The Guide describes the accounting policies, records, and internal control procedures considered adequate to provide proper accounting, reporting, and financial management of a recipient's program. Another purpose of the Guide is to provide standard financial reporting formats to achieve uniformity among the many recipients.

The approach adopted by this Guide is fully consistent with the audit approach recommended by the United States General Accounting Office (GAO) in *Guidelines for Financial and Compliance Audits of Federally Assisted Programs*. That document was developed primarily for use in audits of State and local governmental organizations. However, the objectives of the GAO approach are, to a large extent, appropriate for organizations with the characteristics of LSC's recipients, and accordingly have been incorporated herein.

The requirements in this Guide are enforceable guidelines of LSC with which recipients must comply. They represent items LSC believes are necessary for it to demonstrate effective and responsible financial management and reporting in the legal services program at both the local and national levels. Each audited financial statement and supplemental letter will be reviewed to determine compliance with this Guide.

Any questions regarding the requirements set forth in this Guide should be directed to the Director of LSC's Office of Monitoring, Audit, and Compliance in Washington, DC.

1–3 Background

Prior to October 13, 1975, the Federal Government provided legal assistance to qualified individuals through the Community Services Administration and, prior thereto, through the Office of Economic Opportunity. On July 25, 1974, Congress passed the "Legal Services Corporation Act of 1974" to establish a private, nonmembership, nonprofit corporation to administer the legal assistance program. On December 28, 1977, Congress amended the Act. The Act establishes an eleven member Board of Directors, appointed by the President of the United States by and with the advice and consent of the Senate, to direct LSC. The membership of the Board is to include eligible clients and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public. A majority of the Board must be members of the bar of the highest court of any state, and no member can be a full-time employee of the United States. Board members' terms are three years, and members cannot be reappointed for more than two consecutive terms immediately following an initial term.

LSC was authorized by the Act to provide financial assistance to qualified organizations which furnish legal assistance to "eligible clients," as defined by LSC. LSC is empowered to make grants to, and contract with, individuals, partnerships, firms, corporations, nonprofit organizations and, upon special determination by the Board of Directors that such services will not be adequately provided through nongovernmental arrangements, with state and local governments.

1–4 Authority

LSC has prepared this Guide to establish accounting and reporting requirements for recipients of financial assistance under the authority provided by the following sections of the Act:

Records and Reports—Section 1008:

(a) The Corporation [LSC] is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

Audit—Section 1009(c)(1):

The Corporation shall conduct or require each grantee, contractor, or person or entity receiving financial assistance under this title to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

Recipients' Non-LSC Funds—Section 1010(c):

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds . . .

1–5 Financial Responsibilities of Recipients and Appointment of Auditors

Recipients, under the direction of their boards of directors, are required to establish and maintain adequate accounting records and internal control procedures. Recipients are also responsible for preparing annual financial statements and arranging for an examination of those statements to be completed and submitted to LSC within 90 days of their fiscal year-end.

An extension of the 90-day requirement may be granted in extraordinary circumstances. Requests for extensions should be submitted to LSC prior to the original due date. Under no circumstances will an extension of more than sixty (60) days be granted.

The examination may be conducted by auditors employed by Federal, state, or local governmental units or by public accountants. Where public accountants are engaged, they must be either independent certified public accountants or independent licensed public accountants—licensed on or before December 31, 1970. Public accountants must be certified or

licensed by a regulatory authority of a state or other political subdivision of the United States.

Recipients shall not select any auditor to conduct an examination who is not in fact independent, as defined in section 220 of the American Institute of Certified Public Accountants' "Statement on Auditing Standards No. 1." That pronouncement states in part that ". . . to be recognized as independent, he (the auditor) must be free from any obligation to or interest in the client, its management, or its owners."

There must be a clear written understanding between the recipient's board of directors and the auditor with respect to the scope of the auditor's services and the nature of his or her responsibility. The Guide (Chapter Six) illustrates an auditor's contract as a method to communicate the arrangement, but a letter from the auditor is acceptable if all appropriate subjects are contained therein. The program director and board of directors should review the arrangement closely to avoid any potential misunderstandings. Generally, the recipient's board of directors has the final responsibility for appointment of the auditor. However, LSC reserves the right, at its discretion, to select and contract with its own auditor, in accordance with section 1009(c)(1) of the LSC Act.

LSC requires each recipient's board of directors to establish an audit committee or a joint audit/finance committee:

(a) To provide assistance to the board in fulfilling its fiduciary responsibilities relating to accounting and reporting practices;

(b) To maintain a direct line of communication between the board and independent accountants to provide for exchanges of views and information; and,

(c) To institute any changes necessary to ensure proper administration and control of funds.

1-6 Responsibilities of Auditors

The examination of the recipient's annual financial statements is to be conducted in accordance with generally accepted auditing standards. While Chapter 6 of this Guide discusses various auditing items, it is not intended to be an audit program nor to supplant the auditor's professional judgment as to additional work required to meet GAAS.

In addition to the examination of the recipient's financial statements, the auditor is required to submit a supplemental letter to the board of directors and LSC commenting on items noted during the examination with respect to:

(a) Needed improvements in internal controls;

(b) Significant and unusual transactions;

(c) Compliance with the *Audit and Accounting Guide for Recipients and Auditors* (Revised 1985);

(d) Compliance with the financial or accounting provisions of the grant or contract;

(e) Eligibility of costs charged to the LSC grant or contract; and

(f) The status of the comments from the previous year's supplemental letter, including the status of costs questioned in prior years.

While the auditor will contract directly with the recipient for audit services, it is emphasized that any items required by GAAS or considered by the auditor to justify reporting to the recipient's program director and/or board of directors should also be included in the supplemental letter for LSC's consideration. If such items are of a serious nature in the judgment of the auditor and relate to the recipient's capabilities to safeguard and account for LSC funds or weaknesses in the integrity of management, the facts and circumstances must be brought immediately to the attention of the Director of LSC's Office of Monitoring, Audit, and Compliance. This requirement exists for items coming to the attention of the auditor during the course of his annual examination or during the course of any other work performed by the auditor during the year. The auditor's authority to communicate with LSC must be specified in the audit contract or agreement. Failure to comply with this request may result in LSC exercising its right to select another auditor.

The auditor shall, for a period of seven years, make his/her working papers, records, and other evidence of the audit or other special work available to LSC and the recipient.

1-7 Interrelated Organizations

For a recipient that controls or is controlled by another organization, it is presumed that combined financial statements are more meaningful than separate statements and are usually necessary for a fair presentation in conformity with generally accepted accounting principles. Control means the direct or indirect ability to: (a) Determine the direction of management and policies; or (b) influence the management or policies of another organization to the extent that an arm's length transaction may not be achieved. Control is a question of fact and must be determined by the overall circumstances of the relationship between organizations. Important facts relevant to this determination are:

(a) Extent and pattern of any overlap of officers, directors, or other managers among organizations;

(b) Contractual and financial relationships (especially in terms of the proportion of a possibly controlled organization's funds or resources that are provided by the controlling organization);

(c) History of relationships among the organizations (e.g. the fact that one organization provided initial funding and named initial directors of another would be a relevant fact; as would facts relating to decision-making on policies or transactions of mutual interest; actual control of particular decisions);

(d) Close identity of interest;

(e) One organization has become a mere conduit, "incorporated pocketbook," or "straw" party for another whether or not there was an attempt to work an injustice or promote a fraud;

(f) Funds are solicited by a separate entity in the name of and with the expressed or implict approval of the recipient and substantially all of the funds solicited are intended by the contributor or are otherwise required to be transferred to the recipient or used at its discretion or direction;

(g) A recipient transfers resources to another entity that holds these resources for the benefit of the recipient; and,

(h) A recipient assigns functions to an entity whose funding is primarily derived from sources other than public contributions.

These facts and all relevant facts must be carefully weighed in each situation to determine whether control exists; if there is a basis for a reasonable doubt as to whether control exists, that basis should be disclosed. There is a presumption that an ongoing relationship between a recipient and a bar association does not constitute an interrelationship as contemplated in this section.

If one organization controls another but the financial statements are not combined, the facts of the relationship shall be disclosed along with a statement as to the reasons why combined financial statements were not presented and the financial statements of the controlling or controlled organization shall be included. If financial statements are combined, the facts of the relationship shall be disclosed.

Funds held by an organization which controls, is controlled by, or is subject to

common control with, a recipient or subrecipient, are subject to the same retrictions as if the funds were held by the recipient or subrecipient.

1–8 Delegated funds—Subrecipients

Recipients may, with LSC approval, delegate funds by grant or contract to subrecipient such as a statewide support program, clients' council or another legal program, to carry out specified program activities. The subgranting of LSC funds and the recipient's responsibility for subgranted LSD funds is governed by the provisions of 45 CFR § 1627 and by applicable grant assurances.

Any funds delegated by a recipient to a subrecipient shall be subject to the audit and accounting requirements to the Guide. The delegated funds may be disclosed as a separate fund and accounted for, and reported upon, in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with GAAP. Where a relationship with a subrecipient exists, the footnotes to the financial statements of the recipient should fully disclose the nature of that relationship. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances when a large organization receives a small subgrant. If such an alternate means is approved by the office of Monitoring Audit, and Compliance of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of this Guide. The recipient is responsible for ensuring the proper expenditure, documentation of, accounting for, and audit of delegated funds.

1–9 Fiscal year-end

LSC will normally fund each recipient annually on a calendar-year basis. The fiscal year-end of the recipient should be based upon the optimal report date for the recipient and the majority of the recipient's funding sources. The fiscal year-end need not be determined solely by LSC's funding period. In most instances it will be convenient for programs to select a fiscal year ending on a calendar quarter (i.e., March 31, June 30, September 30, or December 31), although a fiscal year ending any month will be acceptable to LSC. Once a recipient has established a fiscal year-end for financial reporting purposes, it can only be changed upon receipt of the prior written approval of LSC and the approval of the recipient's board of directors.

1–10 Effective date

The effective date of this Guide is January 1, 1986. It supersedes all previous editions.

1–11 Revisions and Supplements to the Guide

Revisions and supplements to this Guide may be made periodically. If this Guide is to provide meaningful instruction, it is imperative that both the recipient and its auditor keep their Guides current. Upon receipt, all revisions/supplements should be incorporated into the recipient's copy of the Guide. It is the responsibility of the recipient to furnish revisions/supplements to its auditors.

1–12 Effective Date and Cumulative Status of Revisions and Supplements

Effective date	Description
August 1976	First Edition of Guide Issued.
June 1977	Revised Edition of Guide Issued.
September 1979	Revision to Pages 4–1 and 8–6.
September 1981	Revision to Pages ii, 4–1, 5–6, VII–3, and addition of Page 4–2.
January 1, 1986	Revised Edition of Guide Issued.

CHAPTER 2—ACCOUNTING

2–1 Accounting Guidelines

LSC requires that the accounting principles employed by its recipients in recording transactions and preparing financial statements be based upon generally accepted accounting principles (GAAP) for non-profit organizations. The accounting guidelines discussed in this chapter should be used by recipients to effect uniform reporting which will be in substantial compliance with GAAP. For some practices, alternative accounting treatments are currently acceptable; however, the following guidelines reflect the GAAP method that will result in the most meaningful financial information for LSC, and for most readers of our recipients' financial statements.

When applying the guidelines of this chapter, every recipient should review the accounting policy in each area in light of its materiality to the program. Items that are not material should be accounted for in the most reasonable and efficient manner. The concept of materiality as used in accounting has been defined as a state of relative importance. The materiality of an item may depend on its size, nature, or a combination of both. For example, an item very small in amount should be disclosed if it raises a question about management integrity or competence. The working rule in applying the concept of materiality is to ask the question: "Is the item of sufficient importance to influence the conclusions and actions of users of the financial information?" More specifically, if the items were not accounted for in accordance with the guidelines, would the reader of the financial statements be misled with respect to his understanding of the nature and extent of assets available for use in program operations; the nature and extent of liabilities incurred by the program; the trust relationships that may exist between the program and clients; and, among other considerations, the nature and scope of the program's operations?

2–1.1 Organization-wide Financial Statements and Audits

In order to implement the requirements of section 1010(c) of the Act, LSC requires that the recipient's financial statements be prepared in accordance with this Guide and include the entire financial resources of the program, including all non-LSC funds. This provision is consistent with the Federal Government's emphasis on conducting organization-wide audits, rather than audits on a grant-by-grant basis. The provision for full financial disclosure allows LSC to evaluate the total legal assistance effort being provided by recipients throughout the United States. It also assists the recipient's board of directors in its responsibility to see that meaningful financial statements are prepared and that they are made available to all interested persons.

In connection with this requirement, every effort should be made to satisfy the needs of all funding organizations with one annual audit report. It is the responsibility of the recipient's program director to arrange for a single audit acceptable to all funding sources. LSC recognizes that this objective may not be possible in some cases. When it is anticipated that a full resource audit will not be provided to LSC, the recipient must contact the Director of LSC's Office of Monitoring, Audit, and Compliance to arrange an acceptable alternative.

2–1.2 Funds Delegated to Subrecipients

The relationship between the recipient and subrecipient will determine the proper method of accounting for and reporting transactions related to funds delegated by grant or contract from a recipient to a subrecipient. If the

subrecipient is sufficiently independent of the recipient, the transactions relating to the delegated funds will be audited and reported in conjunction with the annual audit of the subrecipient. Under such circumstances, the recipient would report the delegated funds as a grant or contract expense in its annual audit and disclose the nature of the transaction and relationship in a note to the financial statements. Alternatively, if the recipient controls the subrecipient (*see* Chapter 1, Paragraph 7 of this Guide), the financial transactions of the subrecipient should be combined with the recipient's operations and reported in the recipient's financial statements. The basis for combining financial statements, including the interrelationship of the combined organizations, should be disclosed in notes to the financial statements. (See 45 CFR 1627.)

2–1.3 Fund Accounting

One fundamental purpose of the financial statements of a non-profit organization is to disclose the sources of the recipient's resources and how those resources were used, i.e., stewardship reporting. In some instances, a recipient's total support will be provided by LSC; however, for most recipients there will be additional funding sources. There are normally two categories of support that most recipients will receive.

1. *Unrestricted funds*—Those resources over which the governing board of directors has discretionary control regarding when and how to use the resources in carrying on the recipient's operations in accordance with the limitations of its charter and bylaws as well as applicable provisions of the LSC Act or other federal law.

2. *Restricted funds*—Those resources which bear a legal restriction as to when and how they are used imposed by parties outside of the recipient—usually by the grantor or contributor.

There may be a few recipients who receive support from an endowment fund under which the principal amount of a gift or bequest must remain intact. Depending upon the terms of the endowment, the income may be spent at the discretion of the board of directors or it may be restricted to a particular use. The provisions of the gift would determine the accounting treatment for the income and principal.

GAAP requires that these different types of resources of the recipient be reported separately. Specifically, each recipient should establish an unrestricted fund and a restricted fund.

Most recipients are funded primarily by several major grants and/or contracts. Many grantors require a separate reporting of how their funds were utilized in the recipient's operations. This requirement means that the books and records must accommodate the accumulating and supporting of costs by grant and contract. To meet this reporting need, the restricted/unrestricted fund, as shown on the financial statements, should be subdivided by the grants or contracts which require separate reporting. LCS requires separate reporting of its grants or contracts. Most federally funded grants or contracts and some privately funded awards include the requirement for separate reporting. If the requirement for separate reporting is unclear for certain funds, the recipient should resolve this issue with the appropriate officials from the funding organization. The recipient has the option of reporting all funds from funding sources not having a separate reporting requirement in a single restricted or unrestricted fund, as appropriate. However, separate fund by fund disclosure is encouraged.

Each recipient should evaluate the reporting requirements stipulated by each funding source to ensure that proper accounting is followed in the financial statements and accounting records. In combining grants and contracts not requiring separate reporting, there must be adequate footnotes disclosing the individual sources and the amounts contributed by each significant source.

The Statement of Activity must reflect a breakdown of operations in accordance with the criteria specified in this Guide. Separate balance sheet accounts by funds are not required unless, in the opinion of the auditor or management, such disclosure is necessary for a fair presentation of the recipient's balance sheet. However, the fund balance for each fund included in the Statement of Activity must be shown separately on the Balance Sheet.

Special-purpose (e.g. Migrant, Native American, State Support, and National Support) grants for LSC as well as regular grant funds designated for Private Attorney Involvement, must be reported separately in the recipient's financial statements. LSC may also impose separate reporting requirements on other grants in grant conditions. This separate reporting requirement may be met be establishing a separate fund for each component in the Statement of Activity, or by reporting this information in a supplemental schedule to the basic financial statements. If the one-time award is specifically designated for the purchase of property and cannot be spent for anything else, the support should be recognized in its entirety in the property fund upon the effective date of the grant. A recipient's accounting records must be able to document that grant proceeds were expended in accordance with the grant provisions.

As mentioned above, a property fund should be maintained. The property fund should be used to accumulate the cost or fair market value (if donated) of buildings, furniture, fixtures, equipment, leasehold improvements, and law library; to reflect depreciation and amortization thereon; to record gains or losses from the disposition of such assets; and to record any other transactions specifically relating to fixed assets.

2–1.4 Reporting Functional Classification of Expenses

The Accounting Standards Subcommittee on Nonprofit Organizations of the AICPA has developed recommendations with respect to accounting and reporting by certain nonprofit organizations which were not previously covered by industry guidelines. Legal services programs are included in this category. The recommendations from this Subcommittee are contained in Statement of Position (78–10), "Accounting Principles and Reporting Practices for Certain Nonprofit Organizations", dated December 31, 1978.

This method of reporting creates substantial management information benefits as well. Functional expense classifications provide valuable operational information to program management. Both the American Institute of Certified Public Accountants and the General Accounting Office have provided research indicating significant rewards from the practice. Accordingly, the Corporation directs that grantees begin use of functional reporting to improve management and to prepare for the possibility of requirements imposed by the AICPA, other accounting standards authorities, the Corporation, other funding sources, or regulatory agencies. See Appendix VI.

2–1.5 Accrual Basis of Accounting

Recipients' annual financial statements must be prepared on the accrual basis of accounting. Under the accrual basis of accounting, goods and services purchased should be recorded as assets or expenses at the time the liabilities arise, which is normally when title to the goods passes or when the services are received. Encumbrances, representing outstanding purchase orders and other commitments for

materials or services not yet received are not liabilities as of the reporting date and should not be reported as expenses nor included in liabilities on the balance sheet. Support is recorded when earned instead of when received. Recognition of support is generally governed by the grant/contract agreement.

The requirement is for accrual basis financial statements, and not for accrual basis recordkeeping. Many programs find it practical to keep their books on a cash basis throughout the year and, through adjustment at the end of the year, prepare statements on an accrual basis. The requirement is that only the financial statements be presented on the accrual basis, and not also that the books be kept on this basis throughout the year. However, the use of the cash basis for interim financial accounting purposes may not be appropriate in all circumstances if it does not meet management's financial reporting needs. Each recipient must evaluate their internal reporting requirements in this regard.

2–1.6 Property

GAAP requires capitalization and depreciation of property for a fair presentation of the assets and results of operations for a profit or nonprofit entity.

In many cases, funding sources (including LSC) maintain a reversionary interest in property purchased with their funds. LSC's reversionary interest requires that property, or the proceeds from the sale of such property, must be returned to LSC or disposed of in accordance with LSC's Property Management Manual for LSC Programs (Revised September, 1981). In view of the reversionary interest of certain funding sources, asset accountability is critical. Capitalization of property is an integral part of discharging the stewardship responsibilities over these assets. In addition to allowing the fair presentation of investment in property on the balance sheet, capitalization helps ensure more effective controls over property and also subjects this account to auditing procedures. Accordingly, capitalization of the cost of property (or fair market value at the time donated) is required by this Guide.

In addition to the capitalization of property, LSC requires the recording of depreciation. Depreciation accounting is a means of distributing the cost or other valuation of an asset (in the case of appraisals or donations) over the asset's estimated useful life in a systematic and rational manner. It is a process of allocation, not valuation. When depreciation is omitted, the cost of providing services is understated. Therefore, depreciation expense should be recognized as an expense of rendering current services and should be included in the Statement of Activity.

The accounting policies for property should also be followed for a recipient's law library (e.g., books, reference materials, and multiple-volume sets of law books), since a law library is as much a long-term asset as the recipient's office equipment. The costs of maintaining a law library should be expensed currently. The judgments as to what constitutes a maintenance item and what constitutes a capital addition must be made after evaluating the nature and significance of the items in question. LSC recommends consultation with the program's auditors with respect to the policy to be adopted. Depreciation should also be computed over the useful life of the library for the difference between the original cost and the salvage value. If the salvage value approximates original cost, depreciation would be immaterial and therefore would not be necessary. Each recipent must evaluate the facts and circumstances of its particular library, including past history, condition, and marketability of the library, to determine a reasonable useful life and salvage value.

Although property purchased during a year will not be recognized as an expense for that year, the funds used for the purchase of that property are considered a current-year grant or contract charge. To recognize this characteristic of grant funds, property purchses should be reflected as a reduction in the fund balance of the appropriate funding source. This is accomplished by transferring the cost of property purchased to a separate property fund balance.

Property and depreciation accounting practices are discussed and illustrated in detail in Appendix V.

2–1.7 Donated Materials, Space, and Property

Items such as supplies, space furniture and equipment may be donated to recipients by individuals or ogranizations. In order to ascertain the total cost of providing legal assistance, such items should be recorded and reported in the recipient's financial statements. Donated materials and property should be recorded at their fair market value at the time donated. Fair market value must be determined using the most objective and clearly measurable basis available. If the value assigned to donated items is material, the donation and valuation should also be approved by the recipient's board of directors. Similarly, the free use of facilities and other assets should also be recorded as donations, with an offsetting charge to the applicable expense.

Donated materials and space should be recorded in the general fund as support and expense in amounts equal to the assigned value of the donations. The amount of donated items included in the general fund must be clearly ascertainable. Donated property and equipment should be recorded as support in the property fund and as an asset in an amount equal to the assigned value. The expense associated with donated property and equipment will be recorded as depreciation over the useful life of the item.

2–1.8 Donated Services

The recognition of significant donated services in the financial statements is critical to a reasonable evaluation of the total cost and scope of legal assistance provided by recipients. Significant donated services, including professional services, should be recorded in the same manner as described for donated materials, space, and property when the following circumstances exist:

1. The services performed are significant and form an integral part of the efforts of the recipient as it is presently constituted; the services would be performed by salaried personnel to the extent funds were available if donated or contributed services were not available for the recipient to accomplish its purposes;

2. The recipient exercises control over the activities and duties of the donors to the extent that control normally would be exercised, considering the professional/clerical status of the donor;

3. The recipient has a clearly measurable basis for the amount to be recorded; and

4. The services of the donating organization are not intended for the benefit of employees and officers of the recipient organization.

Recipients should not record donated services which do not realistically contribute to the accomplishment of the corporate purpose. Many recipients, however, receive a significant amount of "free" assistance that, if not received, would necessitate a reduction in the level of legal services the recipient provides. These include:

1. Students;

2. Gratis legal research by private attorneys or law school faculty;

3. Professional services provided by local attorneys in lieu of services being provided by legal services attorneys;

4. *Pro bono* or professional service arrangements; and

5. Services provided by persons compensated by another state or federal government program (Vista, Ceta, etc.) at no charge to the recipient.

Each recipient should evaluate the magnitude of services donated to it. If the value of the services is material, a method should be established to value and record them. Normally, the valuation should be at the cost to the recipient if the services has been purchased by the recipient. Adequate records must be maintained during the year to support the value of donated services recorded, but the actual recording of the services could be done quarterly or at year-end. For professional legal services, two methods are suggested as providing sufficient documentary support—a predetermined fee schedule or an hourly rate. A major advantage of the fee schedule is that it can be used without having to impose timekeeping requirements on those professionals donating their time to the program. The subject of the adequacy of support for donated services should be discussed with the recipient's auditors. It is usually not necessary to impose detailed recordkeeping requirements upon donors as long as internal records are adequate and provide an audit trail.

2–1.9 Recognition of Grant and Contract Support

The specific language in the donative instrument or grant or contract award should govern the accounting principles used in recognizing support. The vast majority of legal services programs are organized under their charters and by-laws for the specific purpose of delivering legal assistance to eligible clients. Many grant and contract awards to recipients are restricted to that same purpose. However, the specific grant conditions or assurances should govern the accounting for the grant or contract.

For purposes of accounting and reporting, awards from LSC can be categorized into three distinct types:

1. *Annualized Grant/Contracts*—An annualized grant/contract is awarded to support a certain level of legal services activities over a specified period—usually one year. For purposes of satisfying grant/contract restrictions, support is earned ratably by a recipient over the period designated in the grant/contract. Should support during the period exceed expenses, a fund balance would result. The carry-over of the fund balance for use in subsequent periods is subject to certain restrictions imposed by LSC (see 45 CFR 1628). LSC does retain the discretion to require the reimbursement for expenses or the return of funds as a result of non-compliance by a recipient with the terms of the grant/contract. In addition, if LSC funding of a recipient is terminated, all unexpended LSC funds are to be returned to LSC or disposed of in accordance with instructions from LSC.

Carryover LSC funds are required to be expended prior to the expenditure of current grant funds on a first in, first out basis. All LSC funds, including income derived therefrom and those LSC funds held by separate entities that are under the control of the grantee or subgrantee or its agents or employees (or which control the recipient or which are under common control with the recipient) see Chapter 1, Paragraph 1–7 of this Guide, are required to be expended on a first-in, first-out basis. No exceptions will be made to this policy.

Should expenses during a period exceed support, LSC is not obligated to fund the deficit. The deficit should be charged to other funds that are available to the program. However, LSC retains the discretion to allow deficits to be carried over in a fund balance and be absorbed during future periods. (See 45 CFR Part 1628)

2. *Cost-reimbursable Grants/Contracts*—Under a cost-reimbursable award, the recipient earns support only to the extent that the recipient incurs costs eligible for reimbursement. If expenses incurred exceed the grant/contract amount, additional support will not be provided and should not be recorded. The excess expenses incurred must be absorbed by other available funds, usually from LSC's annualized grant/contract or by funds available from other funding sources. The monitoring office may disallow the use of LSC annualized funds to liquidate any deficits if the recipient's basic program is adversely impacted. Recipients must seek the approval of the monitoring office if it is determined that annualized funds are needed to supplement a cost-reimbursable grant. A cost-reimbursable award may be effective for only a specified period or may relate to only a specific event.

3. *One-time Grants/Contracts*—A one-time grant/contract can be awarded to support a specific event, project, or one-time purchase or activity or it can be awarded as a one-time infusion of resources to support the recipient's annualized activities. One-time grants that are essentially one-time infusions to the annualized grant/contract should be recorded as support on a pro-rata basis during the period specified in the grant/contract—consistent with the accounting for the annualized grant/contract. One-time grants/contracts that are restricted to support a specific event, project, or one-time purchase or activity should be reported as support when expenses are incurred for the restricted purpose. Until expenses are incurred for the restricted activity, one-time grants in this category should be recorded as deferred support. If such a grant or contract expires or is terminated, and funds are required to be returned to LSC, appropriate reversing entries should be made.

The accounting policies associated with grants and contracts must be disclosed in the footnotes to the financial statements. The details of the components of LSC support and deferred support must also be disclosed in the footnotes.

2–1.10 Contributions and Fund Raising

Contributions, in the form of cash or cash equivalents (e.g., corporate stocks and bonds, etc.), from private organizations or individuals, should be recorded when the cash or equivalent is received. Contributions should be recorded in an unrestricted fund only if the contributions can be used at the discretion of the board of directors for general program purposes. Contributions with restrictions should be recorded in a restricted fund. The provisions written in the donative instrument will normally determine the accounting and reporting requirements that must be followed, per paragraph 2–1.9 above.

2–1.11 Court/awarded Attorney Fees

Fees awarded to a recipient by a court represent compensation to the recipient for resources expended in litigating a particular matter. The revenue from such fees shall be recorded in the same fund to which the related expenses have been charged. Because of the nature of attorney fees, the revenue should be recognized during the accounting period in which the program actually receives the attorney fees awarded.

When more than one funding source has been charged with expenses for a case in which attorney fees are awarded, the fees should be allocated to each funding source in relation to the expenses charged to each fund. The method used to allocate attorney fee awards, whether based on actual costs incurred or a percentage allocation, should be clearly documented by the recipient.

2–1.12 Allocation of Expenses Among Funds

It is anticipated that recipients which receive funds from sources other than LSC will incur expenses (e.g., salaries, space, travel) which support work performed under more than one grant, contract, or other funding agreement. Such common costs should be allocated

among the sources on the basis agreed to by the applicable funding organizations (including LSC). In the absence of approved methods, the recipient should develop techniques that will provide a reasonable and measurable basis upon which expenses are allocated. Whatever the method used by the recipient, it should be adequately disclosed in the footnotes to the financial statements.

Some grantors may refuse to pay indirect costs, even though that particular grant is benefited by such costs. In this case, 30 days written notice must be given to the Director of Monitoring, Audit, and Compliance. If no objection is raised by the Corporation, allocation of costs is not necessary as long as the grant activities in question are eligible under LSC's Act and regulations. Such allocation is subject to the provisions of 45 CFR 1628. If objection is raised then allocation of costs is required. The objection must be based upon the standards of 45 CFR 1630.2(b).

2–1.13 Investments/Cash Management

LSC funds not needed for immediate operating expenses should be invested in accounts or certificates insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or invested in U.S. Treasury notes or bills. Recipients may use the interest earned on invested LSC funds provided the use of the proceeds does not increase the annual funding requirements and the proceeds are not used for purposes prohibited by the Act or regulations. The investment income should be recorded as revenue in the fund which provides the temporary excess cash available for investment, and shall be subject to the same restrictions as funds currently received from LSC.

If, after considering LSC's investment guidelines, a recipient adopts policies outside these guidelines, LSC will not override the judgment of the local board of directors. In such cases the board must acknowledge by board resolution the divergence from LSC's authorized policy and the acceptance of full responsibility for the security of any investments made outside of LSC's guidelines. In cases of losses of LSC funds related to investment decisions made outside of LSC guidelines, for purposes of personal liability, the board of directors will be held to the standard of care imposed by applicable state or federal law.

Some recipients may have endowment funds or other resources from which management may purchase marketable securities and other investments. In such cases, investments held by recipients may be recorded at either market value or the lower-of-cost-or-market.*

2–1.14 Employee Benefits

The accounting for employee benefits should follow the accrual method of accounting, which requires that the expense and liability associated with benefits that have vested with the employee be recorded currently. This procedure is required for financial statements prepared in accordance with GAAP. An example of a benefit which would require year-end accrual would be vacation earned by employees and vested, but not taken.

There should be financial statement disclosure in a footnote of the liability for vested employee benefits at the balance sheet date.

Recipients which currently have or in the future establish new pension plans are required, under the Employee Retirement Income Security Act of 1974, to meet certain standards administered by the Internal Revenue Service and the Department of Labor. In addition, pension expenses must be recorded and reported in accordance with Accounting Principles Board Opinion No. 8 and FASB Statement No. 36.

2–1.15 Judicare Payments

The accounting for judicare payments should follow the accrual method of accounting which requires that the expenses and liabilities associated with judicare cases be recognized during the period in which the services are rendered by the participating attorney, rather than when the case is assigned to the attorney.

Although programs are encouraged to develop encumbrance systems to adequately control and account for judicare cases, the actual expense for judicare payments must be determined under the accrual method. Encumbrances or reserves should be disclosed in the footnotes as a commitment of the program. (See 45 CFR Part 1614)

* The market-value method requires recognition of unrealized appreciation or depreciation from fluctuations in market prices. Accordingly, under this method of accounting, there are no gains or losses at the time of sale.

Under the lower-of-cost-or-market method, gains on investments are recorded only at the time of sale. However, if the market value falls below the recorded value, and the decline is considered permanent, it will be necessary to reduce the carrying value of the investment to reflect market value in the period the decline in value occurs.

The basis of recording investments should be consistent for all investments held by the recipient. There should also be adequate disclosure of the valuation method used in the financial statements.

2–2 Accounting Records

The following is a brief description of the accounting records considered necessary for the adequate recording of financial transactions. Accounting records must be maintained on a double-entry accounting system and must be adequate to enable the recipient to prepare its annual financial statements, internal budget, and other management reports. See Chapter 5 for reporting requirements.

The accounting records discussed in this chapter can be maintained by either a manual or an automated system. Each recipient should establish the system most appropriate to meet its needs and to provide an adequate audit trail for all transactions.

Recipients should retain accounting records and supporting documentation for a minimum of seven years which is consistent with IRS requirements.

2–2.1 General Ledger

The general ledger is used to summarize and classify all financial transactions from data accumulated in the books of original entry into their proper accounts (i.e., salaries, space, etc.). It is the source for most of the data needed for preparing financial statements. The general ledger is the final and permanent record of all of the recipient's financial transactions.

2–2.2 Cash Receipts Journal

The cash receipts journal is a book of original entry in which cash receipts (i.e., cash, checks, and money orders) are recorded in chronological sequence when received. Bank deposit slips must contain sufficient information so that all deposits can be identified with their source.

2–2.3 Cash Disbursements Journal

A cash disbursements journal is a book of original entry in which disbursements are recorded in chronological sequence. All disbursements must be made by prenumbered checks (excluding petty cash funds) used in numerical sequence. Each check must be supported by appropriate documentation (e.g., payroll records, invoices, contracts, travel reports, etc.) evidencing the nature and propriety of the expense, and documenting the approval by an authorized official.

2–2.4 Payroll Records

Basic payroll records must accumulate payroll data required by Federal, state, and local laws. Documentation must be maintained to support individual gross earnings. A personnel file should be

established for each employee and should include:

1. Wage or salary authorization, employment contracts if applicable;
2. Federal W–4 withholding form;
3. State withholding form;
4. Authorization for all other payroll deductions; and,
5. Authorization for all wage/salary actions.

Each recipient, in light of its size, is required to establish an adequate time-reporting system. This system must be able to identify employee hours worked so that compliance with Federal and state laws with respect to overtime and pay rates can be demonstrated. It must also be able to demonstrate accountability for time to the public. A small recipient with several employees could use a sign-up sheet whereby every employee would record his/her daily hours. A larger recipient would probably utilize a "time report" system whereby each employee would complete and sign an individual time sheet. Whether a sign-up sheet, a time report, or other method is utilized, a supervisor in a position to verify the information, or an individual delegated by the supervisor, should approve the document. More sophisticated time-keeping methods may be necessary when functional accounting is utilized or when it is necessary to allocate salary and fringe benefit costs among various funding sources or cost centers.

A vacation and sick leave record must be maintained currently for each employee. This record would include information in hours or other reasonable units (e.g., days, fractions of days) for the amount of vacation and sick leave earned during the period, taken during the period, and remaining at the end of the period. As a method of checking the accuracy of this record and providing employees with knowledge of "where they stand," each employee should be informed of his vacation and sick leave balance periodically.

2–2.5 Property Records

Individual property records are to be maintained for each non-expendable item costing in excess of $100 per unit. For financial statement purposes, all non-expendable items costing in excess of $500 with a useful life of more than one year must be capitalized and depreciated. (Recipients have the discretion to capitalize items at a lower value.) The property records to be maintained must include:

1. A description of the item, including model and serial number (if the property has no such number, it must be tagged with an identifying number to ensure that internal records are effective in controlling property);
2. Date of acquisition;
3. Number of check used to pay for item;
4. Cost;
5. Useful life;
6. Depreciation method (recipient must either adopt a written policy on depreciation methods governing identifiable classes of property or show the actual depreciation method on each individual property record);
7. Source of funds used to acquire the property;
8. Description of how value was assigned if property was donated; and
9. Location of the property.

The total dollar value of individual items capitalized must equal the property control account balance in the general ledger. Comprehensive guidelines for a property management program for recipients are included in LSC's Property Management Manual (Revised September 1981).

2–2.6 General Journal/Journal Voucher

A general journal or journal voucher system is used to process transactions which are not recorded originally in the cash receipts journal, cash disbursements journal, payroll register, or other record of original entry. Each journal entry must be supported by a complete explanation and documention of the transaction being recorded. Journal entries or journal vouchers should be numbered consecutively and approved by an authorized individual.

2–2.7 Client Trust Records

A client trust record must be maintained for each client and used to document and record receipts and disbursements of client funds. The total of the balances of these records must equal:

1. The cash in the escrow bank account designated solely for these funds; and,
2. The corresponding client trust liability account. Both accounts are required to be maintained in the general ledger. (See Chapter 3 for disussions of the internal controls associated with this item.)

2–3 Chart of Accounts

The following sample chart of accounts reflects an account structure for a medium-sized recipient. For an automated accounting system, the chart of accounts is the key element that drives the entire system. In a manual system, the design of the manual records is equally important in ensuring the system will meet the needs of the recipient. This chart of accounts demonstrates how account details can be used to accumulate financial information necessary for adequate reporting for both internal and external purposes. It also shows how fund or grant activity and cost center and/or functional activity can be accumulated for the various funding sources, cost centers and/or functions by assigning prefixes and suffixes to the basic natural account classification number.

This sample chart of accounts is for reference purposes only. It does not dictate the accounts and detail required of recipients, but is simply one method of addressing the accounting requirements of this Guide. While the account numbering system, account descriptions, and level of detail utilized by recipients should be designed to provide management reporting and financial disclosures specifically related to individual recipients, the techniques selected must also accommodate the reporting requirements of LSC.

2–3.1 Chart of Accounts Structure

The basic structure of this chart of accounts is diagrammed below.

Fund
Natural Account Classification
Cost Center/Function (If required, this code can be expanded to accommodate both cost center and functional reporting.)
XX XXX XX/XX

The fund, natural account classification, and cost center/function coding logic is summarized as follows:

Funds

01 LSC
ACE Foundation
03 HHS
04 Miscellaneous Grants and Contracts
05 General Fund
06 Donated Items
07 Property

Natural Account Classifications

100 Assets
200 Liabilities
300 Fund Balances
400 Support
500 Expenses
600 Expenses (Cont'd)
700 Asset Activity

Cost centers

11 Main Office 02
12 Downtown Office
13 Rural Office
14 Private Attorney Involvement

Functions

21 Priority 1
22 Priority 2
23 Priority 3
24 Priority 4
Presented with CSR codes on Financial Statements.

2–3.2 Sample Chart of Accounts

The coding logic described above, when used in conjunction with natural account classifications similar to those described below, provides extensive flexibility for accumulating financial information to meet recipient information needs and requirements.

Assets

100 Cash Accounts
101 General Disbursements
102 Payroll—Imprest
103 Petty Cash—Imprest
104 Savings
110 Client Escrow Funds
111 Main Office
112 Downtown Office
11 Rural Office
120 Receivables
121 LSC
122 ACE Foundation
123 HHS
124 Other
130 Investments
131 Treasury Bills
132 Certificate of Deposit
140 Travel Advances to Employees
150 Prepaid Expenses
151 Prepaid Insurance
152 Deposits
160 Furniture, Fixtures, and Equipment
170 Law Library
180 Leasehold Improvements
190 Accumulated Depreciation and Amortization
191 Furniture, fixtures, and equipment
192 Leasehold improvements

Liabilities

200 Accounts Payable
201 Vendor
202 Employer FICA
203 Unemployment Compensation
204 Group Health and Life
205 Worker's Compensation
210 Employees Withholdings Payable
211 Federal Income Tax
212 State Income Tax
213 FICA
214 Group Health and Life
220 Accured Expenses
221 Payroll
222 Other
225 Deferred Support
230 Client Trust Deposits
235 Notes Payable

Fund Balances

300 Grants and Contracts—Restricted
301 LSC
302 ACE Foundation
303 HHS
304 Miscellaneous Grants and Contracts
310 General—Unrestricted
320 Property

Support and Revenue

400 Grant and Contract Support
410 Contributions—Cash
411 Bar Associations
412 Other
420 Donated Property and Services
421 Property
422 Services
423 VISTA
424 CETA
430 Interest Income
440 Court Awarded Attorney Fees
450 Miscellaneous and Other Revenue

Expenses

500 Lawyer's Salaries
510 Non-Lawyers' Salaries and Wages
520 Overtime Wages
521 Overtime Lawyers
522 Overtime Non-Lawyers
530 Employee Benefits
531 Employees FICA
532 Group Benefit Insurance
533 Unemployment Insurance
534 Retirement Contributions
540 Legal Consultants/Judicare Payments
550 Others Consultants/Professional Services
551 Audit Expense
552 Other Accounting Services
553 Non-Legal Consultants
560 Travel
561 Transportation
562 Lodging
563 Meals
564 Registration and Conference Fees
565 Local Travel
570 Space and Occupancy
571 Rent
572 Janitorial Service
573 Gas
574 Electric
575 Water
576 Hazard Insurance
580 Office Expenses
581 Supplies
582 Recruitment
583 Insurance
584 Postage
585 Reproduction
586 Telephone
587 Library Maintenance
590 Litigation Costs
591 Depositions and Transcripts
592 Expert Witness
593 Filing, Docket and Services Fees
594 Printing of Briefs and Petitions
599 Interest Expense
600 Equipment Rental
610 Depreciation and Amortization
620 Subgrants Expense
700 Acquisition of Personal Property
705 Acquisition of Real Property
710 Acquisition of Library
720 Proceeds from Sale of Property
730 Gain or Loss on Sale of Property

2–4 Description of Accounts

The Chart of accounts described in paragraph 2–3.2 provides one method of organizing a recipient's accounting records. Whether the recipient utilizes this chart of accounts or another, the general ledger should contain the following accounts, which would provide a minimum acceptable level of detail for full financial disclosure. LSC recognizes that recipients may require a more detailed chart of accounts, expecially for expenses. Recipients should develop a chart of accounts which will allow them to report effectively on their financial operations. The following account descriptions are intended to illustrate the nature of the charges that may be made to specific accounts. Particular recipients may require different designations to accommodate their own information needs.

2–4.1 Assets

Cash—General Disbursements—To record cash on deposit in bank accounts for operating purposes, as opposed to special purposes such as payroll and escrow accounts, discussed below. Separate accounts should be maintained for each bank account.

Cash—Imprest Payroll Account—To record the cash on deposit on an imprest basis in a separate bank account which is used exclusively for payment of payroll. The imprest payroll account should be reimbursed each pay period for the exact amount of the net pay.

Petty Cash—To record cash held at the recipient's office for paying minor bills. The account must be maintained on an imprest basis, with the balance established at the lowest possible level commensurate with efficient operations. The petty cash account in the general ledger always reflects the total value of the fund, in cash and/or vouchers. The fund should be reimbursed periodically for the exact amount of the petty cash vouchers.

Cash—Client Escrow Funds—To record cash received from or on behalf of clients. The payments may include advances from clients for court costs or other purposes, funds due clients from court awards or other sources, and subsequent disbursements for such costs or for the payment of any balance to the clients. The general ledger balance for

this account must equal the liability account "Client Trust Deposits."

Receivable(s) LSC or Other Grantors—To record amounts earned but not received (see recognition of grant and contract support, paragraph 2–1.9) under LSC or other grants or contracts. Separate accounts should be maintained for each major grant or contract.

Receivable(s)—Other—To record miscellaneous accounts receivable.

Investments—To record the carrying value of investments in stocks, corporate bonds, certificates of deposit, treasury bills, etc. A subsidiary record should be maintained for each class of investment to account for the cost and income.

Travel Advances to Employees—To record the amount of travel advances outstanding (i.e., amounts advanced to employees but not accounted for on subsequent expense reports). A subsidiary record or sub-account must be maintained for each employee.

Prepaid Expenses— To record the amount of expenses paid which apply to future periods. LSC recommends that a prepaid expense need not be recorded unless the expense applies to a period more than 12 months from the date paid, or unless the prepaid balance of an individual item applying to a shorter period is considered material. The recipient may choose to record additional prepaid items outside these prescribed criteria if management believes the information is needed.

Deposits—To record the amount of refundable deposits made, for example, to the telephone company or landlord.

Furniture, Fixtures, and Equipment—To record the costs (or fair market value, if donated) of furniture, fixtures, and equipment costing in excess of $500 per unit, and having a useful life of over one year.

Law Library—To record the cost of case sets, other reference books, and multiple-volume sets of law books. The costs capitalized in this account should reflect only those items which will have a value to the program continuing over more than one year.

Leasehold Improvements—To record the costs (or fair market value, if donated) of all items over $750 incurred in connection with making capital improvements to rental space (e.g., carpets, new walls, etc.) which cannot be carried to another location.

Accumulated Depreciation/Amortization—To record the expiration of the service life of assets, i.e., periodic depreciation/amortization expense.

2–4.2 Liabilities

Accounts Payable Vendors—To record the amount of unpaid vendor invoices on hand. If books are maintained on a cash basis, this account should be used at the close of a reporting period to convert the books to the accrual basis of accounting. If books are maintained on the accrual basis, the account will have a continuous balance.

Other Accounts Payable—To record, as necessary, liabilities arising from the employer's share of employee benefits such as employer FICA, Unemployment Compensation, Workmen's Compensation, etc., and other miscellaneous liabilities.

Employee Withholdings Payable—To record the amount of money that has been withheld from the employees' salaries (e.g., FICA, Federal, state and local taxes, pension, health insurance, etc.). Separate accounts should be maintained for each type of withholding.

Accrued Expenses—To record the estimated cost of goods or services received for which an invoice has not yet been received. The accrual can be utilized at the close of an accounting period to record salaries, employer's share of FICA taxes, other taxes, etc., which are owed but not paid. Separate accounts should be maintained for accrued salaries and other miscellaneous accruals such as utilities and consultant fees.

Deferred Support—To record support received in advance but designated to be used in a future period or to record support that has been received but not earned as of the balance sheet date, but is expected to be recognized as revenue in subsequent periods.

Client Trust Deposits—To record the amount of cash received from or on behalf of clients for court costs or other purpose to be disbursed in the future. The balance must agree with the client escrow cash account in the bank.

2–4.3 Fund Balances

Restricted—This account accumulates the balance of support over expenses for grants, contracts, and other awards which have restrictions attached. Each grant or contract or other award requiring separate reporting should have a separate account for its fund balance.

Unrestricted—This account accumulates the balance of support over expenses from unrestricted sources. Each contribution or other award requiring separate reporting should have a separate account for its fund balance.

Property—This account accumulates the net equity in all land, buildings, leasehold improvements, furniture, fixtures, equipment, and law books purchased.

2–4.4 Support and Revenue

Grants and Contracts—To record the amount of support earned during the accounting period.

Contributions—To record cash and security contributions received during the accounting period.

Donated Property and Services—To record the value (see Sections 2–1.7 and 2–1.8 for method of valuing donated items) of all significant donated assets, facilities, and services received during the year.

Interest Income—To record interest earned during the year.

Court-awarded Attorney Fees—To record fees awarded to a recipient by a court.

Miscellaneous and Other Revenue—To record miscellaneous and other revenue earned during the year. This account records miscellaneous income which cannot be classified in any of the above accounts. Where amounts are significant, separate accounts should be established to accurately describe the nature of the income.

2–4.5 Expenses

Salaries and Wages—To record the salaries of all program personnel. Normally, including all salaries and wages in one account would not provide adequate information about program activities. Each program should subdivide the salaries and wages account into the categories which will be most meaningful for management. At a minimum, salaries should be broken down into three main categories: attorneys, paralegals and other staff.

Employee Benefits—To record the costs of items such as employer FICA taxes, unemployment taxes, employer retirement contributions, employer health and life insurance payments, workmen's compensation and other payroll-related benefit items offered by the program. Individual sub-accounts must be maintained for each of these items.

Contract Services—Clients—To record payments to private attorneys and other consultants for services provided to clients.

Contract Services—Program—To record the costs of contracted or purchased services. For financial statement purposes, Other Consultant/Professional Services should be adequately described as to their nature, where material. For example, for proper disclosure, professional services may require classification into accounting services, other consulting services, or

maintenance expense—depending upon the nature of the services.

Travel—To record travel costs (e.g., transportation, lodging, and meal expenses while on a business trip). This account should be subdivided in accordance with the management's needs to control the various elements of travel costs, such as travel relating to legal work, travel relating to administrative work, travel related to training, etc.

Space and Occupancy—To record the costs of rent, utilities (such as electricity, water, and gas), janitorial services, and hazard insurance. Individual sub-accounts should be maintained for these items as necessary.

Office Expenses—To record the costs of office supplies, printing, reproduction supplies, recruitment, postage, telephone, and insurance other than hazard and employee benefit insurance. Recipients should establish separate accounts for any of the above items if the amounts are significant.

Interest Expense—To record interest paid pursuant to debt agreements.

Litigation Costs—To record costs of depositions and transcripts, service of process, filing fees, expert witnesses, and any other litigation costs paid by the program and not the client.

Equipment Rental—To record all costs of renting or leasing furniture and equipment.

Subgrants Expense—To record all grants to subrecipients during the year.

Depreciation and Amortization—To record the depreciation expenses of furniture, equipment, leasehold improvements, etc., acquired by the recipient.

2–4.6 Property Activity

Acquisition of Personal Property, Real Property, or Library—To record the costs of all land, buildings, furniture, equipment, leasehold improvements and other property or law books costing more than $500 that were purchased during the year. The account is closed to the applicable fund balance of the source of funds used to purchase the property. This account is the source for the entry to capitalize as assets all capital property purchases at year-end.

Proceeds from Sale of Property—To record (as a closing entry) the proceeds from a sale of property in the appropriate fund and relieve the property fund balance of the related remaining original cost and gain (when applicable).

Gain or Loss on Sale or Other Disposition of Property—To record any gains or losses pursuant to the sale or other disposition of property.

CHAPTER 3—INTERNAL CONTROL/ FUNDAMENTAL CRITERIA OF AN ACCOUNTING AND FINANCIAL REPORTING SYSTEM

A financial system of a recipient must accomplish three objectives to be effective:

1. It must assure that the assets of the recipient will be safeguarded and used for their intended purposes.

2. It must provide management with timely, accurate financial information with which to manage the resources of the recipient.

3. It must provide adequate public reporting to funding sources and the general public to demonstrate management's accountability for the resources with which it has been entrusted.

A financial audit will not prevent defalcations, nor will it provide for all the financial information needs of management. It is not intended for those specific purposes. Each program must rely instead upon its own system of internal accounting controls and procedures to address these concerns. This chapter discusses the Fundamental Criteria of an Accounting and Financial Reporting System with which recipients must comply to demonstrate effective discharge of stewardship responsibilities.

3–1 Definition

The Fundamental Criteria encompass the coordinated methods and measures that should be adopted by recipients of any size to safeguard assets, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage adherence to prescribed management policies. Variations from this model should only be made when justified by particular program characteristics. The Fundamental Criteria emphasize the results to be achieved. However, there can be substantial flexibility in the methods implemented to achieve the required results.

3–2 Objectives

1. The Fundamental Criteria are intended to provide criteria which allow a nonfinancial manager to assess whether the system for which he is responsible reduces inherent financial management risks sufficiently to demonstrate the proper discharge of his stewardship responsibilities.

2. In addition, the Fundamental Criteria are intended to provide standards which allow program personnel to evaluate performance in the financial area in accordance with consistent criteria, and to make improvements, as needed.

3–3 Characteristics

In establishing an adequate system of internal control, certain basic concepts must be considered recognizing that each recipient is unique, and, therefore, any control procedures must likewise be unique and "custom made."

The following characteristics are generally applicable to any control procedures adopted:

1. *Competent personnel.* Each recipient should have adequately trained, competent accounting personnel to properly document, record, account for, and report on its financial transactions.

2. *Definition of authority and responsibility.* The duties of all program personnel should be defined as to their specific responsibilities. Such a delineation may be flexible and informal in a small program with few employees, or it may be carefully defined by an administrative manual in a larger program. In the accounting area this means that only certain specified individuals may sign checks, approve invoices for payment, prepare grant and contract reports, maintain accounting records, and deposit cash receipts.

3. *Segregation of duties.* Broadly considered, segregation of duties means that program and accounting functions should be separated so that no individual simultaneously has both the physical control and the recordkeeping responsibility for any asset (e.g., cash, client deposits, supplies and property). Within the accounting area, duties preferably should be segregated so that no individual can initiate, execute, and record a transaction without a second individual being involved in that process. If this level of segregation is not possible because of the recipient's size, alternative methods of insuring the integrity of the system must be devised and utilized.

4. *Establishment of independent checks and proofs.* Independent checks and proofs consist of regular internal checks on the recording of transactions and the preparation of financial reports. For example, a certain measure of clerical accuracy is accomplished through the use of a columnar cash disbursements journal that is balanced monthly and posted to the general ledger. Thereafter, the general ledger cash balance is reconciled to the monthly bank statement. Another control procedure is illustrated when a subledger of client deposits is maintained, compared monthly to the general ledger account balance for client trust funds, and the accuracy of this subledger is reviewed periodically by an

employee outside the accounting department who is familiar with legal cases and deposits received.

Note.—Appendix 4 contains an accounting procedures and internal control checklist to be used as a guideline by recipients' management in developing or improving accounting systems and internal control procedures.

Key elements	Criteria	Aids in evaluation criteria	Risks
3-4 Fundamental Criteria			
The fundamental criteria listed below provide a codification of the most fundamental elements of an adequate accounting and financial reporting system. One objective of the criteria is to provide guidelines which a nontinancial manager can use to assess whether the system for which he/she is responsible reduces inherent financial risks sufficiently to demonstrate his/her proper discharge of stewardship responsibilities. The criteria allow an individual to evaluate performance in the financial area in accordance with consistent standards and make the appropriate improvements. Compliance with the fundmental criteria reduces the possibility of serious financial problems occurring in LSC funded programs. The "Risks" column illustrates some frequent problems which may result from poor internal control. It is not intended to be comprehensive.			
3-4.1 Financial Philosophy			
Financial Planning and Control	Each recipient should formally enuciate a financial philosophy (consistent with its own goals and characteristics) which should govern the overall financial planning and control function of management. It is one of the essential elements needed to adequately manage a legal services program and should be an inherent part of all relevant planning, policy and procedure statements.		
	Specifically:		
Define and Communicate Roles and Reponsibilities.	The appropriate rolls of the board and management should be defined. The flow of authority and responsibility from the Board to top management and to successively lower levels of management should be identified clearly and communicated to those personnel who need to know.	A Board may use bylaws and resolutions to define and communicate what authority and responsibility it reserves to itself and what is delegated to top management. Similarly, top management should use organization charts, job descriptions, policy statements, and other techniques to define and communicate the authority and responsibilities of lower personnel. Plans (goals and priorities and budgets), also are used to define and communicate the objectives of, and limitations on individual activities.	Unless authority and responsibilities are defined, an organization may be little more than an undirected group and such a group is unlikely to achieve success in controlling an entity's affairs or achieving its objectives.
		Merely defining authority and responsibility does not, in and of itself, discharge the responsibility of the financial planning and control function. In addition: —The definitions must be communicated to personnel who need to know —Techniques must be devised to provide reasonable assurance that the criteria are observed in the day-to-day conduct of the entity's business.	A failure to communicate can, and probably will, result in transactions, adjustments and journal entries that (1) are not in accordance with management criteria, (2) are not processed or are processed late, or (3) are processed in a careless manner.
Be Explicit	Communications of authority should be explicit and, to the extent possible, should be in writing.	Explicit communications of authority are most often found in bylaws, resolutions, policy statements and procedures statements.	Implicit, unwritten delegations of authority and "understood" criteria all too frequently lead to such exclamations as: "But I thought you understood!", and "Nobody told me I couldn't do it!".
Establish Financial Controls	Financial controls should be established to safeguard program resources.	The financial authority of supervisory personnel should clearly defined and evidenced by: —Established policies for processing, recording and reporting financial transactions: —Documentation identifying the authority delegated to supervisory and other personnel to initiate and approve financial transactions. —Criteria to be used when modifying or eliminating the above procedures.	Without adequate controls and definitions of responsibilities: —Projects or other major transactions may be initiated that violate management intentions, or legal or grant restrictions. —Resources may be wasted on duplicative efforts or used for unauthorized purposes. —A negative attitude toward internal accounting controls may develop within the entity. ("If top management doesn't care, why should I?")
		Numerous other financial controls are discussed in the following pages of the fundamental criteria which help safeguard program resources.	
Translate Goals into Financial Terms.	Goals and priorities should be established with the capability to translate them into financial terms which can be used to inspire improvement as well as measure performance.	At a minimum, the translation of goals and priorities into financial terms is represented by a budget. The annual budget of the program should be approved by the program's board of directors or its finance/audit committee.	Without careful planning that relates the goals and priorities to the financial resources available: —Plans may not be translated into reality. —Training and development of personnel may be misdirected.
Analyze Financial Impact of Decisions.	The capability should be established to analyze and assess the financial impact of management decisions both before and after implementation.	Timely and accurate financial management reporting is essential to the analysis necessary in assessing the impact of management decisions such as hiring additional staff, opening or closing offices, expanding or retrenching service areas, etc.	Without adequate financial management reports, management may commit the program to activities or services which it simply can not afford. The resulting deficit in operations could seriously curtail activities in the next year or could actually threaten the existence of the program itself.
3-4.2 Annual financial Statements and Audit Reports			
ANNUAL AUDIT: LSC's Audit Guide.	The annual audit of the financial statements should be performed in accordance with LSC's Audit and Accounting Guide for Recipients and Auditors.	Review the annual audit report and any audit related correspondence from the LSC Audit Division or monitoring office.	Without an annual audit in conformity with the LSC Audit Guide, Significant audit problems may remain undisclosed to the point where the board of directors may not be discharging its legal responsibilities.
90-day Reporting	The audit report should be submitted to LSC within 90-days of a recipient's fiscal year-end. Under extraordinary circumstances written extensions may be granted by the Audit Division.	Review the recipient's history of timely submission of audit reports.	Consistently delinquent audit reports may indicate a serious problem with management effectiveness or accounting procedures which necessitates extreme efforts on the part of the accounting staff and the auditors to complete the audit.

Key elements	Criteria	Aids in evaluation criteria	Risks
Supplemental Letter	The audit report should be accompanied by the auditor's supplemental letter.	Review the supplemental letter and the corrective action prescribed by the board.	While a recipient may receive a "clean opinion" from the auditor, there are often many areas in which the auditor can make suggestions for improved financial control. The supplemental letter provides the forum for such comments. System deficiencies may not be materially significant now; but, if not corrected could become significant in the future.
BOARD OF DIRECTORS: Audit Committee.	Each recipient's board of directors should have an audit committee or a joint audit/finance committee.	Insure the duties of the audit committee are documented by a board resolution.	The absence of an audit committee deprives the board of directors of the use of one of the most effective tools available to assist in the proper discharge of fiduciary responsibilities. In addition, it is not in compliance with a basic requirement of this Guide.
Approve Auditors	The board of directors should approve the appointment of the auditors.		Auditors report to the individual or body that hires them. Management should not be the sole source in control of reporting on the financial performance of its programs since LSC and interested third parties customarily rely on the auditors.
Exit Conference	The Board of directors minutes should reflect that the annual audit report and auditor's supplemental letter were discussed with management and the auditors, and deficiencies, if any, were satisfactory addressed.	A review of the documentation on the exit conference should include a discussion of significant weaknesses, if any, and corrective action prescribed by the board.	The failure to have an exit conference with top management and the board of directors or its audit committee deprives the auditor and program personnel of the opportunity to obtain additional information which may have a bearing on the conclusions.
Minutes	The board of directors should have policies defining appropriate parameters for fundamental financial decisions. All financial decisions within these parameters should be recorded in the minutes. Appropriate parameters need not include heavy involvement in daily operating decision by board members; but should be sufficient to ensure that the financial operations are discharged adequately.	Minutes should record a clear plan of the levels of authority and responsibility and clear plans of action.	Lack of documentation in the minutes may result in inadequate communication to management. In addition, it will be difficult to later demonstrate tht the board had adequately discharged its fiduciary responsibilities.
AUTHORIZATION BY BOARD: Bank Account(s).	Each bank account should be authorized by the recipient's board of directors or by the person delegated by the board. There should be sufficient justification for using more than one operating bank account. Any account not used should be closed promptly, and the bank should be notified in writing not to process any subsequent transactions. Any remaining blank checks for closed accounts should be destroyed promptly, accounts should be destroyed promptly.	Board minutes should reflect board approval of new bank accounts, and ratification of bank accounts which have been closed. Relevant state escheat laws should be reviewed.	Dormant bank accounts provide greater opportunity for individuals to fraudulently disburse cash and cover the disbursements in the records. An account that is no longer used and is not formally closed can be used to deposit recipient cash receipts and fraudulently disburse them. Board members may not be aware of the existence or purpose of bank accounts.
Check Signing	All check signers should be designated by the board of directors or by the person delegated by the board. Authorized check signers who were terminated should have their authorizations to sign checks cancelled promptly on the bank(s) records.	Board minutes should reflect the designation of authorized check signers. A log should be kept of all persons authorized to sign checks. This should be updated as people are added or deleted and the date the bank was notified indicated beside the name.	Checks may be fraudulently issued with signatures that are no longer or never were authorized.
RECONCILIATIONS: Monthly	Bank statements should be reconciled monthly to the general ledger, by a person who has no access to cash and who is not a regular check signer.	Reconciliation procedures should be documented to ensure timeliness and accuracy in reconciling bank statements.	Proper reconciliation procedures will substantially increase the likelihood of irregular disbursements being discovered on a timely basis. It will also reduce the temptation to "borrow" funds with the intent to pay back later. The reconciliation procedure is a fundamental control technique and failure to use it may be interpreted as negligence, especially in an environment where full segregation of duties is not practicable.
Documentation	The reconciliation should be reviewed and approved by a responsible individual and such review appropriately documented by signature and date.	Examine the monthly bank reconciliation(s): —Have they been prepared for each bank account? —Is the reconciliation assigned to someone with no bookkeeping duties? —Does the person reviewing and approving the reconciliation know how to do it effectively? —Is the review and approval documented on the reconciliation?	Without such a cross-check, errors or irregularities may go unnoticed.
Adjustments	All required adjustments to the general ledger cash identified through the reconciliation procedure should be posted promptly. (The adjustment should be posted through the general journal.)	Determine that adjustments to the cash account which balance have been identified on the reconciliations have been properly posted to the general journal and general ledger.	
3-4.4 Cash Receipts			
INITIAL CONTROL: Accountability	Accountability over cash should be established as soon as a cash item is received. It should be assigned to a person with no other bookkeeping duties, whenever possible.	Unless impossible, nonaccounting individuals should be assigned to receive and record cash receipts. This is the most fundamental safeguard in protecting against irregularities.	The major risk in this area occurs when an individual with recordkeeping responsibilities is also responsible for establishing the initial accountability for cash. Such an individual could cash a check or money order and then adjust the records to cover irregularities.
Mail	Accountability should begin with the individual opening the mail.	The mail should be opened (unless impossible) by a person with no other bookkeeping duties.	If cash is received at more than one location, risk of diversion is increased.
Endorsement	The checks should be restrictively endorsed by the individual opening the mail.	The endorsement should be stamped on the check.	Checks not endorsed or endorsed with no restriction can be cashed by unauthorized individuals.
Receipts Record	Each receipt should be recorded in a journal or on a listing by the person opening the mail.	The receipts journal should list the amount and payor for each check or other cash item received.	Absence of a listing precludes a double check that all cash receipts were recorded and deposited on a timely basis.
Deposit	All receipts should be deposited at least once a week (daily when possible).	Review deposit slips to monitor the frequency and timeliness of deposits.	Undeposited items risk being lost or misappropriated.

Key elements	Criteria	Aids in evaluation criteria	Risks
Accounting Records: Source and Purpose.	The accounting records should adequately identify all cash receipts as to source and purpose.	Review the receipts journal to determine that both the source and purpose of cash receipts are clearly identified.	Lack of control over cash means it may go unrecorded and undeposited.
3-4.5 Cash Disbursements			
Receipt to Deposit	The records should allow an individual to trace the receipt from initial listing to the deposit in the bank account to the general ledger posting.	Trace several cash receipts from the initial listings through the cash receipts record to the general ledger. If a reviewer is unable to do this, the system is not adequate.	Inadequate recordkeeping may allow deposits to go unrecorded in the appropriate ledgers. This produces inaccurate financial statements and management reports.
MANAGING PURCHASES: Purchase Approvals.	Approval should be required at an appropriate level of management before a non-cancellable commitment can be made.	Criteria for purchases should be documented along with appropriate procedures. For example, all items under $XXX may need one management signature, over $XXX two signatures.	Failure to follow the purchase approval process may result in purchases made without the knowledge of appropriate management or at unacceptable prices or terms.
Invoice and Receipt Verification	An internal verification that goods and services were actually received and the vendor's invoice does not contain errors in pricing quantities or addition should be performed and documented.	Prenumbered and controlled receiving documents, a receiving log, or a receipt verification on the invoice should evidence that goods and services were actually received. Verification procedures to validate vendor numbers, quantities, amounts, etc., should be reviewed.	Without adequate internal verification cash may be disbursed for goods and services not received, in advance of receipt, or in the wrong amount.
Control over Duplicate Payments	Documents should be marked paid or otherwise cancelled to avoid duplicate payment. The check number and pay date should also be noted on the invoice or other supporting documentation.	Procedures for preparation, voiding, safeguarding, or otherwise cancelling source documentation to prevent reuse (e.g., vouchers, invoices, and adjustment forms) should be in operation.	Inadequate document control may result in duplicate payments.
CHECK PREPARATION: Prenumbered:	All disbursements (other than petty cash) should be made by pre-numbered checks.	A review of the existing and consecutive use of prenumbered checks should be conducted.	Without prenumbered checks cash may be improperly disbursed or recorded.
Authorized Signature	All checks should be signed by an individual(s) authorized by the board of directors.		Failure to adhere to the check signing authorizations may result in cash being disbursed without appropriate management knowledge.
Payees	No checks may be made payable to cash. No checks may be made payable to employees except expense reimbursement and pay-roll checks. There should be a written prohibition against signing blank checks.		Checks made payable to cash are not adequately identified with the person cashing the check. A check to "cash" is negotiable and therefore does not protect against the improper cashing of a lost or misplaced check.
RECORDKEEPING: Disbursements Journal/Voucher Register.	An effective method should be established to initially record and categorize disbursements and then summarize them for recording in the general ledger.	Review the cash disbursements journal or other methods used to initially record checks or purchases: —Is it organized to allow efficient summarization of expenses (travel, rent, etc.), expenses by fund, and natural expenses by cost center? —Is it posted to the general ledger on a current basis, i.e., monthly? —Are all checks listed in numerical sequence, including voided checks? —Do the subsidiary records agree with the postings to the general ledger?	An ineffective method for initially recording disbursements may adversely affect the ability to accurately report to management on actual expenses.
Disbursement Filing System	An organized method should be established to accumulate and file all documents relating to a particular disbursement for future reference.	Select a sample of disbursement checks and trace them to their source documents. Are the supporting documents accessible in the files?	Improper filing of source documents could result in duplicate payments, or the suspicion of irregularities due to the ability to support disbursements.
Property Record	Purchases of property should result in the preparation of an internal property record that should include: —description of the property —date acquired —check number —original cost —method of valuation (if donated) —funding source —estimated life —depreciation method —identification number —location The property subsidiary record must agree with the general ledger property accounts.	Have the detailed property records been added and reconciled to the general ledger control accounts? Did the totals agree? Were any differences reconciled and adjusted?.	Failure to maintain adequate property records may result in the inability to fully account for fixed asset purchases, and to support depreciation amounts and property asset balances.
Petty Cash	Petty cash funds should be maintained by an accountable person on an imprest basis and recorded in the general ledger.	Review petty cash reimbursements periodically to ensure required procedures are being followed.	Without management review and control the petty cash account is readily subject to misuse.
REVIEW OF DISBURSEMENT PROCEDURES.		Review a sample of cash disbursement checks. Include some that appear unusual to you—large amounts, round dollar amounts, strange vendors, payments to employees, board members, etc. —Are the checks supported by adequate documentation? —Is there documentation on the invoice that it was clerically checked? —Was the item purchased in accordance with standard operating procedures? Namely, is there documentation of who initiated the purchase and who approved it? —Was evidence of the receipt of goods or services noted? —Was the invoice cancelled? —Was it posted to the general ledger account to which it was coded and was the account appropriate? —Was the supporting documentation accessible in the files?	

Key elements	Criteria	Aids in evaluation criteria	Risks
3-4.6 Payroll			
RECORDS: Payroll Register	The payroll register should list all employees paid by name, check number, gross pay, withholdings, and net pay.	Review the payroll register for content and accuracy. Also obtain the latest quarterly withholding reports from the Federal and state authorities to determine that they were filed on time and withholding taxes are being paid correct.	The lack of an adequate payroll register may result in: —Unauthorized amounts withheld from employees; —Employees paid unauthorized amounts; —Improper tax withholding.
Attendance Record or Time Record.	An attendance record or time record should be maintained for each employee and should be approved by the employee's supervisor.		Employees may be paid for days not worked.
Vacation and Sick Leave	A record of vacation and sick leave time should be maintained for each employee. It should include the time accrued and taken and the available balance.	A review of several employees' personnel files will indicate the adequacy of records required for individuals.	Inadequate vacation and overtime compensatory records may result in an employee receiving excessive vacation or in unwarranted wage claim.
Individual Earnings	A record of cumulative individual earnings and withholding amounts should be maintained for each person.	Recording every payroll transaction on an individual earnings record will assist in preventing duplicate payments (e.g., computer prepared check followed by a manually prepared check.).	
Personnel file	Each employee should have a personnel file which includes documentation concerning appointments, position reclassifications, salary rates, promotions, and terminations.	To determine if salary changes are properly authorized, examine an employee's file to determine if proper authorizations exist for the pay rate indicated on the payroll register.	Unauthorized adjustments may be processed to increase or decrease amounts paid to one or more employees.
Labor Distribution	A record should be prepared to document the charging of the gross payroll expenses to the proper accounts funds/cost center.	A payroll register will normally always exist at a program. If a deficiency does exist it may be in the documentation of the salary expense distribution. Therefore, the distribution of the gross pay for one pay period should be reviewed. —There should be an efficient method for summarizing the charges to the appropriate expense accounts. The distribution should be on a standard journal entry form. —The distribution record should tie directly to the general ledger accounts. —The format should accommodate fund and cost center accounting.	Inadequate labor distribution records may result in under or over allocation of payroll costs to funding sources. A funding source audit may then result in disallowed payroll expenses.
CONTROLLING PAYMENTS: Approvals.	Salary and wage rates should be approved by an authorized individual in writing. Procedures must be adequate to provide that employees are paid in accordance with approved wage and salary plans.	Review the wage and salary plan. It should document the following: —Authorized rates or salary ranges by employee group experience, etc. Frequency of payment. —Overtime policies, rates to be paid, etc. —Eligibility for benefits and limits. —Benefit costs to be paid by employee. —Policies related to employee advances and expense reimbursements.	Failure to approve payroll actions or the absence of an appropriate wage and salary plan may result in: —Unauthorzied payroll adjustments. —Excessive payroll costs. —Violation of minimum wage laws, union contracts, etc. —Uncollectable employees advance accounts.
Adjustments	Any adjustment to payroll disbursements should be approved by an authorized individual independent of payroll preparation.	The wage and salary plan should contain a clear statement of criteria or policy related to payroll adjustments. Controlled standard adjustment forms may be helpful.	Adjustments may be approved that are not acceptable to management.
Check Signing	Payroll checks should be signed by persons having no part in preparing the payroll.	Review the cancelled payroll checks for the prior month and verify that the person signing the checks had no part in the check preparation.	The separation of duties is a fundamental component of adequate internal control. It acts as a deterrent to unauthorized payroll actions.
Imprest Bank Account	Payrolls should be disbursed from an imprest bank account restricted for that purpose.	Verify that there is a separate payroll bank account. Determine the policies surrounding cash deposits, withdrawals, and checks written on it.	The lack of an imprest payroll account can facilitate unauthorized payroll transactions and delay or prevent their discovery.
Gross to Net to Employee	Employees should be furnished information on their gross earnings, deductions from earnings, etc. with their payroll checks.	The format for furnishing employees their payroll information should include an identification of each deduction.	Review of pay stub by an employee decreases the possibility for authorized deductions and helps ensure that a miscalculation or an unauthorized deduction is discovered promptly.
TAX LAW: Quarterly Withholding Report.	Proper withholding and prompt payment of applicable Federal, state and local income and payroll taxes should be evidenced by the quarterly withholding reports (Form 9411) to the appropriate authorities.	Obtain the latest quarterly withholding reports for Federal and state taxes to determine that they were filed on time and withholding taxes are being paid correctly.	Laws and governmental regulations may not be complied with when there is a failure to collect and report tax withholdings in a timely and accurate manner.
3-4.7 General Journal			
General Journal	There should be no direct entries to the general ledger. Every entry to the general ledger not originating from the cash receipts journal, payroll register/labor distributions, cash disbursements journal or client trust subsidiary records or any other subsidiary record of orginal entry should initially be posted to the general journal.	Review the general journal for the criteria listed.	Posting of entries directly to the general ledger increases the possibility of inappropriate, unauthorized, or unsupported entries.
Documentation	Each entry to the general journal should be: —fully described —adequately documented —sequentially numbered —approved by an authorized individual	Examine the general ledger to ensure that all entries are referenced to where they originated. Examine the supporting documentation for several general journal entries for several different months. Verify that all entries were approved in writing by the individual assigned that responsibility and were properly supported.	Unsupported or poorly referenced entries are difficult to trace and make it difficult to detect irregularities, and may increase audit costs. Incomplete, inaccurate, or unsupported entries to the general ledger increase the possibility that the financial data may misrepresent the actual financial position.
3-4.8 Client Trust Accounting			
CLIENT TRUST RECORDS: Individual Balance.	Each program should establish a method to determine the balance for each client's account.	Review the client trust ledger cards or records to determine that individual client balances are being maintained.	Accurate individual client trust balances as required by standards of professional legal practice are also essential in maintaining client and community relations.

Key elements	Criteria	Aids in evaluation criteria	Risks
General Ledger Control	The transactions of the client trust accounting system should be under general ledger control.	A recurring weakness, not always immediately obvious, is that although client funds are included in the general ledger, they may not be under general ledger control. Verify that the balance in the general ledger results from recording total receipts from clients and total disbursements for clients made during the month.	The legal profession is held to a high ethical standard of accountability when client funds are involved. Defaults, even if amounts involved are not material, with respect to the standard of accountability may subject the responsible attorney and the project director to review by the local or state Bar.
Reconciliation	The total of the individual client funds held should be reconciled to the general ledger bank account balance and general ledger liability balance on a monthly basis.	Examine a monthly bank reconciliation: —Determine that the individual client ledger cards have been added and agree with the bank reconciliation. —Trace the bank balance to the bank statement and book balance to the general ledger for one month. —Determine that any adjusting journal entries are properly supported. —If the latest reconciliation has reconciling items that have been outstanding for over two months determine how the items will ultimately be treated.	Delinquent or inaccurate reconciliation represents a lack of adequate control over financial transactions and increase the possibility that irregular transactions will be undetected, or accountability for client funds will be lost.
DISBURSEMENTS: Separate Bank Account.	A separate bank account should be maintained only for client funds. The controls over this account should be as specific and clearly stated as the controls established for the recipient's regular bank account. Client funds may not be commingled with any other funds.	Verify that a separate bank account is being used and that the criteria and policies concerning its use are documented.	The high volume of client trust cash transactions increase the risk that clients funds may be diverted. Standards of the legal profession normally prohibit the commingling of client funds.
Prenumbered Checks	Prenumbered checks should be used for disbursements. All check numbers should be accounted for.	Review the disbursement register for proper recording of all check numbers.	The absence of prenumbered checks can result in the loss of control over the checking account. Checks can be written and not recorded.
Adequate Documentation	Documentation supporting the reason for each disbursement should be retained in the files.	The source documents for cash disbursements should be the voucher copies of the check or the client trust cash disbursement book. Each client disbursement should be supported by a request from the case attorney or other documentation that substantiates the propriety of the disbursement.	Inadequate documentation and approval can result in an authorized disbursements.
3-4.9 General Ledger			
RECEIPTS: Duplicate, Prenumbered.	Prenumbered receipts should be issued for all money received from clients. Accountability in the form of duplicate copies of the receipts issued should be maintained.	The source documents for receipts should be the prenumbered client receipts. Specific persons should be designated to issue receipts. Clients should be advised of the individual who can receive cash (perhaps by a sign in the office which could include a sample of the receipt they should request) There should also be documented procedures for receiving cash in and out of the office.	Money received may not be recorded if the cash receipts are not prenumbered.
PROCEDURES: Monthly	The general ledger should be posted monthly and on a timely basis.	Verify that there is a detailed closing schedule showing due dates and the individuals responsible for various categories of journal entries.	Timely management reports are dependent upon a timely closing and reconciliation of errors. The failure to close promptly can also allow errors and omissions to go undetected for long periods of time or never be detected.
Double-Entry Method	The general ledger should be maintained on a double-entry basis.	During the general ledger review determine that a double-entry method is being used, and that all entries are made in ink.	Inadequate maintenance of the general ledger may weaken control over overall operations. Audit costs may also increase significantly.
DESIGN: Fund accounting/Cost Center Accounting/Functional Accounting.	The general ledger design should accommodate fund accounting and/or cost center/functional accounting and other requirements in accordance with the most expedient procedures in the circumstances. Cost center/functional accounting or fund accounting requirements (whichever are not incorporated into the general ledger) may be provided for outside of the confines of the general ledger.	Determine whether the general ledger and any subsystems are efficiently designed to accommodate fund accounting and cost center/functional reporting.	The reliability of management reports generated from sources other than the general ledger can be significantly impaired and the actual report preparation significantly more cumbersome.
3-4.10 Trial Balance			
CHART OF ACCOUNTS	The chart of accounts should be adequate to provide general ledger detail sufficient to easily generate needed management information.	Review the chart of accounts. It should be: —Documented with all valid accounts listed, and; —Adequately detailed to provide needed management information. Procedures should also be established for requesting and approving changes in the chart of accounts.	A chart of accounts which lacks adequate detail can significantly increase the time necessary to research a particular situation or obscure the situation completely.
CONTROL ELEMENT: Monthly	A trial balance of the general ledger should be prepared monthly.	Verify that a trial balance was prepared for each month.	Without a monthly trial balance there is no assurance that the double-entry system is working effectively.
In Balance	Any out of balance condition should be identified and corrected.	Perform a detailed review of one trial balance and answer the following questions: —Was it balance? —Did it agree with the general ledger accounts? (Test one month by tracing some of the balances to the general ledger.) —Was an adding machine tape retained in the files to document that the trial balance totals were correctly added.	If the books are not balanced: —Errors or omissions may go undetected. —The financial position may be erroneously presented. —Management reports may be inaccurate, therefore resulting in erroneous decisions.
Format	The trial balance should facilitate the preparation of management reports.	During the previous review also answer the following questions on format:	Increased time and effort may be spent on the preparation of management reports.

Key elements	Criteria	Aids in evaluation criteria	Risks
		—Did the trial balance contain all of the accounts in the chart of accounts even though there may have been zero balances in general ledger? This is most applicable if the trial balance is utilized to generate reports in lieu of the general ledger. —Was the trial balance (or the general ledger) designed so that all required reports could be drawn from it without need to refer to other records or perform other analyses to determine actual amounts?	
Kept on File	All trial balances should be kept on file until the audit for that fiscal year has been completed and the audit report issued.	Verify that responsibility for the file maintenance has been assigned.	Audit costs may increase.
3-4.11 Management Reports, Budgets, and Projections			
USE OF REPORTS: Timeliness	The director should receive a monthly management report within a prescribed number of days after month-end.	Policies, procedures, and responsibilities for all report preparation should be determined and documented. A time estimate should also be identified which is reasonable under the circumstances. Verify that the reports were completed each month and on a timely basis.	Significantly delayed management reporting does not reflect the current financial condition. The organization may be spending in excess of expected support and revenues. There is no budgetary control without timely reporting. Management and the board of directors may make budgetary or financial decisions having significant financial impace without the benefit of relevant financial information or based upon erroneous information.
Program Director Review and Approval	The director should use the monthly management reports to ensure that all program resources are fully, efficiently, and effectively used.	Discuss with the program director his or her use of the reports and document the results of the discussions.	Irregularities that may be revealed through the review of cost center reports may disclose improper transactions which might otherwise go unnoticed. For example, a negative variance in a salary budget category may reveal that individuals are being paid in excess of authorized amounts. Monthly review of the reports may also disclose conditions which are the result of bookkeeping errors.
TYPE OF REPORTS: Total Program Budget vs. Actual	A cumulative comparison of total actual expenses against total budgeted expenses should be prepared. Variances both over and under should be identified on the face of the report.	By reviewing the monthly management reports evaluate whether: —The reports are informative enough to be meaningful to management (i.e., large expenses are not buried in very broad expense accounts). —They contained the information as described for comparison of totals against budget, etc.	The absence of budget versus actual reports could hide potental budgetary problems which could, for example, necessitate decreased spending.
Funding Source Budget vs. Actual	Special reports by funding source designed to meet grantor and internal reporting requirements should be prepared as required.	The review above should also verify that all grantor reporting requirements were met (for example, reporting by fund).	The failure to comply with funding source requirements can result in a reduction or loss of funding.
Cost Center Budget vs. Actual[1]	The monthly reporting package may be designed to facilitate cost center reporting. Both budgeted expenses and actual expenses should be identified on each report. The ability to account for costs by functions can evolve from cost center accounting.	Determine if cost center reporting is being used and that all cost center requirements for management and grant reporting purposes are being met. If cost center reporting is not being used in a multi-location/multi-program environment, document management's reasons and alternate procedures to maintain cost center budgetary control.	A consolidated report lacks the detail necessary for proper analysis and control of cost center or program spending.
Functional budget vs. Actual	A periodic reporting package must be designed to facilitate functional reporting. Both budgeted expenses and actual expenses should be identified on each report.	Determine if functional reporting is being used and that all functional requirements for management and grant reporting purposes are being met.	
REPORT PREPARATION: Financial System Design.	The accounting and financial reporting system to initially record, categorize, and summarize financial transactions at the trial balance and general ledger level and below should be designed to facilitate management report preparation.	A potential conflict may exist between a recipient's need for financial reports and the monitoring office's need for financial reports. Almost without exception, the requirement for a "standard report" will generate much clerical work for a recipient unless the recipient has specifically designed its accounting and reporting system and to accommodate both the monitoring office's and its own reporting needs. In many cases the highly summarized "standard reports" which may be useful to the monitoring offices may not be as useful as the recipient's management reports. Determine if the system is designed to be flexible enough to meet the monitoring office's and other funding source requirements.	The preparation of management and funding source reporting may be more costly when the financial system is poorly designed. However, regardless of the system design, the preparation of a report should be reviewed periodically to determine that the benefit derived from the report is greater than the cost of preparing it.
Detail Available	The monthly management report should be sufficiently detailed to be useful in managing the recipient's expenses.	If detailed analysis of expense accounts is required to determine the reason for a significant over-expenditure of a budget category, the report too highly summarized.	Reports may not fairly present what they purport to display.
Commitments	The monthly management report should be adjusted for any known commitments that would have a material effect on the amounts reflected in the reports.	Review management reports for a commitments column or a notation that actual expenses have been adjusted for known commitments. Determine the procedures and support for making such adjustments.	The failure to identify major nonrecurring commitments on behalf of a program may result in the appearance of being under budget when in fact the payment of the program commitment would cause the program to be over budget.
Allocations	Common expenses should be allocated in a fair, consistent, and equitable manner to the individual cost centers, funds and, functions (programs).	The allocation methodology should be reviewed and assessed as to whether it fairly represents the total cost of an activity.	The allocation of cost to an activity is especially important to demonstrate the total cost of the activity that a funding source is financing.

Key elements	Criteria	Aids in evaluation criteria	Risks
BUDGETING: Process	The budgeting process should be organized, should involve top management, and should be closely tied to the goals and priority setting process.	An overall evaluation of the budgeting area will require a review of the budget "process" as it relates to each of the criteria listed. The questions which should be answered include the following: —Did the budgeting process appear organized and effective?	Budgeting and projecting are the key tools that should be utilized by management to adequately control and plan the expenditures of the program.
All Expected Resources	The budget included in the monthly management reports should include all funds expected to be available to the recipient during its fiscal year. —Does the budget include carry-over funds or carry-over deficits? —Does the total "budget" or management report reflect funds expected to be received from all sources based upon the best information available?		
From Cost Centers/Functions	The budget should be built from cost center/function and "rolled-up" to create the total budget. —Do the budget process and the accounting records accommodate preparing a budget by cost center/functions, or does the recipient attempt to prepare a budget on a total program basis?		
Assumptions	Schedules should be available to document the assumptions made in arriving at the final cost center/functional budgets. —What do the detailed schedules that were used to develop the budget contain? —Are the budget amounts and assumptions used adequately documented and supported in the detailed schedules?		
Allocation	The budget should be allocated by sources of funds within cost centers/functions by the most expedient and equitable means available.	—Are costs equitably allocated by source of funds within cost centers/functions?	
Format	The budget should be formatted to coincide with the format of the management reports. In addition, for budgeting purposes the chart of accounts should be sufficiently detailed to avoid extensive references to other sources of information or reclassification to determine the content of an account for budgeting or other management purposes.	—Is the chart of accounts detailed enough to facilitate the budgeting process or does preparing a meaningful budget require extensive analysis of the accounts and reference to many other records?	
PROJECTING:		A projection is simply a consideration of whether to rebudget at a later time or when more information is known The process for projections and budgeting are the same. Review the program's budget projections to answer the following questions:	
Quarterly	The monthly management reports should incorporate a comparison of expended budget against projected expenditures at least quarterly during the fiscal year.	—Are projections prepared on a quarterly basis?	
		—If any of the management reports reveal a large variation from budget—is there any evidence that management has recognized and is taking the necessary steps to resolve the potential problem?	Infrequent projections can weaken control over spending and result in budgetary problems.
Built from Cost Centers/Functions	The projections should be built from cost centers/functions with adequate input from the cost center/program manager.	—Are the projections built from cost centers/functions?	Projections made centrally with-out adequate input from the cost center/activity manager may result in incomplete information and a distortion of the projected financial condition of the recipient.
Assumptions	The projections should be supported by schedules that document the assumptions used to arrive at the projected amount.	—Are projections supported? If so, trace several projected amounts back to the original schedules.	Inadequate support for assumptions increases the possibility of errors. It also makes future analysis and improvement of projection techniques difficult.
Format	Projection reports should include the following for each line item: —Total budget —Actual expenditure to date —Projected expenses remaining —Projected total expenses for year —Projected variance over) under budget	—Are projection reports easy to understand?	
3-4.12 General			
ASSIGNED RESPONSIBILITY	The individual responsibility for the timeliness and accuracy of each report, ledger, journal, procedure, and form should be documented in the recipient's procedures	Verify that there is a clear documentation of responsibilities for every major area covered in the fundamental criteria.	Unclear definition of duties often results in increased errors, a reduction of individuals accountability, and in reports not being prepared on a timely basis.
BONDING	There should be fidelity insurance on all individuals who handle cash, sign checks, and/or have purchasing or other financial responsibilities or access to financial records and assets. Fidelity insurance coverage must extend to all individuals (board or staff) who handle funds or property.	Verify that the board of directors has approved or ratified fidelity bond insurance coverage, and that such approval/ratification is documented in board meeting minutes	

[1] Recommended at this time: not required unless the information is necessary to satisfy grant conditions or management needs.

CHAPTER 4—INELIGIBLE COSTS

4–1 Criteria

This chapter establishes criteria for determining the eligibility of costs incurred under LSC grants or contracts. The general concept of eligibility is that all costs incurred by the recipient must be necessary and reasonable for the effective operation of the program. Reasonable costs are defined as costs which reflect the acions of a prudent person after considering the circumstances at the time the costs were incurred.

4–2 Ineligible Costs

LSC has identified the following costs which are ineligible charges to LSC grants or contracts:

1. Costs not adequately supported by vendors' invoices, payroll registers or other documents.

2. Costs that are unreasonable or unnecessary.

3. Cost of the following (to exclude audit contracts, all of which are exempt) incurred without the prior written approval of the regional director.

a. Consultant contracts in excess of $2,500.

b. Consultant fees in excess of $192.75 per eight-hour day.

c. Single pruchases of equipment or property having a purchase price in excess of $5,000.

d. Leases of equipment when the purchase price of the equipment would exceed $5,000.

4. Costs specifically excluded by the grant or contract agreement or LSC rules, regulations, or guidelines.

4–3 Parameters for Eligibility Criteria

1. Consultant services secured on behalf of program management, i.e., labor/management representation, defense of law suits against the recipient, etc., are snbject to regional office approval in accordance with the criteria noted above.

2. Consultant services secured on behalf of a client of a recipient, i.e., co-counsel, expert witnesses, etc., are not subject to regional office approval under the criteria noted above. Costs incurred for such services should be in accordance with properly approved recipient policies.

4–4 Notice

LSC is considering adoption of regulations which may supersede this chapter in whole or in part.

CHAPTER 5—FINANCIAL STATEMENTS AND REPORTS

This chapter discusses the annual and interim reports required from recipients and illustrates the report formats to be used.

5–1 Requirements for Periodic Financial Reports

Each monitoring office director will determine the reporting requirements which are appropriate for recipients for whic he/she has responsibility. All such reporting requirements will be communicated to the recipients by the monitoring office director. The Audit Division requires no periodic reports other than the annual financial reports.

5–2 Requirements for Submitting Annual Financial Reports

Each recipient is required to submit four copies of its annual financial reports (i.e., audit report and auditor's supplemental letter) to the Director, Audit Division, Legal Services Corporation, Washington, D.C.; and one copy to the appropriate monitoring office director within 90 days of its fiscal year-end. The 90-day requirement will not be deemed to have been met until sufficient copies of *both* the audit report and auditor's supplemental letter have been submitted. The transmittal letter to the monitoring office should indicate that four copies have been sent to the Audit Division. The transmittal letter to the Audit Division should indicate that a copy has been forwarded to the applicable monitoring office.

The responsibility for preparing the annual financial reports is divided between the recipient and the aduitor.

Responsibility of Recipient

a. Comparative Balance Sheet.

b. Comparative Statement of Support, Revenue and Expenses and Changes in Fund Balances.

c. Notes to the financial statements disclosing principles of accounting, commitments and other matters not obvious from the statements themselves and deemd necessary for fair presentation or required under generally accepted accounting principles and the LSC Audit Guide.

d. Transmittal of the annual financial statements and supplemental letter to LSC within the 90-day time frame.

Responsibility of Auditor

a. Auditor's examination of and report on the financial statements.

b. Auditor's review and evaluation of internal control.

c. Auditor's supplemental letter.

5–3 Financial Statement and Supplemental Letter Formats

Illustrative financial statements using the accounting principles discussed in this Guide are shown in Appendix I. A sample auditor's supplemental letter is shown in Appendix III. Substantial deviation from the illustrative formats will not be accepted as satisfying the annual auidt requirement. The Statement of Support, Revenue and Expenses, and Changes in Fund Balances (or a supplemental statement or schedule) must be presented in the format of the illustrative financial statements shown in Appendix I or in the format of the Supplemental Schedules shown in Appendix II. This requirement applies to LSC funds only. The format of this financial statement is consistent with the reporting of budgeted expenditures required in the Application for Refunding. The use of this format for the reporting of LSC support, revenue and expenses will allow the Corporation to make comparisons with budgeted amounts as well as accumulate regional or national data for the legal services network.

5–4 Footnote Content

(1) *Summary of Significant Accounting Policies.* (Footnote should include explanations of all the significant accounting policies used by the recipient. See specific policies outlined in Section 2–1 of this Guide. Examples of the types of items to be included are: purpose and legal form of entity, recognition of support, capitalization of fixed assets, depreciation methods and useful lives, allocation of costs among funding sources, investment valuation and policies on donated items and services.)

(2) *Summary of Funding and Deferred Support.* (Footnote should include a description of each material support source, any restrictions on use of funds or assets, total amount of funds available from executed grants/contracts, periods of funding covered by such grants/contracts, and a summary of funds expected to be received in the future, and components of any deferred support reflected on the balance sheet. If the number of sources is large this information can be shown in a supplemental schedule.)

(3) *Employee Benefits.* (Footnote should include a description of any pension plan or material benefits to employees and should be presented in accordance with generally accepted accounting principles. A statement should be made as to whether the plans are quaified as tax-exempt by the Internal Revenue Service.)

4. *Commitments and Contingencies.* (Footnote should include but need not be limited to a description of any lawsuits or claims which could result in a material liability or any potential loss;

description of any material contract or lease commitments which the recipient has entered into; and other commitments or contingencies of the recipient which should be disclosed in order to ensure the financial statements are not misleading.)

(5) *Income Taxes.* (Footnote should include but need not be limited to a description of Federal and state tax status of the recipient, including private foundation status.)

(6) *Management/Administrative and General, and Fund-Raising Expenses.* (If expenses are not reported on a functional basis in the statement of revenue and expenses, then a footnote should include an estimate of the management/administrative and general, and fund-raising expenses incurred during the period.)

(7) *Prior Year's Financial Information.* (The comparative financial statement format recommended in this Guide reflects totals only for the previous year's operations. Since comparative financial statements are considered necessary by LSC, the following comment should be included in a footnote: "The amounts shown for (*prior year*) in the accompanying Statement of Support, Revenue and Expenses and Changes in Fund Balances are included to provide a basis for comparison and present summarized totals only. Accordingly, the (*prior year*) amounts are not intended to present all information necessary for fair presentation in accordance with generally accepted accounting principles.")

(8) *Nonrecurring Items.* (Footnote should disclose any material item of support or expense which would not normally be expected to recur in the foreseeable future.)

(9) *Related Party Transactions.* (Footnote should disclose all financial transactions of the recipient with related parties such as directors, officers, subrecipients, and other interrelated organizations. Disclosure of subrecipient relationships may be more appropriately included in a footnote related to grants and contracts made during the year by the recipient or in a separate footnote.)

Note: These footnotes are written to reflect LSC policies as realistically as possible. The appropriate disclosures required by generally accepted accounting principles must be made for each program individually. However, substantial deviation from suggested formats and disclosures may not satisfy LSC's annual audit requirements.

CHAPTER 6—AUDITS

6–1 Audit Requirements

Congress has granted LSC authority to conduct or to require annual financial examinations of recipients of LSC financial assistance. Specifically, Section 1009(c)(1) of the Act states:

The Corporation shall conduct or require each grantee, contractor, person of entity receiving financial assistance under this title to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

6–2 Audit Standards

Financial statements must be prepared in accordance with generally accepted accounting principles as prescribed by this Guide. In an effort to obtain substantial uniformity of reporting among recipients, LSC has reviewed current accounting practices and included in Section 2–1 of the Guide certain accounting principles for recipients to follow. The recommended principles are generally accepted for nonprofit organizations having the characteristics of LSC recipients. Alternative generally accepted accounting principles are available for accounting for certain types of transactions; however, LSC requires that the principles prescribed in the Audit Guide be followed to ensure consistency of reporting among LSC recipients. The auditor should review this Guide for familiarity with the recommended principles and the specific reporting requirements prescribed by LSC.

6–2.1 Auditor Selection

The selection of an auditor, together with contracting for auditing services, is the responsibility of the recipient (see Section 6–13 for a sample contract). Recipients are not required to obtain approval from LSC before engaging an auditing firm. However, LSC reserves the right, at its discretion, to select and contract with its own auditor, in accordance with section 1009(c)(1) of the LSC Act.

6–3 Audit Objectives

The objectives of the examination are to determine whether:

1. The financial statements fairly present the recipient's financial position and results of operations in accordance with generally accepted accounting principles applied on a basis consistent with the preceding period.

2. The acccounting system and related internal controls of the recipient are operating effectively and adequate records are being maintained.

3. Costs incurred are reasonable, applicable to the legal assistance program, and eligible under LSC requirements.

6–4 Scope of Audits

The scope of each audit will be established in accordance with generally accepted auditing standards and will include an examination of the financial statements and tests of transactions sufficient to enable the auditor to express an opinion on the financial statements. While the audit scope must be designed to meet this objective, it must also include sufficient tests to ensure that (a) costs are eligible under the LSC's criteria discussed in Chapter 4 of this Guide, and (b) the recipient is in compliance with the financial and accounting terms and conditions of the contract or grant. It is not intended, however, that the auditor should increase the scope of his/her work for these items above the scope necessary to issue an unqualified opinion on the financial statements—unless significant exceptions are encountered.

If an auditor has a question about any item in this Guide, it should be directed to the attention of the Director, Office of Monitoring, Audit, and Compliance, at LSC headquarters.

6–5 Auditor's Report

The primary objective of the auditor's examination is the expression of an opinion on the recipient's financial statements. Specifically, the auditor's opinion must, at a minimum, cover the following financial statements:

1. Comparative Balance Sheet;

2. Statement of Support, Revenue, and Expenses and Changes in Fund Balances with summarized totals for the prior year; and

3. Related footnotes to the financial statements.

In addition to rendering an opinion on the financial statements, the auditor is required to issue a supplemental letter. The supplemental letter must be submitted separately from the financial statements. This letter is the vehicle through which the auditor should advise LSC and the recipient's board of directors of observations and recommendations. The letter is intended for use by management, the board of directors, and LSC, and would not normally have a wider distribution. The auditor must comment in the supplemental letter on the following specific items to the extent they are observed within the scope of the examination:

1. Suggestions for improvements in the recipient's internal control procedures;

2. The status of the prior year's internal control comments;

3. Significant and unusual transactions occurring during the year;

4. Compliance with the financial and accounting conditions of the grant or contract, including the provisions of the *Audit and Accounting Guide for Recipients and Auditors* (Revised 1985); and

5. Whether the costs incurred during the current period are eligible to be charged to LSC funds.

The supplemental letter must contain a summary of costs of the current period considered by the auditors to be ineligible under LSC's criteria for such cost as described in Chapter 4. If no exceptions or specific items are observed by the auditor, that fact should also be disclosed in the supplemental letter.

6–6 Auditor's opinion

It is expected that an unqualified opinion will be issued by the auditor. It, however, if is believed that an unqualified opinion cannot be issued, or that disclosures of transactions indicating weaknesses in the integrity of management may be necessary, the auditor must notify the Director, Office of Monitoring, Audit, and Compliance, at LSC headquarters , of the circumstances precipitating a qualified opinion or these disclosures as soon as these circumstances come to the auditor's attention. In the case of an opinion which is qualified solely on the basis of an acceptable accounting change, notification of the LSC is not required.

6–7 Internal Control Review

The second standard of field work expressed in Statement on Auditing Standards No. 1 (SAS 1) is as follows:

There is to be a proper study and evaluation of the existing internal control as a basis for reliance thereon and for the determination of the resultant extent of the tests to which auditing procedures are to be restricted.

The Fundamental Criteria included in Chapter 3, paragraph 3–4 and the checklist included in Chapter 6, paragraph 8, should be utilized by the auditors along with their own methods for reviewing internal controls. The Fundamental Criteria are not intended to limit the scope of the review or to supplant the auditor's judgment as to additional audit procedures which may be necessary. No questionnaire, checklist or other listing can relieve the auditors of the responsibility for possessing a complete understanding of the requirements of adequate internal control procedures.

6–8 Financial and Accounting Compliance Checklist

The following checklist was prepared to assist the auditor in reviewing the recipient's compliance with the financial and accounting conditions of its LSC grant or contract. Items of noncompliance noted in this checklist must be discussed with the recipient's management and included in the auditors' supplemental letter.

6–8.1 General

A. Has the recipient satisfactorily corrected all prior noncompliance comments with respect to:

(1) Internal control improvements;

(2) Financial and accounting compliance with the grant or contract agreement;

(3) Questions on eligibility of costs?

B. Is the recipient exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1954? Further, has the recipient applied for and received a determination that it is not a "private foundation" under Section 509(a) of the Internal Revenue Code?

C. Has the applicable state income tax exemption been obtained?

D. Has the recipient received exemption from sales and use taxes, occupational tax, etc., where available?

E. Where applicable has the recipient met the requirement of expending a substantial (as defined by 45 CFR 1614) portion of its LSC grant on Private Attorney Involvement?

F. Where the audit is not being performed on the entire operations of the recipient, has LSC approved a limited examination?

G. Has the recipient properly accounted for proceeds from the sale of property?

6–8.2 Ineligible Costs

A. Has the recipient incurred costs not adequately supported by vendors' invoices, payroll records, travel expense reports, or other documents; and for which the auditor could not satisfy himself by any other evidential means that the costs were proper charges to LSC's funds? (See Chapter 4, paragraph 4–1)

B. Are there costs that are unreasonable or unnecessary? (These costs are by nature a matter of judgment. When reported by the auditors, they should be accompanied by an adequate explanation of the nature and circumstances surrounding the expenditure and comments by the applicable program officials.)

C. Has the recipient received prior written approval for all expenditures requiring such approval?

6–8.3 Internal Control

Has the recipient implemented and followed accounting procedures adequate in the circumstances, as summarized in Chapter 3—INTERNAL CONTROL/FUNDAMENTAL CRITERIA OF AN ACCOUNTING AND FINANCIAL REPORTING SYSTEM? (Also see Appendix 4, Accounting Procedures and Internal Control Checklist.)

6–9 Documents To Be Furnished the Auditors

Before commencing the examination, the auditors should arrange for the recipient to furnish the following materials, as required, to allow them to perform the audit more efficiently.

1. Copies of all grants and contracts (including any modifications, attachments, amendments, and all general and special provisions).

2. A copy of the prior year's audit report and auditors' supplemental letter (if other auditors were engaged).

3. A copy of all pertinent grant and contract instructions, handbooks, and other directives.

4. Copies of all correspondence affecting financial considerations of the recipient's grants and contracts.

5. Copies of all financial reports submitted to the LSC monitoring office during the accounting period in accordance with reporting requirements in the recipient's grants and contracts.

6. Copies of all other contractual agreements.

7. A copy of the recipient's Federal tax returns and reports (including Form 990), state tax returns, and sales or other tax exemption certificates.

8. A copy of the minutes of the board of directors, and if applicable, executive, audit or financial committee meetings during the accounting period.

9. A copy of the recipient's articles of incorporation, bylaws and any amendments thereto. (Initial audit only, except for amendments.)

10. An explanation of allocation procedures used to allocate costs among funding sources.

11. A copy of the Legal Services Corporation Act and any extensions, amendments, etc. (Initial audit only, except for amendments.)

12. Copies of any audit reports completed by auditors representing other funding sources.

13. Documentation for donated services such as CETA received during the year.

14. Copies of revisions of the LSC Audit Guide, if any.

15. Copies of all LSC rules, regulations, instructions and guidelines.

6–10 Confirmation to LSC

As part of the audit procedures, the auditors should confirm the financial details of the LSC grant/contract with LSC's Comptroller's Office in Washington, D.C. The following sample confirmation letter will be satisfactory for these purposes. The content of the confirmation letter should, of course, be adjusted to reflected any specific requirements the auditors may have.

We suggest that auditors submit the confirmation requests to LSC immediately after the recipient's fiscal year-end. An early submission will ensure that the audit field work will not be delayed awaiting return of the confirmation.

The audit confirmation should be completed in accordance with the sample format provided in paragraph 6–11. Utilizing the requested format will enable the LSC Comptroller's Office to ensure the accuracy of the information provided, and also to respond on a timely basis. If confirmations lack substantial information necessary to allow the Comptroller's Office to process them efficiently, they will be returned with a request to resubmit in accordance with LSC guidelines.

6–11 Confirmation Format and Sample

(Recipient's letter head)

(Date)

Comptroller,
Legal Services Corporation, 733 15th Street, NW., Suite 251, Washington, DC 20005

Dear Sir: Our auditors Cutte, Pastun, Attache & Co., are now engaged in an examination of our financial statements. In connection therewith, they desire to confirm the information as contained herein relating to our grant(s)/contract(s) with you during the period 1/1/XX to 12/31/XX. Please confirm that the following is correct, so that our auditors may verify our recognition of support for the period:

Action No.	Date Signed by LSC	Amount of grant awarded	Grant Period
XX-01	11-26-XX	$2,281,937	1/1/XX-12/31/XX.
XX-02	02-06-XX	500,000	1/1/XX-12/31/XX.
XX-03	03-26-XX	21,402	One time grant for targeted purposes.
XX-04	04-23-XX	45,652	1/1/XX-12/31/XX.
XX-05	06-30-XX	1,000	One time technical assistance.
XX-06	09-24-XX	5,000	One time technical assistance.
Total grants awarded.		2,854,991	

Our auditors also desire to confirm the following payments during the period 1/1/XX to 12/31/XX:

Check No.	Check amount	Related action No.
1. 12748	$190,161	XX-01.
2. 01491	125,001	XX-02.
3. 023070	231,628	XX-01, XX-02.
4. 013387	253,230	XX-01, XX-02, and XX-03.
5. 013715	231,828	XX-01, XX-02.
6. 01572	22,824	XX-04.
7. 014040	231,828	XX-01, XX-02.
8. 01623	3,804	XX-04.
9. 024408	235,804	XX-01, XX-02, and XX-04.
10. 01851	1,000	XX-05.
11. 014729	235,632	XX-01, XX-02, and XX-04.
12. 015039	235,632	XX-01, XX-02, and XX-04.
13. 015353	235,632	XX-01, XX-02, and XX-04.
14. 5005	237,221	XX-01, XX-02, XX-04, and XX-06.
15. Purchase by LSC of BNA books through bulk subscription plan.	3,416	XX-01.
16. Paid to (*program name*) in 19XX against 19XX contract.	380,322	XX-01.
Total	$2,855,163	
In addition, LSC has made an advance to (*program name*) on the 19XX contract, as follows: 50029	$384,364	XX-01.

Our auditors also desire to confirm the following information for miscellaneous training and/or technical assistance grants awarded to (*recipient name*) during the period 1/1/XX to 12/31/XX:

Grant date	Grant amount	Check No.	Check date	Check amount	Comments
4-24-XX	$453.18	51526	05-06-XX	$453.18	Full payment of training grant.
9-13-XX		7169	06-10-XX	2,233.00	Final payment of prior year grant.
9-12-XX	4,993.00	11203	09-29-XX	3,345.31	67 pct. of training grant.
9-24-XX	608.00	11322	10-01-XX	606.00	Full payment of training grant.
9-29-XX	4,800.00	12106	10-20-XX	2,400.00	50 pct. of training grant.
Sub-total				9,039.49	
Less amounts refunded				100.00	Actual cost of 9/24/XX training was $508.00.
Total				8,939.49	

Please indicate in the space provided below whether the information herein is in agreement with your records. After signing and dating your reply, please return it directly to: Cutte, Pastun, Attache & Co., 5050 Middle Street, Centerville, NE 68102.

A stamped, addressed envelope is enclosed for your convenience.

Sincerely,

Nelly J. McWilliams,
Executive Director.

To: Cutte, Pastun, Attache & Co.

Re: Recipient No. XXXXXX (*Recipient Name*)

The information relating to the grant/contract award action and payment during the period is in agreement with our records with the following exceptions (if any).

Date: _____

Signed: _____

Title: _____

_____

_____

6–12 Formal Arrangement for Auditors' Services

It is necessary to have a clear understanding between the recipient and the auditors about (1) what the auditors are engaged to do, and (2) the extent of their responsibilities in what they are engaged to do. Any lack of agreement between the parties as to either the scope of the work or the extent of the auditors' responsibilities is a potential source of trouble.

An understanding of the work to be performed and the extent of the auditors' responsibilities can be accomplished through either a formal contract or an arrangement letter submitted by the auditors and accepted by the recipient. An example of an acceptable contract that contains most items that should normally be included in the auditors'/recipient's understanding is presented below. Whatever agreement is entered into between the auditor and the recipient must contain the following provisions:

(a) That the audit will be performed in accordance with GAAS and the auditing and reporting provisions of the "Audit

and Accounting Guide for Recipients and Auditors".

(b) That, for a period of seven years, the auditor shall make its working papers, records, and other evidence and special work of the audit available to the Legal Services Corporation, and (*Program's Name*).

(c) That it is understood that the Legal Services Corporation is entitled to all reports and relevant information furnished to the Program's management and board of directors.

46–13 Sample Auditors' Contract

This Agreement is entered on the ——— day of ———, 19 ——, by the *(full name of recipient)* (hereinafter called the "Program"), and *(full name of accountant or accounting firm)* Independent Public Accountant (hereinafter called the "Auditor").

WHEREAS the Program desires the Auditor to conduct and perform an examination of the financial statements of the Program as of ——— and for the year ending ———.

NOW, THEREFORE, the Program and the Auditor do mutually agree as follows:

1. The Auditor shall examine the financial statements of the Program for the year ending ———, 19 ——, in accordance with generally accepted auditing standards and the auditing and reporting provisions of the "Audit and Accounting Guide for Recipients and Auditors" issued August 1976, last revised ——— by Legal Services Corporation. The audit performed shall be sufficient in scope to enable the Auditor to express an opinion in the audit report on the financial statements. Auditing procedures will include, among other things, tests of documentary evidence supporting the transactions recorded in the accounts as well as review of the system of internal control and the accounting procedures as a basis for determining the scope of the Auditor's work. This work will be based primarily upon selected sampling and tests of the accounting records. While certain types of defalcations and similar irregularities may occasionally be disclosed by examinations of this type, they are not designed for that purpose and will not afford assurance that defalcations, etc., will be uncovered. However, if items of a serious nature, which relate to the recipient's capabilities to safeguard and account for Legal Services Corporation funds, come to the attention of the Auditor, they will be promptly reported to the Program's director, the Program's board of directors, and Legal Services Corporation's Director, Audit Division.

2. The Program agrees to provide assistance to the Auditor such that the audit report shall be submitted within 90 days after the fiscal year-end i.e., by ———, 19——.

3. The Auditor will also be responsible for the preparation of the Program's Federal information return (Form 990). The Auditor does not have responsibility for any other tax returns. (Optional.)

4. The Program agrees to pay the Auditor as compensation for the services mentioned herein a fee computed according to the Auditor's normal hourly rates. It is estimated that the fee for the year ended ———, 19—— , will not exceed $——— unless approved in advance of actual incurrence by the Program's director.

5. The Auditor certifies that its principal officers, owners, or members are independent Certified Public Accountants and/or independent licensed Public Accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a state or other political subdivision of the United States.

6. The Auditor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Auditor shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Auditor will, in all solicitations or advertisements for employees placed by or on behalf of the Auditor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

7. It is understood that the Legal Services Corporation is entitled to all reports and relevant information furnished to the Program's management and board of directors.

8. For a period of seven years, the Auditor shall make its working papers, records, and other evidence of the audit or special work available to the Legal Services Corporation, and *(Program's name)*.

IN WITNESS WHEREOF, the Program and the Auditor have excuted this Agreement the day and year first above written.

(Program)

By———

(Name of Independent Public Accountant)

By———

6–14 Exit Conference

Upon completion of the field work, the auditors must hold a closing or "exit" conference with senior officials of the recipient to discuss the audit report and the comments to be included in the supplemental letter. The officials in attendance should include, at least, the program director and the senior financial officer such as the controller or chief accountant. It would also be appropriate for members of the audit committee to attend the exit conference.

It is expected that all points included in the supplemental letter should be available for review at the exit conference. The exit conference provides the auditors with a final opportunity to obtain additional information which may have a bearing on their conclusions, and also with the mechanism to personally discuss the recipient's financial and accounting status in detail with top management and a board member. A draft of the supplemental letter should be available for review at the exit conference.

Once the audit report and supplemental letter are finalized, the auditors must meet with the audit committee of the board of directors to discuss the results of the audit. The results of that meeting, including any directions the committee may give the program director regarding items in the audit report and supplemental letter, must be documented in the minutes of the meeting.

Appendix I

Economic Legal Aid Corporation, Richmond, Virginia

(Illustrative) Financial Statements for the Year Ended December 31, 19XX With Comparative Totals for 19X–1 Together With Auditors' Report

Note.—The accompanying financial statements and footnotes are illustrative in nature and should be read in that context. However, as noted in Chapter 5, LSC Support, Revenue and Expenses and Changes in Fund Balances, must be reported in the format presented in these financial statements or in the Supplemental Schedule shown in Appendix II. In addition, the footnotes are written to reflect LSC's policies as realistically as possible, although the appropriate disclosure required by generally accepted accounting principles must be made for each program individually. Substantial deviation from suggested formats and disclosures may not satisfy LSC's annual audit requirement.

Stewart, Brown & Company, Certified Public Accountants, 1200 Elm Street, Richmond, Virginia 22133, (703) 785–9325

March 15, 19XX

To the Board of Directors of Economic Legal Aid Corporation:

We have examined the balance sheets of ECONOMIC LEGAL AID CORPORATION, as of December 31, 19XX and December 31, 19X–1, and the related statements of support, revenue and expenses and changes in fund balances for the year ended December 31, 19XX. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of Economic Legal Aid Corporation as of December 31, 19XX and December 31, 19X–1, and the results of its operations and changes in fund balances for the year ended December 31, 19XX, in conformity with generally accepted accounting principles applied on a consistent basis.

STEWART, BROWN & COMPANY, CPAs

BILLING CODE 6820-35-M

ECONOMIC LEGAL AID CORPORATION

BALANCE SHEETS

AS OF DECEMBER 31

A S S E T S	19XX	19X-1
CURRENT ASSETS		
Cash (includes savings accounts)	$ 36,290	$ 41,056
Certificates of deposit	250,000	200,000
Client escrow funds	3,100	2,500
Receivables -		
United Way	11,000	15,000
Employees	2,400	2,800
Prepaid expenses	14,200	10,100
Total Current Assets	316,990	271,456
PROPERTY (Note 1)		
Furniture, fixtures, and equipment (net of accumulated depreciation of $24,516 in 19XX and $20,000 in 19X-1)	79,204	83,025
Law library	16,000	15,000
Total Property	95,204	98,025
OTHER ASSETS		
Security deposits	1,500	1,500
Total Assets	$413,694	$370,981

LIABILITIES AND FUND BALANCES	19XX	19X-1
LIABILITIES (all current)		
Accounts payable	$ 40,180	$ 36,200
Accrued expenses	37,200	32,100
Employee withholdings payable	9,820	10,190
Client trust deposits	3,100	2,500
Current maturities - note payable	6,948	5,689
Deferred support	125,000	100,000
Total Liabilities	222,248	186,679
LONG-TERM LIABILITIES		
Note payable	14,311	20,000
Less current maturities	(6,948)	(5,689)
Total Long-Term Liabilities	7,363	14,311
COMMITMENTS AND CONTINGENCIES (Note 4)		
FUND BALANCES		
Legal Services Corporation	75,130	63,105
United Way	12,326	5,896
General Fund	1,423	2,965
Property	95,204	98,025
Total Fund Balances	184,083	169,991
Total Liabilities and Fund Balances	$413,694	$370,981

The accompanying notes are an integral part of these financial statements.

ECONOMIC LEGAL AID CORPORATION

STATEMENT OF SUPPORT, REVENUE AND EXPENSES

FOR THE YEAR ENDED DECEMBER 31, 19XX, WITH COMPARATIVE TOTALS FOR 19X-1

	LEGAL SERVICES CORPORATION				UNRESTRICTED				
	Basic Field Grant	Private Attorney Involvement	One-time Grant	TOTAL	United Way	General	Property	Total	19X-1
SUPPORT AND REVENUE									
Grants and contracts (Notes 1 and 2)	$1,312,500	$187,500	$75,000	$1,575,000	$25,000	$	$	$1,600,000	$1,589,623
Contributions (Note 1)						5,213		5,213	4,896
Donated services						4,216		4,216	1,587
Gain on sale of equipment							3,216	3,216	
Interest income	3,452			3,452	236	156		3,844	3,895
	1,315,952	187,500	75,000	1,578,452	25,236	9,585	3,216	1,616,489	1,600,001
EXPENSES (Note 1)									
Salaries and wages-									
Lawyers	512,169	45,012	42,911	600,092	9,023	4,216		613,331	601,589
Paralegals	253,286	19,523	2,063	274,872	2,156			277,028	256,987
Other staff	146,401	10,235	5,206	161,842	1,256			163,098	168,925
Employee benefits	126,401	9,032	8,236	143,669	2,141			145,810	156,025
	1,038,257	83,802	58,416	1,180,475	14,576	4,216		1,199,267	1,183,526
Space									
Rent	135,605	9,236	2,156	146,997				146,997	141,583
Other payments	20,178	1,412		21,590				21,590	19,583
Equipment rental			6,069	6,069				6,069	7,056
Office supplies and expenses	22,559	1,502	3,218	27,279		2,531		29,810	30,125
Telephone	35,004	2,031		37,035				37,035	32,584
Travel									
Staff	569			569				569	487
Others	2,599	56		2,655		568		3,223	1,586
Training									
Staff			1,141	1,141				1,141	652
Others	4,698	893		5,591		896		6,487	3,589
Library	8,963			8,963				8,963	5,689
Insurance	15,023	1,023		16,046				16,046	15,829
Dues and fees	893			893		1,563		2,456	1,221
Audit	6,000	580		6,580				6,580	6,125
Litigation	2,000			2,000				2,000	3,562
Contract services - clients		86,965		86,965				86,965	79,856
Contract Services - program	9,001			9,001		457		9,458	8,795
Depreciation							10,256	10,256	9,582
Other	2,589			2,589		896		3,485	541
	1,303,938	187,500	71,000	1,562,438	14,576	11,127	10,256	1,598,397	1,551,971
SUPPORT AND REVENUE OVER (UNDER) EXPENSES	$ 12,014	$ 0	$ 4,000	$ 16,014	$10,660	($ 1,542)	($7,040)	$ 18,092	$ 48,030

The accompanying notes are an integral part of these financial statements.

ECONOMIC LEGAL AID CORPORATION

STATEMENT OF CHANGES IN FUND BALANCES

FOR THE YEAR ENDED DECEMBER 31, 19XX, WITH COMPARATIVE TOTALS FOR 19X-1

	LEGAL SERVICES CORPORATION				UNRESTRICTED				
	Basic Field Grant	Private Attorney Involvement	One-time Grant	TOTAL	United Way	General	Property	Total	19X-1
FUND BALANCES, beginning of year	$ 63,105	$ 0	$ 0	$ 63,105	$ 5,896	$ 2,965	$98,025	$169,991	$142,550
SUPPORT AND REVENUE OVER (UNDER) EXPENSES	12,014	0	4,000	16,014	10,660	(1,542)	(7,040)	18,092	27,441
OTHER CHANGES IN FUND BALANCES									
Acquisition of property	(3,256)			(3,256)	(4,230)		7,486		
Note payments	(5,689)			(5,689)			5,689		
Transfer of proceeds from sale of equipment	8,956			8,956			(8,956)		
Returned to LSC			(4,000)					(4,000)	
FUND BALANCES, end of year	$ 75,130	$ 0	$ 0	$ 75,130	$12,326	$ 1,423	$95,204	$184,083	$169,991

The accompanying notes are an integral part of these financial statements.

BILLING CODE 6820-35-C

Economic Legal Aid Corporation

Notes to Financial Statements for the Years ended December 31, 19XX and 19X–1

(1) Summary of Significant Accounting Policies

(a) Operations—

Economic Legal Aid Corporation ("ELAC") is a nonprofit corporation organized for the purpose of providing legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance in the Richmond, Virginia, and surrounding area. ELAC is principally funded through grants from Legal Services Corporation ("LSC"), a nonprofit corporation established by Congress to administer a nationwide legal assistance program.

(b) Grant Support—

ELAC recognizes annualized grant funds from LSC as support on a straight-line basis over the grant period. Funds remaining unexpended at the end of an accounting period are recorded in the LSC fund balance. Subject to the provisions of LSC's Fund Balance Regulation, ELAC may use unspent funds in future periods as long as expenses incurred are in compliance with the specified terms of the LSC grant, as defined. LSC may, at its discretion, request reimbursement for expenses or return of funds, or both, as a result of noncompliance by ELAC with the terms of the grant. In addition, if ELAC terminates its LSC grant activities, all unexpended funds are to be returned to LSC. ELAC recognizes funds from the United Way as support on a straight-line basis over the applicable grant period.

(c) Contributions—

Contributions represent cash donations to ELAC from private organizations and individuals and are recognized as support when received.

(d) Furniture, Fixtures, and Equipment—

Property and equipment acquired with LSC and United Way funds are considered to be owned by ELAC while used in the program or in future authorized programs. However, both funding sources have a reversionary interest in these assets. In addition, LSC has the right to determine the use of any proceeds from the sale of assets purchased with its funds.

ELAC follows the practice of capitalizing all expenditures for property and equipment in excess of $500. Depreciation of furniture, fixtures, and equipment is computed on a straight-line basis over the estimated service lives of the assets. Estimated useful lives of 5 years have been assigned to furniture, fixtures, and equipment.

(e) Law Library—

ELAC capitalizes the costs of books, reference materials, and multiple volume sets of law books. ELAC estimates the salvage value of its law library approximates the original cost and, accordingly, depreciation expense is not recorded. A reversionary interest in the law library is retained by ELAC's funding sources.

(f) Donated Services—

Donated services valued at $4,216 were received from three local attorneys working on a special case and are included in the general fund of the accompanying financial statements as a part of personnel costs of lawyers. Donated services are valued based on a pre-determined hourly rate according to the type of service provided. These services are recognized both as support and expenses, and therefore do not effect the general fund balance.

(g) Allocation of Expenses—

In some cases, common expenses are incurred which support the work performed under more than one grant. Such expenses are allocated between LSC and United Way as agreed by these funding organizations or, in the absence of an agreement, on the basis which appears most reasonable to ELAC.

(h) Accrued Vacation—

Accumulated earned vacation amounting to $24,000 at December 31, 19XX, is recorded in the accompanying financial statements under the caption "Accrued Expenses". Accrued vacation as of December 31, 198X–1 was $19,200.

(2) Summary of Funding and Deferred Support

ELAC's operations are funded through grants from LSC and United Way. During the prior year, ELAC received a six-month grant for $68,000 from the Department of Health and Human Services (HHS) to provide legal assistance in Charlottesville, Virginia. This program was subsequently terminated. The following details ELAC's 19XX grants and contracts and their inclusion in the accompanying financial statements.

Grant No.	Period	Amount	19XX support
LSC 400100–XX–1.	1/01/XX–12/31/XX.	$1,500,000	$1,500,000
LSC 400100–XX–2.	One-time Grant	75,000	75,000
United Way 105	1/01/XX–12/31/XX.	25,000	25,000
		1,600,000	1,600,000

ELAC has been awarded an additional grant from LSC and a grant from United Way for the subsequent year ending December 31, 19X1, of $1,500,000 and $25,000, respectively. The LSC grant has been awarded for the twelve-month period January 1, 19X1, to December 31, 19X1. ELAC has received advance funding from LSC in the amount of $125,000. The advance is intended to support operations for the first two months of the subsequent year and is recorded as deferred support on the balance sheet. Both Grants are restricted—to be used only for purposes authorized under the Legal Services Corporation Act of 1974, as amended. Both LSC and the United Way require separate reporting of support and expenses and changes in fund balances applicable to their funding.

(3) Annuity Pension Plan

Included in employee benefit costs are $11,000 in 19XX and $9,500 in 19X–1, which represent the cost of a noncontributory annuity plan to provide employees with retirement benefits. Under the plan, ELAC contributes an amount equal to 4½% of the salaries of employees with more than three months of continuous service. There are no past service costs associated with the plan, and employees are fully vested for all contributions on their behalf after two years.

(4) Commitments and Contingencies

ELAC has entered into a lease agreement for the rental of office space. Under the lease agreement, ELAC is required to make annual lease payments of $18,000 through October 31, 19XX. Such lease payments are adjustable every two years due to the property tax escalation clause included in the lease. In addition, ELAC has leased certain office equipment which requires annual payments of $5,000 through 19XX.

ELAC utilizes the judicare method to meet the Private Attorney Involvement condition of their LSC grant. This condition requires ELAC to expend 12.5 per cent of their annualized LSC grant to involve private attorneys in the delivery of legal services. As of December 31, 19XX, ELAC has outstanding commitments of $30,000 for cases assigned to the judicare panel attorneys. This amount has not been recorded as a liability since the services have not been performed as of December 31, 19XX.

(5) Income Taxes

ELAC is exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Service Code and from Virginia income taxes. In addition, ELAC has been determined by the Internal Revenue Service not to be a "private foundation" within the meaning of Section 509(a) of the Code.

(6) Prior Year Financial Information

The amounts shown for 19X–1 in the accompanying Statement of Support, Revenue and Expenses and Changes in Fund Balances are included to provide a basis for comparison with 19XX and present summarized totals only. Accordingly, the 19X–1 amounts are not intended to present all information necessary for a fair presentation in accordance with generally accepted accounting principles.

(7) Management/Administrative and General, and Fund-Raising Costs

ELAC estimates its management/administrative and general costs (which include overall direction, accounting, budgeting, general Board activities and related items) were approximately $93,000 in 19XX and $89,500 in 19X–1. In addition, ELAC has determined that fund-raising costs are not material.

(8) Transaction With a Related Party

ELAC's office space in Richmond, Virginia, is rented from the chairman of ELAC's Board of Directors. Management believes the rental payment (currently $18,000 a year) is less than the rent that would be paid to a nonaffiliated party.

Appendix II

Economic Legal Aid Corporation, Richmond, Virginia

(ILLUSTRATIVE) Supplemental Schedule of Support, Revenue and Expenses and Changes in Fund Balances for Legal Services Corporation Grants for the Year Ended December 31, 19XX, With Comparative totals for the Year Ended December 31, 19X–1

Note.—As discussed in Chapter 5, support, revenue and expenses and changes in fund

balances for LSC grants and contracts must be presented in a standard format. The supplemental schedules presented in this appendix are offered as an acceptable alternative to meet this requirement if the recipient chooses to present the basic financial statements using a different format. If this option is elected, the supplemental schedules must be covered by the auditor's examination (see accompanying opinion) and must be included with the basic financial statements.

Stewart, Brown & Company, Certified Public Accountants, 1200 Elm Street, Richmond, Virginia 22133, (703) 785–9325

March 15, 19XX.

To the Board of Directors of Economic Legal Aid Corporation:

Our examination was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying statements of Support, Revenue and Expenses and Changes in Fund Balances for Legal Services Corporation grants and contracts for the year ended December 31, 19XX, with comparative totals for the year ended December 31, 19X–1, are presented for purposes of meeting the Legal Services Corporation reporting requirements, and are not a required part of the basic financial statements. These supplemental statements have been subjected to the auditing procedures applied in the examination of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Stewart, Brown & Company, Certified Public Accountants

BILLING CODE 6820-35-M

ECONOMIC LEGAL AID CORPORATION

STATEMENT OF SUPPORT, REVENUE AND EXPENSES FOR LEGAL SERVICES CORPRORATION FUNDS

FOR THE YEAR ENDED DECEMBER 31, 19XX, WITH COMPARATIVE TOTALS FOR 19X-1

	Basic Field Grant	Private Attorney Involvement	One-time Grant	TOTAL	19X-1
SUPPORT AND REVENUE:					
Grants and contracts (Notes 1 and 2)	$1,312,500	$187,500	$75,000	$1,575,000	$1,350,000
Contributions (Note 1)					
Donated Services					
Gain on sale of equipment					
Interest Income	3,452			3,452	2,500
	1,315,952	187,500	75,000	1,578,452	1,352,500
EXPENSES (Note 1):					
Salaries and wages-					
Lawyers	512,169	45,012	42,911	600,092	560,090
Paralegals	253,286	19,523	2,063	274,872	270,820
Other Staff	146,401	10,235	5,206	161,842	151,000
Employee benefits	126,401	9,032	8,236	143,669	124,010
	1,038,257	83,802	58,416	1,180,475	1,105,920
Space					
Rent	135,605	9,236	2,156	146,997	139,800
Other payments	20,178	1,412		21,590	20,480
Equipment Rental			6,069	6,069	6,520
Office supplies and expenses	22,559	1,502	3,218	27,279	28,020
Telephone	35,004	2,031		37,035	35,010
Travel					
Staff	569			569	2,950
Others	2,599	56		2,655	1,330
Training					
Staff			1,141	1,141	1,070
Others	4,698	893		5,591	5,210
Library	8,963			8,963	7,640
Insurance	15,023	1,023		16,046	15,050
Dues and Fees	893			893	700
Audit	6,000	580		6,580	6,860
Litigation	4,589			4,589	3,210
Contract services - clients		86.965		86,965	81,430
Contract Services - program	9,001			9,001	7,180
Depreciation					
Other					
	1,303,938	187,500	71,000	1,562,438	1,468,380
SUPPORT AND REVENUE OVER (UNDER) EXPENSES	$ 12,014	$ 0	$ 4,000	$ 16,014	$ (115,880)

BILLING CODE 6820-35-C

ECONOMIC LEGAL AID CORPORATION

STATEMENT OF CHANGES IN FUND BALANCES FOR LEGAL SERVICES CORPORATION FUNDS

FOR THE YEAR ENDED DECEMBER 31, 19XX, WITH COMPARATIVE TOTALS FOR 19X-1

	Basic Field Grant	Private Attorney Involvement	One-time Grant	TOTAL	19X-1
FUND BALANCES, beginning of year	$ 63,105	$ 0	$ 0	$ 63,105	$ 188,330
SUPPORT AND REVENUE OVER (UNDER) EXPENSES	12,014	0	4,000	16,014	(115,880)
OTHER CHANGES IN FUND BALANCES:					
Acquisition of property	(3,256)			(3,256)	(4,980)
Note payments	(5,689)			(5,689)	(4,365)
Transfer of proceeds from sale of equipment	8,956			8,956	
Returned to LSC			(4,000)	(4,000)	
FUND BALANCES, end of year	$ 75,130	$ 0	$ 4,000	$ 72,917	$ 63,105

Appendix III

Illustrative Auditors' Supplemental Letter

Economic Legal Aid Corporation Recipient Number 400100

Auditors' Comments for Year Ended December 31, 19XX

Stewart, Brown & Company, 1200 Elm Street, Richmond, Virginia 22133, (703) 785-9325

March 15, 19XX.

To the Board of Directors of Economic Legal Aid Corporation:

We have examined the financial statements of Economic Legal Aid Corporation ("ELAC") for the year ended December 31, 19XX, and have issued our report thereon dated March 15, 19XX. As a part of our examination, we reviewed and tested ELAC's system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards. Under these standards the purpose of such evaluation is to establish a basis for reliance thereon in determining the nature, timing, and extent of other auditing procedures that are necessary for expressing an opinion on the financial statements.

The objective of internal accounting control is to provide reasonable, but not absolute, assurance as to the safeguarding of assets against loss from unauthorized use or disposition, and the reliability of financial records for preparing financial statements and maintaining accountability for assets. The concept of reasonable assurance recognizes that the cost of a system of internal accounting control should not exceed the benefits derived and also recognizes that the evaluation of these factors necessarily requires estimates and judgments by management.

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes of judgment, carelessness, or other personal factors. Control procedures whose effectiveness depends upon segregation of duties can be circumvented by collusion. Similarly, control procedures can be circumvented intentionally by management with respect either the execution and recording of tranactions or with respect to the estimates and judgments required in the preparation of financial statements. Further, projection of any evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions and that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of ELAC's system of internal accounting control for the year ended December 31, 19XX, which was made for the purpose set forth in the first paragraph above, would not necessarily disclose all weaknesses in the system. However, during such study and evaluation certain matters came to our attention. All of the matters dicussed herein were considered during our examination of the financial statements as of December 31, 19XX, and they do not modify our opinion.

These matters will be considered by us in connection with subsequent examinations. Our study and evaluation, which included the areas specified in the Legal Services Corporation's "Audit and Accounting Guide for Recipients and Auditors" issued in August 1976 with the latest revision in (*insert latest revision date from paragraph 1-11.*) disclosed the following matters that we would like to call to your attention.

1. Suggestions of improving internal control procedures:

a. The petty cash fund is not maintained on an imprest basis. With an imprest system, control over this fund would be facilitated and improved. Also, the ability to check compliance could be facilitated if the petty cash fund were established at a fixed amount and the petty cash custodian were required to retain cash and vouchers equal to the fixed amount. Reimbursement of the petty cash fund should be made for the exact amount of the petty cash vouchers being submitted for reimbursement.

b. Checks to reimburse the petty cash fund are made payable to "Cash". Checks written in this manner are fully negotiable should they be misplaced or stolen. This risk can be eliminated by having petty cash reimbursements made payable to "Martha Jones—Petty Cash Custodian".

c. Currently, one employee writes checks, maintains the cash disbursements journal and receives and reconciles bank statements.

We recognize that because of the limited number of personnel, total segregation of duties is not practicable or expedient. However, we believe internal control could be strengthened without undue interruption if bank reconciliations were assigned to another employee who would also initially receive the unopened statements.

d. Invoices are not canceled when paid but are simply filed away with the check copy attached. In order to eliminate the possibility of the double payment of an invoice, we recommend that all supporting documents be canceled through the use of a "Paid" stamp or by clearly marking the invoice "Paid" by hand.

e. ELAC does not maintain payroll withholding authorizations for employees. State and Federal laws require that all employers maintain these authorizations Authorization. forms should be obtained from the applicable government agencies and completed by all employees.

2. Significant and unusual transactions noted during the accounting period:

a. The Director of ELAC acted, in fiscal 19XX, as a referee for the Fairfax County courts one day a month. The fees he received for these services were turned over to ELAC and recorded in the general fund. A proportionate amount of his salary for this time was charged to the general fund.

b. In addition to the value recorded in the financial statements for the law library, ELAC has out-of-date law books which would have an approximate value, were they updated, of $5,100. Management estimates it will cost $2,500 to update these volumes. Since these sets have no current value to ELAC, no amount has been recorded for them in the financial statements.

c. At various times throughout 19XX and 19X-1, ELAC borrowed non-interest bearing funds from other programs due to temporary cash shortages. These borrowings amounted to $12,500 and $13,900 from the XYZ Legal Aid Society for fiscal 19XX and 19XX, respectively, and $3,500 from the Fairfax County Economic Action Development Studies Program. All amounts were repaid to the lenders in the same year the funds were received.

d. The office space, currently being rented by the program is owned by ELAC's board chairman. The annual rental charge for similar office space in the area is substantially higher than the rates charged ELAC.

3. ELAC is in compliance with the financial and accounting conditions of the grant except as follows:

During the year ELAC sold equipment with an original cost of $10,000 for $2,000. Management advised us that $2,000 represented the fair market value at the time of sale. We could not independently confirm that the equipment had been advertised, as required by LSC's Property Management Manual, or that $2,000 approximated the fair market value.

4. Costs incurred under the LSC grant were tested by us in accordance with generally accepted auditing standards to the extent such costs came within the scope of our work necessary to issue an opinion on the financial statements. As a result of the examination, $5,828.00 of costs have been listed on Exhibit 1 for a determination by LSC as to whether such costs are in accordance with the criteria of Chapter 4 of the Guide or with the terms of the LSC grant.

5. We reviewed with the Program Director the comments disclosed in the previous audit's supplemental letter. Except for the items listed below, steps had been taken to implement all suggestions by December 31, 19XX.

a. Items (a) and (b) of Section 1 of this letter were included in the previous supplemental letter.

b. Support for a $295 airplane ticket, noted as unsupported in the previous report has not been obtained by the program nor has this exception been cleared to the satisfaction of the LSC monitoring office director.

This letter of comments is furnished solely for the information of management and the Legal Services Corporation and is not to be used for any other purpose.

Very truly yours,
Stewart, Brown & Company

EXHIBIT 1—QUESTIONED COSTS

Date	Check No.	Payee	Amount	Reason for questioning
3/9/XX	264	American Airlines	$295	No supporting documentation to verify business purpose.
7/12/XX	461	Internal Revenue Service	433	Penalty for late filing of payroll taxes. Questioned as an unreasonable or unnecessary cost.
9/12/XX	502	John Smith	5,100	Payments pursuant to a consultant contract for which the prior approval of LSC was not obtained.
			$5,828	

Appendix IV—Accounting Procedures and Internal Control Checklist

The essence of an effective system of internal control is the segregation of duties in such a way that the persons responsible for the custody of assets and conduct of operations have no part in the keeping of, and do not have access to, the records which establish accounting control over the assets and the operations. Duties of individuals should be so divided as to minimize the possibility of collusion, perpetration of irregularities, and falsification of the accounts. The objective is to provide the maximum safeguards practicable in the circumstances, giving due consideration the risks involved and the cost of maintaining the controls.

The following checklist is provided as a guideline for recipients' management to direct attention to practicable revisions of accounting procedures or internal controls which can be made to strengthen, improve, or simplify the existing system. This checklist should not be considered all-inclusive nor are all items considered necessary for all recipients. This is an area where recipients should utilize the expertise of their auditors in a continuing relationship to maximize the services an auditor can provide. The items marked with an asterisk (*) are considered fundamental and essential element of internal controls. There should be few legitimate reasons not to include these as part of each recipient's procedures.

A. General

*1. Has a system of authorizations and approvals been established to require appropriate managerial approval for all significant actions or financial transactions of the organization?

*2. Has a chart of accounts been established to identify all accounts in the accounting system?

*3. Does the organization use the double-entry accounting system?

*4. Are transactions in the accounting records properly authorized, as evidenced by supporting documentation containing the appropriate approving official's signature?

*5. Are bank accounts authorized by the Board of Directors?

*6. Are employees and offices who handle assets or perform significant financial duties bonded?

*7. Are budget controls established to provide a clean cutoff between periods with respect to the recording of support and expenses?

9. Has a general policy with respect to insurance coverage been defined and procedures instituted to insure that all significant business risks have been covered? Is insurance coverage periodically reviewed with a competent insurance agent?

*10. Are journal entries adequately explained, supported, and approved by a responsible officer or employee?

11. Does the recipient prepare and use an annual overall financial plan or operating budget to allocate its resources and provide a system of evaluation and control?

12. Does the recipient have an accounting and financial manual that stipulates the financial duties of employees?

13. Is there an organization chart to show definite lines of responsibility and authority?

14. Are employees required to take annual vacations, and are duties assigned to others in the absence of an

employee on vacation or otherwise absent?

15. Are the accounting policies followed by the organization in agreement with those stipulated by their grants and contracts?

16. Where feasible, are common or indirect costs accumulated into cost pools for later allocation of costs to each project, contract, and grant?

17. Are bases used to allocate cost pools equitable and approved by the various funding organizations?

B. Personnel and Payroll

*1. Are salary and wage rates approved by a responsible officer in writing and are procedures adequate to provide that employees are paid in accordance with approved budget, wage, or salary rates?

*2. Do procedures provide for the proper withholding and payment of applicable Federal, state, and local income and payroll taxes?

3. Are employees furnished information as to their earnings, deductions from earnings, etc., on their payroll stubs?

4. When employees are initially hired, do procedures provide for reference checks and confirmation of prior salary and employment data, and is documentation made of these procedures and maintained as part of the employees' files?

5. Are payroll checks signed by persons having no part in preparing the payroll?

6. Are there personnel policies prohibiting employment of individuals which could result in, nepotism or conflict of interest?

7. Are the payroll bank accounts reconciled by employees who have no other functions with respect to the payrolls?

8. Do procedures followed in reconciling payroll bank accounts include the checking of names on pay checks against payroll records and the examination of endorsements on checks?

*9. Is the reconciliation reviewed critically each month by an officer or responsible employee?

10. Is an independent test made of hours, rates, or other bases of payment by reference to attendance records, employment authorizations, approved rate changes, etc. by someone not connected with the preparation or distribution of the payroll?

11. Are personnel policies established in writing?

*12. Are employees' hours worked approved by the employees' supervisor?

*13. Are records kept on personnel actions including hiring, promotion, dismissal, and resignation of both full-time and part-time employees?

14. Are labor hours charged (distributed) to projects, contracts, and grants based on time distribution records, which identify the total time actually spent by all individuals who charged time directly to projects, contracts, and grants?

15. Are payroll totals checked against labor distribution totals which are compiled from the original time records?

*16. Are payrolls disbursed from an imprest bank account restricted for that purpose?

*17. Do the personnel and/or payroll records include the following or similar records:

a. An attendance record?

b. Vacation, sick and other excused leave records?

c. Individual payroll record form?

d. A payroll register?

e. Notification concerning appointments, terminations, position classifications, and salary rates?

18. When employees work overtime, are there procedures to provide for (where applicable):

a. Authorizing and paying overtime only to employees entitled to receive overtime pay?

b. Recording earned and used compensatory time in lieu of overtime pay?

19. Where duties require employees to spend time away from their officies, do they prepare reports disclosing their weekly or monthly activities?

20. Are duties of those preparing payroll rotated?

*21. Is a "tax return calendar" or other method used to insure timely preparation and filing of various payroll tax returns?

C. Procurement

1. Are supplies in storage reasonably protected from theft, deterioration and damage?

2. Do procedures provide for the solicitation of prices for purchase, rent, and/or lease of fixed assets?

3. Do procedures provide that consideration will be given to the cost advantages of buying versus renting equipment and other nonexpendable property?

4. Are approved vendor lists used for recurring purchases?

*5. Does the recipient have a systematic method for determining what supplies are needed and in what quantities?

6. Are prenumbered purchase orders used and appropriate authorization obtained prior to purchase, rent, or lease of equipment and supplies.

7. Are receiving documents prepared (e.g. receiving log or ticket) and inspection of goods made without reference to purchase order?

8. Are invoices, purchase orders and receiving documents compared and accounted for by person not having any other purchase or receiving functions?

9. Are purchase orders outstanding for long periods of time investigated?

E. Legal Consultants/Contract Services

*1. Are procedures in effect to provide for formal approval by the Monitoring Office Director, Board of Directors, or other high level authority, or consultant and contract service agreements over prescribed limits?

*2. Are there adequate procedures to ensure that all necessary funding source approvals are obtained prior to entering into contracts?

3. Do procedures provide for the solicitation of proposals or bids prior to contract award?

*4. Are contracts written so that the services to be rendered are clearly defined?

5. Does the organization have controls for determining whether contracts are properly executed?

F. Travel

*1. Does the organization have formal written travel policies?

*2. Is adequate support (e.g. lodging receipts, air fare tickets) received from an employee before reimbursement for travel expenses is made?

*3. Are there adequate controls over the accounting for advances and reimbursements for travel expenses made to employees?

4. For out-of-town travel, do employees prepare trip reports documents the reasons and/or the results of the trip?

G. Controls Over Cash Disbursements

*1. Are all checks prenumbered?

*2. Are all payments, except those made from petty cash, made by check?

*3. Are persons who sign checks designated by the Board of Directors?

*4. When checks (except payroll) are presented for signatures, are the supporting vouchers and invoices also presented?

*5. Are there appropriate controls to assure that payments are made only for allowable items of costs, as defined by the terms of the respective contracts and grants?

*6. Are there procedures to insure that checks are never drawn payable to:

a. Officers or employees with the understanding that the cash is to be used for organization purposes (other

than for travel reimbursements, petty cash reimbursements, etc.)?

b. Cash, bearer, or similar payee which renders the check payable to bearer?

c. Other payee when the payee named is not intended as the party to retain the funds?

7. Are written accounting policies and procedures established to describe the accounting system and assure that similar transactions are processed consistently?

*8. Are there procedures to insure that blank checks are never signed in advance?

*9. Have there been procedures adopted to insure that the names of individuals once authorized as check signers are not retained in the signature lists on file with the banks after the individuals have left the employ of the recipient or have been transferred to duties incompatible with check signing?

*10. Is there an appropriate system for filing checks, check copies, and supporting documents; and are supporting documents filed in such a manner so as to be readily located?

11. Are supporting documents marked paid or otherwise canceled and the check number and date of payment indicated to prevent duplicate payments?

12. Is a check protector used?

13. Where a mechanical check signer is used, is the signature die under adequate control?

H. Controls Over Cash Receipts

*1. Are cash receipts deposited currently and intact?

*2. Does the accounting system identify the receipt and expenditure of program funds separately for each contract and grant requiring separate reporting?

3. Are bank-stamped duplicate deposit slips compared with the Cash Receipts Journal?

*4. Does the employee who opens the mail list the receipts in detail in a cash receipts log and is this record used by someone independent of other accounting functions to verity the amount recorded in the general ledger and deposited in the bank?

I. Bank Reconciliation Procedures

*1. Are bank accounts reconciled monthly?

2. Does the reconciliation procedure include:

*a. Comparison of checks with cashbook as to number, date, payee, and amount?

b. Examination of signatures and endorsements, and procedures for the return of inadequately endorsed checks, paid by banks, to the banks for proper endorsements?

*c. Examination of voided checks?

*d. Accounting for serial numbers of checks?

e. Comparison of dates and amounts of daily deposits as shown by the cash receipts records with the bank statements?

f. Test-check of details shown on authenticated duplicate deposit slips obtained directly from the banks against the corresponding details in the cash receipts records?

*3. Are bank statements and paid checks delivered unopened directly to the person preparing the reconciliaton?

J. Segregation of Duties

1. Does the bookkeeper's duties exclude the following functions:

a. Receive cash or checks?

b. Open the incoming mail?

c. Prepare bank deposits?

d. Sign checks?

2. Does an individual other than the person who prepares the bank deposit slip actually deposit the cash in the bank?

3. Is the mail opened by a person who does not prepare the bank deposit?

4. Do the duties of the person preparing the bank reconciliation exclude:

a. Posting to the books of account?

b. Handling cash?

c. Signing checks?

5. Are checks, after being signed, controlled and mailed out by an individual who does not have any other accounting duties?

K. Petty Cash Controls

*1. Is responsibility for the petty cash fund vested in only one person?

*2. Are petty cash vouchers:

a. Required for each petty cash disbursement?

b. Signed by the recipient of the cash disbursed?

c. Executed in ink?

d. Approved by a responsible person?

*3. Are petty cash disbursements evidenced by properly approved supporting data?

*4. Are supporting data for petty cash disbursements checked at time of reimbursement?

*5. Are petty cash reimbursements made payable directly to the petty cash custodian by name rather than to cash, bearer, etc.?

*6. Are petty cash funds maintained on an imprest basis?

*7. Are there procedures to insure that the cash receipts are not commingled with the petty cash fund?

8. When the petty cash fund is reimbursed, is a notation of payment made on the supporting data to prevent duplicate payment?

9. Is the petty cash bank account reconciled by an employee independent of the petty cash custodian?

10. Are petty cash funds audited by surprise counts by an independent person to ensure the fund does not include personal checks, IOU's etc., and that the petty cash fund balances?

L. Client Deposits Controls

*1. Are client funds deposited into a bank account used only for the client's intended purpose?

*2. Was the client trust bank account approved by the Board of Directors?

3. Are two signatures required on checks?

4. Is the account reconciled by an individual not involved with client deposit operations?

*5. Are prenumber receipts given to clients for all checks and cash received?

*6. Are the following records maintained for the accounts?

a. A receipts book with pre-numbered receipts.

b. A cash disbursements journal.

c. A detailed record of the activity for each client's deposit.

Appendix V—Accounting for Property

V–1 Capitalization

The following illustrates the accounting entries to record the purchase of equipment using LSC funds. The cost of the equipment is assumed to be $52,000 and the account numbers are taken from the chart of accounts which is illustrated in paragraph 2–3.1 of Chapter 2.

Illustration 1.1—To record equipment purchased with cash.

Dr: Acquisition of property	$52,000
Cr: Cash	$52,000

To record the cost of property in a property acquisition account which will be closed to the appropriate fund balance at year-end.

For management reporting purposes, fixed asset purchases are treated as expenses during the year and closed to the appropriate fund balance as a fund transfer along with all support and expense accounts at year-end.

Illustration 1.2—A second entry is required (normally made quarterly or at the end of the year) to record the asset in a balance sheet accounting.

Dr: Furniture, Fixtures, Equipment	$52,000
Cr: Fund Balance—Property	$52,000

Illustration 2.1—To record equipment financed partially by debt.

(a) Dr: Acquisition of Property	$2,000
Dr: Furniture, Fixtures, and Equipment	$50,000

Cr: Cash	$2,000
Cr: Note Payable	$50,000
(b) Dr: Furniture, Fixtures, and Equipment	$2,000
Cr: Fund Balance—Property	$2,000

To record: (a) The purchase of equipment costing $52,000 with a $2,000 cash downpayment with the balance financed by a $50,000 note. A second entry (b) similar to the second entry in Illustration 1.2 is necessary to record the cash portion of the asset cost in the balance sheet account—Furniture, Fixtures and Equipment.

Illustration 2.2—To record periodic payments on the note payable.

(a) Dr: Acquisition of Property	$4,000
Dr: Interest Expense	500
Cr: Cash	4,500
(b) Dr: Note Payable	$4,000
Cr: Fund Balance—Property	$4,000

To record (a) payments of debt installments in the Acquisition of Property account (which will be closed to the applicable fund balance) and the related interest expense; and (b) to record the increase in equity in the Property Fund resulting from payments on the Note Payable.

The Acquisition of Property account should be reported in the changes in fund balance section of the Statement of Activity as an increase in the property fund balance and a decrease in the applicable operating fund balance—in this case, the LSC fund balance.

When a recipient has historically expensed property and such property is still in use, an entry to capitalize these assets can be made by recording the furniture, fixtures or equipment at its original cost, less accumulated depreciation. In the absence of accurate historical cost records, an appraisal or other estimate of the cost will be satisfactory. A cost-based appraisal contemplates recording property on the basis of catalog prices, vendor price lists, or another reasonable source. Each recipient should exercise judgment in using a reasonable method to determine an amount to be capitalized.

V–2 Depreciation

LSC suggests that the straight-line depreciation method, with the following guidelines for estimated useful lives, be followed. Internal Revenue Service guideline lives or other criteria may be used if a recipient believes the criteria below are not appropriate for the program's assets.

Buildings	30 to 40 years.
Furniture, fixtures, and equipment.	5 to 10 years.
Leasehold improvements.	Term of lease or life of improvements whichever is shorter.

Using the earlier example, assuming a useful life of ten years, a salvage value of $6,000 and depreciation computed on the straight-line method, depreciation on the equipment for one year is $4,600 ($46,000 divided by 10) and would be recorded in the property fund as follows:

Dr: Depreciation and Amortization Expense	$4,600
Cr: Accumulated Depreciation—Furniture, Fixtures and Equipment	$4,600

During the year of acquisition or disposal, the recipient should record one-half year's depreciation expense for convenience.

Depreciation may be computed on an item-by-item or group basis. The item-by-item basis is probably the simplest method when a program has few items. The group basis consolidates similar type items (i.e.—all furniture, all office equipment, etc.) purchased during a year (vintage-year) and considers them as one group (i.e., furniture, equipment, etc.). Therefore, depreciation records are maintained for the group instead of each individual item within the group. The clerical effort required is significantly reduced using the "vintage year" method when there are a large number of assets.

However, a record detailing original cost of each item within the group should be maintained by year to be used if particular items are sold or retired before they are fully depreciated (this subject will be discussed later). Depreciation for groups of assets is computed identically as depreciation for an individual item which was illustrated in the previous paragraph.

V–3 Sales

The net gains or losses from the sale of property and equipment should be reported as revenue or expense in the property fund. Gain or loss on a transaction is defined as the difference between the sales proceeds and the net book value of the asset (original cost reduced by accumulated depreciation to the date of sale).

Proceeds from the sale of LSC property are not, as a general policy, required by LSC to be reinvested in property. Proceeds, if not reinvested in property, should be transferred to the LSC fund balance and used for general program purposes, which would not result in a permanent increase in annualized funding requirements. Sales or other dispositions of property must be completed in accordince with the provisions of LSC's Property Management Manual.

The following illustrates the recording of a sale when a gain (Illustration 1) is realized or a loss (Illustration 2) is incurred:

Illustration 1—Sale of equipment at more than net book value.

Assumptions:

a. Equipment was originally purchased for $52,000.
b. At time of sale, accumulated depreciation was $46,000.
c. Asset was sold for $20,000.

Sales of assets can be recorded most conveniently by utilizing the following two entries.

1. The first entry is necessary to record the transaction when it occurs.

Dr: Cash	$20,000
Dr: Accumulated Depreciation	46,000
Cr: Furniture, Fixtures, and Equipment	52,000
Cr: Gain on Sale of Property	14,000

To record the receipt of a cash payment for property sold; clear the related asset and accumulated depreciation accounts; and record the gain on the sale.

2. The second entry can be made as a closing entry monthly, quarterly, or at year-end.

Dr: Fund Balance—Property	$20,000
Cr: Proceeds from Sale of Property	20,000

To relieve the property fund balance for the unadjusted original cost ($6,000) and gain ($14,000) being carried therein, and record the related proceeds from the sale in the LSC fund.

Illustration 2—Sale of equipment at less than net book value.

Assumptions: Some as Illustration 1 except that the equipment was sold for only $1,000.

1. Again, the first entry is necessary to record the transaction when it occurs.

Dr: Cash	$1,000
Dr: Accumulated Depreciation	46,000
Dr: Loss on Sale of Property	5,000
Cr: Furniture, fixtures, and equipment	52,000

To record the receipt of a cash payment for property sold; clear the related asset and accumulated depreciation accounts; and record the loss on the sale.

2. The second entry again can be made as a closing entry monthly, quarterly, or at year-end.

Dr: Fund Balance—Property	$1,000
Cr: Proceeds from Sale of Property	1,000

To relieve the property fund balance for the remaining unadjusted original cost ($1,000) and record the proceeds from the sale in the LSC fund.

V–4 Vintage-Year Adjustments

When the group (vintage-year) method is used, gains or losses are recorded similarly. If an item is included in a group being depreciated over ten years, and four years depreciation has been recorded at the time of the sale, then the basis (i.e., cost less accumulated depreciation) for the item is 6/10 of its historical cost.

It should be noted that when an item is removed from a "group" account, the annual depreciation of that group must be adjusted for the item deleted. For example, assume a group originally consisted of ten items costing $1,000 in total and depreciated over ten years (depreciation expense is $100 per year). If one item costing $100 was sold after five years (50% of useful life) the computation of subsequent years' depreciation would be as follows:

Cost of remaining property ($1,000 − $100) = $900
Divided by useful life of 10 years = $90 annual depreciation

V–5 Write-Offs

Amounts required to be written off through abandonment or other loss should be recognized as expense in the property and equipment fund. The following illustrates the write-off of equipment originally costing $52,000 with accumulated depreciation of $46,000 at date of abandonment:

Dr: Loss on abandonment of equipment	$6,000	
Dr: Accumulated depreciation—Furniture, fixtures, and equipment	46,000	
Cr: Furniture, fixtures, and equipment		52,000

Appendix VI—Functional Classification of Expenses

The Accounting Standards Subcommittee on Nonprofit Organizations of the American Institute of Certified Public Accountants (AICPA) has published recommendations with respect to accounting and reporting by nonprofit organizations which were not previously covered by industry guides. Legal services programs are included in this category. The recommendations from that Committee are contained in a "Statement of Position No. 78–10" dated December 31, 1978.

The functional basis of accounting requires the addition of a Statement of Expenses by Function. The Statement of Expenses by Function analyzes both natural expense categories and functional activities of the organization.Tthe resulting statement is illustrated in the exhibit immediately following.

Purpose

It is important to bear in mind the twofold benefits to the functional expense statement. This statement provides meaningful information to third parties, such as the general public, the Corporation, Congress and other funding sources. Further, it is a management tool. It assists program managers to better discern the operational progress of the grantee, improve supervision, set service priorities and to direct its future. The Corporation believes that improvement and standardization of management information for all programs is a necessary and desirable goal, since greater managerial and administrative efficiency should help management provide more legal services within existing budgetary contraints.

Accordingly, the Board of Directors of the Legal Services Corporation has adopted a policy requiring the reporting of expenses on a functional basis for all financial reports for periods ending on or after December 31, 1986. This policy is effective for the Corporation and all recipients.

Practical Considerations of Implementation

The Functional Statement of Expenses (Statement) provides more detailed information on the use of resources by a program. Naturally, as with all budgetary and reporting processes, certain expenses are directly related to given effort. Other expenses are not as readily tied to a given activity. Therefore, these costs are allocated on some rational, consistent and reliable basis. The process of allocating the expenses not directly related to a specific effort is critical in the development of the Statement. The actual construction and format of the Statement is process tailored by the resources, characteristics and information needs of each program. A general discussion of the process follows.

The construction of the Statement is a three step process:

—*Natural Expense Categories.* The left most column of the Statement follows the conventional object class. These categories reflect the *type* of expenses incurred.

—*Functional Area Column Headings.* The column headings are "functional areas" of the program. They are first broken into Staff Attorney Services, PAI Service, Supporting Services, and Legislative and Administrative advocacy category, and then into more detailed subcategories. These categories reflect the *purpose* for which a given expense was incurred.

The Client Services subcategory headings are based on a determination of the areas of the law in which the program provides significant levels of service. The step includes consideration of the published priorities of the program. Concurrent with this, the relevant CSR codes are assigned.

The Supporting Services subcategories are descriptive of those activities not specifically and directly tied to client service. The Corporation has determined that Administrative (unallocated management and general) and Fundraising are necessary for the dual purposes of internal management and disclosure to third parties, such as the general public, the Corporation, Congress and other funding sources. Regardless of program funding level, expense in these areas, if any, should be separately categorized in an effective statement.

—*Allocation of Expense Into Functional Areas.* The allocation of expenses in the appropriate columns is the final and most critical step in the preparation of a useful Statement. As discussed above, each natural expense category has different characteristics to be considered in the allocation process. Evaluation of these characteristics requires the judgment and expertise of a program's managers, financial personnel, and outside auditor. By definition, functional accounting requires a high degree of sensitivity to the priorities, operations, and goals of a given program. Equally important is the consistent application of the allocation method from year to year.

Programs are referred to the AICPA Statement of Position, the relevant FASB pronouncements and their outside auditor for assistance. Further guidelines, training and technical assistance are available through the Corporation.

The following financial statements illustrate Multi-Service Corporation's annual report presented on a functional basis of accounting.

BILLING CODE 6820-35-M

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MULTI-SERVICE CORPORATION
STATEMENT OF EXPENSES BY FUNCTION
for the year ended 12/31/86

All amounts in dollars

	CLIENT SERVICE - STAFF ATTORNEYS					CLIENT SERVICE	SUPPORTING SERVICES		SEC. 1612	COMPARATIVE TOTALS	
	Priority 1	Priority 2	Priority 3	Priority 4	Other Legal	PAI	Administrative	Fund Raising	Legis/ Admin. Advocacy	1986	1985
CSR CODES	01-09	30-39, 11	61-69	71-79	All Other						
Salaries and Wages											
Lawyers	463,050	279,000	360,150	158,000	205,800	20,000	79,000	34,760	15,800	1,615,560	1,475,000
Paralegals	28,800	26,500	22,400	7,000	12,800	25,250	3,000	1,320	600	127,670	111,111
Other Staff	13,500	10,400	10,500	8,500	6,000	6,600	11,050	4,862	2,210	73,622	76,889
Employee Benefits	58,050	22,500	45,150	19,000	25,800	3,165	10,500	4,620	2,100	190,885	171,400
Subtotal	563,400	338,400	438,200	192,500	250,400	55,015	103,550	45,562	20,710	2,007,737	1,834,400
Space											
-Rent	26,000	62,600	18,400	3,900	11,100	6,750	18,500	6,200	3,200	156,650	110,000
-Other Payments	1,730	11,000	3,090	6,000	1,180	2,240	3,750	900	650	30,540	30,140
Equipment Rental	23,850	12,500	18,550	12,500	10,600	1,070	3,900	1,976	780	85,726	115,777
Office Supplies and Expense	22,050	10,100	17,150	10,010	9,900	3,850	7,790	3,388	1,540	85,778	84,500
Telephone	7,600	3,800	7,208	4,355	4,680	3,770	6,655	2,350	2,010	42,428	86,900
Travel											
-Staff	14,450	18,975	14,707	5,900	8,050	1,420	5,800	2,500	1,160	72,962	14,000
-Non staff	0	0	230	0	350	7,300	1,088	0	0	8,968	9,327
Training											
-Staff	1,800	1,270	1,600	0	1,990	0	600	0	0	7,260	7,550
-Non staff	0	0	0	0	0	10,800	0	0	0	10,800	11,232
Library	275	1,450	1,650	275	1,210	550	0	0	275	5,685	5,912
Insurance	1,875	1,200	1,325	1,010	2,110	0	1,675	0	205	9,400	9,776
Dues and fees	605	205	310	605	470	0	100	0	0	2,295	2,387
Audit	2,000	2,000	2,000	2,020	4,000	3,000	2,000	2,000	400	19,420	20,197
Litigation	4,410	3,500	3,430	3,200	1,960	0	0	0	400	16,900	17,576
Contract Svcs - Clients	39,000	30,500	31,100	10,800	14,580	288,705	0	0	0	414,685	431,272
Contract Svcs - Program	0	4,200	0	0	3,000	1,500	14,550	2,900	0	26,150	27,196
Other	5,100	4,508	3,202	1,200	2,020	3,649	4,200	655	167	24,701	25,689
Subtotal	150,745	167,808	123,952	61,775	77,200	334,604	70,608	22,869	10,787	1,020,348	1,009,431
Depreciation	4,860	5,100	3,780	3,100	2,160	2,936	2,450	1,878	490	26,754	27,824
TOTAL	$719,005	$511,308	$565,932	$257,375	$329,760	$392,555	$176,608	$70,309	$31,987	$3,054,839	$2,871,655

The accompanying footnotes are an integral part of this statement. [However they have been omitted from this Audit Guide example.]

BILLING CODE 6820-35-C

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8. United Way of America. *Accounting & Financial Reporting, A Guide for United Way and Not-For-Profit Human Service Organizations.* Alexandria, Va., Author, 1974.

[FR Doc. 85-28226 Filed 11-27-85; 8:45 am]

BILLING CODE 6820-35-M

federal register

Friday
November 29, 1985

Part V

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

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 5.1 (including the statutes listed at 36 FR 306 (1970) 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, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). 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 the 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 5.1 (including the statutes listed at 36 FR 306 (1970) 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, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). 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 Program Operations, Division of 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.

Louisiana:		
	LA85–4020	Aug. 9, 1985.
	LA84–4059	Oct. 5, 1984.
Nebraska:		
	NE85–4033	Aug. 16, 1985.
New Mexico:		
	NM85–4014	June 14, 1985.
New York:		
	NY84–3018	July 6, 1984.
	NY84–3036	Sept. 14, 1984.
	NY85–3026	May 10, 1985.
Oregon:		
	OR85–5030	June 28, 1985.
Pennsylvania:		
	PA84–3002	Feb. 10, 1984.
	PA84–3037	Oct. 5, 1984.
	PA85–3017	Apr. 5, 1985.
	PA85–3030	June 21, 1985.
	PA85–3037	Aug. 9, 1985.
	PA85–3054	Oct. 11, 1985.
Texas:		
	TX85–4050	Nov. 15, 1985.
	TX85–4018	June 14, 1985.
Virginia:		
	VA85–3025	May 3, 1985.
Washington:		
	WA85–5039	Oct. 11, 1985.
	WA85–5038	Oct. 4, 1985.
	WA85–5037	Sept. 20, 1985.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decision being modified 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 decision being superseded.

New York:		
	NY84–3018(NY85–3055)	July 6, 1984.
Oklahoma:		
	OK85–4011(OK85–4051)	May 10, 1985.
	OK85–4012(OK85–4052)	Do.
South Dakota:		
	SD81–5150(SD85–5043)	Sept. 4, 1981.

Signed at Washington, DC this 15th day of November 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #LA85-4020-MOD.85
(50 FR 32351 - 8/9/85)

STATEWIDE, LOUISIANA

OMIT:

	Basic Hourly Rates	Fringe Benefits
Line Construction:		
Lineman	$12.10	$1.25+ 3.75%
Groundman	5.85	1.25+ 3.75%
Winch Truck Operator & Tractor Driver	8.72	1.25+ 3.75%
Hole Digger Operator	10.47	1.25+ 3.75%

ADD:

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Zone 1:		
Lineman	16.45	1.68+9%
Hole digging equipment; tractor w/winch & derrick working hot lines	75%JR	1.68+9%
Pole truck & trailer or pole hauling & setting truck (not energized lines)	65%JR	1.68+9%
Truck w/o winch	45%JR	1.68+9%
Groundman	50%JR	1.68+9%
Zone 2:		
Lineman	17.64	13.80%
Cable Splicers	17.89	13.80%
Heavy equipment opers.	75%JR	13.80%
Truck Drivers & Groundman	45%JR	13.80%
Zone 3:		
Lineman, Equipment opers.	17.70	2.00+ 3.10%
Cable Splicers	18.20	2.00+ 3.10%
Groundman	15.70	2.00+ 3.10%
Zone 4:		
Lineman, equipment oper.	14.60	.70+3%
Cable Splicers	14.85	.70+3%
Groundman	50%JR	.70+3%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Zone 5:		
Lineman, equipment opr.	15.36	3.5%
Cable Splicers	15.61	3.5%
Groundman	40%JR	3.5%
Zone 6:		
Lineman, equipment opr.	16.15	1.15+ 3.5%
Cable Splicers	16.65	1.15+ 3.5%
Groundman	4.19	1.15+ 3.5%
Zone 7:		
Lineman, Operators	16.25	2.40+ 3.75%
Cable Splicers	16.25	2.40+ 3.75%
Groundman	13.65	2.40+ 3.75%
CHANGE:		
Electricians:		
Zone 7:		
Electricians	12.70	2.56+ 3%
Cable Splicers	13.20	2.56+ 3%

DECISION #LA85-4020-MOD.85 CONT'D

ZONE DEFINITIONS FOR LINE CONSTRUCTION

ZONE 1 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northeast of the Atchafalaya River) & Terrebonne Parishes

ZONE 2 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Parishes

ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Pars.

ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes

ZONE 5 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.

ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Parishes

ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Pars.

DECISION #LA84-4059-MOD.#5
(49 FR 39431 - 10/5/84)

Jefferson, Orleans, St. Bernard, Bossier, Caddo, Calcasieu, Strategic Petroleum Reserve in Cameron Parish, Beauregard, Cameron, Jefferson Davis, Allen, Plaquemines, and St. Charles Parishes, Louisiana

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Zone 2:		
Electricians	$12.70	$2.56+ 3%
Cable Splicers	13.20	2.56+ 3%
PAINTERS:		
Zones 3, 4, & 5 (Allen Parish, except northeast corner)		
New Construction	12.45	.60
All other work	11.65	.60

DECISION NO. NE85-4033 - MOD. #3
(50 FR 33154 - 8/16/85)
Lancaster Co., Nebraska

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Electricians	$10.30	1.60

DECISION NO. NY84-3018
MOD. #4
(49 FR 27899 - July 6, 1984)
CATTARAUGUS, CHATAUQUA & ERIE COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS		
Area 1	17.02	5.36
Area 2	17.75	3.40

DECISION #NM85-4014-MOD.#4
(50 FR 24997 - 6/14/85)

STATEWIDE (EXCLUDING EDDY & LEA COUNTIES FOR BUILDING CONSTRUCTION IN NEW MEXICO)

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area 1		
Mechanics	$16.335	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	
Area 2:		
Mechanics	12.52	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	

DECISION NO. NY84-3036
MOD. # 8
(49 FR 36230 - September 14, 1984)
ONONDAGA COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
STEAMFITTERS	16.945	4.42

DECISION NO. NY85-3026
MOD. #2
(50 FR 19856 - May 10, 1985)
MONROE COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
GLAZIERS	14.86	3.68

(5)

DECISION NO. PA85-3030
MOD. NO. 4
(50 FR 25852 - June 21, 1985)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Group 1	$16.52	.50+ 26.6%+ a
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. PA85-3037
MOD. NO. 2
(50 FR 32369 - August 9, 1985)
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (HEAVY CONSTRUCTION)		
ZONE I		
Group 1	15.89	.50+ 26.6%+ a
Group 2	15.60	"
Group 3	14.72	"
Group 4	13.95	"
Group 5	13.47	"
Group 6	12.55	"
Group 7	16.14	"
Group 7-A	16.41	"
Group 7-B	16.64	"

(6)

DECISION NO. PA85-3037, MOD. NO. 2, CONT'D.

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATOR		
ZONE II		
Group 1	16.52	.50+ 26.6%+ a
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. PA84-3002 - MOD. #12
(49 FR 5295 - Feb. 10, 1984)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
Group 1	16.52	.50+26%
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. ORS5-5030 - Mod #5
(50 FR 26893 - June 28, 1985)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLASTERERS:		
Area 2	$15.78	$4.01

DECISION NO. PA85-3017 - MOD. #4
(50 FR 13702 - April 5, 1985)
Carbon Monroe County, including Tobyhanna Army Depot and Pike County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
Group 1	16.52	.50+26%
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. PA84-3037 - MOD. #5
(49 FR 39436 - October 5, 1984)
Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
Group 1	16.52	.50+26%
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"

DECISION NO. PA85-3054 - MOD. #1
(50 FR 41628 - October 11, 1985)
Berks, Lehigh & Northampton Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
Group 1	16.52	.50+26%
Group 2	16.23	"
Group 3	15.17	"
Group 4	14.52	"
Group 5	13.26	"
Group 6	12.36	"
ADD:		
PLASTERS		
Zone 3		
To read Northampton Co.		

(7)

DECISION #TX85-4050-MOD.#1
(50 FR 47337 - 11/15/85)

JEFFERSON & ORANGE COUNTIES, TEXAS

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters:		
Northern 1/2 of Jefferson County:		
Brush & hand cleaning operations:		
Commercial	$12.71	$1.79
Residential	12.00	1.79
Spray, roller, vinyl, tape, float, texture, paper, sign painters, & power tool operations:		
Commercial	13.31	1.79
Residential	12.50	1.79

DECISION NO. VA85-3025-MOD. #6
(50 FR 18966-May 3, 1985)
RADFORD ARMY AMMUNITION PLANT, VIRGINIA

	Basic Hourly Rates	Fringe Benefits
ADD:		
TRUCK DRIVERS	$8.10	$ .45

DECISION NO. WA85-5037 - Mod #2
(50 FR 38405 - Sept. 20, 1985)
CHELAN, CLALLAM, GRAYS HARBOR, JEFFERSON, KING, KITSAP, KITTITAS, LEWIS, MASON, PIERCE, SNOHOMISH, THURSTON, PACIFIC (Northern Portion), and the areas of DOUGLAS & OKANOGAN Counties lying West of the 120th Meridian

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$19.67	$4.50

DECISION NO. WA85-5038 - Mod #2
(50 FR 40782 - October 4, 1985)
Adams, Asotin, *Benton, Columbia *Douglas, Ferry, *Franklin, Garfield, Grant, Lincoln, *Okanogan, Pend Oreille, Stevens Walla Walla and Whitman Counties, Washington.

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS:		
D.O.E. Hanford Site	$17.92	$4.71
Remaining area	18.26	4.71
TRUCK DRIVERS: Area 1:		
D.O.E. Hanford Site in Benton & Franklin Counties:		
Escort or pilot car driver, Tender & Swamper, Pickup hauling materials or employees	12.75	4.10
Group 1	14.94	4.10
Group 2	14.98	4.10
Group 3	15.04	4.10
Group 4	15.13	4.10
Group 5	15.34	4.10
Group 6	15.38	4.10
Group 7	15.44	4.10
Group 8	15.48	4.10
Group 9	15.59	4.10
Group 10	15.63	4.10
Group 11	15.94	4.10
Group 12	16.08	4.10
Group 13	16.24	4.10
Group 14	16.38	4.10
OMIT:		
GROUP DESCRIPTIONS:		
Truck Drivers Area 1:		
Group 1: Omit Tender and Swamper: Pick-up hauling material		
Group 5: Transit mixers and trucks, 4001 to 6000 gallons, flaherty spreaker.		
ADD:		
GROUP DESCRIPTIONS:		
Truck Drivers Area 5:		
Group 5: Transit mixers & trucks hauling concrete over 3 yd to 6 yd; Water tank truck 4001-6000 gallons		
Group 6: Burner, cutter and welder		

(8)

MODIFICATIONS P. 7

DECISION NO. WA85-5039 - Mod #2	Basic Hourly Rates	Fringe Benefits
(50 FR 41631 - Oct. 11, 1985) Statewide Washington		
CHANGE:		
CARPENTERS:		
Area 3: (See Footnote "a" regarding cost of project):		
Carpenters, automatic nailing machine, form stripper, and manhole builder	$17.02	$4.02
Floor layer, stationary power saw operator	17.17	4.02
Millwright & machine erector	17.27	4.02
Certified welder	17.42	4.02
Piledriverman, bridge, dock and wharf builder	17.12	4.02
Boom man	17.22	4.02
Zone Differential (Add to Zone 1 rates):		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.79		
Zone 5 2.75		
IRONWORKERS:		
D.O.E. Hanford Site	17.92	4.71
Remaining Area	18.26	4.71
TRUCK DRIVERS:		
AREA 4: D.O.E. Hanford Site: Escort or pilot car driver, Tender & sweeper, Pickup hauling material or employees	12.75	4.10
Group 1	14.94	4.10
Group 2	14.98	4.10
Group 3	15.04	4.10
Group 4	15.13	4.10
Group 5	15.34	4.10
Group 6	15.38	4.10
Group 7	15.44	4.10
Group 8	15.49	4.10
Group 9	15.59	4.10
Group 10	15.63	4.10
Group 11	15.94	4.10
Group 12	16.08	4.10
Group 13	16.24	4.10
Group 14	16.38	4.10

	Basic Hourly Rates	Fringe Benefits
OMIT:		
GROUP DESCRIPTIONS:		
TRUCK DRIVERS - Area 4:		
Group 1: Omit tender and Sweeper: Pickup hauling materials		
Group 5: Flaherty spreader		
ADD:		
GROUP DESCRIPTIONS:		
TRUCK DRIVERS - Area 4:		
Group 5: Transit mixers and trucks hauling concrete over 3 yd to 6 yd; Water tank truck 4001-6000 gallons		
Group 6: Burner, cutter, and welder		

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SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTIES: CATTARAUGUS, CHAUTAUQUA & ERIE

DECISION NO. NY85-3055

DATE: Date of Publication

Supersedes Decision No. NY84-3018 dated July 6, 1984 in 49 FR 27899.

DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) and Highway construction projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.35	4.16
BOILERMAKERS	18.50	5.20
BRICKLAYERS:		
Area 1:		
Bricklayers, stone masons, pointers, cleaners, caulkers	16.66	6.30
Marble setters	16.375	6.30
Tile & Terrazzo Workers	16.28	6.30
Area 2	13.74	3.08
CARPENTERS:		
Area 1:		
Carpenters	15.23	5.375
Millwrights	15.33	5.375
Area 2:		
Building Construction:		
Carpenters, millwrights & soft floor layers	16.53	6.40
Piledriverman & dockbuilders	16.53	6.40
Heavy & Highway (except Erie County)		
Carpenters & Piledriverman	10.69	6.405+a
Area 3:		
Building Construction:		
Carpenters	12.81	2.98
Light commerical up to and including $90,000		
Millwrights & Piledrivermen	13.06	2.98
Heavy & Highway Carpenters	14.36	2.985 +a
CEMENT MASONS:		
Area 1:		
Cement masons	18.33	3.00
Swing Scaffold	18.60	3.00
Area 2:		
Heavy & Highway	14.43	2.98+b
ELECTRICIANS:		
Area 1:		
Electrician	17.89	5.15+ 3%
Cable Splicer	18.39	5.15+ 3%

	Basic Hourly Rates	Fringe Benefits
Area 2:		
Electrician	16.50	5.00+ 4%
Cable splicer	17.25	5.00+ 4%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Elevator Constructors	18.62	3.290 +c+d
Helpers	13.03	3.290 +c+d
Probationary Helper	9.31	
GLAZIERS	15.98	4.71
IRONWORKERS:		
Area 1:		
Jobs on which the total project cost is $3 million or less	15.01	2.62
Jobs on which the total project costs is over $3 million	16.68	2.62
Pre-engineered buildings	11.50	2.62
Area 2:		
Structural, ornamental, rodman, riggers, reinforcement, steel welders, machinery mover	15.93	5.66
Sheeter	16.33	5.66
Fence erector	14.53	4.16
Layout	16.43	5.66
Area 3:		
Structural, connector, welder, reinforcing, rodman, ornamental, riggers, machinery movers, fence erector, stone derrick	17.95	3.52
Sheeter	19.49	3.52
LABORERS (Building):		
Area 1:		
Class 1	13.745	4.21
Class 2	13.845	4.21
Class 3	13.895	4.21
Class 4	13.945	4.21
Class 5	13.995	4.21
Class 6	13.745	4.21

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DECISION NO. NY85-3055

	Basic Hourly Rates	Fringe Benefits
LABORERS (BUILDING) COND'T		
Area 2:		
Class 1	10.23	2.40
Class 2	10.38	2.40
Class 3	10.48	2.40
LABORERS (Free Air Tunnel):		
Area 1:		
Class 1	13.445	4.21
Class 2	13.695	4.21
Class 3	14.195	4.21
Class 4	14.295	4.21
Class 5	14.695	4.21
Class 6	14.945	4.21
Area 2:		
Class 1	15.40	2.30+e
Class 2	15.60	2.30+e
LABORERS (Heavy & Highway):		
Area 1:		
Class 1	12.945	4.21
Class 2	13.145	4.21
Class 3	13.345	4.21
Class 4	13.545	4.21
Area 2:		
Class 1	11.79	2.30+e
Class 2	11.99	2.30+e
Class 3	12.19	2.30+e
Class 4	12.39	2.30+e
LINE CONSTRUCTION		
Substations and switching sturctures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Line; Technician	17.75	4.35+a +6%
Cable Splicer	19.525	4.35+a +6%
Groundman digging machine operator: dynamite man	15.975	4.35+a +6%
Groundman truck driver (tractor trailer unit)	15.088	4.35+a +6%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+a +6%
Groundman	10.098	4.35+a +6%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+a +6.25%
Groundman digging machine operator; groundmen dynamite man	15.147	4.35+a +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+a +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+a +6.25%
Groundman	10.098	4.35+a +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+a +6.25%
Groundman digging machine op. dynamite man	17.649	4.35+a +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+a +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+a +6.25%
Groundman	10.098	4.35+a +6.25%
MARBLE, TILE & TERRAZZO FINISHERS	15.19	4.17
PAINTERS:		
Area 1:		
Repaint (except bridges, and tanks)	13.46	4.86
Brush & Roll	14.96	4.86
Tapers	15.21	4.86
Spray; spraying mastic; vinyl or paperhangers; sandblasting; swinging and water blasting; swinging scaffold or boatswain chair; stage or chair on building over 25 ft. from ground level; steeplejack used painting steel tanks, smokestacks and church steeples; steel paintings	15.96	4.86

DECISON NO. NY85-3055

	Basic Hourly Rates	Fringe Benefits
PAINTERS (COND'T)		
Domshaped tanks on legs or stilts over 50 ft. from ground	16.955	4.86
Bridges	16.955	4.86
Area 2:		
Brush	15.65	4.48
Wallcovering, paperhanging, epoxy or similar coatings, spraying, sandblast, swing, scaff.	15.80	4.48
Taping	16.15	4.48
Skeleton steel where no floors, walls or ceilings are constructed, including: raido & T.V. towers, flagpoles, watertowers; smokestacks, bridges under 35 ft. and cranes	16.40	4.48
Bridges in heights of 35 ft. or in depth of 35 ft. from road level	17.565	4.48
Area 3:		
Brush; roller paperhanger; taping; swing and bosun under 3 stories or under 35 ft.	11.60	2.29
Swing and bosun over 3 stories or over 35 ft.; steel painting	11.85	2.29
Spraying; steam cleaning sandblasting; toxic coatings	12.25	2.29
Bridge; tanks; stacks	12.85	2.29
Area 4:		
Brush	11.00	2.46
Taping; spray; toxic coatings; wallcovering hanging; ladder or scaffold above 30 ft.; steel painting above 20 ft.	11.60	2.46
Bridges	12.25	2.46
PLUMBERS & STEAMFITTERS:		
Area 1:		
Plumbers	18.13	4.20
Steamfitters	17.92	5.94
Area 2	16.70	2.98
Area 3	17.84	2.98
POWER EQUIPMENT OPERATORS (BUILDING)		
Group 1	16.375	6.56+g
Group 2	16.22	6.56+g
Group 3	16.18	6.56+g
Group 4	16.095	6.56+g
Group 5	15.94	6.56+g
Group 6	15.785	6.56+g
Group 7	15.325	6.56+g
Group 8	13.445	6.56+g
Group 9	13.29	6.56+g
Group 10	13.275	6.16+g
Group 11	13.22	6.16+g
Group 12	13.075	6.16+g
Group 13	16.875	6.56+g
Group 14	17.375	6.56+g
Group 15	17.875	6.56+g
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION):		
Class A	15.85	6.56+h
Class B	15.35	6.56+h
Class C	14.28	6.56+h
Class D	12.10	6.56+h
Class E	16.60	6.56+h
Class F	16.85	6.56+h
Class G	17.35	6.56+h
ROOFERS:		
Area 1:		
Composition: damp; waterproofer; sprayer; asphalt mastic; wood block floor workers; steep roofer & sider	16.86	2.71
Slate; tile & Asbestos	17.01	2.71
Area 2	16.48	2.28
SHEET METAL WORKERS:		
Area 1	17.68	4.26+ 3%
Area 2	14.65	2.46
SPRINKLER FITTERS:		
Area 1	17.02	5.36
Area 2	17.75	3.40
TRUCK DRIVERS:		
Area 1:		
Dump Trucks	9.25	1.05
Area 2:		
Heavy & Highway:		
Class 1	13.49	2.45+h
Class 2	13.54	2.45+h
Class 3	13.59	2.45+h
Class 4	13.74	2.45+h
Class 5	13.99	2.45+h

WELDERS - Rate for craft to which the welding is incidental.

Unlisted classification 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)).

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; Thanksgiving Day; F-Christmas Day.

a. Paid Holidays: C and D, provided the employee works his scheduled day before and day after the holiday and is on the payroll in the payroll week in which the holiday falls.

b. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

c. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

d. Employer contributes 6% of basic hourly rate to employees with under 5 years of service. Employer contributes 8% of basic hourly rate to employees with over 5 years of service.

e. Paid Holidays: A through F, provided the employee works the working day before and the working day after the holiday.

f. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

g. Paid Holidays: A through F, plus Election Day.

h. Paid Holidays: A through F, provided the employee has worked the day before and the day after the holiday.

AREA DESCRIPTIONS

BRICKLAYERS:

Area 1: ERIE; CATTARAUGUS (Perrysburg Township).
Area 2: CHATAUQUA; CATTARAUGUS (Remainder of County).

CARPENTERS:

Area 1: ERIE (Grand Island north of Whitehaven Road).
Area 2: ERIE (Remainder of County); CATTARAUGUS (Perrysburg and Persia Townships).
Area 3: CHAUTAUQUA; CATTARAUGUS (Remainder of County).

CEMENT MASONS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

ELECTRICIANS:

Area 1: ERIE; CATTARAUGUS (Ashford, East Otto, Ellicottville, Farmersville, Freedom, Franklinville, Lyndon, Machias, Mansfield, New Albion, Otto, Perrysburg, Persia and Yorkshire Townships).
Area 2: CHAUTAUQUA; CATTARAUGUS (Remainder of County).

ELEVATOR CONSTRUCTORS:

Area 1: Within an 8.5 mile radius of Buffalo City Hall.

IRONWORKERS:

Area 1: ERIE (Grand Island north of Whitehaven Road).
Area 2: ERIE (Remainder of County); CATTARAUGUS; CHAUTAUQUA (Sheridan, Dunkirk, Pomfret, Charlotte, Arkwright, Hanover, Villenova, Cherry Creek, Ellington Townships and Brockton in Portland Township).
Area 3: CHAUTAUQUA (Remainder of County).

LABORERS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

PAINTERS:

Area 1: ERIE (Grand Island north of Whitehaven Road).
Area 2: ERIE (Remainder of County); CHAUTAUQUA (Dunkirk, Portland, Pomfret, Sheridan, Arkwright, Hanover and Villenova Townships); CATTARAUGUS (Perrysburg, Dayton, Persia, Otto, Ashford, Yorkshire, East Otto and Machias Townships).
Area 3: CHAUTAUQUA (Remainder of County); CATTARAUGUS (Leon, Conewango, Randolph, South Valley, Napoli and New Albion Townships).
Area 4: CATTARAUGUS (Remainder of County).

PLUMBERS & STEAMFITTERS:

Area 1: ERIE; CATTARAUGUS (Perrysburg, Dayton, Persia, Otto, Townships; CHAUTAUQUA (Hanover, Sheridan, Dunkirk, Pomfret, Charlotte, Ripley, Westfield and Cherry Creek Townships and portions of the Townships of Ripley, Westfield, Stockton, Charlotte and Villenova north of a line from the State line where the Townships of Ripley and Mina intersect through Balcom in Villenova Township).
Area 2: CATTARAUGUS (East of a north-south line from the Erie County line due south, running 1 mile east of Cold Spring to the Pennsylvania State Line).
Area 3: CATTARAUGUS (Remainder of County); CHAUTAUQUA (Remainder of County).

POWER EQUIPMENT OPERATORS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

ROOFERS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

SHEET METAL WORKERS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

SPRINKLER FITTERS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

TRUCK DRIVERS:

Area 1: ERIE.
Area 2: CHAUTAUQUA; CATTARAUGUS.

CLASSIFICATION DESCRIPTIONS

LABORERS (BUILDING CONSTRUCTION) - AREA 1

Class 1: Laborers.
Class 2: Foundation laborers (over 8 ft. in depth); hod carriers; plasterer tender; plasterer scaffold builder; pneumatic, gas, electric tool operator (including all forms of busters, jackhammers and chipping guns); steel burners.
Class 3: Mortar mixer.
Class 4: Tool operator over 8 ft. in depth; swing scaffold; blaster; plumbing laborers; wagon drill operator.
Class 5: Bottom man (caisson & cofferdam).
Class 6: Top man; wreckers.

LABORERS (BUILDING CONSTRUCTION) - AREA 2

Class 1: Laborers.
Class 2: Work 40 feet and higher.
Class 3: Blaster; nozzlemen (gunnite, seeding & sandblasting); curb & form setter (steel, stone, granite.); pipelayer.

LABORERS (FREE AIR TUNNEL) - AREA 1

Class 1: Laborers; mole nippers; top laborers.
Class 2: Top bell.
Class 3: Side or roofbolt driller; conveyor men; block layers; caulkers track men; nippers; burners; derail men; electrical cablemen; hosemen; groutmen; gravelmen; bottom bell; form workers; movers; shaft men.
Class 4: Powder monkey.
Class 5: Blasters; cement finishers; ironmen; miners.
Class 6: Steel erectors; piledrivers; riggers.

LABORERS (FREE AIR TUNNEL) - AREA 2

Class 1: Laborers; pit and dumpmen; chuck tenders; brakemen; powdermen.
Class 2: Miners and all machine men; safety miner; shaftwork; caisson work drilling; blow pipe, air tools; tugger; scaling; nipper; guniting pot to nozzle; bit grinder; signalman (top and bottom); concrete man; shield driven tunnels; mixed face and soft ground lines; plate tunnels in free air.

LABORERS (HEAVY & HIGHWAY)

Class 1: Laborer; drill helper; flagman; outboard and hand boats.
Class 2: Bull float; chain saw; concrete aggregate bin; concrete bootman gin buggy; hand or machine vibrator; jackhammer; mason tender; mortar mixer; pavement breaker; handlers of all steel mesh; small generators for laborers' tools; installation of bridge drainage pipe; pipelayers; vibrator type rollers; tamper; drill doctor; tail or screw operator on asphalt paver; water pump operator (1 1/2" and single diaphram); nozzle (asphalt gunnite, seeding and sandblasting); laborers on chain link fence erection rock splitter and power unit; pusher-type concrete saw and all other gas electric, oil and air tool operators; wrecking laborer.
Class 3: All rock or drill machine operators (except quarry master and similar type); acetylene torch operator; asphalt raker; powderman.
Class 4: Blasters; form setters; stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

GROUP 1: All boom type equipment (100 ft. or less), all pan and carry-all operators, archer hoist, back and pull hoe operator, blast or rotary drill (track or cat mounted), boiler (when used for power, boom trucks, cableway operator, concrete paver machine, crane operator, derrick operator, dragline elevating grader self-propelled), head tower operator, hot roller (finish course), hydraulic booms, hydro crane, maintenance engineer, mucking machine operator, multiple drum hoist (more than 1 drum in use) Peine crane, pile driving machine operator, power grader machine operator scoopmobile shovel operator, skimmer operator, test core drill machine, tractor shovel operator, vertical caisson auger drill, well drilling machine.

GROUP 2: Back filling machine operator, Rolman loader, roller machine operator, snatch and pusher cats, stone crusher, towed or self-propelled rollers,trenching machine operator.

GROUP 3: Air hoist operator, cage hoist operator, conveyor operator, conveyor system (belt-crete or similar), hoisting engine operator, house elevator (when used for hoisting), industrial tractor, locomotive operator (irrespective of power), push button hoist operator, Strato tower, tractors (when using winch power).

GROUP 4: Concrete mixer operator (1/2 c.y. or over), gasoline driven boring machine, hydraulic system pumps, hydro hammer, finishing machine operator (asphalt spreader), finishing machine operator, bulldozer (over 50 h.p., monorail.

GROUP 5: Grout machine operator, heating boiler operator (used for temporary heat), lubrication units on truck, pneumatic mixer operator.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION) (CONT'D)

GROUP 6: Bulldozer & tractor (50 h.p., drawbar or under), jeep trencher mulchers, power brooms and rakes, seeders.

GROUP 7: Aggregate bin operator, cement bin operator, concrete mixer operator (under 1/2 c.y.), tractor machines.

GROUP 8: Pump operator (4" or over), pump operator (2-3 in a battery).

GROUP 9: Air compressor operator, generator, mechanical heater (when 3 are in a battery), power plant (in excess of 10KW), welding machine operator (to and including 3 machines).

GROUP 10: Fireman.

GROUP 11: Truck crane driver.

GROUP 12: Oiler, mechanical heaters (when 1 or 2 are used), pump operators (one inch), pump operators (2 inches), pump operators (3 inches).

GROUP 13: Crane with boom over 100 feet.

GROUP 14: Crane with boom over 200 feet.

GROUP 15: Crane with boom over 300 feet.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

CLASS A: All boom type equipment, all pans and carry-alls, asphalt roller, asphalt spreader or paver, automatic fine grade machine, (CMI and similar type), backhoe and pullhoe, belt palcer (CMI and similar type), black top plant (automated), blast or rotary drill (truck or track mounted), bulldozer, cableway, caisson auger, central mix plant (and all concrete batching plants), cherry picker (over 5 tons capacity), crane, derrick, dragline, dredge, dual drum paver, elevating grader (self-propelled or towed), excavator (all purpose, hydraulically operated), front end loader gradall grader, head tower, hydraulic boom, hydro crane, maintenance engineer, maintenance lubrication unit or truck, mine hoist, mucking machine, multiple drum hoist (more than 1 drum in use), overhead crane, Paine crane(or similar type), pile driver, push or snatch cat, quarry master or equivalent, scoopmoble, shovel, skimmer, slip form paver (CMI similar type), tire truck & repair, tractor drawn belt-type grader/load tractor shovel, truck crane, tunnel shovel.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION) (CONT'D)

CLASS B: Air hoist, asphalt curb and gutter machines, automatic fine grade machine (CMI and simlar type) (second operator), backhoe and pullhoe (tractor mounted, rubber-tired), back filling machine, bending machine (pipe), bituminous spreader and mixer, blacktop plant (non-automated), blower for burning brush, boiler (when used for power), boom truck, boring machine, cage hoist, cherry picker (5 tons and under), chipping machine and chio spreader, concrete curb and gutter machine, concrete curing machine, concrete mixer (over cu. yd.), concrete pavement spreader and finishers, concrete paver, concrete pump, conveyor, core drill, crusher, drill rig (tractor mounted), electric pump used in conjunction with well point systems, elevator, farm tractor with accessories, fine grade machine, forklift, grout or gunite machine, hoist one drum), boisting engine, hydraulic hammer (self-propelled), hydraulic pipe jack machine (or simillar type machine), hydraulic rock expander (or similar type machine), Hydraulic system pumps, hydro hammer (or similar type), industrial tractor, jersey spreader, Kolman plant loader (and similar type loaders), locomotive, mixer for stabilized base (self-propelled), monorail mortorized hydraulic pin puller, motorized hydraulic seeder, mulching machine, plant engineer, pneumatic mixer, post hole digger and post driver pump crete, push button hoist, road widener, rock bit sharpener (all types roller (all above sub-grade), roller (grade and fill), rolling machine (pipe), side boom, slip form paver (CMI and similar type) (second operator), snorkel, srato-tower, stump chipping machine, towed roller, tractor with towed accessories, tractors (using winch power), trencher, tube finisher (CMI and similar type) vibratory compactor, vibro tamp, well drilling machine, well point, winch, winch truck with A-frame.

CLASS C: Aggregate bin, aggregate plant, boiler (used in conjunction with production,cement bin, concrete mixer (1/2 cu. yd. and under), concrete saw (self-propelled), fireman, form tamper, fuel truck, heating boiler (used for temporary heat), jeep trencher, power broom, Revinius widener steam cleaner, tractor.

CLASS D: Compressors (4 or less), helper on lubrication unit or truck, power beaterman, power plant in excess of 10 K.W., pump (4" or over), welding machine (1 machine over 300 amps or 2 or 3 machines regardless of amps).

CLASS E: Crane with boom over 100 ft.

CLASS F: Crane with boom over 200 ft.

CLASS G: Crane with boom over 300 ft.

TRUCK DRIVERS (HEAVY & HIGHWAY) - AREA 2

Class 1: Pick-ups, panel trucks, flatboy material trucks (straight jobs), single-axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialired earth moving equipment - euclid type or similar of highway equipment, where not self-loaded, and straddle (ross) carrier.

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Alfalfa, Beckham, Blain, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Pottawatome, Roger Mills, Seminole, Stephens, Tillman, Washita, Woods and Woodward.

DECISION NO.: OK85-4051 DATE: Date of Publication

SUPERSEDES DECISION NO. OK85-4011, dated May 10, 1985 in 50 FR 19863.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$15.85	2.55
Area II	16.73	2.60
Area III	17.04	2.88
BOILERMAKERS	15.875	3.20
BRICKLAYERS, STONEMASONS:		
Area I	15.73	2.23
Area II	15.65	
Area III	13.59	2.17
Area IV	15.31	2.25
Area V	14.50	1.40
Area VI	14.74	2.15
Area VII	15.48	1.57
CARPENTERS - AREA I		
Carpenters	11.80	2.04
Millwrights	12.30	2.04
Piledrivermen	12.30	2.04
CARPENTERS - AREA II		
Carpenters	9.00	2.04
Millwrights	12.30	2.04
Piledrivermen	12.30	2.04
CARPENTERS - AREA III		
Carpenters	11.25	1.74
Millwrights	11.50	1.74
Piledrivermen	11.50	1.74
CARPENTERS - AREA IV		
Carpenters	11.20	
CARPENTERS - AREA V		
Carpenters	11.90	1.55
Piledrivermen	12.15	1.55
Millwrights	14.03	1.55
CARPENTERS - AREA VI		
Carpenters	12.35	1.89
Piledrivermen	12.85	1.89
Power Saw operator	12.475	1.89
CARPENTERS - AREA VII		
Carpenters	12.00	.60
Millwrights	12.00	.60
Piledrivermen	12.00	.60
Power saw operator	12.00	.60
CARPENTERS - AREA VIII		
Carpenters	$11.60	1.10
Millwrights	12.425	1.10
Piledrivermen	12.425	1.10
Power saw operator	11.85	1.10
CARPENTERS - AREA IX		
Carpenters	12.30	.30
CARPENTERS - AREA X		
Carpenters	12.88	.85
Millwrights	14.33	.85
Piledrivermen	14.33	.85
CEMENT MASONS - AREA I		
Cement Masons	10.80	
Power Tool Operator	11.05	
CEMENT MASONS - AREA II		
Cement Masons	15.14	.76
Power Tool Operator	15.54	.76
CEMENT MASONS - AREA III		
Cement Masons	13.83	.85
Power Tool Operator	14.08	.85
ELECTRICIANS:		
Area I	15.60	1.10+ 9%
Area II	15.20	3.5%+ 2.40
Area III	14.05	3 1/4% +1.50
Area IV	17.10	9%+.80
Area V	15.70	2.03+ 3%
CABLE SPLICERS:		
Area I	15.85	1.10+ 9%
Area II	15.45	2.40+ 3.5%
Area IV	18.81	9%+.80
ELEVATOR CONSTRUCTORS:		
Journeyman	15.43	3.00+a
Helpers	10.80	3.00+a
Probationary Helper	7.715	

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DECISION NO.: OK85-4051

	Basic Hourly Rates	Fringe Benefits
GLAZIERS	15.72	.30
IRONWORKERS:		
Area I	13.12	2.25
Area II	13.625	2.95
Area III	14.30	3.00
Area IV	16.19	2.92
Area V	15.29	1.14
LABORERS - AREA I:		
Group I	8.50	1.31
Group II	9.00	1.31
LABORERS - AREA II:		
Group I	8.00	1.31
Group II	8.50	1.31
LABORERS - AREA III		
Group I	7.50	
Group II	8.00	
LATHERS		
Area I	14.25	2.05
Area II	12.15	1.80
MARBLE MASONS, TILE SETTERS & TERRAZZO WORKERS	16.34	1.50
MARBLE & TILE FINISHERS:		
Area I	13.35	
TERRAZZO FLOOR MACHINE MAN:		
Area I	14.50	
TERRAZZO BASE MACHINE MAN:		
Area I	14.90	
TERRAZZO FINISHERS: Area I	14.20	
PAINTERS - AREA I:		
Brush & Roller	9.90	1.03
Spray	10.55	1.03
Brush & Roller (Structural Steel)	10.15	1.03
Swing stage, bosum chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA II:		
Brush	13.55	2.53
Spray under 30 ft.	14.05	2.53
Spray over 30 ft.	14.55	2.53
Paper hanging	14.55	2.53
Tapers using machine tools	14.05	2.53
PLASTERS:		
Area I	15.60	.95
Area II	14.20	
PLUMBERS - AREA I:		
Mechanical contracts under $15,000.00	14.00	2.475
Mechanical contracts of $150,000.00 & over	15.56	2.475
PLUMBERS - AREA II	16.64	2.27
ROOFERS	12.40	1.64
SHEET METAL WORKERS	16.15	3.30
SPRINKLER FITTERS	16.66	3.40
LINE CONSTRUCTION		
Linemen	16.71	3 1/2% +1.25
Cable Splicers	18.07	"
Hole Digger operator heavy equipment op.	14.80	"
Line truck driver (winch operator)	13.01	"
Jackhammerman	11.76	"
Powderman	14.36	3 1/2% 1.25
Truck driver (flat bed, ton-half & under)	11.20	"
Groundman	10.52	"
POWER EQUIPMENT OPERATORS:		
Group I	14.35	1.90
Group II	13.85	1.90
Group III	13.35	1.90
Group IV	13.10	1.90
Group V	12.85	1.90
Group VI	12.60	1.90
Group VII	12.20	1.90
Group VIII	10.60	1.90
Group IX	10.10	1.90
Group X	9.60	1.90
TRUCK DRIVERS - AREA I		
Group I	9.70	
Group II	9.40	
AREA II		
Group I	12.80	
Group II	12.85	
Group III	12.95	
AREA III		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	
SOUND & COMMUNICATION TECHNICIANS for Eagle, Indian, Mound and Union Townships in Payne County	12.02	

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DECISION NO.: OK85-4051

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:
- AREA I: Harper, Ellis, Roger Mills, Beckham, Greer and Harmon Counties
- AREA II: Kay County
- AREA III: Remaining Counties

BRICKLAYERS - STONEMASONS:
- AREA I: Logan, Payne, Canadian, Oklahoma, Cleveland and McClain Counties
- AREA II: Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Blaine and Kingfisher Counties
- AREA III: Harmon, Jackson, Tillman, Comanche, Cotton and Jefferson Counties
- AREA IV: Lincoln, Pottawatomie, Seminole, Pontotoc, Johnston and Marshall Counties
- AREA V: Kay and Noble Counties
- AREA VI: Caddo, Grady, Stephens, Garvin, Murray, Carter and Love Counties
- AREA VII: Roger Mills, Beckham, Greer, Dewey, Custer, Washita and Kiowa Counties

CARPENTERS - MILLWRIGHTS - PILEDRIVERMEN - POWER SAW OPERATORS:
- AREA I: Oklahoma, Logan, Canadian, Kingfisher, Pottawatomie, McClain, Cleveland, and Lincoln County south of the Turner Turnpike
- AREA II: Dewey, Custer, Washita and Blaine Counties
- AREA III: Caddo and Grady Counties
- AREA IV: Alfalfa, Grant, Major and Garfield Counties
- AREA V: Love, Murray, Carter, Pontotoc, Seminole, Johnston, Garvin and Marshall County west of highway #99
- AREA VI: Beckham, Jefferson, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Stephens and Tillman Counties
- AREA VII: Payne County, Northern Half of Lincoln County and Noble County east of Interstate 35 and south of Black Bear Creek
- AREA VIII: Woodward, Woods, Harper, Ellis and Roger Mills Counties
- AREA IX: Kay and Noble Counties north of Black Bear Creek and west of Interstate #35
- AREA X: Marshall County east of highway #99

CEMENT MASONS - POWER TOOL OPERATOR:
- AREA I: Kay County
- AREA II: Johnston and Marshall Counties
- AREA III: Ellis, Roger Mills, Beckham, Dewey, Custer, Grady, Carter, Oklahoma, Logan McClain, Washita, Blaine, Caddo, Kingfisher, Canadian, Cleveland, Garvin, Lincoln, Payne, Noble, Woodward Murray, Harper, Major, Woods, Alfalfa, Grant Garfield, Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson and Love Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELECTRICIANS - CABLE SPLICERS:
- AREA I: Oklahoma, Cleveland, Canadian, Grady, McClain, Garvin, Carter, Murray, Johnston, Pontotoc, Seminole, Pottawatomie, Lincoln, Logan, Kingfisher, Garfield, Grant, Alfalfa, Major, Blaine, Caddo, Washita, Custer, Dewey, Woodward, Woods, Harper, Ellis, Roger Mills, Beckham, Love and that portion of Payne County which is closer to Oklahoma City than Tulsa
- AREA II: Kay and Noble Counties
- AREA III: Comanche, Jackson Stephens, Harmon, Greer, Kiowa, Tillman, Cotton and Jefferson
- AREA IV: Marshall County
- AREA V: That portion of Payne County closer to Tulsa than Oklahoma City

IRONWORKERS:
- AREA I: Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Custer, Dewey, Garfield, Garvin, Grady, Johnston, Kingfisher, Kiowa, Lincoln, Major, Logan, McClain, Murray, Noble, Oklahoma, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita, Woodward, and western Payne County to a line due north of state highway #177 and #33
- AREA II: Beckham, Greer, Harmon, Jackson, Tillman, Cotton, Jefferson and Love Counties
- AREA III: Harper and Ellis Counties
- AREA IV: Marshall County
- AREA V: Alfalfa, Grant, Kay, and Woods Counties

LATHERS:
- AREA I: Oklahoma, Logan, Canadian, Kingfisher, Custer, Washita, Blaine, Pottawatomie, Dewey, Beckham, Caddo, Cleveland, Ellis, Garvin, Grady, Johnston, McClain, Murray, Noble, Pontotoc, Roger Mills, Seminole, Woodward, Lincoln County south of Turner Turnpike and Payne County up to and including the city of Cushing.
- AREA II: Alfalfa, Grant, Garfield and Major Counties

PAINTERS:
- AREA I: Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson, Carter, Love, Pontotoc, Johnston and Marshall Counties
- AREA II: Remaining Counties

PLASTERERS:
- AREA I: Ellis, Roger Mills, Beckham, Greer, Harmon, Jackson, Dewey, Custer, Washita, Kiowa, Tillman, Blaine, Caddo, Comanche, Cotton, Kingfisher, Canadian, Grady, Stephens, Jefferson, Logan, Oklahoma, Cleveland, McClain, Gargin, Murray, Carter, Love, Payne, Lincoln, Johnston and Marshall Counties
- AREA II: Pontotoc, Pottawatomie and Seminole Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LABORERS:

Area I - Canadian, Cleveland, Lincoln, Logan, Oklahoma and Pottawatomie Counties

Area II - Johnston, Kay, Noble, Payne, Pontotoc, and Seminole Counties

Area III - Alfalfa, Beckham, Blaine, Caddo, Carter, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kingfisher, Kiowa, Love, McClain, Major, Marshall, Murray, Roger Mills, Stephens, Tillman, Washita, Wood and Woodward Counties

Group I - All digging and dirt work, firing of salamanders and portable space heaters. All loading and unloading of materials and equipment to and from hoist or cages for stock piling only. Wheeling and placing of concrete. Handling of lumber, steel, cement and distribution of materials. All cleaning including cleaning of windows. All wrecking and razing of buildings and all structures, cleaning and clearing of debris. Loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons or plasterers. Water boys, when used. Carpenter tenders.

Group II - All machine tool operators that come under the jurisdiction of the laborers. All sewer and drain tile layers and handling at the ditch, excluding distribution. Operators of water pumps up to four inches and slip form jackets. All men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers. Mortar mixers, hod carriers, and dry mixers. High work over 30 feet from ground or floors. Cement finisher helper. Work on swinging scaffold. Work on swinging scaffold. All kettle and pot men, tank cleaning, all pipe doping, treating and wrapping including all men working with dope. Mortar and plaster-mixing machine, pump-crete machine and gunite mixing machines, including placing of concrete. Handling creosoted or treated materials liquid acids or like materials when injurious to health, eyes, skin or clothes. All newly developed mechanical equipment which replaces wheelbarrows or buggies previously used by loaders. All scale men on batch plants & tool crib men. All laborers screening sand, running sand drier, and feeding operating sand blaster, except nozzle. Flaggers, Concrete graders and cutting torch operators in connection with laborers' work.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS CONT'D

Group I - All crane type equipment with at least 300' of boom and over (including jib)

Group II - All crane type equipment with at least 200' and less than 300' of boom (including jib)

Group III - All crane type equipment with at least 100' and less than 200' of boom (including jib) - All tower cranes-Crane type equipment (3 cu. yd. and over),Guy Derrick-Whirley

Group IV - Cranes with less than 100' of boom with jib and cranes less than 3 cu. yd. - Heavy duty mechanic, welder, overhead monorail type crane, panel board batch plant operator, piledriver engineer, dragline, clamshell, backhoe (3/4 yd. and over), sideboom or similar type equipment, gradall, cherry picker, hoist (while doing stack and chimney work), power driven hole digger (with 30' and longer mast), Motor patrol (blade)

Group V - Dozer (engine H.P. 65 or over), roller and compactors with dozer blade, backhoe under 3/4 yd., All scraper type equipment, water wagons under the jurisdiction of this craft, loader or hi-lift (engine H.P. 65 or over), asphalt lay machine, conveyor-multiple- panel board central, power driven hole digger with less than 30' mast, trenching machine, concrete pump (boom type)

Group VI - Boiler (all types), oil distributor, pulvimixer, screed operator, concrete pump (trailer type), rotary drilling machine when operated from cockpit

Group VII - Greaser, tilt top trailer operator

Group VIII- Locomotive engineer, boring machnie, tug boat, mixer (18 cu. ft. and over) sand barge, dredging machine, tugger, hoist (operating one drum) welding machines (3 to 6), air compressor (3 to 6-size 500 cu. ft. and under, air compressor over 500 cu.ft. (1), pump (battery 3 to 6), all fork-lift, bobcat, and similar equipment, generator plant engineer (diesel elect), winch truck with a frame, concrete buster or tamper, heater under jurisdiction of operating engineers, fireman, boiler operator, crushing plants, form tractor (with or without attachments), batch plant operator (portable), conveyor operator (continuous belt bulking handling, form grader, screening plant, well pump operator, signal man on whirley when and if required, outside (side elevator or construction type hoist personnel)

Group IX - Concrete mixers (less than 18 cu. ft.), air compressor (500 cu. ft. and under-1 or 2), welding machines (1 or 2), pumps (1 or 2), fuelman, asphalt lay machine backend man, mechanic helper and welder helper

Group X - Truck crane oiler and driver, crane oiler, permanent building type elevator operator

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS CONT'D

PLUMBERS - PIPEFITTERS
AREA I Kay County
AREA II Remaining Counties

MARBLE & TILE FINISHERS, TERRAZZO FINISHERS, TERRAZZO FLOOR MACHINE MAN
TERRAZZO BASE MACHINE MAN:
AREA I Kay, Noble, Payne, Lincoln, Pottawatomie, Seminole, Pontotoc and Johnston

TRUCK DRIVERS:

AREA I	Alfalfa, Beckham, Blaine, Caddo, Carter, Canadian, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson Johnston, Kingfisher, Kiowa, Logan, Love, Major, McLain, Murray, Oklahoma, Pontotoc, Pottawatomie, Payne, Roger Mills, Seminole, Stephens, Tillman, Washita, Wood and Woodward Counties
GROUP I	Truck drivers for heavy equipment such as lowboys, heavy winch and floats, heavy earth moving equipment such as dump trucks and euclids
GROUP II	Truck drivers and swampers, such as dump trucks, flat beds, stakebodies, and 3/4 and ½ ton pick-up trucks
AREA II	Kay, Noble and Lincoln Counties
GROUP I	Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver
GROUP II	3 tons or 4 yards up to but not including 4 tons or 6 yards
GROUP III	Ready mix concrete truck; tractor trailer and similar equipment
AREA III	Marshall County
GROUP I	Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, state bodies and buses
GROUP II	3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III	5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV	Ready-mix concrete trucks up to but not including 3 yards
GROUP V	Ready-mix concrete trucks 3 yards and over

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

a - 6 mos. to 5 yrs. 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day.

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Adair, Atoka, Bryan, Cherokee, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, LeFlore, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, Washington

DECISION NO.: OK85-4052 DATE: Date of Publicatico
SUPERSEDES DECISION NO. OK85-4012, dated May 10, 1985 in 50 FR 19859.
DESCRIPTION OF WORK: BUILDING PROJECTS (excluding single family homes and apartments up to and including 4 stories); and Heavy Construction within the City of Muskogee.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$17.04	$2.88
Area II	16.73	2.60
BOILERMAKERS	15.875	3.20
BRICKLAYERS-STONE MASONS:		
Area I	16.00	2.35
Area II	15.31	2.25
Area III	14.84	2.34
Area IV	15.31	1.54
Area V	16.90	
Area VI	14.50	1.40
CARPENTERS - AREA I		
Carpenters	11.85	2.00
Millwrights, Piledrivermen	13.20	2.00
CARPENTERS - AREA II		
Carpenters	12.88	.85
Millwrights, Piledrivermen	14.33	.85
CARPENTERS - AREA III		
Carpenters	11.90	1.55
Piledrivermen	12.15	1.55
Millwrights	14.03	1.55
CARPENTERS - AREA IV		
Carpenters	14.08	2.02
Millwrights	14.38	2.02
Piledrivermen	14.38	2.02
CARPENTERS - AREA V		
Carpenters	13.50	
Millwrights	16.40	
Piledrivermen	16.10	
CARPENTERS - AREA VI		
Carpenters	12.19	2.02
Millwrights, Piledrivermen	12.69	2.02

	Basic Hourly Rates	Fringe Benefits
CARPENTERS - AREA VII		
Carpenters	$12.30	.30
CARPENTERS - AREA VIII		
Carpenters	12.92	1.60
Millwrights, Piledrivermen	13.17	1.60
CEMENT MASONS:		
Area I	10.80	
Area II	13.83	.85
Area III	15.14	.76
POWER TOOL OPERATOR:		
Area I	11.05	
Area II	14.08	.85
Area III	15.54	.76
ELECTRICIANS:		
Area I		
Zone I	14.55	3%%+.00
Zone II	14.95	3%%+.80
Area II	15.20	3.5%+ 2.40
Area III	17.10	9%+.80
Area IV	15.70	3%+ 2.03
CABLE SPLICERS:		
Area I		
Zone I	14.95	3%%+.80
Zone II	15.35	3%%+.80
Area II	15.45	3.5%+ 2.40
Area III	18.81	9%+.80
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	15.34	3.00+a
Helpers	70%JR	3.00+a
Probationary Helpers	50%JR	
Area II		
Journeymen	15.41	3.00+a
Helpers	70%JR	3.00+a
Probationary Helper	50%JR	

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	Basic Hourly Rates	Fringe Benefits
GLAZIERS		
Area I	$15.72	.30
Area II	15.04	
Area III	14.68	1.96
IRONWORKERS:		
Area I	16.19	2.92
Area II	13.12	2.25
LABORERS - AREA I		
Group I	8.50	1.31
Group II	9.00	1.31
LABORERS - AREA II		
Group I	8.00	1.31
Group II	8.50	1.31
PAINTERS - AREA I		
Brush, sheetrock hand-tools	14.70	.90
Highwork & Stage	15.10	.90
Spray, & Sandblasting, Sheetrock Power Tools	15.70	.90
Hot & Bituminous	16.00	.90
PAINTERS - AREA II		
Brush & Roller	9.90	1.03
Brush, Roller (Strl. Steel)	10.15	1.03
Spray	10.55	1.03
Swing Stage, Bosun Chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA III		
Brush, Roller, Tapers & Paperhangers	13.37	.60
Spray, Steamclean, Sandblasting & Pot Tenders	13.87	.60
PLASTERERS		
Area I	15.45	.01
Area II	14.20	
PLUMBERS & PIPEFITTERS:		
Area I	16.62	2.98
Area II	17.25	2.35
Area III	16.64	2.27
Area IV		
Mechanical Contracts under $150,000.00	14.00	2.475
Mechanical Contracts $150,000.00 & over	15.56	2.475
Area V	15.20	2.25
ROOFERS	12.40	1.64
SHEET METAL WORKERS:		
Area I	16.15	3.30
Area II	16.58	1.89+ 3%

	Basic Hourly Rates	Fringe Benefits
SOFT FLOOR LAYERS:		
Area I	14.60	2.03
Area II	13.47	1.88+b
SPRINKLER FITTERS	16.66	3.40
LATHERS:		
Area I	14.25	2.04
Area II	12.62	1.50
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS:		
Area I	16.84	1.50
Area II	15.09	3.10
TILE & MARBLE FINISHERS:		
Area I	13.35	
Area II	12.72	2.00
TERRAZZO FINISHERS:		
Area I	14.20	
Area II	12.72	2.00
TERRAZZO FLOOR MACHINE:		
Area I	14.50	
Area II	12.92	2.00
TERRAZZO BASE MACHINE:		
Area I	14.90	
Area II	13.26	2.00
LINE CONSTRUCTION (except Braden, Pocola & Spiro Townships in LeFlore Co.):		
Linemen	16.71	3 1/2%+1.25
Cable Splicers	18.07	3 1/2%+1.25
Hole Digger Operator & Heavy Equipment Op. (pole or cat equivalent)	14.80	3 1/2%+1.25
Jack Hammerman	11.76	3 1/2%+1.25
Line Truck Driver (Winch Operator	13.01	3 1/2%+1.25
POWDERMAN	14.36	3 1/2%+1.25
GROUNDMAN	10.52	3 1/2%+1.25
TRUCK DRIVER (FLAT BED, TON-HALF AND UNDER)	11.20	3 1/2%+1.25

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OK85-4052

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Braden, Pocola, and Spiro Townships in LeFlore Co.: that portion east of Brent, Prices Chapel, Rocky Mountain & Salliwaw Townships in Sequoyah Co.:		
Lineman, Heavy Equipment Operator	14.54	1.30+ 3 3/4%
Cable Splicer	14.79	1.30+ 3 3/4%
Powderman	90%JR	1.30+ 3 3/4%
Truck Driver	75%JR	1.30+ 3 3/4%
Groundman	65%JR	1.30+ 3 3/4%
POWER EQUIPMENT OPERATORS:		
Group I	14.35	1.90
Group II	13.85	1.90
Group III	13.35	1.90
Group IV	13.10	1.90
Group V	12.85	1.90
Group VI	12.60	1.90
Group VII	12.20	1.90
Group VIII	10.60	1.90
Group IX	10.10	1.90
Group X	9.60	1.90
TRUCK DRIVERS:		
Area I		
Group I	12.80	
Group II	12.85	
Group III	12.95	
Area II		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	
SOUND AND COMMUNICATION TECHNICIAN - Area IV	12.02	

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	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

OK85-4052

ASBESTOS WORKERS:
AREA I - Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

BRICKLAYERS - STONEMASONS:
AREA I - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Haskell, LeFlore, Latimer and Pushmataha Counties
AREA II - Hughes, Coal, Atoka and Bryan Counties
AREA III - Creek, Tulsa, Rogers, Mayes, Craign, Ottawa and Delaware Counties
AREA IV - Okfuskee, Okmulgee, McIntosh and Pittsburg Counties
AREA V - Osage, Washington and Nowata Counties
AREA VI - Pawnee County

CARPENTERS - MILLWRIGHTS & PILEDRIVERMEN:
AREA I - Okmulgee, Okfuskee, Pittsburg, Latimer, LeFlore, the western part of McIntosh County - the line running straight south from the east line of Okmulgee County, Haskell County south of Highway #9 and north one-half of Atoka County
AREA II - Pushmataha, Bryan and south one-half of Atoka County
AREA III - Coal and Hughes County
AREA IV - Tulsa, Rogers, Mayes, Creek, Craig and Delaware Counties and that part of Osage Co. South of Hwy.#20, including all of the town of Hominy and that part of Pawnee Col east of State Hwy. #99.
AREA V - Washington, Nowata and Eastern two-thirds of Osage County
AREA VI - Muskogee, Wagoner, Adair, Cherokee, Sequoyah, Eastern part of McIntosh and Haskell County north of Highway #9
AREA VII - Pawnee and western one-third of Osage County
AREA VIII - Ottawa County

CEMENT MASONS - POWER TOOL OPERATORS:
AREA I - Western one-third of Osage County
AREA II - Pawnee County west of a line running due north from the western boundary of Creek County
AREA III - Remaining Counties

ELECTRICIANS - CABLE SPLICERS:
AREA I - Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, LeFlore, Latimer, Atoka and Pushmataha Counties
ZONE I - 30-mile radius from Post Office of the City of Muskogee
ZONE II - Area outside Zone 1
AREA II - Osage and Pawnee Counties west of Highway #18
AREA III - Bryan County
AREA IV - Washington, Nowata, Craign, Ottawa, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Okmulgee, Okfuskee, Hughes, Pittsburg, Coal, Osage and Pawnee east of Highway #18

ELEVATOR CONSTRUCTORS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Pawnee, Creek, Tulsa, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, and Sequoyah Counties
AREA II - Remaining Counties

GLAZIERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Ottawa and that portion of Craig County east of Vinita
AREA III - Remaining Counties

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CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

OK85-4052

IRONWORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

LABORERS:

Area I - Craig, Creek, Delaware, Mayes, Nowata, Okmulgee, Osage, Ottawa, Rogers, Tulsa and Washington Counties.

Area II - Adair, Atoka, Bryan, Cherokee, Coal, Haskell, Hughes, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Pawnee, Pittsburg, Pushmataha, Sequoyah and Wagoner Counties.

Group I - All digging and dirt work, firing of salamanders and portable space heaters. All loading and unloading of materials and equipment to and from hoist or cages for stock piling only. Wheeling and placing of concrete. Handling of lumber, steel, cement and distribution of materials. All cleaning including cleaning of windows. All wrecking and razing of buildings and all structures, cleaning and clearing of debris. Loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons or plasterers. Water boys, when used. Carpenter tenders.

Group II - All machine tool operators that come under the jurisdiction of the laborers. All sewer and drain tile layers and handling at the ditch, excluding distribution. Operators of water pumps up to four inches and slip form jackets. All men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers. Mortar mixers, hod carriers, and dry mixers. High work over 30 feet from ground or floors. Cement finisher helper. Work on swinging scaffold. Work on swinging scaffold. All kettle and pot men, tank cleaning, all pipe doping, treating and wrapping including all men working with dope. Mortar and plaster-mixing machine, pump-crete machine and gunite mixing machines, including placing of concrete. Handling creosoted or treated materials liquid acids or like materials when injurious to health, eyes, skin or clothes. All newly developed mechanical equipment which replaces wheelbarrows or buggies previously used by loaders. All scale men on batch plants & tool crib men. All laborers screening sand, running sand drier, and feeding operating sand blaster, except nozzle. Flaggers, Concrete graders and cutting torch operators in connection with laborers' work.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LATHERS:
AREA I - Atoka, Coal and Hughes
AREA II - Ottawa County

PAINTERS:
AREA I - Pawnee, Osage, Washington, Nowata, Rogers, Mayes, Creek, Tulsa, Okfuskee, Okmulgee, Wagoner, Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, and Pushmataha
AREA II -Hughes, Coal, Atoka and Bryan Counties
AREA III - Craig, Ottawa and Delaware Counties

PLASTERERS:
AREA I - Adair, Cherokee, Craig, Creek, Delaware, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Rogers,Tulsa, Wagoner, Washington, and the northern and western portions of Sequoyah County north and west of a line running southwesterly from the northeastern corner of Sequoyah County including the town of Sallisaw.
AREA II - LeFlore County and the southern and eastern portions south and east of a line running southwesterly from the northeast corner of Sequoyah County

PLUMBERS - PIPEFITTERS:
AREA I - Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Tulsa, Creek and Osage and Pawnee Counties east of Highway #18
AREA II - Adair, Cherokee, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Sequoyah and Wagoner Counties
AREA III - Hughes, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage and Pawnee Counties west of Highway #18
AREA V - Washington County

SHEET METAL WORKERS:
AREA I - Hughes and Coal Counties
AREA II - Remaining Counties

SOFT FLOOR LAYERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

TILE LAYERS & TERRAZZO WORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

TILE & TERRAZZO FINISHERS - TERRAZZO FLOOR MACHINE - TERRAZZO BASE MACHINE:
AREA I - Bryan County
AREA II - Remaining Counties

POWER EQUIPMENT OPERATORS:

Group I - All crane type equipment with at least 300' of boom and over (including jib)

Group II - All crane type equipment with at least 200' and less than 300' of boom (including jib)

Group III - All crane type equipment with at least 100' and less than 200' of boom (including jib) - All tower cranes-Crane type equipment (3 cu. yd. and over), Guy Derrick-Whirley

Group IV - Cranes with less than 100' of boom with jib and cranes less than 3 cu. yd. - Heavy duty mechanic, welder, overhead monorail type crane, panel board batch plant operator, piledriver engineer, dragline, clamshell, backhoe (3/4 yd. and over), sideboom or similar type equipment, gradall, cherry picker, hoist (while doing stack and chimney work), power driven hole digger (with 30' and longer mast), Motor patrol (blade)

Group V - Dozer (engine R.P. 65 or over), roller and compactors with dozer blade, backhoe under 3/4 yd., All scraper type equipment, water wagons under the jurisdiction of this craft, loader or hi-lift (engine R.P. 65 or over), asphalt lay machine, conveyor-multiple- panel board central, power driven hole digger with less than 30' mast, trenching machine, concrete pump (boom type)

Group VI - Roller (all types), oil distributor, pulvimixer, screed operator, concrete pump (trailer type), rotary drilling machine when operated from console

Group VII - Greaser, tilt top trailer operator

Group VIII- Locomotive engineer, boring machnie, tug boat, mixer (18 cu. ft. and over) sand barge, dredging machine, tugger, hoist (operating one drum) welding machines (3 to 6), air compressor (3 to 6-size 500 cu. ft. and under, air compressor over 500 cu.ft. (1), pump (battery 3 to 6), all fork-lift, bobcat, and similar equipment, generator plant engineer (diesel elect), winch truck with a frame, concrete buster or tamper, heater under jurisdiction of operating engineers, fireman, boiler operator, crushing plants, form tractor (with or without attachments), batch plant operator (portable), conveyor operator (continuous belt bulking handling, form grader, screening plant, well pump operator, signal man on whirley when and if required, outside (side elevator or construction type hoist personnel)

Group IX - Concrete mixers (less than 18 cu. ft.), air compressor (500 cu. ft. and under-1 or 2), welding machines (1 or 2), pumps (1 or 2), fuelman, asphalt lay machine backend man, mechanic helper and welder helper

Group X - Truck crane oiler and driver, crane oiler, permanent building type elevator operator

Coal	Hughes	Okmulgee	Payne 1/	Wagoner 4/
Craig	Mayes	Osage 1/	Pittsburg	Washington
Creek	Nowata	Ottawa	Rogers	
Delaware	Okfuskee	Pawnee 2/	Tulsa	

1/ That portion east of State Highway No. 18
2/ That portion east of State Highway No. 18
3/ Eagle, Indian, Mound and Union Townships
4/ Adams Creek, Cherokee, Coal Creek, Lone Star and Shanhan Townships

TRUCK DRIVERS:

AREA I - Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Creek, Tulsa, Okmulgee, Okfuskee and Mayes and Wagoner Counties west of Highway #69.

GROUP I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver.

GROUP II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.

GROUP III - Ready mix concrete truck; tractor-trailer and similar equipment.

AREA II - Bryan, Atoka, Pushmataha, Coal, Hughes, Pittsburg, Latimer, LeFlore, McIntosh, Haskell, Sequoyah, Muskogee, Cherokee, Adair, Delaware, and Mayes and Wagoner Counties east of Highway #69.

GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards.

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards.

GROUP V - Ready-mix concrete trucks up to but not including 3 yards and over

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:

a - 6 months to 5 years 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

b - 5 paid holidays - A through E plus G

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day

SUPERSEDEAS DECISION

STATE: South Dakota COUNTY: Minnehaha
DECISION NUMBER: SD85-5043 DATE: Date of Publication
Supersedes Decision Number SD81-5150 dated September 4, 1981, in 46 FR 44656
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	$15.70	$2.15
BOILERMAKERS	16.12	3.575
BRICKLAYERS: Stonemasons	13.60	1.70
CARPENTERS	10.54	
CEMENT MASONS	8.55	
DRYWALL HANGERS	7.00	
DRYWALL TAPERS/FINISHERS	10.87	
ELECTRICIANS:		
Within 30 mile radius of the Main Post Office of Sioux Falls:		
Electrical Installations Under $200,000:		
Electricians	12.05	12⅓%+ 2.00
Cable Splicers	13.26	12⅓%+ 2.00
Electrical Installations Over $200,000:		
Electricians	12.75	12⅓%+ 2.00
Cable Splicers	14.03	12⅓%+ 2.00
Outside 30 mile radius of the Main Post Office of Sioux Falls:		
Electrical Installations Under $200,000:		
Electricians	9.04	12⅓%+ 2.00
Cable Splicers	10.34	12⅓%+ 2.00
Electrical Installations Over $200,000:		
Electricians	14.00	12⅓%+ 2.00
Cable Splicers	15.40	12⅓%+ 2.00
LABORERS:		
Common	5.68	
Mason Tenders	6.00	
LATHERS	$12.59	
PAINTERS	9.00	
PLASTERERS	13.09	
PLUMBERS; Steamfitters	12.36	$2.13
ROOFERS	6.87	
SHEET METAL WORKERS:		
H.V.A.C. Contract Under $175,000.00	13.62	.63 +a
H.V.A.C. Contract Over $175,000.00	15.14	.63 +a
SOFT FLOOR LAYERS	9.50	1.56
TILE SETTERS	11.65	.95
TRUCK DRIVERS	6.21	
POWER EQUIPMENT OPERATORS:		
Cranes	10.00	
Rollers	6.70	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
FOOTNOTE:		
a. 3% of gross earnings to SASMI		

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)).

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FR Doc. 85-28294 Filed 11-27-85; 8:45 am]

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federal register

Friday
November 29, 1985

Part VI

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives; Test Procedure for Determination of Gasoline Lead Content by X-Ray Spectrometry; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL 2899-9]

Regulation of Fuels and Fuel Additives; Test Procedure for Determination of Gasoline Lead Content by X-ray Spectrometry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend its testing procedure for the determination of gasoline lead content by adding an optional third method to the standard method and automated method. This method utilizes X-ray spectrometry, is technically equivalent to the other methods, and is more efficient and cost effective.

DATES: Comments must be submitted on or before January 13, 1986. A public hearing will be held upon request. Requests for a hearing must be submitted by December 13, 1985. If a hearing is requested, an announcement will be published in the **Federal Register** and the comment period will be extended until 30 days after the hearing is held.

ADDRESS: Comments and requests for a hearing should be submitted to Docket No. EN–85–05, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified with the docket number. Copies of information relevant to this proposed rule are available for public inspection at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery I, 401 M Street, SW., Washington, DC 20460, and are available for review between the hours of 8:00 a.m. to 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. To expedite review, it is also requested that a duplicate copy of comments be sent to Marilyn W. McCall at the address listed below.

FOR FURTHER INFORMATION CONTACT: Marilyn W. McCall, Fuels Section, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, DC 20460 (202) 382–2660, or Dr. Joe H. Lowry, Chief, Inorganic Analyses Section, Laboratory Services Division, National Enforcement Investigations Center, Building 53, Box 25227, Denver Federal Center, Denver, Colorado 80225 (303) 236–5132.

SUPPLEMENTARY INFORMATION: The use of leaded gasoline in motor vehicles equipped with catalytic converters as part of their emission control systems can render the catalysts inoperative. Therefore, such vehicles are designed (and labelled) to operate on unleaded gasoline and the introduction of leaded fuel into those vehicles by certain persons is prohibited (40 CFR 80.22). To ensure that fuel represented as unleaded does not contain lead in excess of the maximum established by rule—0.05 gram of lead per gallon (gpg) of gasoline (40 CFR 80.2(g))—the Administrator has established approved testing procedures (40 CFR Part 80, Appendix B). The rule proposed herein would amend the approved procedures (which utilize atomic absorption spectrometry) by adding an optional procedure utilizing X-ray spectrometry. The addition of this procedure will allow greater flexibility and efficiency in the analysis of gasoline lead content.

The method of X-ray spectrometry is proven and accepted. It is an American Society of Testing and Materials (ASTM) method, designated as method B of ASTM D2599, "Standard Test Method for Lead in Gasoline by X-ray Spectrometry," and a recognized standard of the Institute of Petroleum (IP 228).

Slight modifications have been made to the ASTM method in order to achieve compatibility with the atomic absorption method and in order to ensure compliance with EPA quality assurance guidelines. First, the range of the proposed method has been extended from a lower limit of 0.1 gpg to a lower limit of 0.01 gpg. This decrease in the lower limit is well within the valid range of the method (see data in proposed method). The original ASTM method was for leaded gasoline and apparently ASTM did not deem it necessary to go lower than 0.1 gpg.

Second, EPA quality assurance guidelines require more extensive quality checks than the ASTM method and these have been incorporated into the proposed method. The quality assurance part of the proposed method is equivalent to the corresponding sections of the atomic absorption methods in all major respects. The proposed quality assurance standards are more stringent than those of the ASTM method.

The third change is in the calibration procedure. This section is more detailed than the ASTM method in order to better reflect good laboratory practice in enforcement analyses.

The last part of the proposed method, part 9, is composed of quality control data collected at EPA's National Enforcement Investigations Center (NEIC). Almost all of these data were collected during use of the X-ray spectrometer for screening actual samples for lead. (Screening means analyzing all samples by X-ray spectrometry and then reanalyzing samples with excessive lead by atomic absorption.) In order to completely cover the entire range of possible lead concentrations, additional quality control data were collected on specially prepared samples. The actual duplicate, spike recovery, EPA check sample, and NBS reference sample data are included in the proposed method. An extensive comparison between the proposed X-ray method and the automated atomic absorption method was done on 15 samples prepared by compositing several hundred old survey samples. The results of this comparison are also included in the proposed method. EPA has concluded that the two methods show similar precisions for concentrations near 0.05 gpg, but at higher concentrations the X-ray spectrometer is somewhat more precise although the differences between results from the two methods are minor.

Additional Information

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse 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.

The effects of this action are to increase efficiency and reduce costs to test facilities which adopt the proposed procedure.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any EPA responses to such comments have been placed in the docket.

Finally, under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a Regulatory Impact Analysis. The regulation proposed herein authorizes

use of an optional laboratory procedure for testing lead content of gasoline for enforcement purposes. The proposed method allows greater efficiency than the authorized standard methods. This enables facilities to achieve a cost saving if they already have the equipment or test a volume of samples sufficient to warrant the initial investment in the equipment. Small laboratories which cannot afford to purchase the needed equipment may be placed at a competitive disadvantage if they are unable to test gasoline samples as inexpensively as facilities employing the proposed method; however, this impact on small entities is expected to be slight. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulation proposed herein will not impose any reporting requirements on affected parties as no paperwork is required as a result of this proposed rule. Thus, the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 80

Gasoline.

Dated: November 20, 1985.

A. James Barnes,

Acting Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, Part 80 of Title 40 of the Code of Federal Regulations is to be amended as follows:

1. The authority citation for Part 80 continues to read as follows:

Authority: Sec. 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 and 7601, unless otherwise noted.

2. Appendix B is amended by adding Method 3 as follows:

Appendix B—Tests for Lead in Gasoline by Atomic Absorption Spectrometry.

* * * * *

Method 3—Test for Lead in Gasoline by X-ray Spectrometry

1. Scope and Application.

1.1 This method covers the determination of the total lead content of gasoline. The procedure's calibration range is 0.010 to 5.0 grams of lead/U.S. gallon. Samples above this level should be diluted to fall within the range of 0.05 to 5.0 grams of lead/U.S. gallon. The method compensates for variations in gasoline composition and is independent of lead alkyl type.

1.2 This method may be used as an alternative to Method 1—Standard Method Test for Lead in Gasoline by Atomic Absorption Spectrometry, or to the Method 2—Automated Method Test for Lead in Gasoline by Atomic Absorption Spectrometry.

1.3 Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

2. Summary of Method.

2.1 A portion of the gasoline sample is placed in an appropriate holder and loaded into an X-ray spectrometer. The ratio of the net X-ray intensity of the lead L alpha radiation to the net intensity of the incoherently scattered tungsten L alpha radiation is measured. The lead content is determined by reference to a linear calibration equation which relates the lead content to the measured ratio.

2.2 The incoherently scattered tungsten radiation is used to compensate for variations in gasoline samples.

3. Sample Handling and Preservation.

3.1 Samples should be collected and stored in containers which will protect them from changes in the lead content of the gasoline, such as loss of volatile fractions of the gasoline by evaporation or leaching of the lead into the container or cap.

3.2 If samples have been refrigerated they should be brought to room temperature prior to analysis.

3.3 Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

4. Apparatus.

4.1 X-ray Spectrometer, capable of exciting and measuring the fluorescence lines mentioned in 2.1 and of being operated under the following instrumental conditions or others giving equivalent results: a tungsten target tube operated at 50 kV, a lithium fluoride analyzing crystal, an air or helium optical path and a proportional or scintillation detector.

5. Reagents.

5.1 Isooctane

5.2 Lead standard solution, in isooctane, toluene or a mixture of these two solvents, containing approximately 5 gm Pb/U.S. gallon. May be prepared from a lead in oil concentrate such as those prepared by Conostan (Conoco, Inc., Ponca City, Oklahoma). As an alternative, tetraethyl lead or lead naphthenate may be used to prepare the standard. Tetraethyl lead is extremely poisonous and should be handled cautiously in a hood and with gloves. It causes both acute and chronic harm to the central nervous system and is toxic by ingestion, inhalation, and absorption through the skin.

6. Calibration.

6.1 Make exact dilutions with isooctane of the lead standard solution to give solutions with concentrations of 0.01, 0.05, 0.10, 0.50, 1.0, 3.0 and 5.0 g Pb/U.S. gallon. Place each of the standard solutions in a sample cell using techniques consistent with good operating practice for the spectrometer employed. Insert the sample in the spectrometer and allow the spectrometer atmosphere to reach equilibrium (if appropriate). Measure the intensity of the lead L alpha peak at 1.175 angstroms, the Compton scatter peak of the tungsten L alpha line at 1.500 angstroms and the background at 1.211 angstroms. Each measured intensity should exceed 200,000 counts or the time of measurement should be at least 30 seconds. The Compton scatter peak given above is for 90° instrument geometry and should be changed for other geometries. The Compton scatter peak (in angstroms) is found at the wavelength of the tungsten L alpha line plus 0.024 (1-cos phi), where phi is the angle between the incident radiation and the take-off collimator.

6.2 For each of the standards as well as for an isooctane blank determine the net lead intensity by subtracting the corrected background from the gross intensity. Determine the corrected background by multiplying the intensity of the background at 1.211 angstroms by the following ratio obtained on an isooctane blank:

$$\frac{\text{Background at 1.175 angstroms}}{\text{Background at 1.211 angstroms}}$$

6.3 Determine the corrected lead intensity ratio, which is the net lead intensity corrected for matrix effects by division by the net incoherently scattered tungsten radiation. The net scattered intensity is calculated by subtracting the background intensity at 1.211 angstroms from the gross intensity of the incoherently scattered tungsten L alpha peak. The equation for the corrected lead intensity ratio follows:

$$R = \frac{\text{Lead L alpha} - \text{corrected background}}{\text{Incoherent tungsten L alpha} - \text{background}}$$

6.4 Obtain a linear calibration curve by performing a least squares fit of the corrected lead intensity ratios to the standard concentrations.

7. Procedure.

7.1 Prepare a calibration curve as described in 6. Since the scattered tungsten radiation serves as an internal standard, the calibration curve should serve for at least several days. Each day the suitability of the calibration curve should be checked by analyzing several NBS lead-in-reference-fuel standards or other suitable standards.

7.2 Determine the corrected lead intensity ratio for a sample in the same manner as was done for the standards. The samples should be brought to room temperature before analysis.

7.3 Determine the lead concentration of the sample from the calibration curve. If the sample concentration is greater than 5.0 g Pb/U.S. gallon, the sample should be diluted to between 0.05 and 5.0 g Pb/U.S. gallon and reanalyzed.

7.4 Quality control standards, such as NBS standard reference materials, should be analyzed periodically.

7.5 For each group of ten samples, a spiked sample should be prepared by adding a known amount of lead to a sample. This known addition should be at least 0.05 g Pb/gal., at least 50% of the measured lead content of the unspiked sample, and not more than 200% of the measured lead content of the unspiked sample (unless the minimum addition of 0.05 g Pb/gal. exceeds 200%). Both the spiked and unspiked samples should be analyzed.

8. Quality Control.

8.1 The difference between duplicates should not exceed 0.005 g Pb/U.S. gallon or a relative difference of 6%.

8.2 All quality control standard check samples should agree within 10% of the nominal value of the standard.

8.3 All spiked samples should have a percent recovery of 100%±10%. The percent recovery, P, is calculated as follows:

$$P = 100\% (A-B)/K$$

where

A = the analytical result from the spiked sample,

B = the analytical result from the unspiked sample, and

K = the known addition.

8.4 The difference between independent analyses of the same sample in different laboratories should not exceed 0.01 g Pb/U.S. gallon or a relative difference of 12%.

9. Past Quality Control Data.

9.1 Duplicate analysis for 26 samples in the range of 0.01 to 0.10 g Pb/gal. resulted in an average relative difference of 5.4% with a standard deviation of 5.4%. Duplicate analysis of 15 samples in the range 0.1 to 0.5 g Pb/gal. resulted in an average relative difference of 2.4% with a standard deviation of 1.9%. Duplicate analysis of 47 samples in the range of 0.5 to 5 g Pb/gal. resulted in an average relative difference of 2.1% with a standard deviation of 1.8%.

9.2 The average percent recovery for 23 spikes made to samples in the 0.0 to 0.1 g Pb/gal. range was 103% with a standard deviation of 3.2%. For 42 spikes made to samples in the 0.1 to 5.0 g Pb/gal. range, the average percent recovery was 102% with a standard deviation of 4.2%.

9.3 The analysis of National Bureau of Standards lead-in-reference-fuel standards of known concentrations in a single laboratory has resulted in found values deviating from the true value for 14 determinations of 0.0490 g Pb/gal. by an average of 2.8% with a standard deviation of 6.4% for 11 determinations of 0.065 g Pb/gal. by an average of 4.4% with a standard deviation of 2.9%, and for 15 determinations of 1.994 g Pb/gal. by an average of 0.3% with a standard deviation of 1.3%.

9.4 Eighteen analyses of reference samples (U.S. EPA, Research Triangle Park, NC) have resulted in found values differing from the true value by an average of 0.0004 g Pb/gal. with a standard deviation of 0.004 g Pb/gal.

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H.R. 3038/Pub. L. 99-160

Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986. (Nov. 25, 1985; 99 Stat. 909; 25 pages) Price: $1.00

H.R. 3447/Pub. L. 99-161

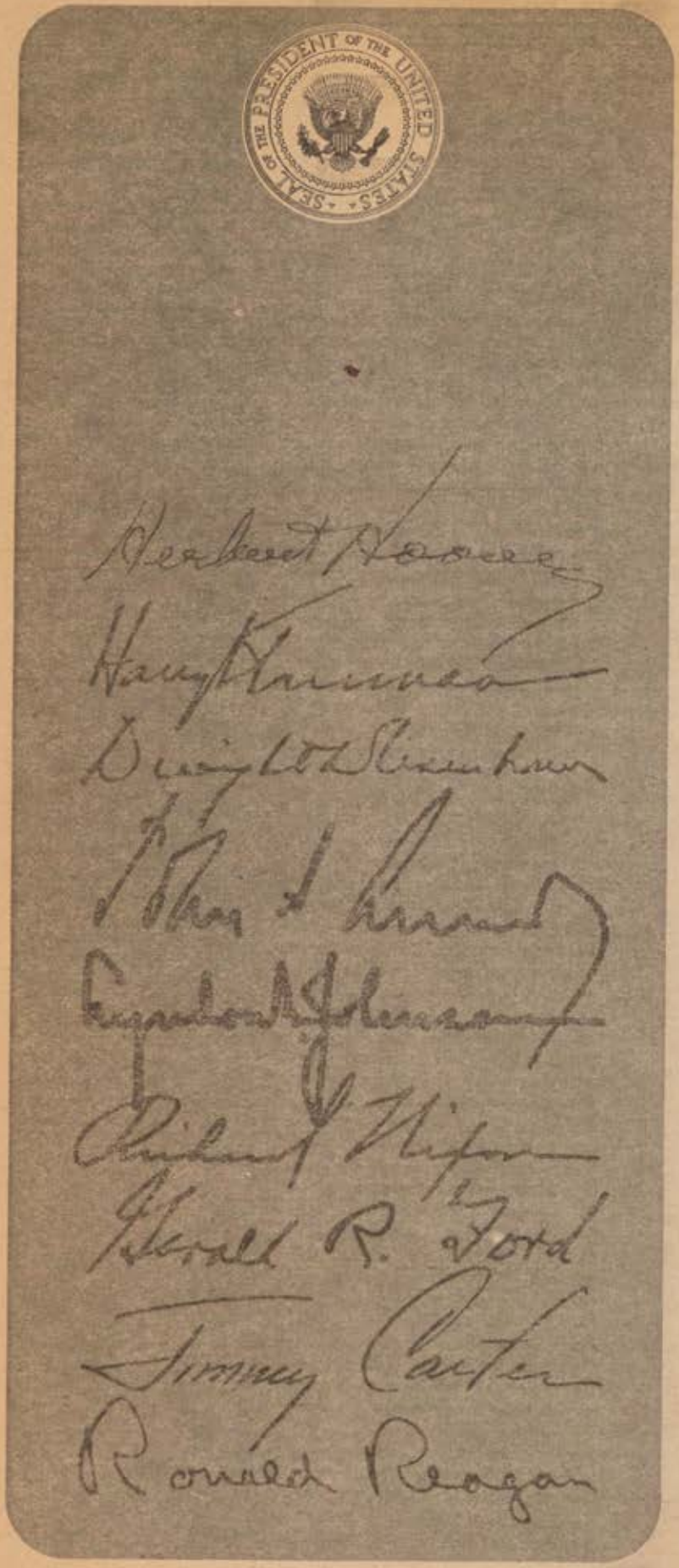
Congressional Award Amendments of 1985. (Nov. 25, 1985; 99 Stat. 934; 3 pages) Price: $1.00

S.J. Res. 228/Pub. L. 99-162

Relating to the proposed sales of arms to Jordan. (Nov. 25, 1985; 99 Stat. 937; 1 page) Price: $1.00

S.J. Res. 174/Pub. L. 99-163

To designate November 18, 1985, as "Eugene Ormandy Appreciation Day". (Nov. 25, 1985; 99 Stat. 938; 1 page) Price: $1.00



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