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# Federal Register

Friday
November 7, 1986

**Briefings on How To Use the Federal Register—**
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## 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.

### WASHINGTON, DC

**WHEN:** November 18 at 9:30 a.m.

**WHERE:** National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC

**RESERVATIONS:** Laurice Clark, 202-523-3419.

### NEW YORK, NY

**WHEN:** December 5 at 10:00 a.m.,

**WHERE:** Room 305A, 26 Federal Plaza, New York, NY

**RESERVATIONS:** Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

### PITTSBURGH, PA

**WHEN:** December 8 at 1:30 p.m.,

**WHERE:** Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

**RESERVATIONS:** Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia: 215-597-1707, 1709

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# Presidential Documents

Title 3— The President

## Proclamation 5564 of November 3, 1986

## Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association With the Federated States of Micronesia and the Republic of the Marshall Islands

**By the President of the United States of America**

**A Proclamation**

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94–241 of March 24, 1976, 90 Stat. 263. Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public Law 99–239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the

United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 (Public Law 99–239), do hereby find, declare, and proclaim as follows:

**Section 1.** I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

**Sec. 2.** (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Nothern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

**Sec. 3.** (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25463
Filed 11-6-86; 11:17 am]
Billing code 3195-01-M

# Presidential Documents

**Executive Order 12572 of November 3, 1986**

## Relations With the Northern Mariana Islands

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that, consistent with the Joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," approved March 24, 1976 (Public Law 94–241; 90 Stat. 263), the relations of the United States with the Government of the Northern Mariana Islands shall, in all matters not the program responsibility of another Federal department or agency, be under the general administrative supervision of the Secretary of the Interior.

Ronald Reagan

THE WHITE HOUSE,
*November 3, 1986.*

[FR Doc. 86–25466
Filed 11–6–86; 11:18 am]
Billing code 3195–01–M

# Presidential Documents

**Proclamation 5565 of November 5, 1986**

## National Alzheimer's Disease Month, 1986

**By the President of the United States of America**

**A Proclamation**

Alzheimer's disease afflicts more than 2.5 million Americans. It destroys specific cells of the brain, impairing memory and judgment and producing confused thought and irritability. Families and friends, no less than the patient, are caught up in a daily battle to cope emotionally, physically, and financially with the patient's loss of intellectual functioning. We owe these patients and their families our understanding and our support.

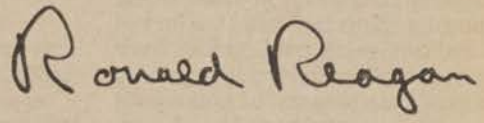
No cure or treatments yet exist for Alzheimer's disease, but scientific research gives us hope. In medical institutions and laboratories across our country, scientists, supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and by voluntary organizations such as the Alzheimer's Disease and Related Disorders Association, are carrying out a wide range of studies on Alzheimer's disease and similar forms of dementia.

Each day, these efforts yield new knowledge about the functions of the brain and its disorders. New imaging techniques have disclosed that Alzheimer's disease does not affect the entire brain, as previously thought, but instead destroys specific areas. Scientists can now target future research more precisely on these areas and on certain brain chemicals that appear to play a role in the disease. Much about Alzheimer's disease remains to be learned, but through research we hope to find a way to overcome what we now know is a disease and not "senility" or a normal consequence of aging.

To demonstrate our commitment to conquering this disease and to enhance public awareness of Alzheimer's disease, the Congress, by Public Law 99–520, has designated the month of November 1986 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1986 as National Alzheimer's Disease Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 86–25467
Filed 11–6–86; 11:19 am]
Billing code 3195–01–M

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 29

### Tobacco Inspection; Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** These regulations modify the Official Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco to more accurately describe tobacco as it presently appears at the marketplace. These modifications will: (1) Reduce the number of size designations in fire-cured and dark air-cured tobacco; (2) add a special factor symbol in the fire-cured types to denote tobacco that is not sufficiently smoked; (3) add grades in burley tobacco to separate tannish-buff color from tan color, to describe fine quality mixed color leaf, and to describe variegated color in mixed groups; (4) delete certain grades determined to be no longer necessary; and (5) modify and add definitions to clarify terminology related to grade determinations of fire-cured tobacco.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Director Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture. Washington, DC 20250, telephone (202) 447-2567.

**SUPPLEMENTARY INFORMATION:** A notice was published October 1, 1986 (51 FR 34994), that the Department was considering the modification of the Official Standard Grades for Fire-Cured Tobacco, U.S. Types 21–23 and Foreign Type 96, Burley Tobacco, U.S. Type 31 and Foreign Type 93, and Dark Air-Cured Tobacco, U.S. Types 35–37 and Foreign Type 95, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The following modifications were proposed: (1) Reduce the number of standard sizes in fire-cured tobacco, types 22–23 and 96 and dark air-cured types 35–37 and 95, by specifying a range of 8 inches within individual sizes and redesignating the standard sizes as "1", "2" and "3"; (2) change the specification of body in dark fire-cured tobacco, types 22–23 and 96, from "heavy" to "medium to heavy" in grades B1D–B5D, B3G–B5G, X1D–X3D and X3G; (3) add a special factor "semifired (SF)" in dark fire-cured tobacco, types 21–23 and 96, to describe tobacco that has not received the amount of smoke characteristic of fire-cured tobacco; (4) replace grade N1G in dark fire-cured tobacco, types 22–23 and 96, with two new grades, N1GL and N1GX, to separate green nondescript from thinner Lug group and green nondescript from the heavier Leaf group; (5) add a new combination color symbol and definition in burley tobacco types 31 and 93 to describe tannish-buff (FL) color and add new grades B2FL, B3FL and B4FL to describe tannish-buff color produced in the Leaf (B) group; (6) add a new grade B2M in burley tobacco, types 31 and 93, to describe fine mixed color in the Leaf (B) group; (7) delete grades M1F and M2F in burley, types 31 and 93, based on the fact that tobacco characteristic of these grades has appeared in insufficient volume to justify retention; and (8) add grades M4K and M5K in burley, types 31 and 93, to describe variegated color in the mixed (M) group.

A total of nine comments were received, six from producer associations, and one each from a manufacturer, dealer, and dealer association. Eight of the comments generally supported the proposals, although some suggested modifications, which are discussed below.

Three comments from producer associations suggested that the Tips (T) grades be deleted in dark air-cured tobacco, types 35–37 and 95. The proposal would delete the Tips (T Group) grades by creating standard size "1", which would include tips and other leaves ranging from 12 to 20 inches in length. The proposal inadvertently failed to delete all of the references to tips. In order to avoid confusion, this final rule will also delete all references to tips in the Official Standard Grades for dark air-cured tobacco, types 35–37 and 95.

Two comments from producer associations suggested that the special factor "BL" (Broad Leaf) be deleted. This special factor symbol is used in Type 35, to designate tobacco that contains broad leaves. This suggestion appears to have some merit. However, since the suggested change is not directly related to the changes which appeared in the notice of proposed rulemaking, it would not be appropriate to make such a change at this time. The suggestion will be considered for inclusion in any future proposed revision of the Official Standard Grades.

One comment from a company which deals in leaf tobacco suggested that the standard sizes in Type 21 should be: Size "1"—12 to 18 inches, Size "2"—18 to 26 inches, and Size "3"—over 26 inches. The Department believes that the proposed standard sizes would be easier to correlate to the current standard sizes. The proposed standard size "1" combines current standard sizes "43" and "44", proposed standard size "2" combines current standard sizes "45" and "46", and proposed standard size "3" is the same as current standard size "47". Also, the Department believes that uniform sizes should be maintained in all dark types of tobacco. Accordingly, this suggestion is not adopted in this final rule.

One comment was received from a tobacco manufacturer which supported the proposed regulations, and which also suggested that some action be taken concerning the rule applying to wet tobacco. This suggestion will be considered in any future proposed revision of the Official Standard Grades.

One comment was received from an association representing burley tobacco growers, objecting to the inclusion of any additional grades for burley tobacco. The commentor argued that no additional grades are necessary to adequately describe the crop. However, in recent years burley tobacco lighter than tan color has appeared at the marketplace in substantial quantities, as has mixed color leaf which exceeds third quality. Also, experience with the grading of imported burley tobacco has shown that substantial quantities of mixed variegated leaf are being imported. The additional grades are necessary to adequately describe such tobacco. Accordingly, the suggested

modification of the proposal is not adopted in this final rule.

Finally, minor corrections have been made in the grade name and specifications of the new grade "B2FL". In the proposal, the grade name was given as "Good Tannish-Buff Leaf", which was the same as the name of the grade "B3FL". This has been corrected to "Fine Tannish-Buff Leaf" in this final rule. Also, the injury tolerance for "B2FL" has been corrected to be 10 percent, which is the standard injury tolerance for fine quality in the "B" group.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this final rule. The Administrator, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact upon a substantial number of small entities.

The purpose of the Official Standard Grades is to accurately describe tobacco as it presently appears in the marketplace, in terms of the characteristics which are significant in current marketing practices. This final rule would adjust the Official Standard Grades to reflect current conditions and practices relevant to the marketing of tobacco. The changes would impose no additional burdens on persons affected by the regulations.

It is also found and determined that it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of this rule for 30 days after publication in the **Federal Register.** This final rule is made effective upon publication in order to allow the Commodity Credit Corporation to establish and announce the price supports by grade prior to the opening of the 1986 marketing season.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the proposed regulations with minor modifications.

**List of Subjects in 7 CFR Part 29**

Administrative practices and procedures, Tobacco.

## PART 29—TOBACCO INSPECTION

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

1. The authority citation for §§ 29.2251 to 29.2481 is revised to read as follows:

**Authority:** Sections 29.2251 to 29.2481, issued under 7 U.S.C. 511m and 511r.

**§§ 29.2295 through 29.2316 [Redesignated as §§ 29.2296 through 29.2317]**

2. Current §§ 29.2295 through 29.2316 are redesignated as §§ 29.2296 through 29.2317, respectively.

3. A new § 29.2295 is added to read as follows:

**§ 29.2295 Semifired (SF).**

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

4. § 29.2371 is revised to read as follows:

**§ 29.2371 Standard sizes.[1]**

| Inches | Size |
|---|---|
| 12–20 | 1 |
| 20–28 | 2 |
| Over 28 | 3 |

[1] The application of sizes is governed by the major portion of the lot or package.

5. § 29.2404 is revised to read as follows:

**§ 29.2404 Rule 13.**

Length shall be stated in connection with each grade of the A, B and C groups and may be stated in connection with the grades of other groups. The standard tobacco sizes shall be used.

6. § 29.2405 is revised to read as follows:

**§ 29.2405 Rule 14.**

The standard tobacco size 2 shall be used to designate X group tobacco of M or G color when such tobacco is 20 inches or over in length.

7. A new § 29.2414 is added to read as follows:

**§ 29.2414 Rule 23.**

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

**§ 29.2461 [Amended]**

8. Section 29.2461 is amended by revising the table heading "321 Grades of lugs" to read "21 Grades of lugs".

9. Section 29.2461 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W" and "SF" may be applied to all grades.

10. Section 29.2461 is further amended by revising the heading and text of the chart "U.S. Standard sizes applicable" to read as follows:

*Standard sizes applicable.*

| | |
|---|---|
| A1, A2 | 2, 3 |
| B1 | 2, 3 |
| B2, B3, B4, B5 | 1, 2, 3 |
| C1 | 2, 3 |
| C2, C3, C4, C5 | 1, 2, 3 |
| X3, X4, X5, M and G [1] | 2 |

[1] No size is applied to these grades if tobacco is under size 2.

11. The authority citation for §§ 29.2501 to 29.2696 is revised to read as follows:

**Authority:** Sections 29.2501 to 29.2696 issued under 7 U.S.C. 511m and 511r.

**§ 29.2547 through § 29.2570 [Redesignated as § 29.2548 through § 29.2571]**

12. Current §§ 29.2547 through 29.2570 are redesignated as §§ 29.2548 through 29.2571, respectively.

13. A new § 29.2547 is added to read as follows:

**§ 29.2547 Semifired (SF).**

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

14. § 29.2606 is revised to read as follows:

**§ 29.2606 Standard sizes.[1]**

| Inches | Size |
|---|---|
| 12–20 | 1 |
| 20–28 | 2 |
| Over 28 | 3 |

[1] The application of sizes is governed by the major portion of the lot or package.

**§ 29.2629 [Amended]**

15. § 29.2629 is amended to remove the words "4-inch series of" from the last sentence.

16. A new § 29.2640 is added to read as follows:

**§ 29.2640 Rule 24.**

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the

grademark. This factor does not apply to tobacco designated "No-G".

**§ 29.2662 [Amended]**

17. The table in § 29.2662 is amended in the text under the headings "B1D-Choice Dark-brown Heavy Leaf", "B2D-Fine Dark-brown Heavy Leaf", "B3D-Good Dark-brown Heavy Leaf", "B4D-Fair Dark-brown Heavy Leaf", "B5D-Low Dark-brown Heavy Leaf", B3G-Good Green Heavy Leaf", "B4G-Fair Green Heavy Leaf", and "B5G-Low Green Heavy Leaf" to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

**§ 29.2664 [Amended]**

18. Section 29.2664 is amended in the text under the headings "X1D-Choice Dark-brown Lugs", "X2D-Fine Dark-brown Lugs", "X3D-Good Dark-brown Lugs", and "X3G-Good Green Lugs" to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

**§ 29.2665 [Amended]**

19. § 29.2665 is amended to remove the grade "N1G-First Quality Crude Green Nondescript".

20. § 29.2665 is further amended to add two new grades following the grade "N1D-First Quality Dark Colored Nondescript" to read as follows:

| | |
|---|---|
| N1GL | First Quality Crude Green Nondescript from the C or B Groups 60 percent crude leaves or injury tolerance. |
| N1GX | First Quality Crude Green Nondescript from the X Group 60 percent crude leaves or injury tolerance. |

**§ 29.2686 [Amended]**

21. § 29.2686 is amended by revising the heading and text of the chart "4 Grades of Nondescript" to read as follows:

5 Grades of Nondescript

| | | | | |
|---|---|---|---|---|
| N1L | N1D | N1GL | N1GX | N2 |

22. § 29.2686 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W", "S" and "SF" may be applied to all grades.

23. § 29.2686 is further amended by revising the chart "Standard Sizes Applicable" to read as follows:

*Standard sizes applicable*

| | |
|---|---|
| A1, A2, A3 | 2, 3 |
| B1, B2, B3, B4, B5 | 1, 2, 3 |
| C1, C2, C3, C4, C5 | 1, 2, 3 |

24. The authority citation for §§ 29.3001 to 29.3182 is revised to read as follows:

**Authority:** Sections 29.3001 to 29.3182 issued under 7 U.S.C. 511m and 511r.

25. § 29.3013 is revised to read as follows:

**§ 29.3013 Combination color symbols.**

As applied to Burley, combination color symbols are as follows:

FL—tannish buff, FR—tannish red, VF—greenish tan, VR—greenish red, GF—green tan, and GR—green red. (See rules 17 and 18.)

**§§ 29.3067 through 29.3077 [Redesignated as §§ 29.3068 through 29.3078]**

26. Current §§ 29.3067 through 29.3077 are redesignated as §§ 29.3068 through 29.3078, respectively.

27. A new § 29.3067 is added to read as follows:

**§ 29.3067 Tannish-buff (FL).**

A light red-yellow shaded toward buff.

28. § 29.3118 is revised to read as follows:

**§ 29.3118 Rule 15.**

Any lot of tobacco containing over 20 percent of variegated leaves shall be described as "variegated" and designated by the color symbol "K."

29. § 29.3153 is amended to add three new grades following the grade "B5F-Low Tan Leaf", and by adding one new grade following "B5K-Low Variegated Leaf: to read as follows:

**§ 29.3153 Leaf (B Group).**

* * * * *

| Grades | Grade names and specifications |
|---|---|
| * * * * * | |
| B5F | * * * |
| B2FL | Fine Tannish-buff Leaf. Medium body, ripe, open, even, clear finish, strong color intensity, spready, 20" or over in length, 90 percent uniform, and 10 percent injury tolerance. |
| B3FL | Good Tannish-buff Leaf Medium body, mature to ripe, firm to open, wavy to even, moderate finish and color intensity, narrow to normal width, 18" or over in length, 85 percent uniform, and 15 percent injury tolerance. |
| B4FL | Fair Tannish-buff Leaf. Medium body, mature, firm, wavy, dull finish, weak color intensity, narrow, 16" or over in length, 80 percent uniform, and 20 percent injury tolerance. |
| * * * * * | |
| B5K | * * * |
| B2M | Fine Mixed Color Leaf. Fleshy to medium body, ripe, open, even, clear finish, strong color intensity, 20" or over in length, 90 percent uniform, and 10 percent injury tolerance. |

**§ 29.3155 [Amended]**

30. § 29.3155 is amended to remove the grades "M1F-Choice Light Mixed" and "M2F-Fine Light Mixed".

31. § 29.3155 is further amended to add two new grades following the grade "M5FR—Low Dark Mixed" to read as follows:

**§ 29.3155 Mixed (M Group).**

* * * * *

| Grades | Grade names and specifications |
|---|---|
| * * * * * | |
| M5FR | * * * |
| M4K | Fair Variegated Mixed. General quality of X4, C4, B4, T4, fleshy to thin body, under 20 percent greenish, and 20 percent injury tolerance. |
| M5K | Low Variegated Mixed. General quality of X5, C5, B5, T5, fleshy to thin body, under 20 percent greenish, and 30 percent injury tolerance. |

**§ 29.3181 [Amended]**

32. § 29.3181 is amended by revising the heading and text of the chart "35 Grades of Leaf" to read as follows:

39 Grades of Leaf

| | | | |
|---|---|---|---|
| B1F | B3FR | B3K | B3VR |
| B2F | B4FR | B4K | B4VR |
| B3F | B5FR | B5K | B5VR |
| B4F | B1R | B2M | B3GF |
| B5F | B2R | B3M | B4GF |
| B2FL | B3R | B4M | B5GF |
| B3FL | B4R | B5M | B3GR |
| B4FL | B5R | B3VF | B4GR |
| B1FR | B4D | B4VF | B5GR |
| B2FR | B5D | B5VF | |

33. § 29.3181 is further amended by revising the chart "8 Grades of Mixed Group" to read as follows:

8 Grades of Mixed Group

| | | | |
|---|---|---|---|
| M3F | M5F | M4FR | M4K |
| M4F | M3FR | M5FR | M5K |

34. § 29.3181 is further amended by revising the chart "7 Grades of Nondescript" to read as follows:

7 Grades of Nondescript

| | | | |
|---|---|---|---|
| N1L | N1R | N2L | N2G |
| N1F | N1G | N2R | |

**§ 29.3182 [Amended]**

35. § 29.3182 is amended under the heading "Colors" by adding "FL—Tannish Buff" following "F—Tan".

36. The authority citation for §§ 29.3501 to 29.3686 is revised to read as follows:

Authority: Sections 29.3501 to 29.3686 issued under 7 U.S.C. 511m and 511r.

37. § 29.3523 is revised to read as follows:

**§ 29.3523 Group.**

A division of a type covering closely related grades based on certain characteristics which are related to stalk position, body, or the general quality of the tobacco. Groups in Dark Air-cured types are: Wrappers (A), Heavy Leaf (B), Thin Leaf (C), Lugs (X), Nondescript (N), and Scrap (S).

38. § 29.3529 is revised to read as follows:

**§ 29.3529 Length.**

The linear measurement of cured tobacco leaves from the butt of the midrib to the extreme tip. (See Standard Tobacco Sizes, § 29.3591.)

39. § 29.3545 is revised to read as follows:

**§ 29.3545 Size.**

The length of tobacco leaves. Size does not apply to tobacco in strip form. (See Standard Tobacco Sizes § 29.3591.)

40. § 29.3591 is revised to read as follows:

**§ 29.3591 Standard Tobacco Sizes.[1]**

| Inches | Sizes |
|---|---|
| 12-20 | 1 |
| 20-28 | 2 |
| Over 28 | 3 |

[1] The application of sizes is governed by the major portion of the lot or package.

41. § 29.3601 is revised to read as follows:

**§ 29.3601 Rules.**

The application of §§ 29.3501 to 29.3568, § 29.3591, §§ 29.3646 to 29.3648, §§ 29.3650 to 29.3652 and 29.3681 shall be in accordance with the following rules.

42. § 29.3614 is revised to read as follows:

**§ 29.3614 Rule 13.**

Length shall be stated in connection with each grade of the A, B, and C groups, except strip grades, and may be stated in connection with grades of other groups. For this purpose, the standard tobacco sizes shall be used. (See Applicable Standard Sizes, § 29.3681.)

43. § 29.3619 is revised to read as follows:

**§ 29.3619 Rule 18.**

Any lot of tobacco of the B, C, or X groups shall be classified as "mixed" and designated by the color symbol "M" when it is not green but contains (a) over 30 percent of colors distinctly different from the major color or (b) over 30 percent of a combination of variegated and colors distinctly different from the major color mingled together.

44. § 29.3621 is revised to read as follows:

**§ 29.3621 Rule 20.**

Crude leaves shall not be included in any grade of any color except the fourth and fifth qualities of the B, C, and X groups in green color. Any lot containing 20 percent or more of crude leaves shall be designated as Nondescript.

**§ 29.3649 [Removed and Reserved]**

45. § 29.3649 is removed and reserved.

**§ 29.3676 [Amended]**

46. § 29.3676 is amended to remove the heading and text of the chart "15 Grades of Tips."

47. § 29.3681 is revised to read as follows:

**§ 29.3681 Applicable standard sizes.**

Types 35, 36, 37 and 95

| | |
|---|---|
| A1, A2, A3 | 2, 3 |
| B1, B2, B3, B4, B5 | 1, 2, 3 |
| C1, C2, C3, C4, C5 | 1, 2, 3 |

**§ 29.3686 [Amended]**

48. § 29.3686 is amended to remove the words "T-Tips" under the heading "Group."

Dated: November 5, 1986.

**William T. Manley,**

*Deputy Administrator, Marketing Programs.*

[FR Doc. 86-25312 Filed 11-5-86; 10:41 am]

BILLING CODE 3410-02-M

## 7 CFR Part 1280

**[Docket No. WR-1]**

## Wheat and Wheat Foods Research and Nutrition Education; Termination Order

*Correction*

In FR Doc. 86-24746 beginning on page 39738 in the issue of Friday, October 31, 1986, make the following correction:

On page 39739, first column, second complete paragraph, thirteenth line, insert the following after "cracker": ", (3) pasta, and (4) bread manufacturers. Cereal manufacturers and biscuit and cracker ".

BILLING CODE 1505-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 86-NM-33-AD; Amdt. 39-5459]**

## Airworthiness Directives; Fokker Model F27 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that requires a one-time inspection of the elevator trim tab bracket attachment, and repair, if necessary, on certain Fokker Model F27 series airplanes. The use of incorrect rivets was a contributing factor in one case of rudder tab flutter; there is evidence that the same incorrect rivets may have been used in the elevator trim tab. Flutter could lead to structural failure.

**DATE:** Effective December 10, 1986.

**ADDRESSES:** The service bulletin specified in this AD may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schinphol Oost, the Netherlands. 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:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. 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 which requires a one-time inspection and repair, if necessary, of the elevator trim tab bracket on certain Fokker Model F27 series airplanes to prevent structural failure, was published in the Federal Register on May 15, 1986 (51 FR 17745).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 40 airplanes of U.S. registry will be affected by this AD, that

it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for tnis regulation and has been placed in the 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 adding the following new airworthiness directive:

**Fokker B.V.:** Applies to Model F27 airplanes; serial numbers 10105 to 10648 inclusive, 10654, 10658, 10659, 10660, 10662 to 10667 inclusive, 10669, 10672 and 10678; certificated in any category. To ensure structural integrity of the elevator trim tab, accomplish the following, unless already accomplished:

A. Within 60 days after the effective date of this AD, conduct a one-time visual inspection of the elevator trim tab in accordance with Fokker Service Bulletin F27/55-59, Revision, 1, dated October 15, 1985.

B. If incorrect rivets are installed, repair the tab before further flight in accordance with the above service bulletin.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172] Schiphol Oost, the Netherlands. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 10, 1986.

Issued in Seattle, Washington, on October 30, 1986.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 86-25137 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 86-CE-54-AD; Amdt. 39-5457]**

## Airworthiness Directives; Univair (Ercoupe) Models 415, -C, -CD, -D, -E, -G and (Forney) Models F1 and F1A Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Univair (Ercoupe) Models 415, -C, -CD, -D, -E, -G, and (Forney) Models F1 and F1A airplanes which requires inspection of the fuel line nipple located between the gascolator and the carburetor for cracks, incorrect alignment or over torque and replacement as necessary, of the original AN911-2D (aluminum) nipple with a AN911-2 (brass or steel) nipple. Reports have been received indicating this nipple is cracking causing fuel leakage and engine power loss. These failures may have been the result of incorrect alignment or over torque of the aluminum nipple. The inspection and replacement of this nipple as necessary, will prevent future fuel line failures.

**EFFECTIVE DATE:** November 13, 1986.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Univair Aircraft Corporation (Ercoupe) Service Bulletin (S/B) No. 24A dated August 22, 1986, applicable to this AD may be obtained from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald F. May, FAA, Denver Aircraft Certification Office, ANM-170D, Northwest Mountain Region, 10455 East Avenue, Suite 307, Aurora, Colorado 80010; Telephone (303) 340-5582.

**SUPPLEMENTARY INFORMATION:** Reports have been received of the fuel line nipple (AN911-2D) located between the gascolator and the carburetor cracking causing fuel leakage and engine power loss on certain Univair (Forney) Models 415, F1 and F1A airplanes. These failures may have been the result of incorrect alignment or over torque of the aluminum nipple. To reduce the possibility of these nipple failures the manufacturer has published Revision A to Ercoupe Bulletin No. 24. This bulletin provides instructions to assure correct alignment and prevent over torque of the fitting. In addition, it changes the fitting material from a AN911-2D (aluminum) to AN911-2 (brass or steel) nipple.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection of the fuel line nipple for cracks, incorrect alignment or over torque and replacement as necessary of the original AN911-2D (aluminum) nipple with a AN911-2 (brass or steel) nipple on Univair (Ercoupe) Models 415, -C, -CD, -D, -E, -G, and (Forney) Models F1 and F1A airplanes in accordance with Ercoupe Bulletin No. 24A. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may

be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**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 FAR 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 adding the following new AD:

**Univair Aircraft Corporation:** Applies to Model (Ercoupe) 415, -C, -CD, -D, -E, -G (all serial numbers), and (Forney) Models F1 and F1A (all serial numbers) airplanes certificated in any category.

*Compliance:* Required within the next 25 hours time-in-service after the effective date of this AD or at the next annual inspection whichever occurs first, unless already accomplished.

To prevent possible fuel leakage and loss of engine power, accomplish the following:

(a) Visually inspect the fuel line nipple located between the gascolator and the carburetor for cracks, incorrect alignment or over torque and prior to further flight replace as necessary, the nipple from a AN911-2D (aluminum) to a AN911-02 (brass or steel) fitting as described in Univair Aircraft Corporation, Ercoupe Bulletin No. 24A dated August 22, 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Denver Aircraft Certification Office, Northwest Mountain Region, 10455 East Avenue, Suite 307, Aurora, Colorado 80010.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1986.

Issued in Kansas City, Missouri, on October 29, 1986.

**Jerold M. Chavkin,**

*Acting Director, Central Region.*

[FR Doc. 86-25138 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 85-AWA-1]**

## Establishment of Airport Radar Service Areas

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

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the Theodore Francis Green State Airport, Providence, RI, Airport Radar Service Area (ARSA) by adding the hours of operation.

**EFFECTIVE DATE:** 0901 UTC, December 18, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267-9253.

**SUPPLEMENTARY INFORMATION:**

History

On October 20, 1986, the FAA published a final rule which will established an ARSA at Theodore Francis Green State Airport, effective December 18, 1986 (51 FR 37256). The hours of operation of this ARSA were inadvertently omitted from the rule. This action corrects the final rule to reflect the hours of operation.

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**

Aviation safety, Airport radar service areas.

**Adoption of the Correction**

**PART 71—[CORRECTED]**

Accordingly, pursuant to the authority delegated to me, Federal Register Document 86-23606, as published in the Federal Register on October 20, 1986, (51 FR 37256) is amended as follows:

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

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

**§ 71.501 [Amended]**

2. Section 71.501 is amended as follows:

**Providence Theodore Francis Green State Airport, RI [Amended]**

By adding the following to the end of the text "This airport radar service area is effective during the specific days and times of operation of the Quonset Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Washington, DC, on October 31, 1986.

**Harold H. Downey,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 86-25136 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-13-M

**Office of the Secretary**

**14 CFR Parts 204 and 291**

**[Docket No. 44036; Amdt. Nos. 204-8 and 291-19]**

## Limitation on Fitness Determination: Revocation of Operating Authority

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Department is making final a rule that will automatically revoke the authority of carriers who do not begin operations within one year of being found fit or who, having begun and then ceased operations, remain dormant for any subsequent one-year period. The new rule substitutes provisions to this effect for existing §§ 204.8 and 291.15. These sections currently require, after two years, a new fitness determination for dormant carriers proposing to start operations, but they do not terminate the authority of carriers that choose not to start service at all or that, having started and stopped, choose not to resume. The purpose of the change is to improve the Department's ability to monitor continuing fitness of air carriers.

**DATE:** This regulation is effective December 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Jeffery B. Gaynes or Patricia T. Szrom,

Office of Aviation Operations, Department of Transportation, 400 Seventh Street, SW., Room 6402, Washington, DC 20590. (202) 366-2424 or (202) 366-9721.

**SUPPLEMENTARY INFORMATION:**

## Background

Under section 401(r) of the Federal Aviation Act of 1958, as amended, the fitness requirement for those carriers holding a certificate under section 401 is a continuing one. The Department of Transportation has the authority under section 401(r), after notice and hearing, to modify, suspend, or revoke an air carrier's certificate if it is no longer fit, willing, and able to operate, or if it violates any Department reporting requirements to implement the continuing fitness requirement. We have comparable authority *vis-a-vis* commuter air carriers and section 418 all-cargo carriers. The FAA and the Department can directly monitor the continuing fitness of carriers that are actually operating in air transportation. Carriers that are not operating, even though they have been certificated or otherwise authorized to provide service for which a fitness finding is needed, pose a special problem of how to review their continuing fitness.

By the Notice of Proposed Rulemaking issued May 16, 1986 (51 FR 19071, May 27, 1986), we announced a proposal designed to address this problem. We proposed to automatically revoke the authority of carriers that do not begin operations within one year of being found fit or that, having begun and then ceased operations, remain dormant for any subsequent one-year period. We proposed to do so by substituting provisions to this effect for existing §§ 204.8 and 291.15 of the Department's regulations. These sections currently require, after two years, a new fitness determination for dormant carriers proposing to start operations, but they do not terminate the authority of carriers that choose not to start service at all or that, having started and stopped, choose not to resume operations. The Department also proposed to terminate dormant authority of operating carriers in certain instances and to require carriers temporarily ceasing all operations to file notices and supporting information prior to recommencing operations.

## Comments

We received comments on our proposal from DHL Airways, Pacific American Airlines, Transamerica Airlines, The Flying Tiger Line, Airlift International, Midway Airlines and the Regional Airline Association (RAA).

DHL and Pacific American oppose the proposed rule in its entirety. DHL says the proposal contravenes the deregulation philosophy of promoting public benefits by maximizing the number of carriers, and thereby maximizing the price and service options available to consumers. Furthermore, DHL says that the rule is unnecessary since current regulations and practices are sufficient to protect against certificate abuses. Finally, DHL sees the proposal as causing specific harm to itself, since it holds substantial dormant authority—especially certain international large aircraft authority—that it spent time and resources to acquire, might seek to use on short notice, but now would risk losing with no way of reacquisition short of lengthy procedures. As a compromise, DHL (which at present conducts cargo operations only) would allow its dormant passenger authority to be subject to the one year revocation rule, so long as its unused cargo authority would continue.

Pacific American, like DHL, feels that the existing regulations on dormancy are adequate. In opposing the proposed rule, it says that the rule would create problems for new carriers by forcing them to reestablish their fitness every year, and do so while they were in the midst of negotiations to secure financing; that any time period of less than two years to initiate service is simply insufficient for a carrier to pursue all financing options and undertake the tasks related to start-up; that the rule could inhibit small carriers from seeking certification or could pressure certificated carriers into starting operations with insufficient capital; and that instead of easing our burden of monitoring fitness, the rule would actually increase it by encouraging repetitive filings from dormant carriers.

The other commenters, Transamerica, Flying Tiger, Midway, RAA, and Airlift, either support the proposed rule in principle or take no position on its overall merits; but each seeks certain limited modifications or clarifications. Generally, their concerns go to an aspect of our proposal that would revoke certain dormant authority of otherwise operating air carriers, to our requirement that carriers ceasing operations systemwide file notices before resuming services, and to the conditions under which we might be prepared to grant exemptions from the rule.

## Disposition

We have decided to adopt the proposed rule, subject to a clarification urged upon us by Transamerica, Flying Tigers, Midway, and RAA: namely, that the rule shall be deemed to affect only the certificate authority of carriers operating none of the authority for which they have been found fit. The proposed rule has been revised accordingly. Several editorial and clarifying changes have also been made.

We disagree with the commenters who say that the rule is unnecessary. We fully described in the NPRM the problems created by dormant certificates in the performance of our continuing fitness function and the inadequacy of our existing regulations to resolve those problems. We discussed the problems we were encountering as a result of dormant certificate holders, specifically as regards trafficking in unused certificates to avoid our fitness requirements. We made clear that the specific problem of trafficking went beyond the "one particular promoter" DHL claims was our sole source of concern. Furthermore, we referred to a number of proceedings that clearly demonstrate the potential for consumer harm latent in dormant certificates. Accordingly, DHL is incorrect in saying that we have "fail[ed] to show that any of the dormant certificates in the universe harms anyone."[1]

As we pointed out in the NPRM, the concerns that make the rule essential go to something far more fundamental than certificate trafficking. We have come now to realize that in a universe so full of dormant certificates, we simply cannot rely upon a system that leaves retention of a certificate solely to the discretion of a dormant carrier to advise us of developments affecting its certificate authority. In light of reduced carrier reporting requirements, we are in

[1] Furthermore, we have found that the potential harm from dormant certificates remains present notwithstanding the existence of certain safeguards cited by DHL, specifically: FAA certification requirements; §§ 201.6 and 204.8 of our regulations (addressing precertification sales and advertising, and pre-inauguration fitness reviews after 2-year start-up delays, respectively); our holding announced in the StatesWest Airlines Case (Order 86-4-69) (requiring updated evidence of financial condition before actual start-up); and our ability to limit the effective date of a certificate—all currently available safeguards that DHL says eliminate the need for the new rule. For while DHL concludes that, in light of these safeguards, a two-year old certificate has minimal value even though it has not been formally revoked, we have found that it is the unrevoked dormant certificate that has sufficient value—even in the eyes of consumers—to prompt the types of abuses we described. Moreover, as we discuss below, our concern over dormant certificates goes beyond trafficking to the overall performance of our fitness function, *i.e.*, to being assured that every certificate holder continues to meet the fitness requirements of the Act. The remedial devices DHL relies upon do not adequately address this concern.

position where we often remain uninformed of even the most fundamental changes affecting dormant carriers during the period of their dormancy. In these circumstances, a period of up to two years after our initial fitness finding now appears to be too long to permit carriers to begin operations without our taking a fresh look at their fitness. We now believe, based on our own and the CAB's accumulated experience, that after one year, fitness findings for dormant carriers are essentially no longer valid.

Against this background, we have concluded that the best way to deal with our section 401(r) responsibilities is to ensure that authority supported by stale fitness findings ceases to exist. At a time of staff shortages and severe budgetary constraints, we simply must limit the universe of dormant authority or else we can no longer be confident that the public is fully protected. We have read nothing in DHL's or Pacific American's comments that convinces us otherwise.

DHL claims we proposed the rule simply for our own bureaucratic convenience. It has misunderstood our purpose. We proposed the rule, and we are adopting it today, because section 401(r) of the Act entrusts us with a responsibility to protect the public by ensuring that certificated carriers continue to be fit. We take this responsibility seriously. We came to realize, in light of the sheer number of certificate holders we must monitor, the difficulty of adequately performing the monitoring function where a large number of those carriers were dormant. This prompted our concern over whether we could any longer say with assurance that such carriers remained fit. We recognized that we could no longer fulfill our section 401(r) responsibility without a change to our regulations. This rule is nothing less than the product of our determination to carry out our statutory mandate.

This last point is critical. For in contending that we are contravening the policies of deregulation, DHL misses the meaning both of the Deregulation Act itself, and of our efforts to implement it. As we said in the NPRM, 51 FR at 19074, "[the] need to balance a liberal entry policy with a heigthened vigilance on fitness was at the very heart of the amendments to section 401(r) in the Airline Deregulation Act." Congress manifestly appreciated that the open entry policies of deregulation raised a corresponding need for checks and balances designed to ensure an adequately protected traveling and shipping public. Deregulation was never intended to eliminate the need for continuing fitness as DHL implies, and therefore our action today does not represent the change in policy that DHL contends. As we said in the NPRM, our action—

> simply represents an additional mid-course correction, following upon corrective steps already begun by the CAB, and based upon the additional years of deregulation experience. It is thus no more than a further step designed to achieve the balance that Congress plainly intended all along. (*Id.*)

We see Pacific American's opposition to the rule as no better founded than DHL's. Pacific American incorrectly sees the rule as requiring yearly reapplications from dormant carriers. Our NPRM made plain that carriers who lost their authority because of dormancy would not be prejudiced. They could reapply at such time as they were prepared to reestablish their fitness. We pointed out that the Department—unlike the CAB—has consistently used expedited non-oral procedures for processing fitness applications—even those coming from uncertificated applicants. A carrier suffering a dormancy revocation would thus be in practically the same procedural posture as a certificated but dormant carrier relying on present § 204.8 which also has to reestablish its fitness under the non-oral hearing procedures used in two-year fitness review cases.

Even if a carrier chose to retain its certificate by seeking a fitness reevaluation each year, we would not anticipate voluminous repetitive filings Pacific American contemplates. On the contrary, while the dormant carrier clearly must provide enough information for us to assess its current fitness, to the extent that previously submitted materials remained accurate reflections of the current situation, they could certainly be relied upon and incorporated by reference. This would ease any burden on the carrier and the Department.

We find Pacific American's other concerns similarly without merit. It says that the fitness application process will hinder a carrier's efforts to gain financing. Yet, we are continually getting applications from new carriers who pursue their financing efforts while our fitness review proceeds. Indeed, this situation is the norm, with financing often completed or nearly so by the time our certificate issues. Moreover, we have seen no evidence that small carriers would be inhibited from seeking certification. Even with our existing case-by-case approach of reducing the number of dormant certificates, we are still regularly receiving certificate applications from small carriers. Nor do we believe that certificated carriers would be pressured into operating on inadequate capital as Pacific American alleges. Our new *States West* policy (*see* Order 86-4-69) provides the necessary safeguards against undercapitalized start-up. Finally, as to Pacific American's assertion that two years is an absolute minimum for a carrier to pursue financing and prepare for operations, history has shown the contrary. As our NPRM pointed out, 51 FR at 19073, nearly 80 percent of previously non-operating carriers certificated since the 1978 Deregulation Act inaugurated service within one year of certification.

Clearly then, neither DHL nor Pacific American has provided a valid basis for not going forward with the rule.

Transamerica, Flying Tiger, Midway, and RAA, on the other hand, have presented a sound justification for slightly modifying the rule's reach. These commenters point out that if we applied the rule as strictly as we had indicated in the NPRM, operating carriers whose continuing fitness was hardly in doubt might nevertheless lose substantial amounts of authority. This was because we proposed that where a carrier had been found fit and certificated for two or more types of service (*e.g.* charter and scheduled) but ceased operating one of the types (*e.g.* scheduled), then the other type would be revoked.

The comments have persuaded us that the approach announced in the NPRM goes beyond our needs. This rule is essentially aimed at facilitating our monitoring of non-operating carriers, not at ensuring that operating carriers properly seek fitness evaluations for substantial changes in their operations. As we have ample regulatory control over the latter concern under § 204.4 of our regulations, we need not address it by this rule. Thus, contrary to the inference permissible from the preamble in the NPRM, *i.e.* that the rule would apply where a carrier operated some but not all of the authority for which it had been found fit, the rule shall in fact apply only where an air carrier operates *none* of the authority for which it has been found fit. This clarification should also resolve the concern voiced by DHL as to the specific harm it would suffer under our proposed rule.

Transamerica also sought clarification of our requirement that carriers completely ceasing operations must file a notice to the Department 45 days before planned resumption and receive Department authorization before resuming operations. Transamerica

claims the proposed rule could be read to apply to instances where a carrier must temporarily cease all operations for reasons wholly beyond its control (strikes, weather, FAA groundings) and argues that surely we could not have intended to require a 45-day fitness resubmission in such circumstances.

Transamerica is correct in its view that the rule would require a notice in *all* cases of a complete cessation of operations, even those outside the carrier's control. However, for a variety of reasons we do not see this as either unwise or unduly burdensome. First, even the examples Transamerica cites represent extraordinary occurrences. They are thus unlikely to pose a recurring problem. When they do arise, even if they represent forces beyond the carrier's control, they may have fitness implications for the carrier about which we need to be notified. We expect the notice, though, to be tailored to the circumstances. In the examples Transamerica cites, the notice almost certainly would not involve a complete Part 204 refiling; nor would the Department's review procedures preclude a prompt start up. Sections 204.8(c) and 291.15(c) provide a procedure whereby carriers can learn precisely what data need be filed. This will enable them to limit their notice filings accordingly. As we said in the NPRM:

> Such notice must include information on any *substantial changes* in operations as well as in the carrier's management, financial position, or compliance disposition as prescribed by our regulations. The Department would conduct fitness inquiries *where appropriate.*

51 CFR 19073 (emphasis added). We added that "we do not intend our rule to prevent carriers whose continuing fitness can be readily established from quickly resuming operations." *Id.* And we made clear our readiness to grant exemptions from the 45-day rule to allow rapid start-ups in the event of short-term cessations. Subject to review of the precise facts of a given case, each of the generic examples Transamerica cities would seem to hold the possibility for such an exemption.

The only remaining concern raised about our proposed rule came from Airlift. Airlift was fearful that a carrier might lose its authority solely because of a foreign government refused to grant it landing rights within a year of certification. We see the circumstances Airlift envisages as highly unlikely. Given our decision to limit the reach of the rule to carriers performing no certificate operations at all, an airline would be affected as Airlift asserts only when the sole certificate authority it held was for service to foreign points and all the foreign authorities refused to grant landing rights. So long as the carrier was engaging in some certificate operations somewhere, the rule would have no effect on any of its certificates. In the unlikely event that the carrier's only certificate authority was to foreign points where landing rights could not be obtained, we would expect that an exemption from the rule normally would be available, provided no legitimate fitness issues were present.

**Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980**

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations will result in no net change in reporting burden for certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. However, its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[2] The ability of such entities to engage in certificate operations essentially will be unaffected by the regulation.

**Economic Impact Analysis**

Because of the Department's streamlined certification procedures, carriers needing to reapply for certificate authority by virtue of this rule would face filing requirements and procedures closely comparable to those that exist under the Department's current continuing fitness rule. Therefore, the rule's impact should be minimal and a full regulatory evaluation is not required.

**List of Subjects**

*14 CFR Part 204*

Air carriers, Reporting and recordkeeping requirements.

*14 CFR Part 291*

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

**Final Rule**

For these reasons, the Department amends 14 CFR Chapter II as follows:

**PART 204—[AMENDED]**

1. The authority citation for Part 204 continues to read as follows:

> **Authority:** Secs. 204, 401, 407, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1389.

2. The existing § 204.8 in Subpart A of 14 CFR Part 204, Data to support fitness determinations, is revised to read as follows:

**§ 204.8 Revocation for dormancy.**

(a) Except as provided in paragraph (b) of this section, an air carrier that has not begun initial operations to provide any type of air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year after the date of such finding, has not provided any type of air transportation for which that kind of finding is required, shall be deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked automatically.

(b) For all air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all the data required by § 204.4 or § 204.7, as applicable, at least 45 days before it intends to provide any such air transportation. The

[2] For purposes of its aviation economic regulations Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.

Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to ascertain the data already available to the Department, which need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet those requirements, or finds that the carrier is fit, willing, and able to perform such air transportation based on new information the carriers submits. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(d) The provisions of paragraph (c) of this section shall apply to all air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

## PART 291—[AMENDED]

3. The authority citation for Part 291 continues to read as follows:

**Authority:** Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

4. The existing § 291.15 in Subpart B of 14 CFR Part 291, Domestic Cargo Transportation, is revised to read as follows:

**§ 291.15 Revocation for dormancy.**

(a) Except as provided in paragraph (b) of this section, an all-cargo air carrier that has not begun initial operations to provide any type of air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year from the date of the most recent such finding, has not provided any type of air transportation for which that kind of finding is required, shall be deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked automatically.

(b) For all all-cargo air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An all-cargo air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all the data required by § 291.11 at least 45 days before it intends to provide any such air transportation. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in the data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to ascertain the data already available to the Department, which need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet those requirements, or finds that the carrier is fit, willing, and able to perform such air transportation based on new information the carrier submits. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(d) The provisions of paragraph (c) of this section shall apply to all all-cargo air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(49 U.S.C. 1324, 1371, 1377, 1386, 1388, 1389)

Issued in Washington, DC on October 31, 1986.

Matthew V. Scocozza,

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 86-25190 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 814

[Docket No. 79N-0009]

### Premature Approval of Medical Devices; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that prescribes the contents of a premarket approval application (PMA) for a medical device and the criteria FDA will employ in approving,

disapproving, or withdrawing approval of a PMA. This document corrects editorial errors in the final rule.

**EFFECTIVE DATE:** November 19, 1986.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 86–16262 appearing on page 26342 in the issue of Tuesday, July 22, 1986, the following corrections are made:

**§ 814.15 [Corrected]**

1. In the first column on page 26366, in § 814.15 *Research conducted outside the United States* in paragraph (b), the paragraph heading is corrected to read "(b) *Research begun on or after effective date.*"

**§ 814.20 [Corrected]**

2. In the third column on page 26366, in § 814.20 *Application* in paragraph (b)(3)(v), the first sentence is corrected to read, "An abstract of any information or report described in the PMA under paragraph (b)(8)(ii) of this section and a summary of the results of technical data submitted under paragraph (b)(6) of this section."

Dated: October 31, 1986.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 86–25151 Filed 11–6–86; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 637

### Sampling and Testing of Materials and Construction

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending its regulation which establishes general requirements for the sampling and testing of materials and construction of Federal-aid highway projects. The amended regulation will clarify existing policy and procedures and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection program and materials certification.

**EFFECTIVE DATE:** December 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob B. Myers, Chief, Construction and Maintenance Division, (202) 366–1548 or Mr. Michael Laska, Office of the Chief Counsel, (202) 366–1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Subpart B of 23 Part 637 establishes general requirements and procedures related to sampling and testing of materials and construction of Federal-aid highway projects. The sampling and testing program is to provide assurance that all materials and construction of Federal-aid highway projects comply with approved plans and specifications. These revisions clarify and further delineate policy and procedural requirements which are already in effect.

Reviews conducted by the FHWA from 1981 through 1984 have identified several points of misinterpretation of requirements, particularly in the independent assurance sampling and testing requirements. The revisions will clarify these requirements and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection programs and material certifications. The revisions will not result in any significant additional actions or procedural changes in the standard operating procedures currently being used by the State and local highway agencies.

A notice of proposed rulemaking (NPRM) was published in the Federal Register on September 20, 1985 (50 FR 38136). A total of 11 commenters responded to the NPRM, 8 State highway agencies, 2 national laboratory associations, and 1 Federal agency. A complete summary and analysis of these comments has been prepared and placed in docket 85–6. The major comments and FHWA's response thereto are summarized as follows.

Several respondents recommended an expanded role for third party consultants in the control and testing of materials. The comments addressed three areas where third party consultants could be utilized: the National Reference Laboratories, independent assurance testing, and acceptance testing.

The first area concerns allowing other testing services to perform the activities of the National Reference Laboratories. The purpose of the laboratory inspection program is to review the States' testing procedures, testing equipment, and measuring equipment against national standards as part of the Federal Highway Administration's (FHWA's) determination pursuant to 23 U.S.C. 302 that a State has an adequate operating highway department. The laboratory inspection program, as proposed, would allow other equally suitable laboratories to perform the function of the reference laboratory. Currently, the only comprehensive central laboratory inspection systems in existence are the Cement and Concrete Reference Laboratory (CCRL) and the American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL). For an inspection system to be considered equal to AMRL and CCRL, the system would have to include a procedure for checking all equipment and procedures that are currently being checked by these services (AMRL and CCRL). This includes a procedure for calibration of equipment and weights with the National Bureau of Standards and for providing reference samples at regular intervals.

This is not to say that other testing services will not eventually have the same capability for evaluating consultants to be used for material testing. Since the National Reference Laboratory program is part of the FHWA's determination that a State has an adequate highway department, the FHWA retains the right to approve comparable testing services as they become available.

The second area concerns the fact that the regulation does not permit the use of consultants for independent assurance testing. The independent assurance testing is an extension of the national reference laboratory program. This extension is necessary to ensure a proper acceptance testing program that is recognized by all parties: contractor, State, and Federal. For any test result to be accepted and respected, the results must be repeatable. To accomplish this, the standardization of the reference laboratories on testing procedures and testing equipment must be transferred to the acceptance testing program. In addition, States that have subsidiary laboratories that fulfill the functions of the central laboratory are encouraged to establish their own programs for reviewing equipment and procedures of those laboratories if they are not included in the reference laboratory inspection program.

It is the States' responsibility to ensure that the equipment and procedures that are used in acceptance testing are in accordance with accepted standards. The independent assurance testing program provides the State this assurance by providing standardization through the extension of the reference laboratories to the acceptance testing. If

consultants were permitted to perform the independent assurance testing function, the State would have to repeat the function in reviewing the consultants procedures. This would be necessary in order to assure that the sampling and testing procedures are properly performed. Under these circumstances, using consultant testing for independent assurance testing would be an unwarranted additional expense. For this reason we are requiring the State personnel to perform this testing function. Therefore, no changes are being made to the regulation in this area.

The third area concerns the extent to which consultants or independent laboratories can be used for acceptance sampling and testing. The purpose of the acceptance sampling and testing is to serve as the principal basis for determining the quality and acceptability of material being incorporated into an item of construction. It was the intent of the FHWA to allow the States and local agencies to use consultants and independent laboratories for acceptance sampling and testing provided they would be directly accountable to the State highway agency or local agency. A definition of State representative has been added to the regulation to clarify this point.

The role of consultant and independent laboratories could be significant in the sampling and testing of highway construction projects. The acceptance sampling and testing along with process control testing represent the principal area in which consultants and independent laboratories may participate in project testing. For the most part, in the past, the contractors' operations have been controlled by the States' sampling and testing programs. However, due to limited personnel along with the need for more frequent process control tests, States are encouraged to require contractors to perform their own process control tests. The FHWA strongly encourages the certification of consultant and independent laboratories used in the acceptance and process control testing programs. Certification provides the State with assurance that the consultants are qualified to perform the inspection services. Certification has become more important since States are using more consultants to perform inspection services due to the reduction in State personnel. Presently, there are no national certification programs that FHWA considers adequate. The sampling and testing community is moving to fill this void. However, since the issue has not been settled, we consider it inappropriate to issue guidelines at the present time.

One commenter recommended that a precision statement for the test methods used in independent assurance sampling and testing be provided. The purpose of the independent assurance test is to check the reliability of acceptance test results. This requires the preparation of split samples to verify testing equipment and actual observation to ensure that the procedures are performed properly. It is not necessary to have statistically proven precision statements to perform this function. The FHWA has recommended, and continues to believe, that a range should be used as a guide when precision statements do not exist.

One commenter questioned the requirement that the States perform the acceptance testing. It has always been FHWA policy that State personnel or a State representative perform acceptance sampling and testing. This final rule only clarifies the policy contained in the previous version of this regulation. It is the opinion of the FHWA that the State must retain its responsibility for acceptance of materials and this is possible only if State personnel or a State's representative performs the acceptance sampling and testing. Acceptance sampling and testing by the contractor would raise the obvious question about a contractor's ability to test objectively and, if necessary, reject his/her own work.

One commenter questioned the necessity of requiring that all independent assurance tests use equipment other than that assigned to the project. The sampling and testing program permits a reasonable portion of independent assurance samples and tests to be accomplished by observation of the acceptance sampling and testing. In these instances, project equipment would be used. No change is necessary.

One commenter recommended that clarification be made as to what constitutes an exception and the degree of explanation necessary in the certification letter. An exception is any material that does not meet the requirements as stated in the approved plans and specifications. The explanation should be sufficient to justify allowing the material to remain in the project. The wording on the certification letter has been modified to indicate that any exception must be explained and attached to the back of the certification letter rather than in the projects records. In addition, the certification letter has been changed to require any deviation from the approved plans and specifications to be listed as an exception. Previously, deviations that were reasonably close to conformity were sometimes not considered exceptions. Under the new procedure, all such exceptions must be listed on the reverse side of the letter.

**Section-by-Section Analysis**

The revised regulation includes the following revisions:

1. Section 637.203 is revised to include the definition of acceptance samples and tests the provision that such activities be performed either by State personnel or a State representative. The definition for "State representative" has also been included. This definition encompasses other public agencies or consultants and independent laboratories who are employed and paid by the State or public agencies and accountable to those agencies.

2. Section 637.205 is revised to emphasize that all State highway agencies are required to participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or other approved and equally recognized authority. This is to provide assurance that the State's sampling and testing equipment and procedures are reliable and repeatable. Currently, all State highway agencies voluntarily participate in this program; however, due to recent budget constraints, several have considered discontinuing this service. The FHWA believes participation in this type of program is essential to assure continued State laboratory capability.

3. Section 637.207(d) is revised to emphasize the requirement for comparison, including documentation, of acceptance test results with independent assurance test results. In order for the independent assurance program to be effective, comparisons to acceptance test results must be made in a timely manner. This requirement for comparison documentation should assure the proper comparisons. The comparison should be normally maintained in the project records.

4. Section 637.209 is added to provide for a Laboratories Inspection Program. Each State shall have its own headquarters laboratory included in a regular inspection and comparative sample testing program by a nationally recognized authority as described in § 637.205. Each State shall authorize the inspecting authority to submit copies of all inspection reports to the FHWA. This will allow monitoring of the program described in § 637.205. Since the inspection reports are developed by the inspecting authority, no additional effort

is required by the State highway agencies.

5. Appendix A, Guide Letter of Certification by State Engineer, is revised to provide for the explanation of exceptions to the plans and specifications on the back of the letter. Identification of these exceptions to the plans and specifications will facilitate their review and judgment of their acceptability.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–5110, the information collection requirements contained in this regulation are being submitted for approval to the Office of Management and Budget (OMB).

The FHWA has determined that this action does not contain a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation. The revisions do not impose any new mandatory standards on State and local governments, but would provide general program direction and recommended criteria. For this reason, the anticipated economic impact of this rule is so minimal as not to require preparation of a full regulatory evaluation. For the foregoing reasons and under the critiera of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b), the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by revising Part 637, Subpart B to read as set forth below. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**List of Subjects in 23 CFR Part 637**

Construction project—sampling and testing, Grant program—transportation, Highways and roads, Materials testing.

Issued on: October 31, 1986.

**R.A. Barnhart,**

*Federal Highway Administrator, Federal Highway Administration.*

Part 637 is amended by revising Subpart B to read as follows:

## PART 637—CONSTRUCTION INSPECTION AND APPROVAL

* * * * *

**Subpart B—Sampling and Testing of Materials and Construction**

Sec.



## Subpart B—Sampling and Testing Materials and Construction

**Authority:** 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

### § 637.201 Purpose.

To prescribe policies, procedures, and guidelines relating to sampling and testing of materials and construction in Federal-aid highway projects.

### § 637.203 Definitions.

(a) *Acceptance samples and tests.* All of the samples and tests performed by State personnel or a State representative used for determining the quality and acceptability of the materials and workmanship which have been or are being incorporated in the project.

(b) *Independent assurance samples and tests.* Independent samples and tests or other procedures performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making independent checks on the reliability of the results obtained in acceptance sampling and testing and not for determining the quality and acceptability of the materials and workmanship directly.

(c) *National reference laboratories.* The American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL).

(d) *Process control samples and tests.* All of those samples and tests that are performed in order to make adjustments to the contractors' operations.

(e) *State personnel.* An employee or employees of a State agency.

(f) *State representative.* An employee or employees of a State or public agency or a consultant/independent laboratory which is employed, paid by and directly accountable to the State or public agency.

### § 637.205 Policy.

(a) *Sampling and testing program.* Each State highway agency shall develop a sampling and testing program which will provide assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207, and be approved by the FHWA.

(b) *Laboratory inspection program.* Each State highway agency shall participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or a comparable laboratory approved by FHWA.

### § 637.207 Sampling and testing program.

Each State's acceptance and independent assurance sampling and testing program shall provide for the following:

(a) The specific location in the construction or production operation at which sampling and testing is to be accomplished for acceptance or independent assurance testing.

(b) Frequency guide schedules for acceptance and independent assurance sampling and testing which will give general guidance to personnel responsible for the program, yet give them reasonable latitude for adaptation to specific project needs.

(c) Independent assurance sampling and testing shall be performed by State personnel who have no direct responsibility for acceptance sampling and testing using test equipment other than that assigned to the project. The program may permit a reasonable portion of the independent samples and tests to be accomplished by independent observation of the acceptance sampling and testing.

(d) A prompt comparison of acceptance test results with independent assurance test results and documentation of that comparison.

(e) The preparation and submission of a materials certification, conforming in substance to Appendix A of this regulation, to the FHWA Division Administrator for each construction project.

### § 637.209 Laboratory inspection program.

(a) Each State shall have its central laboratory included in a regular laboratory inspection and comparative sample testing program such as that provided by the National Reference Laboratories.

(b) Each State is required to authorize the National Reference Laboratories, or the other comparable laboratory used in its laboratory inspection program, to submit copies of all laboratory inspection reports to the appropriate

regional and division offices of the FHWA.

**Appendix A to Subpart B—Guide Letter of Certification by State Engineer**

Date _____

Project No. _____

This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications; and such results compare favorably with the results of the independent assurance sampling and testing.

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

*Director of Laboratory or other Appropriate State Official.*

[FR Doc. 86-25283 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### 35 CFR Parts 251 and 253

### Regulations of the Secretary of the Army; Panama Canal Employment System

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule; correction.

**SUMMARY:** The Panama Canal Area Personnel Board, designated by the Secretary of the Army, is correcting an error in the effective date section previously published in the Federal Register September 19, 1986, (51 FR 33261). The effective date section is correctly revised to read as set forth below:

**EFFECTIVE DATE:** September 19, 1986, except the amendments to § 251.4(b)(4) and (g) relating to employees of the National Security Agency which is effective retroactively to 31 March 1982.

**FOR FURTHER INFORMATION CONTACT:** LTC. Kenneth Dunn, Office of the Assistant Secretary of the Army (CW), Washington, DC 20310. Tel. (202) 695-1370.

Dated: November 4, 1986.

**William R. Gianelli,**

*Chairman, Panama Area Personnel Board.*

[FR Doc. 86-25295 Filed 11-6-86; 8:45 am]

BILLING CODE 3710-02-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

### Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements recent amendments to Federal statutory provisions governing commercial vehicles operated on U.S. Highway 209 within Delaware Water Gap National Recreation Area, Pennsylvania. Provisions contained in Pub. L. 99-88 (8/15/85) now limit the combined total of commercial vehicles from the New York Counties of Orange, Rockland, Ulster, and Sullivan to a maximum of 125 Northbound and 125 Southbound vehicles per day servicing businesses or persons within these four New York Counties on a first come first served basis. Pub. L. 98-151 had provided for up to 150 Northbound and 150 Southbound commercial vehicles per day servicing businesses or persons within Orange County, New York to be exempted from the prohibition found at CFR § 5.6. This rulemaking reflects the reduction in the number of authorized commercial vehicles and the increase in the number of New York Counties provided for the Pub. L. 99-88.

**EFFECTIVE DATE:** December 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Amos Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, Telephone 717/588-6637.

**SUPPLEMENTARY INFORMATION:**

#### Background

Pub. L. 98-63 was enacted July 30, 1983, closing U.S. Highway 209 in accordance with § 5.6 of the Code of Federal Regulations prohibiting commercial vehicles from Delaware Water Gap National Recreation Area, authorizing the exemption of some commercial vehicles, and directing that fees be established for certain authorized commercial vehicle operations on Highway 209.

In addition to the exemption established by Pub. L. 98-63, Pub. L. 98-151 (Section 117) also provided exemptions for up to 150 Northbound and 150 Southbound commercial vehicles per day serving businesses or persons in Orange County, New York. Pub. L. 99-88, dated August 15, 1985, amended Pub. L. 98-151 (Section 117) to include commercial vehicles servicing businesses or persons from the New York Counties of Rockland, Ulster and Sullivan and reduced the combined number of vehicles from 150 to 125 Northbound and Southbound daily.

Pub. L. 99-88 further amended Pub. L. 98-151 by idefinitely extending the date of termination of authority from December 31, 1985 to such time as Congress may take action to the contrary.

This rulemaking revises National Park Service (NPS) regulations to reflect the new statutory provisions that went into effect upon enactment of Pub. L. 99-88 and that apply regardless of the conflicting and outdated text in the existing regulations. The purpose of this rulemaking is to remove the regulatory text that has been rendered either obsolete or inappropriate by the new statutory provisions that take precedence.

The NPS is publishing this rulemaking as a final rule without prior publication of a proposed rule. This action is being taken because the NPS has determined that a proposed rulemaking and opportunity for public comment in this case are unnecessary and contrary to the public interest. This determination is based on the fact that the revised regulatory text incorporates statutory provisions that have been in effect since August 15, 1985 and that were implemented by the NPS on the same date. Prompt removal of expired or inappropriate regulatory text from the Code of Federal Regulations avoids confusion and facilitates consistent interpretation of regulations by NPS officials and the general public and is therefore in the public interest. Publication of a proposed rule would delay this process unnecessarily and would also result in unnecessary additonal expense, both contrary to the public interest.

Public comment on this regulation is unnecessary and irrelevant because the statutory provisions are already in effect and will continue to take precedence over the existing regulatory text, regardless of public comment. The applicable statutory provisions are mandatory and contain no discretionary elements that are open to agency interpretation or whose implementation could be influenced by public comment to the NPS.

#### Drafting Information

The principal author of this rulemaking is Frank W. Mills, Delaware Water Gap National Recreation Area, National Park Service, Bushkill, Pennsylvania 18324.

### Paperwork Reduction Act

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

### Compliance With Other Laws

The final Environmental Impact Statement on the management of U.S. Highway 209 (September 1982) addresses the impacts of commercial vehicular traffic on U.S. Highway 209 and the diversion of that traffic. Copies of these documents are available at the address provided at the beginning of this rulemaking. The Department has determined that it is not necessary to prepare any additional documents concerning this regulation in order to comply with the National Environmental Policy Act (42 U.S.C. sec. 4321 *et seq.*).

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document 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.*) The persons and businesses in the three additional counties in New York which can be serviced by commercial vehicles using Route 209 will be positively affected. The costs of delivering goods and providing services will be cheaper, since the commercial vehicles will be able to use a more direct route. The reduction in the number commercial vehicles authorized to use Route 209 (from 150 to 125 Northbound and Southbound per day) in order to serve the New York counties will have no negative effects. Only an average of 29 northbound and 27 southbound used Route 209 per day prior to the change in the law. Only an additional 8 northbound and 7 southbound commercial vehicles are using the road daily in order to service the three additional counties. These figures are well below the 125 which can use the road each way each day.

### List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.71 is amended as follows:

a. By revising paragraph (d)(1)(iii) to read as follows:

b. By removing paragraph (d)(3).

**§ 7.71 Delaware Water Gap National Recreation Area.**

* * * * *

(d) * * *

(1) * * *

(iii) On a first come-first served basis, up to 125 northbound and up to 125 southbound commercial vehicles per day serving businesses or persons in Orange County, Rockland County, Ulster County or Sullivan County, New York; and

* * * * *

Dated: October 13, 1986.

**P. Daniel Smith,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 86-25293 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region II Docket No. 67; A-2-FRL-3105-5]**

### Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice announces that the Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) concerning a change made to Part 217, the State's motor vehicle emission control regulation. The change provides for more stringent light duty gasoline vehicle inspection standards and new heavy duty gasoline vehicle inspection standards.

**DATES:** This action will be effective January 6, 1987, unless notice is received by December 8, 1986, that someone wishes to submit adverse or critical comments.

**ADDRESSES:** All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

**SUPPLEMENTARY INFORMATION:** On June 17, 1985 (50 FR 25073) the Environmental Protection Agency (EPA) approved the New York State Implementation Plan (SIP) for attainment of the ozone and carbon monoxide national ambient air quality standards. As a part of its control strategy, New York committed in its SIP to revise the State regulation, Part 217, of Title 6 of the New York Code of Rules and Regulations, "Emissions from Motor Vehicles Propelled by Gasoline Engines." These revisions were necessary in order to obtain additional emission reductions in volatile organic compounds (VOCs) from light duty gasoline vehicles and to obtain emission reductions from heavy duty gasoline powered vehicles.

On January 2, 1986, the State submitted the required revisions to Part 217. Light and heavy duty emission standards were affected as follows:

NEW YORK STATE EMISSION STANDARDS

[Prior to Jan. 29, 1986]

| Vehicle model year | Carbon monoxide limit (percent) | Hydrocarbon limit (ppm) |
|---|---|---|
| Light duty vehicles: [1] | | |
| 1974 and older | 6.0 (9.9) | 700 (1,990) |
| 1975, 1976 and 1977 | 3.5 (7.5) | 400 (1,500) |
| 1978 | 3.5 (6.0) | 400 (870) |
| 1979 | 2.5 (4.5) | 300 (630) |
| 1980 | 2.5 (2.7) | 300 (330) |
| 1981 and newer | 1.2 (1.2) | 220 (220) |
| Heavy duty vehicles: [2] | | |
| 1969 and older | 7.0 | 800 |
| 1970 to 1973 | 6.0 | 700 |
| 1974 to 1978 | 4.5 | 600 |
| 1979 and newer | 3.5 | 400 |

[1] 8,500 pounds and under.
[2] Over 8,500 pounds.

### Conclusion

EPA is today approving the revisions made to Part 217 as part of the New York SIP. EPA has determined that the revisions fulfill the commitment made by New York in its ozone SIP.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision

regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

EPA is approving this SIP revision request without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. (See 46 FR 44476 dated September 4, 1981 and 47 FR 27073 dated June 23, 1983).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Incorporation by reference.

Note.—Incorporation by Reference of the State Implementation Plan of New York was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 5, 1986.

**Lee M. Thomas,**

*Administrator, Environmental Protection Agency.*

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

### Subpart HH—New York

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1670 paragraph (c) is amended by adding new paragraph (c)(75) as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) * * *

(75) A revision to the New York State Implementation Plan for attainment and maintenance of the ozone standards was submitted on January 2, 1986 by the New York State Department of Environmental Conservation.

(i) Incorporated by reference:

(A) Part 217, "Emissions from Motor Vehicles Propelled by Gasoline Engines," effective January 29, 1986.

3. Section 52.1679 is amended by adding on an entry in numerical order for Part 217 in the table as follows:

**§ 52.1679 EPA-approved New York State regulations.**

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|---|---|---|---|
| Part 217, Emissions from Motor Vehicles Propelled by Gasoline Engines. | Jan. 29, 1986 | [November 7, 1986, FR page 40414]. | |

[FR Doc. 86–25102 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Parts 413 and 433

**[OW–FRL–3103–9]**

## Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This technical amendment makes a grammatical clarification to § 413.01(c) and § 433.10(c) and corrects errors in the lists of regulated toxic organic pollutants in § 413.02 and § 433.11.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernst P. Hall, Chief, Metals Industry Branch, (202) 382–7126.

**SUPPLEMENTARY INFORMATION:** On July 15, 1983 (48 FR 32462), EPA promulgated 40 CFR Part 433 and final amendments to 40 CFR Part 413. EPA published a correction notice related to these parts on September 26, 1983 (48 FR 43680). However, since that date the Agency has detected additional errors which the Agency is correcting in today's notice.

In §§ 413.01(c) and 433.10(c) the Agency exempted metallic platemaking and gravure cylinder preparation "conducted within printing and publishing facilities." The Agency has been informed that this exclusionary language has been restrictively interpreted to mean that only metallic platemaking and gravure cylinder preparation operations physically conducted within a printing and publishing facility would be excluded from regulation under Parts 413 and 433. This was never the Agency's intent.

As is demonstrated by the discussion in the original electroplating preamble (44 FR 52591, September 7, 1979), the Agency intended to exclude all printing and publishing industry operations from regulation under Part 413. The Agency identified the industry by reference to SIC Code 2700. In the 1982 Standard Industrial Classification Manual, Major group 27—Printing, Publishing, and Allied Industries, includes "establishments engaged in printing by one or more of the common processes, . . .; and those establishments which perform services for the printing trade . . ." For example, a shop that manufactures and sells metallic plates to a printing and publishing facility would be included within the SIC Code 2700 group. The Agency, in developing the electroplating and metal finishing pretreatment standards, did not specifically study or cost treatment technologies for any metallic platemaking or gravure cylinder preparation conducted either within or "for" the printing and publishing industry. Therefore, the administrative records for those rulemakings support today's correction notice clarifying that the exclusionary language in §§ 413.01(c) and 433.10(c) also applies to facilities that perform metallic platemaking or gravure cylinder preparation "for," as well as within, the printing and publishing industry.

Today's correction notice adds the words "or for" after the word "within" in the applicable exclusionary provisions in §§ 413.01(c) and 433.10(c). This clarifies that facilities engaged in metallic platemaking and gravure cylinder preparation for printing and publishing, either within their facility or for an outside printing or publishing facility, are not subject to the

electroplating and metal finishing pretreatment standards.

The other corrections addressed in this notice relate to the listing of toxic organic pollutants in the definition of the term "TTO" in §§ 413.02(i) and 433.11(e). This notice adds the chemical "1,3-dichloropropylene (1,3-dichloropropene)" to both lists as it was inadvertantly omitted. In addition, the notice corrects the listing of "1,2-dichloropropane (1,3-dichloropropene)" by deleting "(1,3-dichloropropene)".

The Agency is making these corrections effective upon publication in the **Federal Register.** The Agency's action makes only minor corrections and therefore the Agency does not believe that public notice and opportunity to comment is necessary.

**List of Subjects**

*40 CFR Part 413*

Electroplating, Metals, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

*40 CFR Part 433*

Metals, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 21, 1986.

**Michael B. Cook,**

*Acting Assistant Administrator for Water.*

40 CFR Parts 413 and 433 are amended as follows:

**PART 413—[AMENDED]**

1. The authority citation for Part 413 continues to read as follows:

**Authority:** Secs. 301, 304(g), 307, 308, 309, 402, 405, 501(a), Clean Water Act, as amended, (33 U.S.C. 1311, 1314(g), 1317, 1318, 1318, 1322, 1325 and 1341(a)).

**§ 413.01 Amended]**

2. In § 413.01(c), the phrase "conducted within printing and publishing facilities" is revised to read as follows: "conducted within or for printing and publishing facilities".

**§ 413.02 [Amended**

3. In § 413.02(i), the listing entry "1,2-dichloropropane (1,3-dichloropropene)" is revised to read as follows: "1,2-dichloropropane".

4. Section 413.02(i), is amended by adding as a separate listing entry after the listing entry "1,2-dichloropropane", the following: "1,3-dichloropropylene (1,3-dichloropropene)".

**PART 433—[AMENDED]**

5. The authority citation for Part 433 continues to read as follows:

**Authority:** Secs. 301, 304 (b), (c), (e), and (g), 306(b) and (c), 307 (b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1971, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b) (c), (e), and (g), 1316 (b) and (c), 1317(b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

**§ 433.10 [Amended]**

6. In § 433.10(c), the phrase "conducted within printing and publishing facilities" is revised to read as follows: "conducted within or for printing and publishing facilities".

**§ 433.11 [Amended]**

7. In § 433.11(e) the listing entry "1,2-Dichloropropane (1,3-dichloropropene)" is revised to read as follows: "1,2-Dichloropropane".

8. Section 433.11(e), is amended by adding as a separate listing entry after the listing entry "1,2-Dichloropane", the following: "1,3-Dichloropropylene (1,3-dichloropropene)".

[FR Doc. 86–24659 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 6628

[AK–960–07–4220–11; F–019801]

## Alaska; Revocation of Public Land Order No. 1847, and Partial Revocation of Public Land Order No. 547

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes two public land orders (PLOs) insofar as they affect approximately 23,120 acres of public lands withdrawn for military purposes. This action will also classify the lands as suitable for selection by the State of Alaska, if such lands are otherwise available. The lands will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5060.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order Nos. 547 and 1847, dated February 2, 1949 and May 16, 1959, which withdrew lands for use by the military, are hereby revoked insofar as they affect the following described lands:

**Fairbanks Meridian**

T. 7 S., R. 7 W., unsurveyed,
Secs. 5 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 to 32, inclusive.
T. 7 S., R. 8 W., partially surveyed,
Secs. 1 to 6, inclusive;
Sec. 7, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 8, N½, N½S½;
Sec. 9, N½, N½S½;
Secs. 10 to 15, inclusive;
Sec. 22, NE¼, E½NW¼, E½W½NW¼, those lands lying outside of the following tract:

Beginning at the common corner of Secs. 15, 16, 21, and 22, thence East 660 ft., thence South 1,470 ft., thence N. 56°47'12" W. approximately 20 ft. to corner No. 1 on the center line of the Anderson Road, the point of beginning.

From corner No. 1, by metes and bounds, Thence S. 56°47'12" E. 330 ft. to corner No. 2 at the southwest corner of the off loading area of the Anderson Airport, from which the southwest corner of a 28' x 112' terminal building bears northerly approximately 115 ft.; Thence N. 33°12'48" E. 260 ft. on common boundary with the off loading area to corner No. 3; Thence N. 56°47'12" W. 331 ft. to corner No. 4 on the center line of the Anderson Road; Thence S. 30°01'16" W. 261 ft. to corner No. 1, the point of beginning.

Sec. 23, that portion east of the west boundary of right-of-way F–025067 for the Parks Highway;
Secs. 24 and 25;
Secs. 26, 27, 32, 33, and 34, those portions east of the west boundary of right-of-way F–025067 for the Parks Highway;
Secs. 35 and 36.
T. 7S., R. 9 W., surveyed,
Secs. 1, 2 and 11;
Sec. 12, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼, NW¼NW¼, N½SE¼.

The lands described aggregate approximately 23,120 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat., 2437–2438.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above

for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5187 and other withdrawals of record.

**J. Steven Griles,**

*Assistant Secretary of the Interior.*

November 3, 1986.

[FR Doc. 86-25223 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-JA-M

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1612

### Restrictions on Lobbying and Certain Other Activities

**AGENCY:** Legal Services Corporation.

**ACTION:** Reconsideration of final rule.

**SUMMARY:** This notice requests further comment on the final rule published August 1, 1986 (51 FR 27539) concerning restrictions on lobbying and certain other activities. Pub. L. 99-500 provides that no funds appropriated by it to LSC may be spent to implement or enforce Part 1612 of Title 45 of the Code of Federal Regulations, as published on May 31, 1984 (49 FR 22651), or as published on August 1, 1986 (51 FR 27539). This notice seeks public comment to assist the LSC Board in its reconsideration of the rule at the next meeting of its Operations and Regulations Committee.

**DATE:** Comments must be received on or before December 8, 1986.

**ADDRESS:** Comments may be submitted to the Office of General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

**FOR FURTHER INFORMATION CONTACT:** John H. Bayly, Jr., General Counsel, (202) 863-1820.

**SUPPLEMENTARY INFORMATION:** The Corporation published revised Part 1612, "Restrictions on Lobbying and Certain Other Activities," as a final rule on August 1, 1986 (51 FR 27539-27552). In furtherance of Congressional intent, LSC had sought in the rule to remove restrictions on services recipient programs could perform in *bona fide* representation of eligible clients and to ensure that proper regulation was established for conduct of recipient activity in such relevant areas as publications, training, grassroots lobbying, dues payment, and organizing. The rule had attempted to simplify and reorganize old Part 1612 by expanding the definitions section; by dividing old § 1612.5; and by according consistent treatment to all funds derived by recipients from LSC. Prior to the Board's adoption of this rule as final on February 21, 1986, numerous comments had been received and considered by the Operations and Regulations Committee of the Board during extensive deliberation and lengthy hearings. Following publication on August 1, 1986 (51 FR 27539), LSC has continued to receive comments and inquiries respecting the new rule. In addition, Pub. L. 99-500 has provided that no funds appropriated by it for LSC may be used to implement or enforce Part 1612 as printed in 49 FR 22651 (May 31, 1984) or 51 FR 27539 (August 1, 1986).

In consideration of continuing expressions of interest in this rule by affected parties, in light of comments and requests for interpretation and advice received by LSC from recipients, bar organizations, and members of the public since publication of this rule on August 1, 1986, and in view of subsequent Congressional action, LSC requests additional comments on the existing rule, particularly §§ 1612.1, 1612.4, 1612.5., 1612.7, 1612.9, 1612.11, and 1612.13.

### List of Subjects in 45 CFR Part 1612

Administrative representation, Legal services, Lobbying, Publicity, Reporting and record-keeping requirements.

Dated: November 5, 1986.

**John H. Bayly, Jr.,**

*General Counsel.*

[FR Doc. 86-25387 Filed 11-6-86; 8:45 am]

BILLING CODE 6820-35-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 252

### Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Maritime Administration (MARAD) is issuing this final rule to amend the regulations governing the calculation and payment of operating-differential subsidy (ODS) for bulk cargo vessels engaged in worldwide services. The rule provides for the payment of ODS as a fixed and final daily amount that encompasses all items of expense authorized for ODS participation by the ODS contracts currently in force.

**DATE:** This rule is effective December 8, 1986 for application to the wage rate year beginning July 1, 1987, and the rate year for other items beginning January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 366-2323.

**SUPPLEMENTARY INFORMATION:** On December 23, 1985, MARAD published in the **Federal Register** (50 FR 52338) a notice of proposed rulemaking (NPRM) to amend the regulations governing the calculation and payment of ODS for bulk cargo vessels engaged in worldwide services. The proposed amendments would provide for the payment of ODS as a fixed and final daily amount encompassing all items of expense authorized for ODS participation by the ODS contracts currently in force.

In response to a recommendation in a 1981 GAO report that MARAD pay ODS on a more timely basis and to improve current procedures for ODS rate determinations, MARAD has developed a system which would pay ODS as a fixed and final daily amount that includes all items of subsidizable expense. The new system permits the operators to establish conclusively the amounts of ODS receivable at the time they prepare financial statements and tax filings, and when making decisions on dividends. More extensive information concerning the background and specific details of this final rulemaking are to be found in the preamble to the MPRM. Modifications made to the rulemaking, as a result of comments on the NPRM, are accounted for in this preamble to the final rule and incorporated, as applicable, in the new regulation.

The NPRM provided a period of public comment that initially expired on February 21, 1986, but was subsequently extended to March 26, 1986, at the request of interested parties. On March 18, 1986, MARAD held a public hearing on the matter, pursuant to an informal request by counsel for three of the subsidized operators. During the hearing, MARAD emphasized that it would consider all comments, provided they were submitted in writing according to the instructions in the NPRM.

On March 26, 1986, written comments were received from Kominers, Fort, Schlefer & Boyer (Kominers) on behalf of Apex Marine Corp., Moore-McCormack Bulk Transport, Keystone Shipping and American Maritime

Transport, Inc. Comments were also submitted by Seabulk Transmarine I, Inc., Seabulk Transmarine II, Inc. and Seabulk Transmarine III, Inc. (Seabulk) by telex dated March 25, 1986.

The comments submitted by Kominers dealt with several aspects of the proposed new system. These comments, along with MARAD's response to them are discussed below.

**1. Accuracy of Payments**

Kominers stated that the new system would remove the direct correlation between expenses incurred and subsidy paid, and could result in significant and possibly permanent under or overpayment of ODS. In addition, according to Kominers, the proposed method seems to contradict the government's statutory and contractual obligation to pay necessary ODS amounts for operators to achieve cost parity with foreign competitors.

The new system does not provide a direct dollar-for-dollar correlation between expenses incurred and subsidy paid. However, the system employs historical cost experience that would be verified through audit to obtain a fair and reasonable estimate of expenses. This is fully within the dictates of the Merchant Marine Act, 1936, as amended (the Act) and the ODS agreements. MARAD does not believe significant under or overpayments will occur, due to the semi-annual adjustments based on historical data. The system will provide cost parity to the extent required by the ODS contracts.

**2. Maintenance and Repair**

Kominers offered the following six comments with regard to the treatment of maintenance and repair (M&R) subsidy:

a. Operators would receive large subsidy amounts in years when they have few M&R expenses and vice versa.

b. The system will harm the operators' ability to compete effectively with foreign operators as it would unduly influence operators' decisions as to when and where to repair vessels. This is because the timing of drydocking would affect the calculation of the constructed per diem subsidy.

c. The data on which the per diem amount is based will be one to three years old. The subsidy paid at any time will not reflect the current M&R expense, but will only approximately reflect the M&R expense for a prior period.

d. Because the base periods are determined by the period between drydockings, the length of the period used to calculate the per diem subsidy is entirely unrelated to the period over which that per diem subsidy amount is paid. A per diem subsidy amount computed from a 36-month period (where expenses were high) might be paid over a single year (where expenses were low) while a subsidy amount computed over 18 months might be applied to a three-year period.

e. The rule does not provide for the subsidy to "catch up" to the actual M&R expenses at the end of a subsidy contract, thus leading to overpayments or underpayments at the time a contract terminates.

f. Most ODS vessels are in the later years of their useful lives and have steadily increasing M&R expenses. The expense subsidy lag described above will have a distinct adverse impact upon operators.

Kominers also offered the following alternative to the proposed M&R changes. Upon submission of an operator's certified expenses, 100 percent of the subsidy be paid and that any refund due the government be repaid when the expenses are audited. Kominers stated that this system would never result in a net overpayment of subsidy at any time because the operator continually incurs new subsidizable expenses.

With regard to Kominer's comments on the time frame (a. and d. above) in which M&R subsidy is paid, MARAD concedes that using historical costs to determine subsidy payments in the current year may not reflect actual expenses incurred in that year. However, the use of a moving historical period, escalated to the current period by an appropriate index, provides a reasonable estimate of subsidizable expense in each year. In addition, under the current system which utilizes tentative rates, there is also uncertainty with regard to whether the tentative rates will closely reflect the final rates. Thus, an operator may be overpaid or underpaid during the period in which it incurs the expense. In the case of an underpayment, it may take two to three years for an operator to be made whole when the rates are finalized. MARAD believes that the new system is superior in this respect. The moving historical experience over time would automatically compensate for any under/overpayments, to the extent that they exist.

MARAD does not agree that there will be substantial under/overpayments of subsidy and that the subsidy paid at any time will not reasonably reflect the current M&R expense. As noted in the regulations, historical cost experience from the 24–36 month period immediately preceding the subsidized period will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible M&R costs so established will be divided by the calendar days of the historical period to establish a weighted daily average M&R cost. The U.S.-foreign cost differential percentage applicable to the most recent year will be applied to the weighted daily average cost to determine the daily M&R subsidy amount. MARAD believes that indexing will yield a fair and reasonable estimate of current M&R expenses and subsidy.

The new system attempts to provide an estimation of a fair and reasonable M&R cost for a given period of time. MARAD concedes that M&R expenses increase as the ship gets older, but MARAD contends that, for the most part, this is offset by the indexing previously referred to and the time value of receiving a final per diem subsidy with no subsequent adjustment. In addition, MARAD does not foresee the expense subsidy lag as being of significant value.

MARAD does not believe the new system will influence operators' decisions as to when and where to repair vessels. As provided in the regulation, the length of the period used for establishing the subsidizable M&R costs will be the number of months between the last two routine drydockings and the subsidizable costs will include the most recent drydocking. The eligible costs would be divided by the calendar days in the historical period to provide an appropriately weighted daily expense. Although a shorter time frame between drydockings would likely result in a higher daily expense, MARAD expects that the operators would not seek to undergo drydockings more frequently than necessary as this would not be to their benefit for economic reasons.

In view of the foregoing, MARAD considers the alternative offered by Kominers as inappropriate. In addition, it is inconsistent with section 603 of the Act, which provides 100 percent ODS payment only after expenses have been audited.

**3. Protection and Indemnity Insurance**

a. Kominers argued that, as in the case of M&R, subsidy for protection and indemnity (P&I) deductible expenses will not reflect actual expenses and will never "catch up" with increases in expenses at the end of the contract.

MARAD believes that the new system provides for the establishment of a relationship between P&I deductible subsidy and wage subsidy during a moving historical period that reflects the

fullest measure of crew claims experience. This percentage relationship is applied to current wage subsidy to provide an estimate of current P&I deductible subsidy. MARAD believes that this system results in a fair and reasonable subsidy amount.

b. Kominers stated that the NPRM does not provide for circumstances in which an operator's deductible limit is increased. In this case an operator would be liable for claims up to a greater amount but would still receive subsidy based upon prior years when a lower deductible was in effect. This problem could be solved if the P&I deductible subsidy for prior years was recalculated with the higher deductible limit for purposes of determining the current P&I deductible subsidy.

It was MARAD's intent that this methodology be followed and MARAD has clarified the new regulation to make this more explicit.

c. Kominers contended that the NPRM has no provision to modify the maximum deductible absorption limit in the event operators are unable to get P&I insurance with a deductible limit at or below that established by the regulations.

In MARAD's view, the purpose of this rule is to take existing procedures and convert them to a per diem system. The rule is not a vehicle to modify the maximum deductible absorption limit. Operators who desire such modification should present their justification as a separate matter.

**4. Hull and Machinery Insurance**

It is Kominer's view that under both the present and proposed regulation MARAD's method to determine foreign premium costs for hull and machinery (H&M) insurance is flawed. The "particular average factor" is erroneous. There is no reason why the percentage should be limited to 85 percent. The percentage is often much higher and may reach 95–100 percent. In addition, since the calculation is based only upon claims paid by the underwriter as opposed to those paid by the underwriter (H&M cost under or over deductible limit) or operator, the resulting percentage will not reflect a true particular average portion.

MARAD believes that the methodology for determining subsidy rates for hull and machinery insurance premiums clearly indicates that the hull and machinery insurance subsidy rate is limited to the particular average portion of the partial loss premium related specifically to the domestic repair of the vessel. The partial loss premium is equal to the basic premium cost (plus premium costs for increased value and excess liability, if applicable) less total loss premiums. Total loss premiums are excluded from the calculation since ship values are assumed to be the same for both the U.S. operator and its foreign competitors as clearly indicated in the procedures.

The particular average portion of the partial loss premium is determined by measuring historical underwriters absorptions for particular average domestic repair claims as a percentage of total underwriters absorptions for all other claims, including general average claims but excluding total losses. This particular average percentage factor has been capped at 85 percent in recognition of the fact that a certain percentage of the partial loss premium is applicable to claims other than those related to particular average, e.g., general average claims. MARAD has reexamined this aspect of the calculation and finds that the allocation of 15 percent of partial loss premiums to claims other than particular average is completely justified. Accordingly, the final rule makes no change in the 85 percent cap. Further, MARAD considers it entirely correct that the operators' absorptions are not used in determining the particular average portion of the partial loss premium. To the extent subsidized operators absorb domestic repair costs under the deductible provisions of their policies, such absorptions are eligible for ODS at the maintenance and repair subsidy rate and are not used in the hull and machinery calculation.

The foregoing procedures have been accepted by all subsidized bulk vessel operators since their entry into subsidized service. It is clear that questions now arise since certain of the operators have recently begun carrying very high deductible levels under their hull and machinery policies in order to reduce premium costs. The result is that those operators have in some years absorbed all domestic particular average claims while the underwriters have absorbed none. The lack of underwriters absorptions produces a zero particular average percentage factor and consequently, a zero subsidy rate for hull and machinery premiums. MARAD considers this to be appropriate since the carriage of high deductible levels by the operators in effect places them in the same category as self insurers for all but major claims and, to the extent the operators absorb repair costs under the deductible provisions, they are reimbursed by the government at the maintenance and repair subsidy rate. Overall, we find the procedures for determining ODS for hull and machinery insurance premiums to be logical and completely supportable. No changes have been made.

**5. Variable Costs**

Kominers stated that the NPRM provides that variable costs shall be based upon variable cost data for the first nine months of the preceding calendar year. This would exclude several variable costs incurred during the Christmas season (overlap crew costs, transportation costs). It is recommended that a 12-month period from October to October ending in the preceding calendar year be used.

MARAD disagrees with this reasoning, as the Christmas season would not make an appreciable difference in costs. MARAD believes the nine-month period is adequate and, in fact, is using a nine-month period under the current system.

**6. Wage Costs (Ship Type)**

Kominers stated that one operator would be affected by the use of the "predominant" ship type and recommended that the computation be done on a ship-by-ship basis in order that no operator or the government be adversely affected.

MARAD believes that use of the phrase "predominant" ship type is inappropriate. Rates for bulk vessels are done on a ship type basis that accounts for every particular ship type in the bulk fleet. Since any two vessels within the same type are treated identically, the system, in effect, accounts for each individual vessel.

**7. Submission of Financial Data**

The present regulation and the NPRM require operators to submit quarterly balance sheets. Kominers stated that the requirement is not appropriate for bulk vessels that often make voyages that last more than 3 months, and should be dropped. In addition, the operator should be given 120 days rather than 90 days to submit the annual balance sheet and MA–172.

MARAD agrees on this point. The requirement for quarterly statements has been deleted. In addition, the rule has been revised to require the submission of semiannual MA–172s and audited annual financial statements not later than 120 days after the close of the operator's semiannual and annual reporting periods.

**8. Fuel Subsidy**

Kominers stated that the Act, the regulations, and the subsidy contracts entitle operators to an amount to compensate for the U.S.-foreign cost differential for fuel costs.

This is a matter that goes beyond the scope of the NPRM and is the basis for pending litigation initiated by operators represented by the commenter.

**9. ODS Budget**

Kominers stated that the proposed rule would not enable MARAD to estimate with greater accuracy its annual ODS budget. Under the NPRM, MARAD's annual budget would remain subject to a number of unpredictable factors, not the least of which is the varying number of days that subsidized vessels would be operating under subsidy.

MARAD believes that the new system would make the ODS budget process more accurate in the per diem subsidy eliminates the unknown factor of the difference between tentative and final rates and the amounts which would be paid after auditing.

**10. Miscellaneous**

Kominers offered the following miscellaneous comments, which MARAD responds to.

In view of section 615 of the Act, the provision requiring U.S.-built vessels should be dropped.

Section 615 of the Act has expired. However, MARAD realizes that some vessels were built or acquired foreign under its provisions. Since these vessels were eligible for ODS under the applicable law at the time they were built, they are included under the new system. MARAD has made this explicit in the final regulation.

The NPRM refers to the daily rate of subsidy for subsidized items of expense identified in the operating-differential sudsidy agreement (ODSA). The commenter stated that the provision should be changed to reflect that there are subsidizable items (e.g., training, medical costs) not identified in the ODSAs.

MARAD believes these items are included in the ODSAs since the ODSAs reference section 603 of the Act which defines wage expenses as those contained in collective bargaining or other agreements. No further definition is necessary.

The MPRM defines approved manning complement as the complement approved by the Maritime Subsidy Board (Board) for subsidy. Kominers assumes this means the complement previously approved for construction subsidy. If so, this should be clarified.

MARAD disagrees since the manning complement referred to is that approved for ODS, which subsequent to the initial award of CDS and ODS could be reduced to reflect later collective bargaining agreements. No further clarification is necessary.

The provisions dealing with the possibility of the manning complement for a vessel varying in number should be dropped since this applies only to liner vessels.

MARAD agrees and the final rule has been amended accordingly.

**11. Seabulk Comments**

Seabulk commented that its ODSAs specifically allow it to be paid subsidy on a calendar month basis rather than voyage basis. Therefore, all reference to terminated voyage and voyage days are not applicable with respect to Seabulk's ODSAs.

MARAD agrees with this and Seabulk will be paid subsidy in accordance with its ODSAs.

**E.O. 12291, Statutory and DOT Requirements**

The Maritime Administrator has determined that this final rulemaking is not major, as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; February 1979). This rulemaking places the ODS receipts of the operator and the obligations of the government on a current basis, with no appreciable overall change in such receipts and obligations.

Since it only facilitates the payment of final ODS amounts in a more timely manner, the economic impact of this rulemaking has been found to be minimal and further evaluation to be unnecessary. However, MARAD specifically requested comments on the industry's views with respect to the economic impact of this proposal. No comments on this aspect of the regulation were received. MARAD expects no appreciable change in ODS receipts or obligations. The major benefit is one of improving the timeliness of ODS payments. Accordingly, no further Regulatory Evaluation is deemed necessary.

Since this final rulemaking affects principally ship operators with substantial annual revenues, the Maritime Administrator certifies that this rulemaking does not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133–0004 and 2133–0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 46 CFR Part 252**

Bulk commodities, Bulk cargo vessels, ODS program, Water transportation.

## PART 252—[AMENDED]

Accordingly, 46 CFR Part 252 is amended as follows:

1. The authority citation for Part 252 is revised to read as follows:

**Authority:** Secs. 204(b), 603-606, 608–611, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173–1176), 49 CFR 1.66.

2. A new § 252.4 is added to the Table of Contents under Subpart A, to read as follows:

Sec.
252.4 Waivers.

3. Subpart C in the Table of Contents is amended by removing § 252.23 [Reserved]" and redesignating § 252.24 as § 252.23.

4. Section 252.1 is revised to read as follows:

**§ 252.1 Purpose.**

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171–1176 and 1178–1181) governing operating-differential subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

**§ 252.3 [Amended]**

5. Section 252.3 is amended as follows:

a. Paragraph (f) is amended by removing the word "Assistant" and inserting in its place, the word "Associate".

b. Paragraph (j) is removed and paragraphs (k) through (u) are redesignated (j) through (t).

6. A new § 252.4 is added to Subpart A to read as follows:

**§ 252.4 Waivers.**

In special circumstances and for good cause shown, the procedures prescribed in this Part may be waived, in writing, by mutual agreement of the parties, in keeping with the circumstances then present, provided that the procedures adopted are consistent with the Act and with the intent of these regulations.

7. Section 252.12(b) is revised to read as follows:

**§ 252.12 Approval.**

* * * * *

(b) The vessel was built in the United States, or built foreign and determined to be eligible for ODS pursuant to the applicable law at the time it was built or

acquired, and the vessel is documented under the laws of the United States.

* * * * *

**§ 252.20 [Amended]**

8. Section 252.20(b)(3) is amended by removing the reference to "§ 252.24(a)" and inserting § 252.23(a)".

9. Section 252.22(a) is revised to read as follows.

**§ 252.22 Substantiality and extent of foreign-flag competition.**

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined, as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage ranges as follows:

(1) Range A-vessels of less than 25,000 DWT;

(2) Range B-vessels of 25,000 but less than 50,000 DWT;

(3) Range C-vessels of 50,000 but less than 100,000 DWT; and

(4) Range D-vessels of 100,000 or more DWT.

* * * * *

**§§ 252.23 and 252.24 [Redesignated and Amended]**

10. In § 252.23 the designation, "Reserved", is removed and the §252.24 is redesignated as §252.23.

11. Paragraph (d) of newly redesignated § 252.23 is amended as follows:

a. In the first sentence of the introductory text, by removing the words "Director, Office of Financial Analysis", and inserting, the words "Director, Office of Financial Approvals".

b. By removing paragraph (d)(1), and redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively.

c. By revising newly redesignated paragraph (d)(1) to read as follows:

(d) * * *

(1) Not later than 120 days after the close of the operator's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6.

d. By revising newly redesignated paragraph (d)(2) to read as follows:

(d) * * *

(2) Not later than 120 days after the close of the operator's annual accounting period an audited annual financial statement, in accordance with 46 CFR 232.6.

12. Subpart D is revised to read as follows:

**Subpart D—Calculation of Subsidy Rates**

Sec.



**§ 252.30 Amount of subsidy payable.**

(a) *Daily rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced crew periods.* For reduced crew periods, as defined in § 252.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule C at § 252.41 of this part.)

(c) *Review of rates.* Daily subsidy rates shall be reviewed every six months. For the item, "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by MARAD. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

**§ 252.31 Wages of Officers and Crews.**

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index systems, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance wth the following schedule:

| | Minimum (pct) | Maximum (pct) |
|---|---|---|
| Base period following a: | | |
| 2 year cycle | 97½ | 102½ |
| 3 year cycle | 96¼ | 103¾ |
| 4 year cycle | 95 | 105 |

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Examples of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of three days for officers and two days for unlicensed crew); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA-790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA-790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA-790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA-790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example Calculation.* The following is a sample calculation of CBC and WC:

ABC Bulk Co.

Jan. 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

| | Per diem | |
|---|---|---|
| | WC | CBC |
| Crew Complement | [1] 35 | [2] 31 |
| Fixed Costs as of January 1, 1985: | | |
| Base Wages and non-watch pay | $1,789.79 | $1,571.60 |
| Allowances (radio, telephone, clothing, etc.) | $5.75 | $5.75 |
| Vacation Pay | $1,189.60 | $1,109.65 |
| Pension, Welfare, Training, Unemployment Fund Contributions | $,280.80 | $1,171.75 |
| Total Fixed | $4,265.94 | $3,858.75 |
| Variable Costs as of January 1, 1985: | | |
| Variable Cost Factor (based on 1984 cost experience) (pct) | 104.69 | 104.69 |
| Total Variable Costs (January 1, 1985 base wages x variable cost factor) | $1,873.73 | $1,645.31 |
| Total wage costs as of January 1, 1985 | $6,139.67 | $5,504.06 |

[1] Normal manning complement.
[2] Approved manning complement.

(f) *Method of calculating foreign wage cost.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign-flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitor shall be constructed for the subsidized vessel type using the manning scales and practice of the competitor as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitor shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by 25% or more during the period, in which case the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the "International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitor. The following is a sample calculation of the foreign cost percentage.

ABC Bulk Company, Inc.

[Jan. 1, 1985—Foreign Wage Cost (FC)]

| | United States | Liberia |
|---|---|---|
| Crew Complement | 26 | 26 |
| Base Wages | [1] $53,687 | [1] $24,779 |
| Allowances | $1,074 | $4,584 |
| Vacation Pay (leave) | [1] $35,681 | [1] $13,009 |
| Pension and Welfare | [3] $38,407 | [1] $2,065 |
| Social Security | [2] $6,608 | [2] $7,227 |
| Overtime and other variable costs (not elsewhere included) | [2] $48,732 | [2] $10,944 |
| Repatriation | | |
| Total wage costs | $184,189 | $62,608 |
| Percentage FC to WC | | 33.99 |

[1] Based on Jan. 1 priced out cost.
[2] Based on cost experience.
[3] Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amount would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses shall be eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefits funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

Table 1.—ABC Bulk Company, Inc.

[Calculation of Wage Subsidy Rates [1]]

| Base period | Interim period | U.S. wage cost | Collective bargaining cost | Application of BLS index to base period cost | Averaging in base periods (4)+(5) / 2 | Appropriate limits |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1981 | | $4,162.60 | $3,850.29 | | | |
| | 1982 | $4,578.24 | $4,230.15 | $3,850.29×1.0845=$4,175.64 | | .9×(4)=$3,807.14<br>1.1×(4)=$4,653.17 |
| | 1983 | $4,578.24 | $4,230.15 | $3,850.29×1.1816=$4,549.50 | | .9×(4)=$4,104.34<br>1.1×(4)=$5,016.42 |
| | 1984 | $5,539.40 | $4,966.90 | $3,850.29×1.2992=$5,002.30 | | .9×(4)=$4,470.21<br>1.1×(4)=$5,463.59 |
| | 1985 | $6,139.57 | $5,504.06 | $3,850.29×1.4044=$5,407.35 | | .95×(4)=$5,226.86<br>1.05×(4)=$5,779.26 |

[1] This computation is based on a new vessel entering subsidized service in May 1981.

| Base period cost | Subsidizable wage cost | Foreign cost percentage | Foreign wage cost | Wage subsidy daily rate | Wage subsidy percentage rate (12)+(9) |
|---|---|---|---|---|---|
| $3,850.9 | $3,850.29 | 32.99 | $1,373.24 | $2,477.05 | 64.33 |
| | $4,175.64 | 32.98 | $1,509.90 | $2,665.74 | 63.84 |
| | $4,549.50 | 32.15 | $1,812.49 | $2,737.01 | 60.16 |
| | $5,002.30 | 34.77 | $1,926.05 | $3,076.25 | 61.50 |
| $5,455.71 | $5,455.71 | 33.99 | $2,086.84 | $3,368.87 | 61.75 |

**§ 252.32 Maintenance (upkeep) and repairs.**

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from

price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL

[Year—1985; U.S. Atlantic—Gulf Coast; Foreign Country—Singapore]

| Repair category | Foreign price | U.S. price |
|---|---|---|
| Drydocking and Underwater Repairs | $89,840 | $300,245 |
| Tank Cleaning and Coating | 70,160 | 77,080 |
| Boiler Repairs | 10,545 | 47,550 |
| Machinery Repairs | 22,505 | 108,165 |
| Hull and Deck Repairs | 33,500 | 99,370 |
| Piping System | 71,905 | 215,830 |
| Electrical Repairs | 12,340 | 36,660 |
| Exterior Painting | 5,035 | 30,640 |
| Interior Painting | 390 | 1,470 |
| Estimate Totals | 316,220 | 917,010 |

Foreign/U.S. Price Ratio—34%.
Country Cost Differential (100-34)—66%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *U.S.-foreign cost differential.* The U.S.-foreign cost differential for the foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country, and by adding the resulting weighted cost differential for all countries. For example:

ABC BULK COMPANY, INC., U.S.-FOREIGN COST DIFFERENTIAL, 1985

| Principal competitor | Distribution of repairs | | Country cost differential percent | Weighted cost differentials |
|---|---|---|---|---|
| | Country | Percent | | (1) x (2) (percent) |
| | (1) | | (2) | (3) |
| Liberia | U.K. | 15 | 19 | 2.9 |
| | Japan | 20 | 36 | 7.2 |
| | Singapore | 65 | 57 | 37.1 |
| U.S.-foreign cost differential | | | | 47 |

(c) *Calculation.* The U.S.-foreign cost differential is applied to the subsidizable maintenance and repair costs to establish the daily M&R subsidy amount.

(1) *Subsidizable costs.* The period used for establishing the subsidizable maintenance and repair costs will generally be a 24- to 36-month period ending in the year prior to the subsidizable year. The length of the period will be the number of months between the last two routine drydockings, and the subsidizable costs will include only the most recent routine drydocking. The costs of each year will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible costs will be divided by the calendar days of the period to establish daily average maintenance and repair costs. The U.S.-foreign differential percentage applicable to the most recent year will be applied to the daily average cost to determine the daily M&R subsidy amount.

(2) *Data submission requirement.* The operator is required to submit an annual certified statement of eligible M&R expenses for each month. The report shall be submitted to the Director, Office of Ship Operating Costs. The report should be submitted not later than sixty (60) days after the close of each calendar year.

**§ 252.33 Hull and machinery insurance.**

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for the service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operator's total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

**Table 2.—ABC Bulk Company, Inc., U.S./Foreign Cost Differential for Hull and Machinery Insurance—1985**

| | | |
|---|---|---|
| 1. Foreign Premium Cost: | | |
| A. Hull and Machinery, Total coverage | $92,741,996 | |
| Average Premium Rate in British Market | 1.00966% | |
| Premium Cost in British Market | | $936,379 |
| (Estimated Total Loss Premium $92,741,966@ .46500% [1] | 431,250) | |
| B. *Increased Value,* Total Coverage | 1,083,325 | |
| Average Premium Rate in British Market | .32550% | |
| Premium Cost in British Market | | 3,526 |
| C. *Excess Liability,* Total Coverage | | None |
| D. Total Premium Cost if Insured 100% in British Market | | 939,905 |
| E. *Deduct Particular Average Portion:* $936,379 Less $431,250= $505,129× 62% [2] | | 313,180 |
| F. Net Premium Cost Exclusive of Particular Average | | 626,725 |
| G. *Particular Average Adjustment.* | Worldwide service | |
| P/A Portion of Premium Cost | $313,180 | |
| M&R Subsidy Rate Complement [3] | 84.48% | |
| Adjusted P/A Foreign Premium Cost | 264,574 | |
| Add: Net Premium Cost (Excluding P/A) | 626,725 | |
| 2. *Foreign Premium Cost* | 891,299 | |
| 3. *Total Premium Cost to Subsidized Operators* | 1,068,998 | |
| 4. *Differential in Dollars* [4] | 177,699 | |
| 5. *U.S.–Foreign Cost Differential* [5] | 16.62% | |

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

### § 252.34 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, "tovalop" or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection

and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible, notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for the service of the vessels. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* the crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-Foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC BULK COMPANY, INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

| Premium cost (per GRT) | United States | Liberia |
|---|---|---|
| Crew liability | [1] $3.98 | [2] $1.27 |
| All other liability | $1.06 | $1.06 |
| Total cost | $5.04 | $2.33 |
| Differential—Excess of U.S. cost over foreign cost | | $2.71 |
| U.S.-foreign cost differential (pct) | | 53.77 |

[1] Determined by applying 79.03% (based on 5-year claims experience) to total GRT premium rate of $5.04.
[2] Crew Liability data obtained by Maritime Administration.

NOTE.—The unweighted percentage of foreign to U.S. wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(d) *Daily subsidy rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, and determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year period. The P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

| Item | Calendar year 1979 | Calendar year 1980 | Calendar year 1981 | Total |
|---|---|---|---|---|
| P&I deductible C.Y. expenses | $1,680,000 | $1,220,000 | $1,400,000 | |
| Diff. foreign/U.S. wage cost (pct) | 26.00 | 23.00 | 20.00 | |
| Subsidy | $436,800 | $280,600 | $280,000 | $997,400 |
| Voyage days | 1,140 | 1,100 | 1,225 | 3,465 |

Average subsidy per voyage day ($997,400 ÷ 3,465 days) = $287.85.

| | Fiscal year 1979 | Fiscal year 1980 | Fiscal year 1981 | Total |
|---|---|---|---|---|
| Wages fiscal year per diem rate | $7,660 | $7,700 | $8,050 | |
| Voyage days | 1,090 | 1,180 | 1,230 | 3,500 |
| Subsidy | $8,349,400 | $9,086,000 | $9,901,500 | $27,336,900 |

Average subsidy per voyage day ($27,336,900 ÷ 3,500 days) = $7,810.54.
Ratio P&I deductible ODS to wage ODS $287.85 ÷ $7,810.54 = 3.69%.

| T.R. 98 ship type | Daily wage ODS 1/1/85 | Ratio P&I ded. to wage ODS (pct) | Daily P&I ded. ODS 1/1/85 |
|---|---|---|---|
| C4-A | $9,000 | ×3.69 | $332.10 |
| C5-B | 9,300 | ×3.69 | 343.17 |
| C6-C | 9,600 | ×3.69 | 354.34 |

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims as identified in paragraph (d)(2) of this section for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs, no later than January 1 of the subsidized year.

12. Section 252.40 is revised to read as follows:

**§ 252.40 Payment of subsidy.**

*Submission of voucher.* At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

13. Section 252.41 is revised to read as follows:

**§ 252.41 Subsidy billing procedures.**

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

**Schedule A**

(Company) ———
ODSA No. ———
ODS Accrued During Fiscal Year 19—
ODS Payable for the Month of ———

| | Current voucher | Previous voucher | Total |
|---|---|---|---|
| Total accrued ODS (sched. B) | $——— | | |
| Les ODS reductions: reduced crew (sched. C) | ——— | | |
| Net ODS accrued | ——— | $——— | $——— |
| Less previous payments | | | ——— |
| ODS payable | | | ——— |

**Schedule B**

(Company) ———
ODS Accrued for the Month of ———

| Vessel name | Voy. No. | Voyage dates From | Voyage dates To | Voy. days | Per diem rates | Accrued subsidy |
|---|---|---|---|---|---|---|
| | | | | | $——— | $——— |
| ODS payable for unpredictably timed expenses not included in daily amount (attach supporting supporting information) | | | | | | $——— |
| Total accrued subsidy (enter on Schedule A) | | | | | | $——— |

**Schedule C**

(Company) ———

REDUCED CREW PERIODS

| Vessel | Reduced crew dates From | Reduced crew dates To | No. of reduced crew days (a) | | No. of crew reduced | | Man-days | | Man-day amount | | Reduced crew reduction |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | × | | = | | × | $——— | = | $——— |
| | | | | × | | = | | × | ——— | = | ——— |
| | | | | × | | = | | × | ——— | = | ——— |
| | | | | × | | = | | × | ——— | = | ——— |
| Total reduced crew reduction (enter on Schedule A) | | | | | | | | | ——— | | |

(a) If licensed crew, indicate (a).
(b) If unlicensed crew, indicate (b).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel, and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

**Affidavit**

State of ———
City of ———
County/Parish of ———

I, ———, being duly sworn, depose and say that I am ——— (title) of the ——— (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ———, dated as of ———, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for bulk cargo vessels, PART 252, Title 46, CFR: and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and

disbursements of the Operator relating to such operation.

Referring to the public voucher dated ———, covering voyage days allowed for subsidy during the periods commencing ———, and ending ———, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of ———, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

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Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ——— day of ———,
My commission expires ———
Notary Public ———

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(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

14. Section 252.42 is revised as follows:

**§ 252.42 Appeals procedures.**

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing a written petition for review of the Board's action with the Secretary of Transportation. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* The Rules of Practice and Procedures, 46 CFR Part 201, Subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42.

By order of the Maritime Administrator.

Dated: October 31, 1986.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 86-24977 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-81-M

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 86-26; RM-5113]**

### Radio Broadcasting Services; Fresno, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 257A to Fresno, California, as that community's eighth commercial FM service, in response to a petition filed by New Life Enterprises, Inc.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 1, 1986; The window period for filing applications will open on December 2, 1986, and close on December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, (202) 634-6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-26, adopted September 26, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202, (b) the table of allotments is amended by adding Channel 257A to the entry for Fresno, California.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 86-25156 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

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### 47 CFR Part 73

**[MM Docket No. 86-17; RM-4973]**

### Radio Broadcasting Services; Kings Beach, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 299A to Kings Beach, California, as that community's first local FM broadcast service, in response to a petition filed by Eric R. Hilding.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 1, 1986; the window period for filing applications will open on December 2, 1986, and close on December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–17, adopted September 30, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of Allotments is amended by adding Kings Beach, Channel 299A, under California.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 86–25157 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 85–379; RM–5091]**

## Radio Broadcasting Services; Franklin, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 269A to Franklin, Virginia, as that community's first FM service at the request of Franklin Broadcasting Corporation. A site restriction of 6.6 kilometers (4.1 miles) west of the community is required. The window periods for filing applications on Channel 269A will be announced at a later date. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85–379, adopted September 26, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202 (b), the table of allotments, the entry for Franklin, Virginia is amended to add Channel 269A.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 86–25158 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket 85–90; FCC 86–433]**

## Broadcast Services; Directional Antenna Proof of Performance Measurements and Design Specifications; Petitions for Reconsideration

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** This action is taken in response to petitions for reconsideration of the *Report and Order* (*Report*) in this proceeding, (50 FR 47051, November 14, 1985). That decision deregulated the rules requiring proof of performance measurements (proofs) by AM stations using directional antennas (DAs). The *Report* also deleted from the Rules criteria for antenna monitor sampling system approval. This action reaffirms that decision.

**EFFECTIVE DATE:** November 24, 1986.

**FOR FURTHER INFORMATION CONTACT:** John Wong or John Reiser, Policy and Rules Division, Mass Media Bureau, (202) 632–9660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket 85–90, adopted, October 6, 1986, and released October 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Memorandum Opinion and Order**

1. The *Report* in this proceeding deregulated the rules for AM–DA operation. Petitions for reconsideration of that decision were filed by The Association of Federal Communications Consulting Engineers (AFCCE) and by du Treil-Rackley Consulting Engineers (du Treil-Rackley).

2. First, the *Memorandum Opinion and Order* (*Order*) denies the AFCCE petition. That petition sought amendment of the Rules to sanction the use of nondirectional measurements in performing partial proofs. The *Order* finds it unnecessary to incorporate such an acknowledgement into the Rules.

3. Second, the Commission denies a request of du Treil-Rackley to reinstate the criteria defining an acceptable sampling system, as the deleted information can easily be obtained in a public notice. The *Order* does, however, add a Note to the Rules explaining to all interested parties the existence of the public notice.

**Regulatory Flexibility Information**

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this action will not have a significant economic impact on a substantial number of small entities because it does not adopt significant Rule amendments.

5. The Secretary shall cause a copy of this *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

**Paperwork Reduction Act Statement**

6. The *Memorandum Opinion and Order* contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new modified form, information collection and/or recordkeeping, labeling, disclosure, or

record retention requirements; and will not increase or decrease burden hours imposed on the public.

**Ordering Clauses**

7. Accordingly, It Is Ordered, That the petition for reconsideration filed by the Association of Federal Communications Consulting Engineers Is Denied.

8. It Is Further Ordered, That the petition for reconsideration filed by du Treil-Rackley Is Granted to the extent specified above, and Is Denied in all other respects.

9. It Is Further Ordered, That Part 73 of the Commission's Rules Is Amended as set forth below, effective November 24, 1986.

10. It Is Further Ordered, That this proceeding Is Terminated.

11. Authority for these actions is contained in sections 4, and 303 of the Communications Act of 1934, as amended.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Amendatory Text**

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, and 405.

2. Section 73.68 is amended by adding a Note following paragraph (b) to read as follows:

**§ 73.68 Sampling systems for antenna monitors.**

* * * * *

(b) * * *

**Note.**—A public notice giving additional information on approval of antenna sampling systems is available upon request from the FCC's current copy contractor.

* * * * *

**William J. Tricarico,**

*Secretary.*

[FR Doc. 86-25155 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 335

### Promotion and Internal Placement

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations on promotion and internal placement. This amendment is being proposed together with a major revision of chapter 335 of the Federal Personnel Manual (FPM). These changes are intended to preserve basic management rights and flexibilities, emphasize cost effectiveness over procedural complexity, and ensure adherence to basic merit principles. The corresponding FPM chapter was submitted to agencies and employee organizations for comment in July, 1985. A copy of the chapter, which contains specific policies, advice, and guidance to agencies amplifying these regulations, is available upon request from the contact office below.

**DATE:** Comments must be submitted on or before January 6, 1987.

**ADDRESS:** Send or deliver comments to Don Holum, Chief, Staffing Policy Analysis Division, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Raleigh M. Neville, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** OPM is proposing to revise and strengthen its regulations and instructions to agencies governing promotion and competitive internal placement actions in the competitive civil service by amending this part and FPM chapter 335. The following are among the more important changes being proposed.

a. Area of consideration is revised to specify that it is a geographical and/or organizational area which must be as broad as practicable and applies only to actions for which competition is required.

b. Agency promotion plans must provide for open competition and may not, *as a matter of policy,* exclude "outside" candidates. (Consideration may be restricted for individual promotion actions).

c. Agencies may not give unwarranted first consideration for promotion to a particular group of employees.

d. Performance appraisals must be given significant weight in evaluating candidates for promotion. No employee may be promoted unless his or her most recent rating of record is "Fully Successful" or higher.

e. The content of the crediting plans and the weight assigned to individual factors in evaluating candidates for promotion must be based on the actual requirements of the job to be filled and are entirely within management's discretion to determine.

f. The decisions of if and when to promote rest with agency management. Agencies may not adopt policies that allow virtually automatic promotions upon meeting time-in-grade requirements, but must make promotion decisions in each individual case based on qualifications, performance, availability of higher grade work, budget, and other management considerations.

g. The selecting official may select, or non-select, from any appropriate source of candidates, at any point in the selection process.

h. To prevent abuse, controls are placed on reclassification actions involving a change in duties.

i. An exception from competition is allowed for repromotion to any grade formerly held under nontemporary appointment provided the employee was not separated or demoted for cause.

j. Agencies are allowed to make term promotions without coming to OPM.

k. An employee serving under a term or temporary promotion may be returned to his or her former grade level at any time without adverse action or reduction in-force procedures.

l. Corrective action must be based on the loss of an opportunity or benefit.

m. Employees may not grieve nonselection for promotion or reassignment from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

The provisions of the current § 335.101, effect of position change on status and tenure, are beng removed from this part and will be included in Part 212 at a later date.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

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

### List of Subjects in 5 CFR Part 335

Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM proposes to revise Part 335 of title 5, Code of Federal Regulations, as follows:

## PART 335—PROMOTION AND INTERNAL PLACEMENT

### Subpart A—General Provisions

Sec.



Authority: 5 U.S.C. 3301, 3302, E.O. 10577.

### Subpart A—General Provisions

#### § 335.101 Agency authority to promote, demote, and reassign.

Subject to § 335.102, an agency may:

(a) Promote, demote, or reassign career and career-conditional employees.

(b) Reinstate or transfer career and career-conditional employees in accordance with Part 315 of this chapter.

(c) Promote, demote, or reassign overseas limited employees who are not serving under temporary appointments limited to 1 year or less to any position to which an initial appointment of the same type is authorized by Part 301 of this chapter.

(d) Promote, demote, or reassign status quo employees.

(e) Promote, demote, or reassign term employees to any position that may properly be filled by term appointment.

(f) Promote, demote, or reassign, or transfer Veterans' Readjustment Authority appointees as prescribed in Part 307 of this chapter.

(g) Promote, reassign, or transfer student appointees in career-related work study programs authorized under E.O. 12015.

(h) Reassign employees serving under a temporary appointment pending establishment of a register (TAPER) to any position to which the individual's original appointment could have been made under the same authority by the same appointing office, from the same recruiting list, in the same order of consideration.

(i) Promote, demote, reassign or transfer worker-trainee TAPER employees.

(j) Make temporary promotions to meet a temporary need, or term promotions for purposes of participation in a designated project or planned rotation program, for any period up to a maximum of 4 years. The employee must be informed in writing that the promotion is for a specified term and that return to the former grade may be effected at any time and is not subject to the procedures set forth in Parts 351, 432, 752, or 771 of this chapter. Extensions beyond 4 years require OPM approval. However, a temporary or term promotion, or any combination thereof, may not last longer than a total of 5 years.

**§ 335.102 Agency promotion and placement plans.**

Promotion and placement actions under § 335.101 must conform to the requirements of this part and to implementing material published by OPM in Chapter 335 of the Federal Personnel Manual. Each agency must adopt a plan, designed to ensure a systematic means of selection according to merit, which meets the following criteria:

(a) *Nondiscrimination.* Provides for consideration and selection without regard to political, religious, or labor organization affiliation or nonaffiliation; marital status; race; color; sex; national origin; nondisqualifying handicap; age; or other nonmerit factor.

(b) *Open competition.* Provides for open competition and consideration of candidates from a varity of sources—including outside the agency—consistent with principles of good management and merit selection. Agencies may not adopt policies which give unwarranted first consideration to a particular group of employees.

(c) *Area of consideration.* Defines the scope of competition, as determined by agency management, which must be as broad as practicable within a geographic and/or organizational area.

(d) *Rights of selecting official.* Preserves the right of the selecting official to select or not select from any appropriate source at any point in the selection procecess.

(e) *Promotion decisions.* Preserves management's discretion to determine if and when to promote an employee. This applies to all situations that may involve promotion, including career ladder promotions, reclassification actions, and details to higher graded jobs.

**§ 335.103 Eligibility for promotion.**

No employee shall receive a promotion unless his or her most recent rating of record for the current position under Part 430 of this chapter is "Fully Successful" (level 3) or higher. In addition, no employee may receive a promotion who has a rating below "Fully Successful" in a critical element that is also critical to performance in the higher grade position.

**§ 335.104 Requirements for competition.**

Unless an exception is allowed under § 335.105, competition is required for promotions, transfers, or reinstatements to a higher grade; reassignments, transfers, or demotions to positions with more promotion potential; selection for training which leads to promotion; term promotions; temporary promotions which exceed 120 days; and details of more than 120 days to higher graded jobs or to positions with more promotion potential.

**§ 335.105 Exceptions from competition.**

Competition does not apply to the following in-service placement actions:

(a) Career promotions where an employee occupies a grade level below the established full performance level of the position;

(b) Reclassification actions due to issuance of a new classification standard or correction of a classification error;

(c) Reclassification actions in which additional duties and responsibilities result in the position being classified at a higher grade and the employee continues to perform the same basic functions, the duties of the former position are administratively absorbed into the new position, the new position has no known promotion potential, and the additional duties and responsibilities do not adversely affect another encumbered position. This exception may not be used to promote a nonsupervisor to a supervisor when the supervisory duties are the sole basis for upgrading the position;

(d) Permanent promotion to a position held under temporary or term promotion or detail when the assignment was originally made under competitive procedures and it was made known to all competitors that it might lead to permanent promotion, and the area of consideration is the same as it would have been for a permanent promotion;

(e) Reinstatement of a former career or career conditional employee who has served under a career SES appointment;

(f) Placement as a result of priority consideration when a candidate was not previously given proper consideration in a competitive promotion action;

(g) Placement under Part 351 in a position with more promotion potential or to a different pay system in which the employee receives higher pay;

(h) Repromotion or transfer to a grade previously held under a nontemporary appointment in the competitive service except when the employee was demoted for cause.

(i) Reassignment to a position with more promotion potential in lieu of disability retirement; and

(j) Promotion resulting from successful completion of a training program which is required for promotion or given primarily to prepare an employee for advancement.

**§ 335.106 Evaluating candidates.**

(a) *General principles.* To ensure that selection and advancement is based on relative ability, knowledges, and skills, procedures used to assess candidates for placement under this part must be job related, capable of distinguishing differences in the qualifications measured, and applied in a fair and consistent manner.

(b) *Crediting plans.* The content of crediting plans (or other methods of evaluating candidates) and the weight given each factor must be determined on the basis of the requirements of the job to be filled. Agencies must use multiple measures to determine candidate qualifications. Significant weight must be given to performance appraisals.

**§ 335.107 Corrective actions.**

Corrective actions are intended to redress an improper personnel action or other violation under this part. Any corrective action regarding an individual must be directly linked to the loss of a specific opportunity or benefit.

**§ 335.108 Appeals and grievances.**

(a) Appeals. There is no right to appeal an action under this part.

(b) Grievances. Employees may not grieve nonselection under this part from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

[FR Doc. 86-25296 Filed 11-6-86; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 425

**[Amendment No. 1; Doc. No. 0105A]**

### Peanut Crop Insurance Regulations; Withdrawal of Proposed Rulemaking

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Withdrawal of Notice of Proposed rulemaking.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1987 and succeeding crop years. FCIC has determined that giving insureds more time to qualify for a higher amount of insurance would result in adverse selection against the insurance company and that the change is unnecessary and contrary to the basic concept underlying the insurance program. The authority for the promulgation of this notice is contained in the Federal Crop Insurance Act, as amended.

**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, August 27, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 30497, proposing to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

One comment was received by the Crop-Hail Insurance Actuarial Association (CHIAA) expressing opposition to the proposed change of allowing a producer until the acreage reporting date to sign sales contracts. CHIAA contends that the current conditions allow a producer sufficient time to establish an insurance contract at the time of planting. CHIAA also expressed opposition to the change that would give insureds more time to qualify for a higher amount of insurance contending that such a change would allow adverse selection against the insurance company.

FCIC has determined that giving insureds more time to qualify for a higher amount of insurance would result in adverse selection against the insurance company and that the change is unnecessary and contrary to the basic concept underlying the insurance program.

For the reasons stated above, the Notice of Proposed Rulemaking, published on Wednesday, August 27, 1986 (51 FR 30497) is hereby withdrawn.

Done in Washington, DC on October 23, 1986.

**Edward Hews,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 86-25280 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-08-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

### Requirements for Criminal History Checks

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) proposes to add a new regulation to implement a program for the control and use of criminal history data received from the Federal Bureau of Investigation (FBI) as part of criminal history checks of individuals granted unescorted access to nuclear power facilities or access to Safeguards Information by nuclear power reactor licensees. Conducting criminal history checks of such individuals will help assure that individuals with criminal histories impacting upon their reliability and trustworthiness are not permitted unescorted access to a nuclear power facility or access to Safeguards Information. Issuance of this regulation is required under the provisions of Pub. L. 99-399, "Omnibus Diplomatic Security and Anti-Terrorism Act of 1986."

**DATES:** Submit comments by December 8, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given unless comments are received on or before this date.

**ADDRESSES:** Send comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received and the regulatory analysis at: the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Kristina Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4754.

**SUPPLEMENTARY INFORMATION:** Section 606 of Pub. L. 99-399, "The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986," requires nuclear power reactor licensees and applicants to conduct criminal history checks through the use of FBI criminal history data on individuals with unescorted access to nuclear power facilities or access to Safeguards Information. The Act, signed by the President on August 27, 1986, requires the NRC to issue regulations to establish conditions for the use and control of the criminal history data received from the FBI no later than six months after the date of the enactment of the Act. These conditions include procedures for the taking of fingerprints, limits on use and redissemination of criminal history data, assurance that the information is used solely for its intended purpose, and provisions that individuals subject to fingerprinting are provided the right to complete, correct, and explain information in their criminal history records prior to any final adverse action.

The Conference Report on H.R. 4151 (published in the Congressional Record on August 12, 1986, p. H-5965) contains the following legislative history:

**Criminal History Record Checks**

The Senate amendment (Section 703) contains a provision requiring fingerprinting and criminal history record checks for certain employees of nuclear power plants.

The House bill contains no comparable provision.

The conference substitute (Section 606) is similar to the Senate amendment with some modifications. The substitute, which incorporates the substance of S. 274, passed by the Senate on October 3, 1985, adds a new section to the Atomic Energy Act of 1954 which is intended to establish a uniform procedure for criminal history checks, applicable to all commercial licensees, regardless of ownership.

The Committee of Conference agrees that the Nuclear Regulatory Commission (NRC)

would serve as a channeling agency, in order to collect fingerprint cards from licensees and applicants, forward them to the Federal Bureau of Investigation for identification and a criminal history record check, and distribute the results of the search to the licensees and applicants. The NRC will not screen the results. It will, however, be responsible for checking incoming cards to ensure that they are complete and legible and have been submitted by a licensee or applicant entitled to receive criminal history information under this law. The NRC may refuse to accept requests from, or return results to, a licensee or applicant the Commission finds is mishandling or misusing information obtained under this provision.

The conference substitute specifies that the regulations the Commission is to promulgate under this section must include provisions to ensure that no final adverse action may be taken against an employee or job applicant solely on the basis of information obtained under this section involving an arrest more than 1 year old for which there is no information of the disposition or an arrest that resulted in dismissal of the charge or an acquittal. A licensee or applicant receiving a criminal record showing an arrest not accompanied by a disposition may seek to determine the disposition of the charge, but if no disposition information can be obtained, the arrest cannot be used as the basis for adverse action.

The conference substitute also specifies that the Commission's regulations must protect individuals subject to fingerprinting from misuse of criminal history records provided under the section. Misuse would include, for example, use of the records to discriminate against minorities or to penalize union members or whistleblowers or to accomplish any other unlawful purpose. As the Senate indicated in its report on S. 274, the statutory requirements for the Commission's regulations are minimum requirements and are not meant to limit the discretion of the Commission to implement a practical program for carrying out the purposes of the section and protecting the due process and privacy interests of prospective employees.

The Committee of Conference also added language authorizing the Commission to collect and retain fees for its services as channeling agency. The FBI already has established and is authorized to collect fees for its processing non-criminal justice fingerprint checks. It is the intent of the Committee of Conference that this language ensures that the FBI will be able to collect its normal fee for the work it will do in processing record checks under this provision.

Licensees cannot have access to the criminal history data provided by the legislation until the NRC has established regulations for the control and use of the data. In accordance with the Act, the NRC will only collect fingerprint cards, forward them to the FBI, and distribute the results of the search. The NRC will not maintain any new files of information or system of files to contain either fingerprint cards or the results of the search. Only those records necessary for administering the program will be kept. The routine turnaround time for a criminal history check, from the time the licensee mails the fingerprint card to the NRC to the time the licensee receives the returned fingerprint card with the results of the criminal history check, is expected to average 25 working days.

The legislation requires nuclear power reactor licensees and applicants to conduct criminal history checks on individuals with unescorted access to nuclear power facilities or access to Safeguards Information. However, current regulations do not require protection measures against radiological sabotage until issuance of an operating license. Accordingly, the Commission does not deem it necessary to require fingerprinting of applicant employees for unescorted access to the facility. Applicants who anticipate receiving their operating license in the near future and wish to submit fingerprints of those individuals who will remain on staff after the license is issued may do so in accordance with the provisions of the rule.

Implementation of this rule will take place immediately upon its effective date. The Commission will send to the licensee an initial stock of the necessary fingerprint cards prior to the date of the effective rule, as well as a sample forwarding letter to be used by licensees for transmitting the fingerprint cards and fees to the NRC. The forwarding letter will contain the following information: facility docket number, number of fingerprint cards being submitted, amount of the proper fee being submitted, and the contact person at the facility along with his/her phone number. (The fingerprint cards and the results of the criminal history checks, when completed, will be sent to the licensee to the attention of the contact person.) In accordance with the Act, the fee will be utilized to offset NRC and FBI costs for processing of fingerprints and criminal history records.

Within 180 days of the effective date of this rule, each licensee will return to the Commission, as they are completed, the fingerprint cards of all individuals (licensee, contractors, manufacturers, and suppliers) who are deemed to require unescorted access at the nuclear power facility or access to Safeguards Information. The fingerprint cards are to be filled out completely and the facility docket number shall be included on each individual card in addition to the information required in the space marked "Reason Fingerprinted". To assist the licensee in ensuring a low rejection rate of submitted fingerprint cards, Edison Electric Institute (EEI) and FBI training tapes are available for use in establishing procedures for the proper method of taking fingerprints. Fingerprint cards shall be filed by the licensee on behalf of the contractor, manufacturer, and supplier employees who are expected to haved unescorted access to a nuclear power facility or to Safeguards Information with the appropriate fee attached. NRC personnel requiring unescorted access to the facility do not need to be fingerprinted by the licensee. The Commission conducts an equivalent program for fingerprinting of NRC employees for FBI criminal history checks.

In accordance with the provisions of § 73.57(e) and (f), the licensee will establish procedures for implementing the individual's right to correct, complete, and explain information prior to any adverse action. The licensee will also establish procedures for limiting redissemination of an individual's criminal history record to only those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to a nuclear power facility or access to Safeguards Information as well as against unauthorized disclosure. Submittal of an amended security plan is not necessary.

During the internal staff review of the proposed rule, a question arose as to whether or not fingerprinting should be required only for unescorted access to vital areas rather than to the nuclear power facility which also includes protected areas. To be consistent with the legislative intent and specific language of Pub. L. 99-399, the staff has written the proposed rule to require fingerprinting of individuals granted unescorted access to the nuclear power facility. Additionally, during the public comment period on the proposed Access Authorization Rule, licensee and industry groups commented that it was more cost effective to run a single access authorization program, especially since the majority of employees needing access to the protected area also required access authorization to one or more vital areas. In the interest of determining whether this view still prevails, specific response is requested during the public comment period to the following question: should fingerprinting be required of individuals for unescorted access to vital areas only or to the nuclear power facility?

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

**Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

**Regulatory Analysis**

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from Kristina Jamgochian, Safeguards Reactor Regulatory Requirements Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4754.

**Regulatory Flexibility Certification**

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects licensees who operate nuclear power plants under 10 CFR Parts 50 and 73. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in § 605(b) of the Regulatory Flexibility Act of 1980, or within the definition of Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

**Backfit Analysis**

As this rulemaking is based upon a legislative mandate, the need to make a backfit decision is unnecessary.

**List of Subjects in 10 CFR Part 73**

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendent to 10 CFR Part 73.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for CFR Part 73 is revised to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issue under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 7.357 is issued under sec. 606, Pub. L. 99–399.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25 73.26, 73.27, 73.37, 73,40, 73.45, 73.46, 73.50, 73.55, 73.67, are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 73.57 is added to read as follows:

**§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.**

(a) *General.* (1) Each licensee who is authorized to operate a nuclear power reactor under Part 50 shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this chapter shall submit fingerprint cards for those individuals who have access to Safeguards Information.

(3) Each applicant for a license to operate a nuclear power reactor purusant to Part 50 of this chapter may submit fingerprint cards prior to receiving its operating license for those individuals who will require unescorted access to the nuclear power facility.

(b) *General performance objective and requirements.* (1) Each licensee subject to the provisions fo this section shall fingerprint each individual, except NRC employees and individuals responding to a site emergency in accordance with the provisions of § 73.55(a), who is permitted unescorted access to the nuclear power facility or access to Safequards Information. Individuals who have unescorted access authorization on ——— [1] will retain such access pending licensee receipt of the results of the criminal history check of the individuals' fingerprintes, so long as the cards were submitted by ——— [2]. The licensee will then review and use the information received from the FBI, and based on the provisions contained in this rule, determine either to continue to grant or to deny further unescorted access to the facility or Safeguards Information for that individual. Individuals who do not have unescorted access after ——— [1] shall be fingerprinted by the licensee and the results of the criminal history records check shall be used in making a determination for granting unescorted access to the nuclear power facility.

(2) The licensee shall notify each affected individual that the fingerprints will be used to scure a review of his/her criminal history record.

(3) Fingerprints need not be taken, in the discretion of the licensee, if an individual who is a permanent employee of a licensee, contractor, manufacturer or supplier has been granted unescorted access to a nuclear power facility or to Safeguards Information by another licensee, based in part on criminal history records check under this section. In the case of temporary employees, fingerprints need not be taken so long as the individual has been fingerprinted within the last 180 days.

(4) All fingerprints obtained by the licensee under this seciton must be submitted to the Attorney General of the United States through the Commission.

(5) The licensee shall review the information received from the Attorney General and consider it in making a determination for granting unescorted access to the individual.

(6) A licensee shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the nuclear power facility or access to Safeguards Information.

(c) *Prohibitions.* (1) A licensee may not base a final determination to deny an individual unescorted access to the nuclear power facility or access to Safeguards Information solely upon:

(i) An arrest more than 1 year old for whcih there is no information of the disposition of the case; or

[1] Insert date of final rule publication in **Federal Register.**

[2] Insert date 180 days after final rule publication in **Federal Register.**

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(2) A licensee may not use information received from a criminal history check obtained under this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

(d) *Procedures for processing of fingerprint checks.* (1) For the purpose of complying with this section, licensees shall submit 1 completed, legible standard fingerprint card (Form FD–258) supplied by the NRC for each individual requiring unescorted access to the nuclear power facility or access to Safeguards Information to the Director, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Criminal History Check Section. Copies of these forms may be obtained by writing to: Information and Records Management Branch (PMSS), U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

(2) The Commission will review applications for criminal history checks for completeness. Any Form FD–258 containing omissions or evident errors will be returned to the licensee for corrections. No additional fee will be charged for fingerprint cards needed to replace returned incomplete or illegible fingerprint cards if the original fingerprint card is attached to the resubmittal.

(3) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, or money order made payable to "U.S. NRC", at the rate of $15.00 for each card. Combined payment for multiple applications is acceptable.

(4) The Commission will forward to the submitting licensee all data received from the Federal Bureau of Investigation as a result of the licensee's application(s) for criminal history checks, including the individual's fingerprint card.

(e) *Right to correct and complete information.* (1) Prior to any adverse action, the licensee shall make available to the individual the contents of records obtained from the Federal Bureau of Investigation for the purpose of assuring correct and complete information. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 3 years from the date of the notification.

(2) If after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating of the alleged deficiency, or to explain any matter in the record, the licensee shall inform the individual of proper procedures for revising the record or including explanation in the record. These procedures include direct application to the agency that contributed the questioned information or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation then forwards the challenge to the agency that submitted the data requesting that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee may not take final adverse action with respect to an individual based solely on information in the record that has been challenged by the individual as incorrect or incomplete until the individual has been afforded a reasonable amount of time to correct, complete, or explain the record or has declined to do so.

(f) *Protection of information.* (1) Each licensee who obtains a criminal history record on an individual under this section shall establish and maintain a system of files and procedures for protection of the record and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to the nuclear power facility or access ot Safeguards Information. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a criminal history record check may be transferred to another licensee:

(i) Upon the individual's request to redisseminate the information contained in his/her file, and

(ii) If the gaining licensee verifies information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification, and,

(iii) If the individual was terminated within the previous 365 days, the termination was under favorable conditions.

(4) The licensee shall make criminal history records obtained under this section available for examination onsite by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint cards and criminal history records received from the FBI on an individual (including data indicating no record) for 3 years after termination or denial of unescorted access to the nuclear power facility or access to Safeguards Information.

Dated at Washington, DC this 5th day of November, 1986.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 86–25393 Filed 11–6–86; 8:45 am]

BILLING CODE 7590–01–M

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## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

### 10 CFR Part 430

**[Docket No. CAS–RM–79–102]**

### Energy Conservation Program for Consumer Products; Proposed Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps; Extension of Comment Period

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Extension of comment period.

**SUMMARY:** The Department of Energy (DOE) hereby extends the comment

period for the notice of proposed rulemaking regarding test procedures for central air conditioners, including heat pumps, published in the **Federal Register** on October 7, 1986. (51 FR 35736). The comment period is hereby extended to January 30, 1987.

The purpose of this extension of the comment period, to January 30, 1987, is to allow interested parties sufficient time to review and comment on the proposed rule. Several representative organizations have communicated to DOE a need for this extension to provide time to prepare comments on the notice due to the complex nature of the proposed rule. The initial comment period would have ended on December 8, 1986, providing only 60 days for comments. DOE, in evaluating these requests, has determined that an extension in comment time is reasonable and in the best interests of all concerned. This extension will not adversely affect the scheduled adoption of the Final Rule.

**DATES:** Written comments (7 copies) in response to the notice of proposed rulemaking for central air conditioners, including heat pumps, must be received by January 30, 1987.

**ADDRESSES:** Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Central Air Conditioning Test Procedures, Docket No. CAS–RM–79–102, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9319.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513

U.S. Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B–025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9319

Issued in Washington, DC, November 3, 1986.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 86–25182 Filed 11–6–86; 8:45 am]

**BILLING CODE 6450–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 86–CE–53–AD]**

### Airworthiness Directives; Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, and P 68C–TC Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, and P 68C–TC airplanes which would require inspection of composite wing leading edge ribs for cracking or debonding of the leading edge skin, and the repair of any damage found. A case of cracks and debonding of wing leading edge ribs and leading edge skin on a Model P 68 airplane has been reported to Partenavia. These actions will prevent deformation of the airfoil and possible loss of control or structural failure of the aircraft.

**DATE:** Comments must be received on or before March 12, 1987.

**ADDRESSES:** Partenavia S/B No. 67, dated June 21, 1985, and Partenavia Service Instruction (SI) No. 21, dated August 30, 1985, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche, S.p.A., via Cava, Naples, Italy; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–53–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m. Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Munro Dearing, FAA, Brussels Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711; or Mr. John P. Dow, Sr., FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

**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 or notice 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 Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–53–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

#### Discussion

A case was reported to Partenavia of cracks found in the wing leading edge ribs and debonding of the leading edge skin in a Partenavia Model P 68 airplane. As a result, Partenavia issued S/B No. 67, dated June 21, 1985, which describes a one time visual and tactile (by touch) inspection procedure to detect cracks and debonding. Partenavia SI No. 21, dated August 30, 1985, describes repair of damaged parts. The Registro Aeronautico Italiano (RAI) which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has issued RAI AD No. 85–135/P.68–34, dated November 25, 1985, and classified Partenavia S/B No. 67, dated June 21, 1985, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under RAI registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness

conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI AD No. 85–135/P.68–34, dated November 25, 1985, and the mandatory classification of this bulletin by the RAI. Based on the foregoing, the FAA has determined that the condition addressed by Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI AD No. 85–135/P.68–34, dated November 25, 1985, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require inspection of the wing leading edges, leading edge wing ribs, and repair of any damage found.

The FAA has determined there are approximately 15 airplanes affected by the proposed AD. The cost of the inspection according to the proposed AD is estimated to be $140 per airplane. The total cost is estimated to $2,100 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**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 FAR 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), 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Partenavia Costruzione Aeronautiche, S.p.A.:** Applies to Models P 68, P 68B, P 68C (Serial Numbers (S/N) 1 through S/N 250), and P 68C–TC (S/N 300—1TC through S/N 300–22TC) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible loss of control and structural failure, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, visually and tactilely (by touch) inspect the composite leading edge wing ribs for cracking, and the composite wing leading edge for debonding from the ribs of both wings using the procedure and locally fabricated tool described in the "INSTRUCTIONS" section of Partenavia Service Bulletin (S/B) No. 67, dated June 21, 1985. (The tool is used to exert force on the ribs to check for lack of stiffness by tactile inspection.) If a crack or debonding is found, prior to further flight remove the wing leading edge and repair the cracks or debonds as described by the repair "INSTRUCTIONS" in Partenavia SI No. 21, dated August 30, 1985.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., via Cava, Naples, Italy, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 28, 1986.

**Edwin S. Harris,**

*Director, Central Region.*

[FR Doc. 86–25139 Filed 11–6–86; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 13

**[File No. 842 3192]**

## Solar Age Industries, Inc.; 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 prohibit, among other things, an Albuquerque, NM, manufacturer and seller of solar energy heaters from misrepresenting the efficiency and performance of its solar space heaters or any other kind of solar energy equipment, unless it can substantiate its claims. Additionally, respondent would be prohibited from using the phrase "up to" in energy-related claims, unless the upper limit of potential savings indicated in the claim can be achieved by an appreciable number of consumers.

**DATE:** Comments will be received until January 6, 1987.

**ADDRESS:** Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** FTC/B–407, Michael Dershowitz, 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**

Solar space heaters, Trade practices.

**Before Federal Trade Commission**

In the matter of Solar Age Industries, Inc., a corporation.

[File No. 842 3192]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Solar Age Industries, Inc., a corporation, and it now appearing that Solar Age Industries, Inc. 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 Solar Age Industries, Inc., by its duly authorized officer, and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent Solar Age Industries, Inc. is a corporation with its office and principal place of business located at

6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico 87110.

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) Any claim 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 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*

Definitions

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

"Energy-related claim" means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, area heating capability, efficiency or conservation, "payback," or "payback" potential.

A "competent and reliable test" means any scientific, engineering, laboratory, or other analytical report, study, or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

A "solar space heater" is a particular type of solar energy equipment. Specifically, it is equipment which typically consists of one or more rooftop collector panels, one hot and one cold air duct and a small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other, small buildings. The term describes, *inter alia*, respondent's "Solar Age Model 37," also referred to by respondent as its "Hot Air Collector Kit."

*Part I*

It is ordered that respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy 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, in any manner that:

(1) More than a few consumers may be able to reduce their heating bills by 40%, or close to 40%, by using the Hot Air Collector Kit or any other such solar space heater, as defined herein.

(2) Any one consumer's experience with respondent's solar space heater reflects what other consumers will experience under circumstances they can reasonably foresee, unless such is the case.

(3) The Hot Air Collector Kit or any other such solar space heater will provide more than a few consumers enough heat by itself to heat 600–800 square feet of space in residences or small buildings.

(4) More than a few consumers may be able to save enough money on their heating bills by using the Hot Air Collector Kit by itself to recoup the retail cost of the Hot Air Collector Kit or any other such solar space heater which ranges in cost from $1,095 to $3,595, within an average of 4 years.

(5) Its solar collector is the highest Btu-rated solar collector per square foot, in the country, unless such is the case.

B. Making any energy-related claim for any solar space heater, or any other solar energy equipment, unless at the time that the claim is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

C. Making any energy-related claim which uses the phrase "up to" or words of similar import unless the maximum level of savings or performance can be achieved by an appreciable number of consumers; and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

D. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, analysis, rating or survey upon which respondents rely as substantiation for any energyrelated claim, or making any representation which is inconsistent with the results or conclusions of any such test, study, rating or survey.

*Part II*

It Is Further Ordered that respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. All materials relied upon to substantiate any energy-related claim; and

2. All test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

*Part III*

It Is Further Ordered that respondent shall:

A. Within thirty (30) days after the date of service of this Order, send the following material via first class mail to every person or firm that is a current distributor of respondent's solar energy equipment and thereafter to every person or firm that becomes a distributor during the first year from the date of service of this Order:

1. A copy of this Order, and

2. A copy of the cover letter attached to this Order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this Order to each of respondent's operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraphs A and B of Part III of this Order.

*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 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 V*

It Is Further Ordered that respondent shall, 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.

**Solar Age Letterhead**

*Re: Advertising Claims and Practices*

Dear Solar Age Distributor: As a result of a Federal Trade Commission investigation of advertising claims for our Solar Age Model 37 Solar Space Heater (the Hot Air Collector Kit), we have entered into the enclosed Consent Order Agreement. The Agreement is for settlement purposes only and does not constitute an admission that Solar Age or its distributors violated the law. At issue in the investigation were a number of energy cost savings, performance and payback claims.

We agree to conform our future advertising practices to the standards set forth in this agreement, and to cease and desist from the use of all promotional material that may contain contrary claims. In order to insure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and to advise your dealers to do so as well. Please forward to us any remaining literature relating to our products which may be in your possession or that of your dealers and which does not conform to the enclosed agreement.

Thank you very much for your assistance in this regard.

Sincerely,

Solar Age Industries, Inc.

Alan D. Schwanke,

*President.*

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Solar Age Industries, Inc. (Solar Age).

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 advertising for a solar space heater called the "Hot Air Collector Kit" or Solar Age Model 37. Solar space heaters collect heat from the sun's rays in order to heat a room or small area in a residence or other building. They consist of one or two small rooftop collector panels but do not have the heat storage or distribution systems typical of larger traditional solar systems. Solar Age is a New Mexico corporation that manufactures the Model 37 solar space heater, which is sold by Solar Age distributors nationwide.

The Commission's complaint in this matter charges Solar Age with disseminating advertisements containing false and misleading representations concerning the solar space heater's limited energy savings potential; limited heating capability; the actual Btu output rating of its solar collector; and the product's actual cost payback period. According to the complaint, Solar Age also represented that it possessed a reasonable basis for its product performance and payback claims, when in fact, it does not have such a reasonable basis.

The consent order contains provisions designed to remedy the advertising violations charged, to prevent Solar Age from engaging in similar acts and practices in the future, and to deter Solar Age distributors from engaging in similar acts and practices.

Part I.A of the order prohibits Solar Age from making certain specific energy savings, heating capability, Btu rating and payback claims in the future. Specifically, Solar Age may not claim that more than a few consumers will be able to reduce their heating bills by 40% (or close to 40%) or heat 600–800 square feet using a solar space heater such as the Model 37. Nor may Solar Age represent that more than a few consumers will save enough money to recoup the cost of the Hot Air Collector Kit or other similar solar space heater within an average of 4 years. Further, Solar Age may not represent through the use of testimonials, that one consumer's experience with its solar space heater reflects what other consumers will experience, unless such is the case. The final provision of Part I.A of the order prohibits Solar Age from representing that its solar collector is the highest Btu output rated solar collector in the country, unless such is the case.

Under Part I.B of the proposed order, Solar Age must possess a competent and reliable test or other objective material substantiating any energy-related claim it wishes to make in the future for solar space heaters or other solar energy equipment. "Energy related claims," encompasses any representation as to energy savings, cost savings, heating capability, efficiency or conservation, or payback.

Part I.C limits Solar Age's use of "up to" type claims to those instances where the maximum level of savings or performance can be achieved by an appreciable number of consumers. Further, if the factors or conditions affecting performance cannot be reasonably forseen, Part I.C requires that those factors or conditions be disclosed. This provision, therefore, permits "up to" claims only under circumstances where they do not deceptively raise consumers' expectations about product performance.

Part I.D prohibits the company from misrepresenting or misusing the purpose, content, conclusion or results of any test, study, analyses, rating or survey.

Parts II, III and IV are standard order provisions requiring Solar Age to retain substantiation; disseminate the order to its distributors, officers and operating divisions; notify the Commission of changes in its corporate structure and report to the Commission on its compliance with the terms of the order.

The distribution requirement under Part III.A directs Solar Age to send a copy of the order to all of its distributors and remains in effect for one year from the issuance of the order. Thus, all current distributors and any distributors added during the next year will receive a copy of the order. Additionally, Part III.A requires that Solar Age send to its distributors a cover letter (attached to the order) explaining that the order is the result of a settlement agreement and asking that any non-conforming advertising material be returned to Solar Age.

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 their terms.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 86–25140 Filed 11–6–86; 8:45 am]

BILLING CODE 6750-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A-5-FRL-3107-2]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing to disapprove a revision to the Illinois State Implementation Plan (SIP). The revision pertains to rules for continuously monitoring and recording the compliance status of facilities in certain stationary source categories. USEPA's action is based upon a request which was submitted by the State to satisfy the requirements of 40 CFR 51.19(e).

**DATE:** Comments on this revision and on the proposed USEPA action must be received by December 8, 1986.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

**SUPPLEMENTARY INFORMATION:** Section 51.19 of Title 40 of the Code of Federal Regulations (40 CFR) requires that State Implementation Plans provide for monitoring the status of compliance with rules and regulations which are part of the control strategy. Paragraph (e) requires legally enforceable procedures to require certain stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions, and to provide other information as specified in 40 CFR Part 51 Appendix P.

To comply with this requirement, on February 25, 1985, the State of Illinois submitted to USEPA *35 ILLINOIS ADMINISTRATIVE CODE (35 IAC) Section 285)* as a proposed revision to the Illinois SIP. This rule was adopted by the Illinois Environmental Protection Agency (IEPA) on December 20, 1984, was published in the ILLINOIS REGISTER on January 4, 1985, and became effective at the State level on February 1, 1985.

USEPA has reviewed the State's submittal for conformance with the Federal requirements as specified in Appendix P of 40 CFR Part 51. A full discussion of USEPA's review is contained in an April 19, 1985, Technical Support Document which is available for inspection at the Region V office listed above. A discussion of the deficiencies identified in the regulation follows.

### Deficiencies Identified in the Illinois Rule

*35 IAC Section 285.101(a)*

This section states the basis on which the State requires monitoring, recording, testing, and reporting of emissions from owners or operators of emission sources and pollution control equipment. It also states that these requirements shall be made a part of an operating permit issued to these sources. However, it imposes no requirements on owners and operators of emission sources except when the State requires the permittee to monitor and report the emissions.

In effect, section 285.101(a) exempts those sources specified under section 285.201 which do not have operating permits from complying with the requirements of the rule until the sources are permitted by the State. 40 CFR Part 51, Appendix P, specifies that continuous emission monitoring (CEM) and reporting is required for all source categories specified in Appendix P, Section 1.1, upon plan approval or promulgation, regardless of whether they have a valid operating permit. Further, section 285.101(a) imposes no specific requirements on owners or operators of emission sources in and of itself, but only through the permit mechanism. 40 CFR Part 51, Appendix P, section 1.1, requires owners or operators of emission sources for the applicable source category to install, calibrate, and maintain all monitoring equipment. For the above reasons, 35 IAC 285.101(a) is not approvable.

The State rule's exemption of sources which do not have operating permits is of particular concern to USEPA. Illinois law allows a source to operate without a valid operating permit while the provisions of the operating permit are being adjudicated. Under such a circumstance, a source could operate without a permit and escape the requirement for CEM which is required by 40 CFR 51.19(e) and Appendix P.

*35 IAC Section 285.103—Applicability*

Section (a) states that these rules shall be used by the IEPA as a guide to whether CEM requirements shall be included in the permits. This requirement is appealable to the Illinois Pollution Control Board (IPCB). Section (a) gives the State discretion to determine whether CEM is needed for those sources required under section 285.201. Although section 1.2 of Appendix P of 40 CFR Part 51 provides for exemptions from the CEM requirement, the State rule in allowing the IPCB to determine whether or not CEM is necessary goes will beyond USEPA's requirements and grants broader discretion in exempting sources from the CEM requirement than the minimum Federal requirements allow. Therefore, this part is not approvable.

This section also allows a CEM requirement under Appendix P for certain source categories to be appealed to the Illinios Pollution Control Board. 40 CFR Part 51 Appendix P, imposes mandatory requirements for CEM with very limited exemptions provided in section 1.2. The appeal option to the IPCB is a further basis for determining that this section is not approvable.

*325 IAC Section 285.104—Compliance Dates*

This section states that a schedule for installation and performance testing for CEM shall begin from the date the permit is issued and must be completed within 18 months, unless the State finds that a longer schedule is necessary. 40 CFR Part 51, Appendix P, section 1.1(2) requires that installation and performance testing for CEM be within 18 months of Federal plan approval or promulgation. Because the State compliance schedule for this requirement begins when the permit is issued, all sources subject to this requirement could delay installation of a CEM System beyond the time requirement of Appendix P.

Although section 1.3 of Appendix P of 40 CFR Part 51 provides for reasonable extensions of time for facilities unable to meet the required 18 month timeframe, the State's extensions go beyond what Appendix P allows. This section, therefore, is not approvable.

**Proposed Rulemaking Action**

USEPA proposes to disapprove the State's self monitoring rule in its entirety because a partial approval of the rule, while disapproving key provisions of the rule such as 35 IAC 285.103—Applicability, would make the self monitoring rule more stringent than ever intended by the State. Such partial approval is precluded by a Seventh Circuit Court of Appeals decision. In *Bethlehem Steel Corporation v. Gorsuch* 742 F.2d 1028 (7th Cir. 1984), the Court held that USEPA may not approve parts of a SIP and disapprove other parts if the effect of the action is to make the SIP stricter than the State ever intended.

Public comment is solicited on the proposed SIP revision and on USEPA's proposed rulemaking action to disapprove it. Public comments should be sent to the Region V office listed in the front of this **Federal Register** notice. Comments received by the date specified above will be considered in USEPA's final rulemaking.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over population of less than 50,000.

USEPA believes that these rules, if finally disapproved, will not have a significant negative economic effect on a substantial number of small entities. The requirements of 40 CFR Part 51, Appendix P do not apply to sources which can be construed as small entities. Public comment is expressly solicited on any information to the contrary.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 31, 1986.

**Valdas V. Adamkus,**

*Regional Administrator.*

[**Editorial Note:** This document was received by the Office of the Federal Register on November 4, 1986.]

[FR Doc. 86–25194 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Part 52**

**[A–5–FRL–3107–1]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for total suspended participates (TSP). The revision pertains to a temporary variance from the requirements of 35 Illinois Administrative Code (IAC) 212–462(e) until December 4, 1989, for Demeter, Incorporated (Demeter). USEPA's action is based upon a revision request which was submitted by the State pursuant to section 110 of the Clean Air Act (Act).

**DATE:** Comments on this revision and on the proposed USEPA action must be received by December 8, 1986.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 86–6035, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearbon Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano (312) 886–6035.

**SUPPLEMENTARY INFORMATION:** On January 29, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to the Illinois SIP for December which operates a grain elevator in unincorporated Winnebago County. Winnebago County is classified as better than National Ambient Air Quality Standards (NAAQS) for the pollutant TSP.

The proposed SIP revision, if finally approved by USEPA, would allow Demeter a variance from the requirements of 35 IAC 212.462(e)[1] until December 4, 1989. 35 IAC 212.462(e) requires Demeter to file applications for construction and operating permits and to comply with the dump pit control requirements of 35 IAC 212.462(b),[2] because the firm's annual grain throughput increased 150 percent, from the 1984 annual grain throughput on which the original permit was based. This increase exceeds the rule's threshold value of a 30 percent increase.

In granting a variance from the requirements for Demeter's dump pit, the Illinois Pollution Control Board (IPCB) found that the requirement for Demeter to install a grain dust control system on its dump pit immediately would subject the firm to unreasonable hardship because of Demeter's low profitability over the prior several years. The IPCB Opinion and Order of the Board is only a temporary variance. It requires Demeter to install a dust control system to comply with the regulations by December 4, 1989.

USEPA has reviewed this proposed SIP revision for consistency with USEPA's policy on source specific SIP revisions, which is contained in a July 29, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to the Directors of the Air Management Divisions. This policy requires that for a State to secure USEPA approval of a relaxation of a SIP in an attainment area and yet continue the overall approval status of its plan, the State must demonstrate that the SIP as a whole, despite the relaxation, would continue to provide for maintenance of the NAAQS. This policy, in effect, requires a current modeling demonstration, using reference modeling techniques and best available data.

Because the State's submittal in this matter did not include such a modeled demonstration of attainment, USEPA proposes to disapprove this proposed SIP revision for Demeter because the State has not demonstrated that it will not jeopardize attainment and maintenance of the TSP NAAQS, if the SIP revision were finally approved.

Public comment is solicited on the proposed SIP revision and on USEPA's

[1] 35 IAC 212.462(e) was incorporated in the Illinois SIP as 203(d)(8)(F) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(F) because this is the regulation incorporated in the SIP.

[2] 35 IAC 212.462(b) was incorporated in the Illinois SIP as 203(d)(8)(B) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(B)(ii) because this is the regulation incorporated in the SIP.

proposed disapproval of the incorporation of it into the SIP. Public comments received by the data indicated above will be considered in the development of USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single small entity is involved Demeter.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1986.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 86–25193 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 60**

**[OAR–FRL–3085–9]**

## Standards of Performance for New Stationary Sources; Revision of Method 25 of Appendix A

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** This proposed rule would amend Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon," of Appendix A of 40 CFR Part 60. This method is being revised to improve its precision and reliability.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the revised method.

**DATE:** *Comments.* Comments must be received on or before January 21, 1987.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by November 28, 1986, a public hearing will be held December 22, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by November 28, 1986.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–86–05. U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Gary McAlister, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

*Docket.* Docket No. A–86–05, containing supporting information used in developing the proposed rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger T. Shigehara or Mr. Gary McAlister, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

**SUPPLEMENTARY INFORMATION:**

### I. The Rulemaking

On October 3, 1980 (45 FR 65956), EPA published Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon." Shortly after publication, testers began to report erratic results with the method and suggested a number of different causes for the imprecision. As a result, EPA began a program to review the test method in March 1982. The EPA has completed the review and is now proposing revisions to Method 25, which will make the method simpler, more reliable, and more precise.

The results of the various studies on Method 25 are summarized in the following reports, which are included in the docket:

1. Evaluation of Trap Recovery Design, EMB Project No. 82SFS–1.

2. Preparation of Method 25 Sampling Equipment and Determination of Limit of Detection and Limit of Quantitation, EMB Project No. 82SFS–1.

3. Evaluation of Method 25 Condensate Trap Packing Material, EMB Project No. 82SFS–1.

4. Oxidation Catalyst Screening and Evaluation Study, ESED Project No. 82SFS1–4–2.

5. Quality Control Procedures Evualation, ESED Project No. 82SFS1–4–3.

6. Condensate Trap Development and Evaluation, ESED Project No. 82SFS1–4–4.

7. Trap Recovery Procedures Evaluation, ESED Project No. 82SFS1–4–5.

8. Evaluation of Particulate Filters, ESED Project No. 82SFS1–5–2.

The studies showed that the basic operating principle of Method 25 was sound, but some changes in equipment design and operating practices would improve the reliability of the method. These changes can best be discussed by dividing the method into three parts: Sampling, sample recovery, and analysis.

The major changes in the sampling equipment are the addition of a heated filter, a redesigned condensate trap, and a different packing material for the condensate trap. The purpose of the filter is to remove organic particulate matter from the sample and, thus, eliminate a potential source of imprecision. The filter is heated to a temperature of 120° C (248° F) to be consistent with Method 5 for particulate matter. The new trap design is a simple U-tube which may be more easily and cheaply produced than the current design. It also provides a faster and more complete sample recovery than the existing trap while showing equal collection efficiency. The new packing material is quartz wool, which shows better durability and collection efficiency than the currently specified stainless steel packing.

The major changes in the sample recovery system are a new oxidation catalyst, a simplified recovery system, and lower operating temperatures. The new oxisation catalyst has proven to be very durable and to provide 100 percent oxidation efficiency for a wide variety of organic compounds at much lower operating temperatures than the current catalyst. The redesigned recovery system has eliminated some of the tubing and valving and, thus, reduced the potential for sample loss during recovery and decreased recovery times. The lower temperatures for sample recovery will increase the life expectancy of the recovery system materials and simplify the operation of the system.

The major change in the sample analysis system is a new separation column for the nonmethane organics analyzer. This new column provides separation of carbon monoxide, carbon dioxide, and methane from a wider

range of organic compounds than the currently specified column.

In addition to these major changes, there are a number of minor changes, particularly in the area of quality assurance and calibration.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply revise test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking.

## II. Administrative Requirements

### *A. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **"ADDRESSES"** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **"ADDRESSES"** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **"ADDRESSES"**) section of this preamble.

### *B. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

### *C. Office of Management and Budget Review*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

### *D. Regulatory Flexibility Act Compliance*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

**List of Subjects in 40 CFR Part 60**

Air Pollution control, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Automobile surface coating, Large appliance surface coating, Beverage can coating, and Metal coil coating.

Dated: October 24, 1986.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

## PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended by revising Method 25 of Appendix A as follows:

1. The authority citation for Part 60 continues to read as follows:

**Authority:** Sec. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By revising Method 25 of Appendix A to read as follows:

**Appendix A—Reference Method**

* * * * *

**Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon**

*1. Applicability and Principle*

*1.1 Applicability.* This method applies to the measurement of volatile organic compounds (VOC) as total gaseous nonmethane organics (TGNMO) as carbon in source emissions. Organic particulate matter will interfere with the analysis and, therefore, a particulate filter is required.

When carbon dioxide ($CO_2$) and water vapor are present together in the stack, they can produce a positive bias in the sample. The magnitude of the bias depends on the concentrations of ($CO_2$) and water vapor. As a guideline, multiply the ($CO_2$) concentration, expressed as volume percent, by the water vapor concentration. If this product does not exceed 100, the bias can be considered insignificant. For example, the bias is not significant for a source having 10 percent ($CO_2$) and 10 percent water vapor, but it might be significant for a source having 10 percent ($CO_2$) and 20 percent water vapor.

This method is not the only method that applies to the measurement of TGNMO. Costs, logistics, and other practicalities of source testing may make other test methods more desirable for measuring VOC contents of certain effluent streams. Proper judgment is required in determining the most applicable VOC test method. For example, depending upon the molecular weight of the organics in the effluent stream, a totally automated semicontinuous nonmethane organics (NMO) analyzer interfaced directly to the source may yield accurate results. This approach has the advantage of providing emission data semicontinuously over an extended time period.

Direct measurement of an effluent with a flame ionization detector (FID) analyzer may be appropriate with prior characterization of the gas stream and knowledge that the detector responds predictably to the organic compounds in the stream. If present, methane ($CH_4$) will, of course, also be measured. The FID can be applied to the determination of the mass concentration of the total molecular structure of the organic emissions under any of the following limited conditions: (1) Where only one compound is known to exist; (2) when the organic compounds consist of only hydrogen and carbon; (3) where the relative percentages of the compounds are known or can be determined, and the FID responses to the compounds are known; (4) where a consistent mixture of the compounds exists before and after emission control and only the relative concentrations are to be assessed; or (5) where the FID can be calibrated against mass standards of the compounds emitted (solvent emissions, for example).

Another example of the use of a direct FID is as a screening method. If there is enough information available to provide a rough estimate of the analyzer accuracy, the FID analyzer can be used to determine the VOC content of an uncharacterized gas stream. With a sufficient buffer to account for possible inaccuracies, the direct FID can be a useful tool to obtain the desired results without costly exact determination.

In situations where a qualitative/quantitative analysis of an affluent stream is desired or required, a gas chromatographic FID system may apply. However, for sources emitting numerous organics, the time and expense of this approach will be formidable.

*1.2 Principle.* An emission sample is withdrawn from the stack at a constant rate through a heated filter and a chilled condensate trap by means of an evacuated sample tank. After sampling is completed, the TGNMO are determined by independently analyzing the condensate trap and sample tank fractions and combining the analytical results. The organic content of the condensate trap fraction is determined by oxidizing the NMO to $CO_2$ and quantitatively collecting the effluent in an evacuated vessel; then a portion of the $CO_2$ is reduced to $CH_4$ and measured by an FID. The organic content of the sample tank fraction is measured by

injecting a portion of the sample into a gas chromatographic column to separate the NMO from carbon monoxide (CO), $CO_2$ and $CH_4$; the NMO are oxidized to $CO_2$, reduced to $CH_4$, and measured by an FID. In this manner, the variable response of the FID associated with different types of organics is eliminated.

*2. Apparatus*

*2.1 Sampling.* The sampling system consists of a heated probe, heated filter, condensate trap, flow control system, and sample tank (Figure 25–1). The TGNMO sampling equipment can be constructed from commercially available components and components fabricated in a machine shop. The following equipment is required:

*2.1.1 Heated Probe.* 6.4-mm (1/4-in.) Outside diameter (OD) stainless steel tubing with a heating system capable of maintaining a gas temperature at the exit end of at least 129°C (265°F). The probe shall be equipped with a thermocouple at the exit end to monitor the gas temperature.

A suitable probe is shown in Figure 25–1. The nozzle is an elbow fitting attached to the front end of the probe while the thermocouple is inserted in the side arm of a tee fitting attached to the rear of the probe. The probe is wrapped with a suitable length of high temperature heating tape, and then covered with two layers of glass cloth insulation and one layer of aluminum foil.

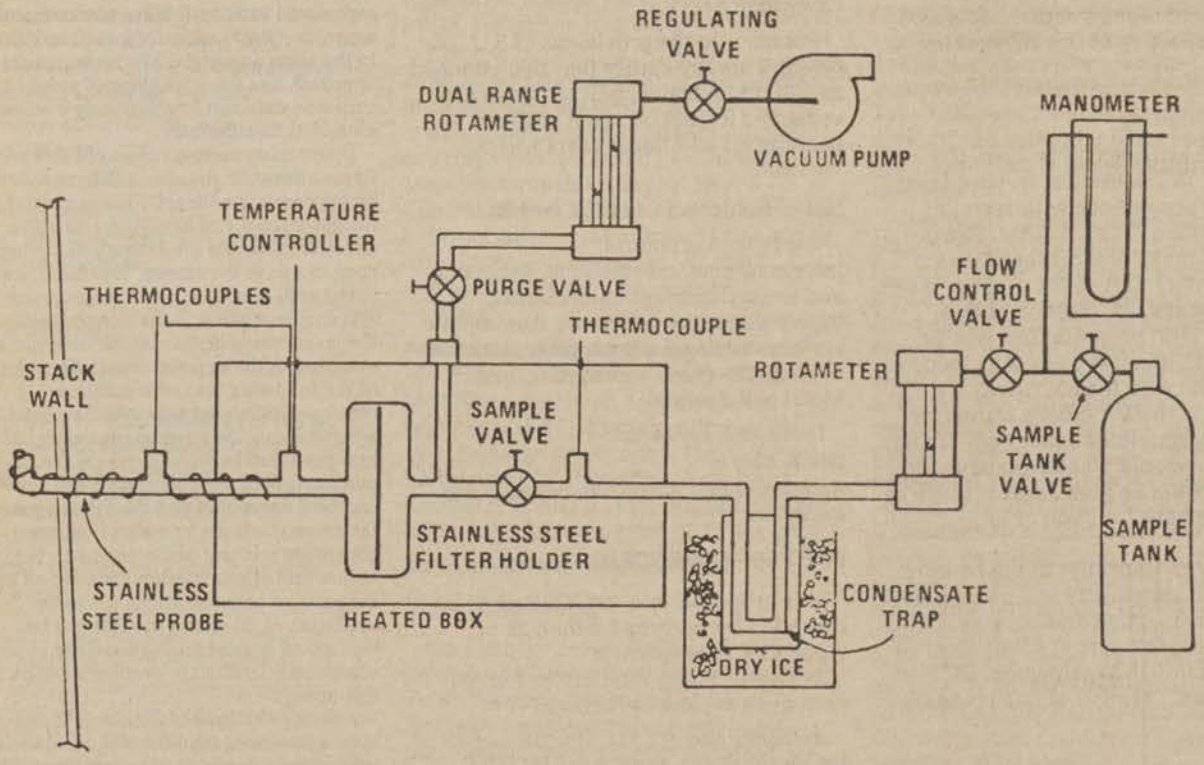


Figure 25-1. Sampling train.

**Note.**—If it is not possible to use a heating system for safety reasons, an unheated system with an in-stack filter may be a suitable alternative.

*2.1.2 Filter Holder.* 25-mm (15/16-in.) Inside diameter (ID) Gelman filter holder with 303 stainless steel body and 316 stainless steel support screen with the Viton O-ring replaced by a Teflon O-ring.

**Note.**—Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

*2.1.3 Filter Heating System.* A metal box consisting of an inner and an outer shell separated by insulating material with a heating element in the inner shell capable of maintaining a gas temperature at the filter of 121±3°C (250±5°F).

A suitable heating box is shown in Figure 25–2. The outer shell is a metal box that measures 102 mm x 280 mm x 292 mm (4 in. x 11 in. x 11½ in.), while the inner shell is a metal box measuring 76 mm x 229 mm x 241 mm (3 in. x 9 in. x 9½ in.). The inner box is supported by 13-mm (½-in.) phenolic rods. The void space between the boxes is filled with fiberfrax insulation which is sealed in place by means of a silicon rubber bead around the upper sides of the box. A removable lid made in a similar manner, with a 25-mm (1-in.) gap between the parts, is used to cover the heating chamber.

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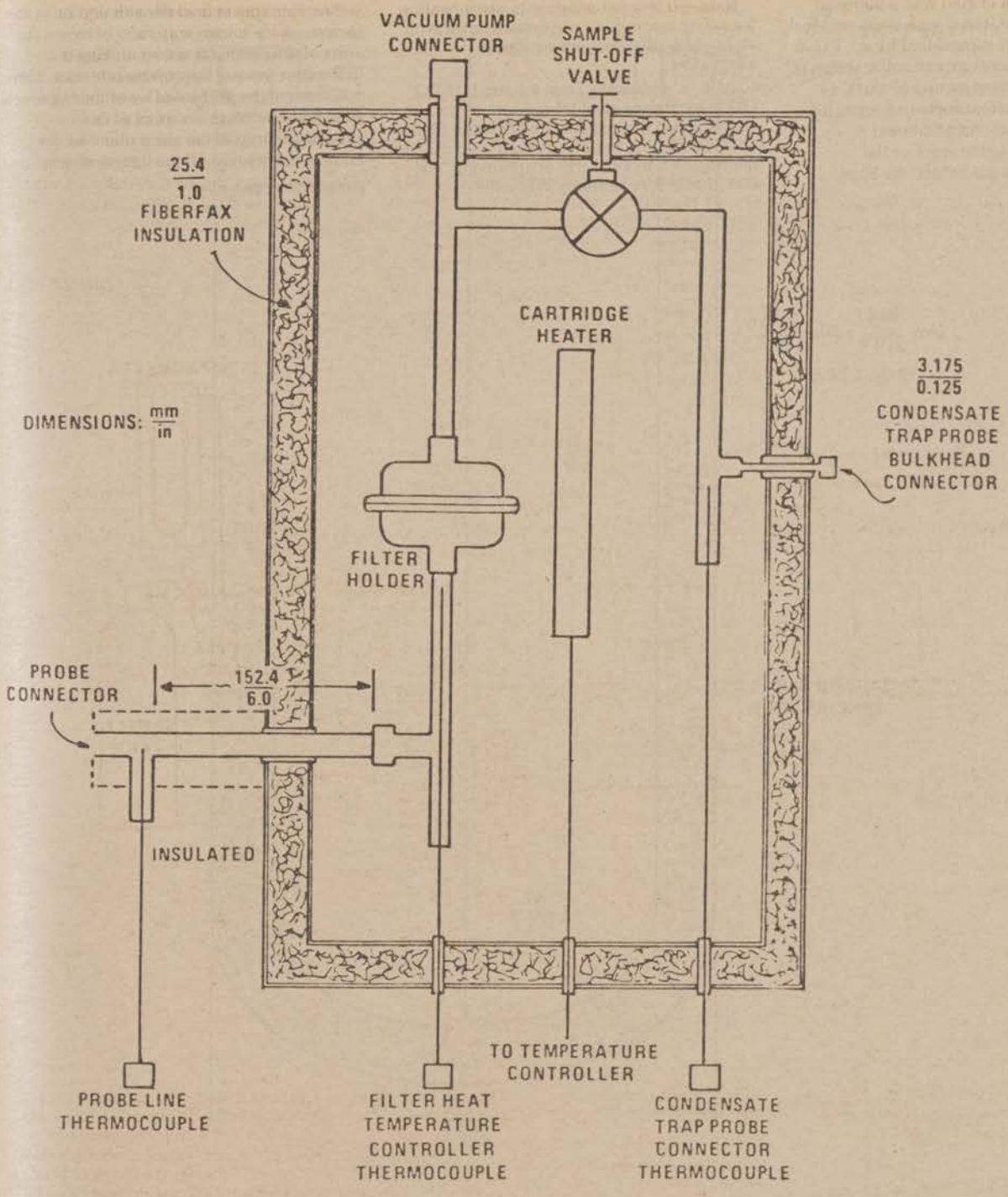


Figure 25-2. Out-of-stack filter box.

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The inner box is heated with a 250-watt cartridge heater, shielded by a stainless steel shroud. The heater is regulated by a thermostatic temperature controller which is set to maintain a temperature of 121°C as measured by a thermocouple in the gas line just before the filter. An additional thermocouple is used to monitor the temperature of the gas behind the filter.

**Note.**—If it is not possible to use a heating for safety reasons, an unheated system with an in-stack filter may be a suitable alternative.

*2.1.4 Condensate Trap.* 9.5-mm (3/8-in.) OD 316 stainless steel tubing bent into a U-shape. Exact dimensions are shown in figure 25–3. The tubing shall be packed with coarse quartz wool, to a density of approximately 0.11 g/cc before bending. While the condensate trap is packed with dry ice in the Dewar, an ice bridge may form between the arms of the condensate trap making it difficult to remove the condensate trap. This problem can be prevented by attaching a steel plate between the arms of the condensate trap in the same plane as the arms to completely fill the intervening space.

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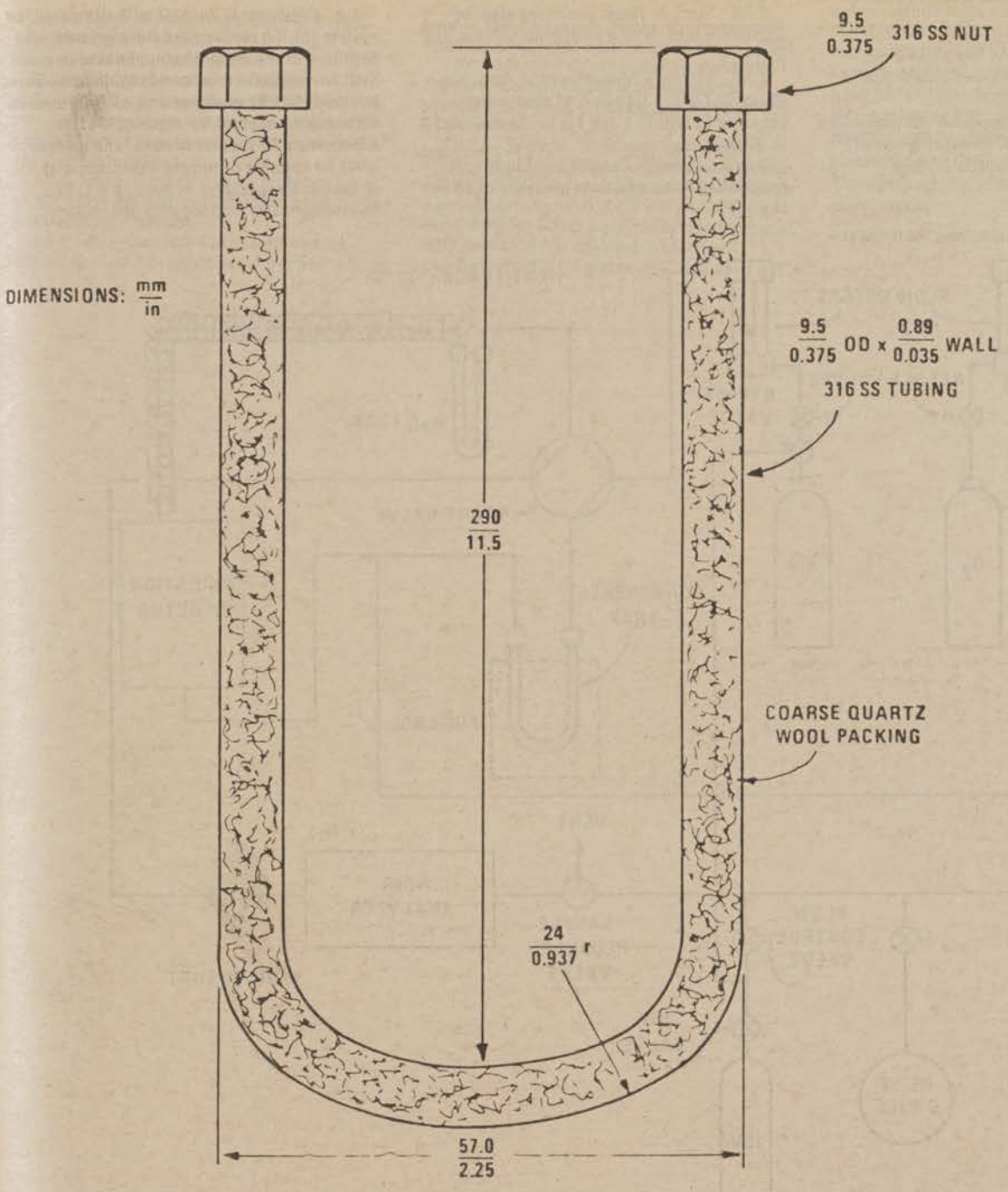


Figure 25-3. Condensate trap.

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*2.1.5 Valve.* Stainless steel control valve for starting and stopping sample flow.

*2.1.6 Metering Valve.* Stainless steel valve for regulating the sample flow rate through the sample train.

*2.1.7 Rotameter.* Glass tube with stainless steel fittings, capable of measuring sample flow in the range of 60 to 100 cc/min.

*2.1.8 Sample Tank.* Stainless steel or aluminum tank with a minimum volume of 4 liters.

*2.1.9 Mercury Manometer or Absolute Pressure Gauge.* Capable of measuring pressure to within 1 mm Hg in the range of 0 to 900 mm.

*2.1.10 Vacuum Pump.* Capable of evacuating to an absolute pressure of 10 mm Hg.

*2.2 Condensate Recovery Apparatus.* The system for the recovery of the organics captured in the condensate trap consists of a heat source, oxidation catalyst, nondispersive infrared (NDIR) analyzer and an intermediate collection vessel (ICV). Figure 25–4 is a schematic of a typical system. The system shall be capable of proper oxidation and recovery, as specified in Section 5.1. The following major components are required:

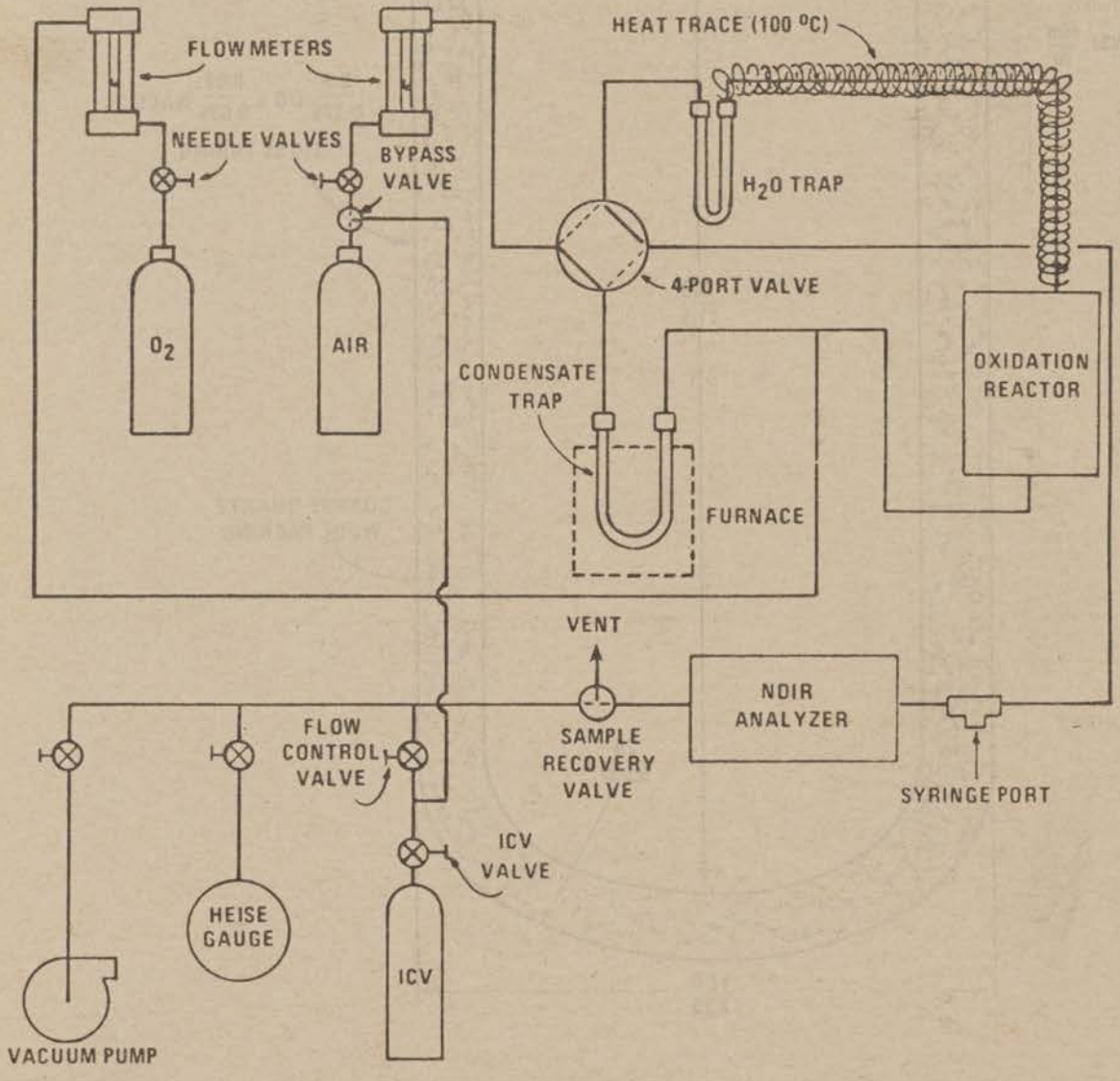


Figure 25-4. Condensate recovery system.

*2.2.1 Heat Source.* Sufficient to heat the condensate trap (including connecting tubing) to a temperature of 200 °C. A system using both a heat gun and an electric tube furnace is recommended.

*2.2.2 Heat Tape.* Sufficient to heat the connecting tubing between the water trap and the oxidation catalyst to 100 °C.

*2.2.3 Oxidation Catalyst.* A suitable length of 9.5 mm (⅜-in.) OD Inconel 600 tubing packed with 15 cm (6 in.) of 3.2 mm (⅛ in.) diameter 19 percent chromia on alumina pellets. The catalyst material is packed in the center of the catalyst tube with quartz wool packed on either end to hold it in place. The catalyst tube shall be mounted vertically in a 650 °C tube furnace.

*2.2.4 Water Trap.* Leak proof, capable of removing moisture from the gas stream.

*2.2.5 Syringe Port.* A 6.4-mm (¼-in.) OD stainless steel tee fitting with a rubber septum placed in the side arm.

*2.2.6 NDIR Detector.* Capable of indicating $CO_2$ concentration in the range of zero to 5 percent, to monitor the progress of combustion of the organic compounds from the condensate trap.

*2.2.7 Flow-Control Valve.* Stainless steel, to maintain the trap conditioning system near atmospheric pressure.

*2.2.8 Intermediate Collection Vessel.* Stainless steel or aluminum, equipped with a female quick connect. Tanks with nominal volumes of at least 6 liters are recommended.

*2.2.9 Mercury Manometer or Absolute Pressure Gauge.* Capable of measuring pressure to within 1 mm Hg in the range of 0 to 900 mm.

*2.2.10 Syringe.* 10-ml gas-tight glass syringe equipped with an appropriate needle.

*2.3 NMO Analyzer.* The NMO analyzer is a gas chromatograph (GC) with backflush capability for NMO analysis and is equipped with an oxidation catalyst, reduction catalyst, and FID. Figures 25–5 and 25–6 are schematics of a typical NMO analyzer. This semicontinuous GC/FID analyzer shall be capable of: (1) Separating CO, $CO_2$, and $CH_4$ from NMO, (2) reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$, and (3) oxidizing the NMO to $CO_2$, reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$, according to Section 5.2. The analyzer consists of the following major components:

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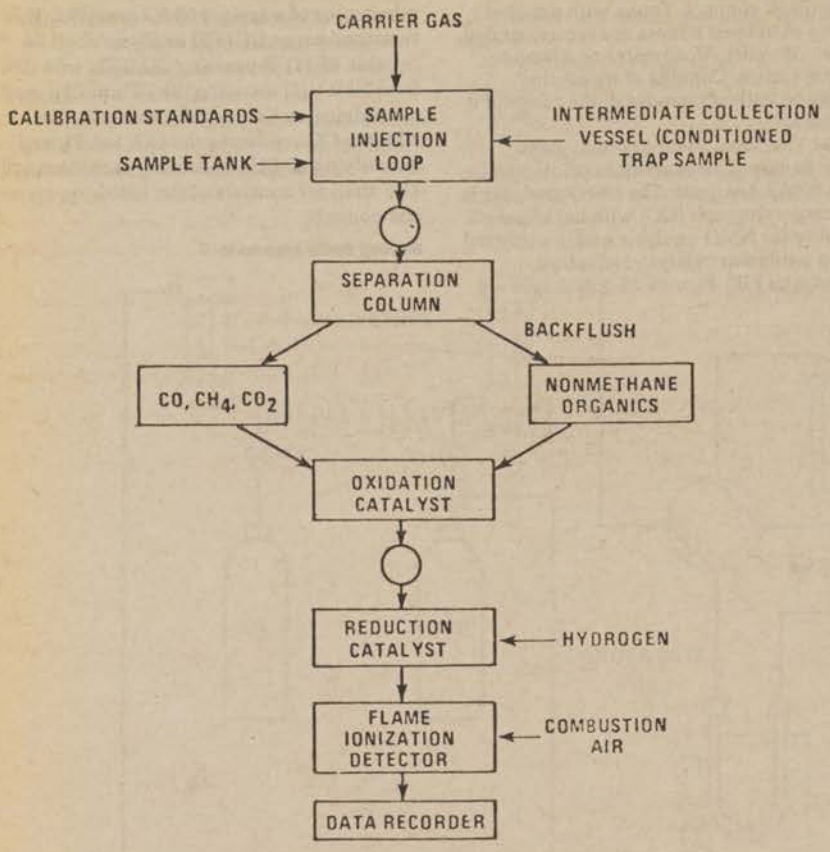


Figure 25-5. Simplified schematic of nonmethane organic (NMO) analyzer.

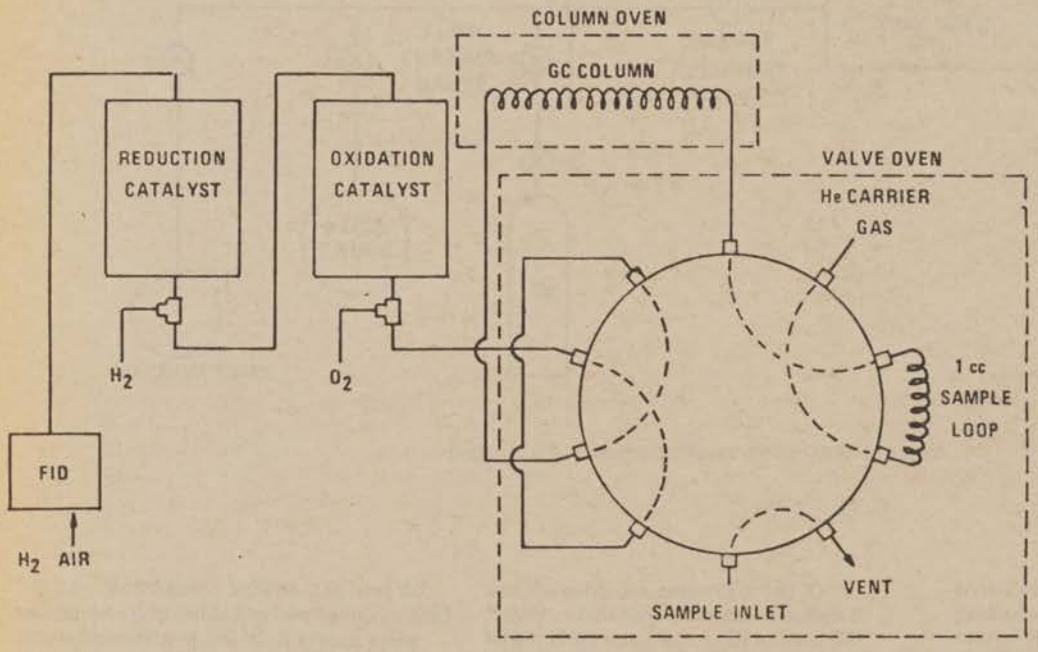


Figure 25-6. Nonmethane organic analyzer (NMO).

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*2.3.1 Oxidation Catalyst.* A suitable length of 9.5-mm (⅜-in.) OD Inconel 600 tubing packed with 5.1 cm (2 in.) of 19 percent chromia on 3.2-mm (⅛-in.) alumina pellets. The catalyst material is packed in the center of the tube supported on either side by quartz wool. The catalyst tube must be mounted vertically in a 650 °C furnace.

*2.3.2 Reduction Catalyst.* A 7.6-cm (3-in.) length of 6.4-mm (¼-in.) OD Inconel tubing fully packed with 100-mesh pure nickel powder. The catalyst tube must be mounted vertically in a 400 °C furnace.

*2.3.3 Separation Column(s).* A 30-cm (1-ft) length of 3.2-mm (⅛-in.) OD stainless steel tubing packed with 60/80 mesh Unibeads 1S followed by a 61-cm (2-ft) length of 3.2-mm (⅛-in.) OD stainless steel tubing packed with 60/80 mesh Carbosieve G. The Carbosieve and Unibeads columns must be baked separately at 200 °C with carrier gas flowing through them for 24 hours before initial use.

*2.3.4 Sample Injection System.* A 10-port GC sample injection valve fitted with a sample loop properly sized to interface with the NMO analyzer (1-cc loop recommended).

*2.3.5 FID.* An FID meeting the following specifications is required:

*2.3.5.1 Linearity.* A linear response (±5 percent) over the operating range as demonstrated by the procedures established in section 5.2.3.

*2.3.5.2 Range.* A full scale range of 10 to 50,000 ppm $CH_4$. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

*2.3.6 Data Recording System.* Analog strip chart recorder or digital integration system compatible with the FID for permanently recording the analytical results.

*2.4 Other Analysis Apparatus.*

*2.4.1 Barometer.* Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

*2.4.2 Thermometer.* Capable of measuring the laboratory temperature within 1 °C.

*2.4.3 Vacuum Pump.* Capable of evacuating to an absolute pressure of 10 mm Hg.

*2.4.4 Syringes.* 10-μl and 50-μl liquid injection syringes.

*2.4.5 Liquid Sample Injection Unit.* 316 SS U-tube fitted with an injection septum, see Figure 25–7.

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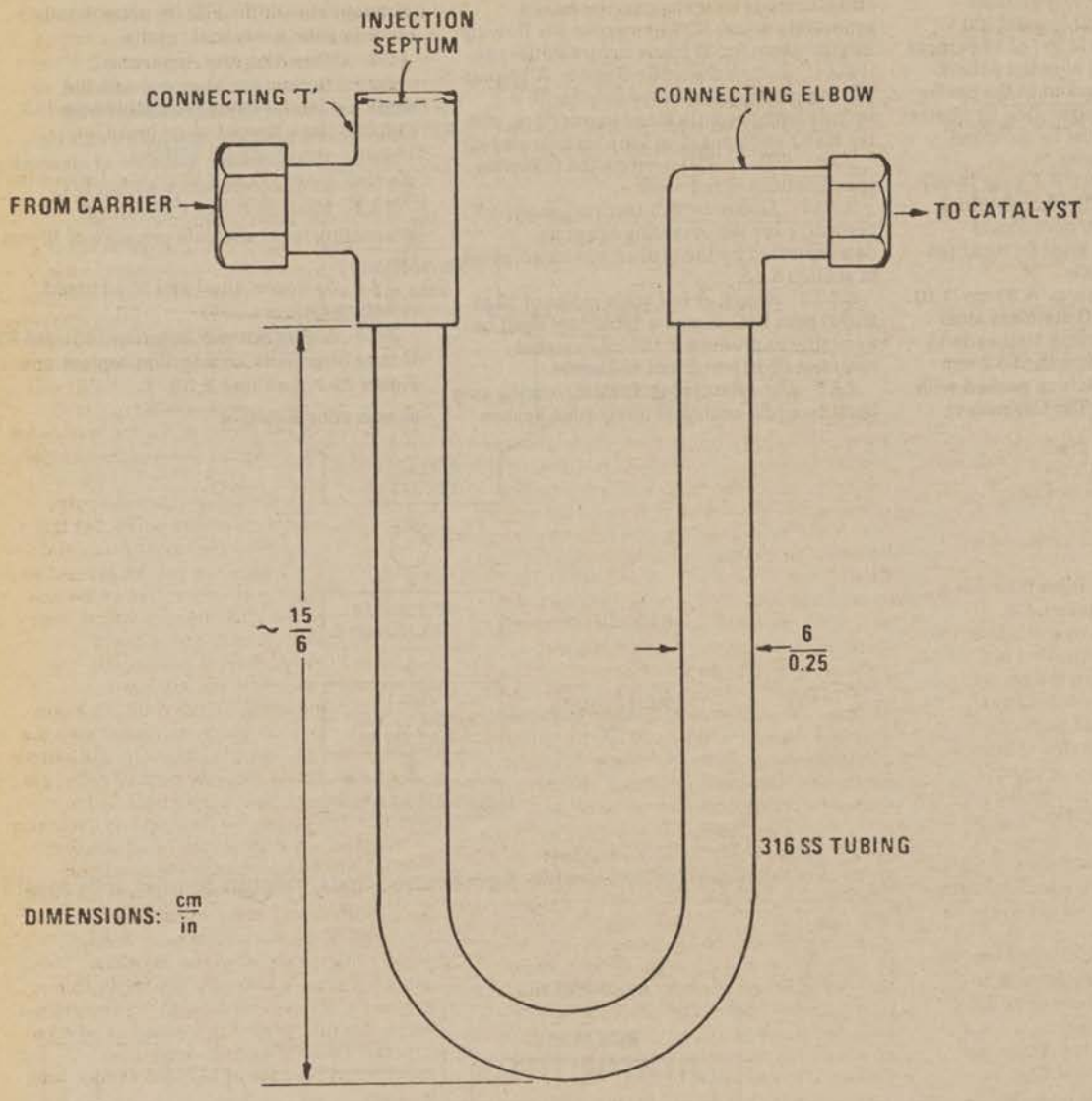


Figure 25-7. Liquid sample injection unit.

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3. *Reagents*

*3.1 Sampling.* The following are required for sampling:

*3.1.1 Crushed Dry Ice.*

*3.1.2 Coarse Quartz Wool.* 8 to 15 μm.

*3.2 NMO Analysis.* The following gases are needed:

*3.2.1 Carrier Gases.* Zero grade helium (He) and oxygen ($O_2$) containing less than 1 ppm $CO_2$ and less than 0.1 ppm C as hydrocarbon.

*3.2.2 Fuel Gas.* Zero grade hydrogen ($H_2$), 99.999 percent pure.

*3.2.3 Combustion Gas.* Zero grade air or $O_2$ as required by the detector.

*3.3 Condensate Analysis.* The following gases are needed:

*3.3.1 Carrier Gas.* Zero grade air, containing less than 1 ppm C.

*3.3.2 Auxiliary $O_2$.* Zero grade $O_2$ containing less than 1 ppm C.

*3.3.3 Hexane.* ACS grade, for liquid injection.

*3.3.4 Decane.* ACS grade, for liquid injection.

*3.4 Calibration.* For all calibration gases, the manufacturer must recommend a maximum shelf life for each cylinder (i.e., the length of time the gas concentration is not expected to change more than ±5 percent from its certified value). The date of gas cylinder preparation, certified organic concentration, and recommended maximum shelf life must be affixed to each cylinder before shipment from the gas manufacturer to the buyer. The following calibration gases are required.

*3.4.1 Oxidation Catalyst Efficiency Check Calibration Gas.* Gas mixture standard with nominal concentration of 1 percent methane in air.

*3.4.2 FID Linearity and NMO Calibration Gases.* Three gas mixture standards with nominal propane concentrations of 20 ppm, 200 ppm, and 3000 ppm, in air.

*3.4.3 $CO_2$* Calibration Gases. Three gas mixture standards with nominal $CO_2$ concentrations of 50 ppm, 500 ppm, and 1 percent, in air.

**Note.**—Total NMO less than 1 ppm required for 1 percent mixture.

*3.4.4 NMO Analyzer System Check Calibration Gases.* Four calibration gases are needed as follows:

*3.4.4.1 Propane Mixture.* Gas mixture standard containing (nominal) 50 ppm CO, 50 ppm $CH_4$, 2 percent $CO_2$, and 20 ppm $C_3H_8$, prepared in air.

*3.4.4.2 Hexane.* Gas mixture standard containing (nominal) 50 ppm hexane in air.

*3.4.4.3 Toluene.* Gas mixture standard containing (nominal) 20 ppm toluene in air.

*3.4.4.4 Methanol.* Gas mixture standard containing (nominal) 100 ppm methanol in air.

4. *Procedure*

4.1 Sampling.

*4.1.1 Sample Tank Evacuation and Leak Check.* Evacuate the sample tank to 10 mm Hg absolute pressure or less. Then close the sample tank valve, and allow the tank to sit for 30 minutes. The tank is acceptable if a change in tank vacuum of less than 2 mm Hg is noted. The evacuation and leak check may be conducted either in the laboratory or the field.

*4.1.2 Sample Train Assembly.* Just before assembly, measure the tank vacuum using a mercury U-tube manometer. Record this vacuum, the ambient temperature, and the barometric pressure at this time. Close the sample tank value and assemble the sampling system as shown in Figure 25–1. Immerse the condensate trap body in dry ice. The point where the inlet tube joins the trap body should be 2.5 to 5 cm above the top of the dry ice.

*4.1.3 Pretest Leak Check.* A pretest leak check is required. Calculate or measure the approximate volume of the sampling train from the probe tip to the sample tank valve. After assembling the sampling train, plug the probe tip, and make certain that the sample tank valve is closed. Turn on the vacuum pump, and evacuate the sampling system from the probe tip to the sample tank valve to an absolute pressure of 10 mm Hg or less. Close the purge valve, turn off the pump, wait a minimum period of 10 minutes, and recheck the indicated vacuum. Calculate the maximum allowable pressure change based on a leak rate of 1 percent of the sampling rate using Equation 25–1, section 6.2. If the measured pressure change exceeds the calculated limit, correct the problem and repeat the leak check before beginning sampling.

*4.1.4 Sample Train Operation.* Unplug the probe tip, and place the probe into the stack such that the probe is perpendicular to the duct or stack axis; locate the probe tip at a single preselected point of average velocity facing away from the direction of gas flow. For stacks having a negative static pressure, seal the sample port sufficiently to prevent air in-leakage around the probe. Set the probe temperature controller to 129°C (265°F) and the filter temperature controller to 121°C (250°F). Allow the probe and filter to heat for about 30 minutes before purging the sample train.

Close the sample valve, open the purge valve, and start the vacuum pump. Set the flow rate between 60 and 100 cc/min, and purge the train with stack gas for at least 10 minutes. When the temperatures at the exit ends of the probe and filter are within their specified range, sampling may begin.

Check the dry ice level around the condensate trap, and add dry ice if necessary. Record the clock time. To begin sampling, close the purge valve and stop the pump. Open the sample valve and the sample tank valve. Using the flow control valve, set the flow through the sample train to the proper rate. Adjust the flow rate as necessary to maintain a constant rate (±10 percent) throughout the duration of the sampling period. Record the sample tank vacuum and flowmeter setting at 5-minute intervals (see Figure 25–8). Select a total sample time greater than or equal to the minimum sampling time specified in the applicable subpart of the regulation; end the sampling when this time period is reached or when a constant flow rate can no longer be maintained because of reduced sample tank vacuum.

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VOLATILE ORGANIC CARBON

FACILITY _____ SAMPLE LOCATION _____

LOCATION _____ OPERATOR _____

DATE _____ RUN NUMBER _____

TANK NUMBER _____ TRAP NUMBER _____ SAMPLE ID NUMBER _____

| | TANK VACUUM, mm Hg / cm Hg | BAROMETRIC PRESSURE, mm Hg | AMBIENT TEMPERATURE, °C |
|---|---|---|---|
| PRETEST (MANOMETER) | (GAUGE) | | |
| POST TEST (MANOMETER) | (GAUGE) | | |

LEAK RATE _____ cm Hg / 10 min

PRETEST _____

| TIME CLOCK/SAMPLE | VACUUM cm Hg | FLOWMETER SETTING | COMMENTS |
|---|---|---|---|
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Figure 25-8. Example field data form.

Note:—If sampling has to be stopped before obtaining the minimum sampling time (specified in the applicable subpart) because a constant flow rate cannot be maintained, proceed as follows: After closing the sample tank valve, remove the used sample tank from the sampling train (without disconnecting other portions of the sampling train). Take another evacuated and leak-checked sample tank, measure and record the tank vacuum, and attach the new tank to the sampling train. After the new tank is attached to the sample train, proceed with the sampling until the required minimum sampling time has been exceeded.

*4.2 Sample Recovery.* After sampling is completed, close the flow control valve, and record the final tank vacuum; then record the tank temperature and barometric pressure. Close the sample tank valve, and disconnect the sample tank from the sample system. Disconnect the condensate trap at the flowmetering system, and tightly seal both ends of the condensate trap. Do not include the probe from the stack to the filter as part of the condensate sample. Keep the trap packed in dry ice until the samples are returned to the laboratory for analysis. Ensure that the test run number is properly identified on the condensate trap and the sample tank(s).

*4.3 Condensate Recovery.* See Figure 25–9. Set the carrier gas flow rate, and heat the catalyst to its operating temperature to condition the apparatus.

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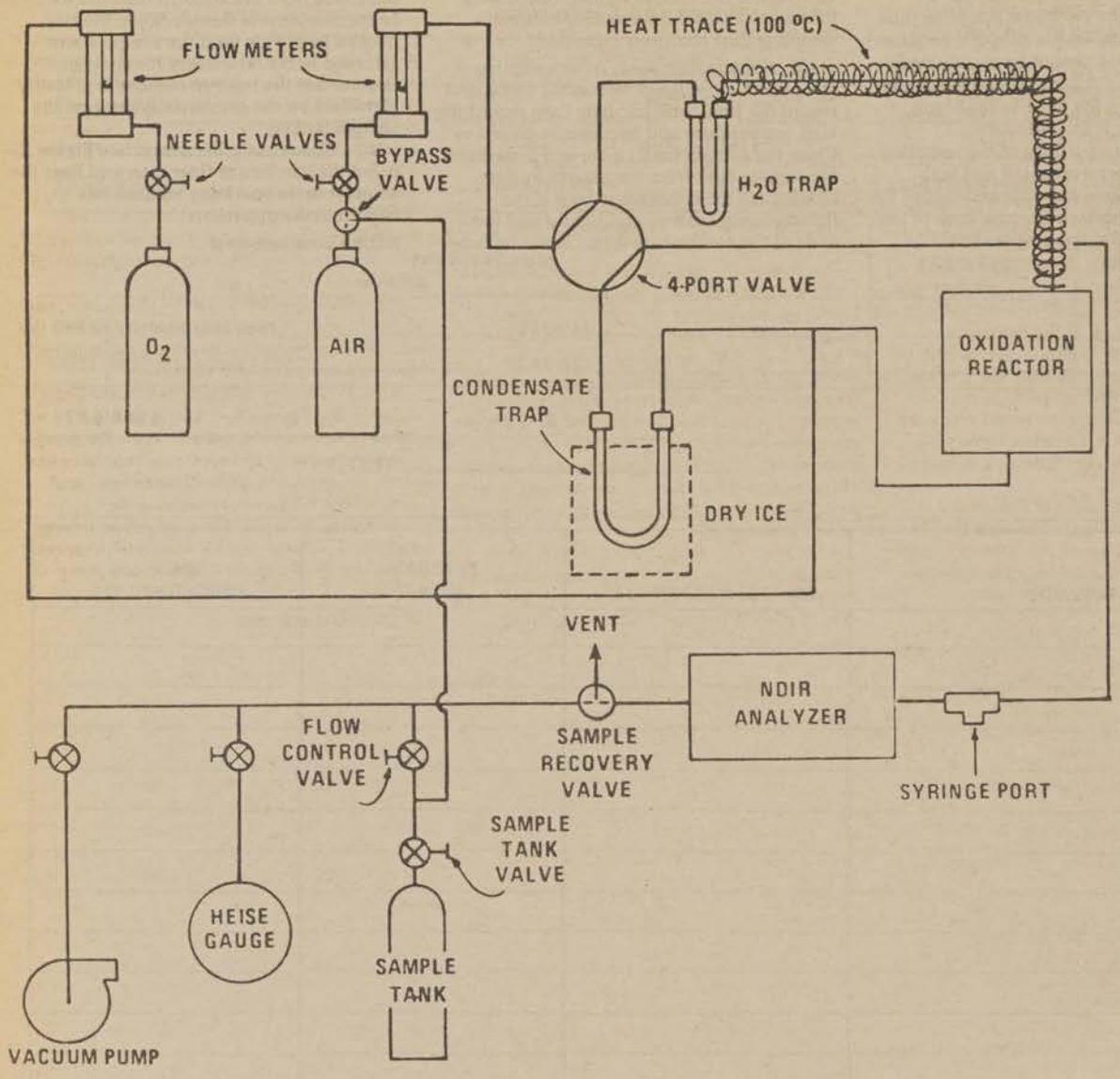


Figure 25-9. Condensate recovery system, $CO_2$ purge.

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*4.3.1 Daily Performance Checks.* Each day before analyzing any samples, perform the following tests:

*4.3.1.1 Leak Check.* With the carrier gas inlets and the flow control valve closed, install a clean condensate trap in the system, and evacuate the system to 10 mm Hg absolute pressure or less. Close the vacuum pump valve and turn off the vacuum pump. Monitor the system pressure for 10 minutes. The system is acceptable if the pressure change is less than 2 mm Hg.

*4.3.1.2 System Background Test.* Adjust the carrier gas and auxiliary oxygen flow rate to their normal valves of 100 cc/min and 150 cc/min, respectively, with the sample recovery valve in vent position. Using a 10-ml syringe withdraw a sample from the system effluent through the syringe port. Inject this sample into the NMO analyzer, and measure the $CO_2$ content. The system background is acceptable if the $CO_2$ concentration is less than 10 ppm.

*4.3.1.3 Oxidation Catalyst Efficiency Check.* Conduct a catalyst efficiency test as specified in section 5.1.2 of this method. If the criterion of this test cannot be met, make the necessary repairs to the system before proceeding.

*4.3.2 Condensate Trap $CO_2$ Purge and Sample Tank Pressurization.* After sampling is completed, the condensate trap will contain condensed water and organics and a small volume of sampled gas. This gas from the stack may contain a significant amount of $CO_2$ which must be removed from the condensate trap before the sample is recovered. This is accomplished by purging the condensate trap with zero air and collecting the purged gas in the original sample tank.

Begin with the sample tank and condensate trap from the test run to be analyzed. Set the four-port valve of the condensate recovery system in the $CO_2$ purge position as shown in Figure 25–9. With the sample tank valve closed, attach the sample tank to the sample recovery system. With the sample recovery valve in the vent position and the flow control valve fully open, evacuate the manometer or pressure gauge to the vacuum of the sample tank. Next, close the vacuum pump valve, open the sample tank valve, and record the tank pressure.

Attach the dry-ice-cooled condensate trap to the recovery system, and initiate the purge by switching the sample recovery valve from vent to collect position. Adjust the flow control valve to maintain atmospheric pressure in the recovery system. Continue the purge until the $CO_2$ concentration of the trap effluent is less than 5 ppm. $CO_2$ concentration in the trap effluent should be measured by extracting syringe samples from the recovery system and analyzing the samples with the NMO analyzer. This procedure should be used only after the NDIR response has reached a minimum level. Using a 10-ml syringe, extract a sample from the syringe port prior to the NDIR, and inject this sample into the NMO analyzer.

After the completion of the $CO_2$ purge, use the carrier gas bypass valve to pressurize the sample tank to approximately 1,060 mm Hg absolute pressure with zero air.

*4.3.3 Recovery of the Condensate Trap Sample.* See Figure 25–10. Attach the ICV to the sample recovery system. With the sample recovery valve in a closed position, between vent and collect, and the flow control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

BILLING CODE 6560-50-M

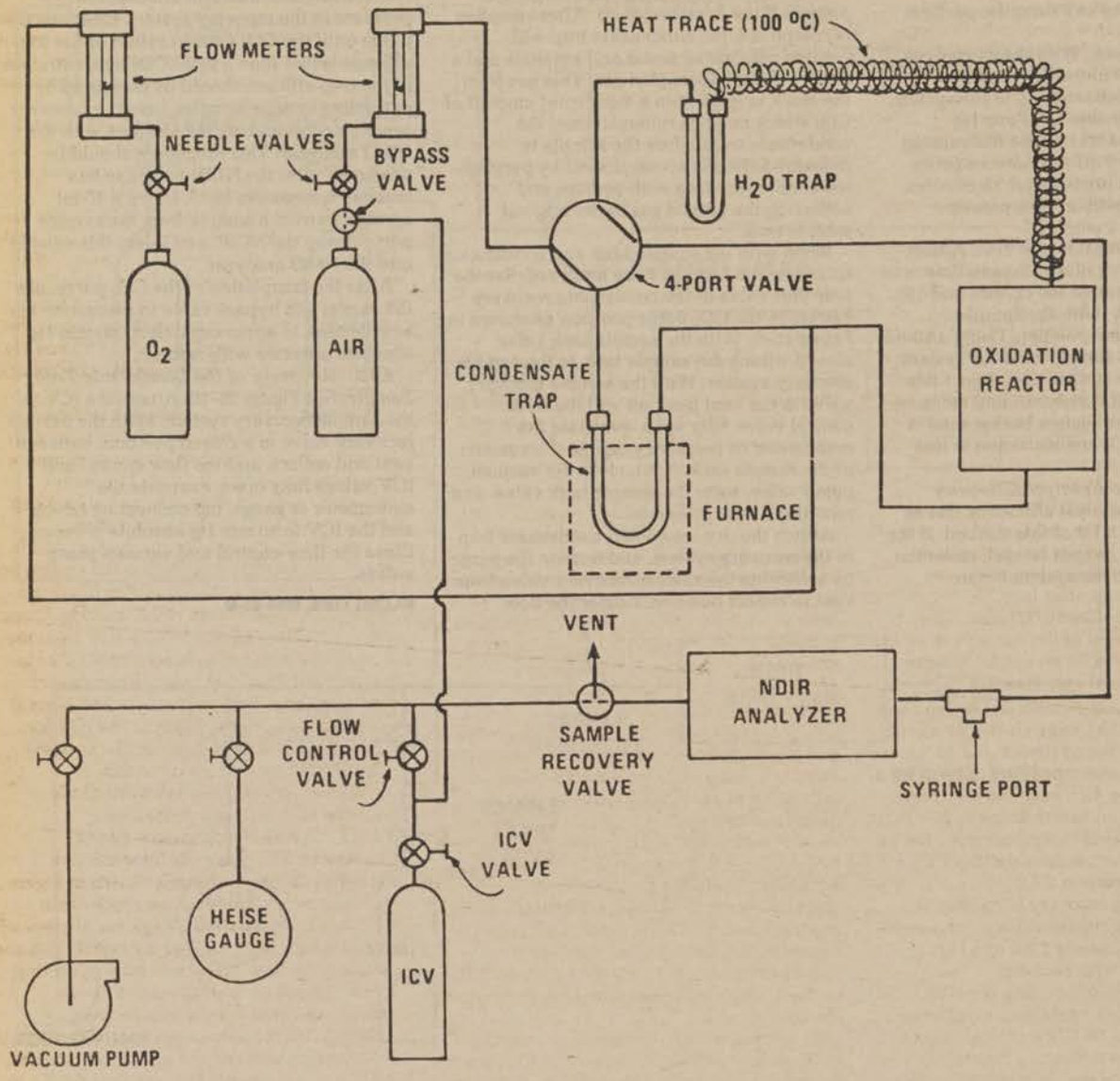


Figure 25-10. Condensate recovery system, collection of trap organics.

BILLING CODE 6560-50-C

Begin auxiliary oxygen flow to the oxidation catalyst at a rate of 150 cc/min, then switch the four-way valve to the trap recovery position and the sample recovery valve to collect position. The system should now be set up to operate as indicated in Figure 25–10. After the manometer or pressure gauge begins to register a slight positive pressure, open the flow control valve. Adjust the flow-control valve to maintain atmospheric pressure in the system within 10 percent.

Now, remove the condensate trap from the dry ice, and allow it to warm to ambient temperature while monitoring the NDIR response. If after 5 minutes, the $CO_2$ concentration of the catalyst effluent is below 10,000 ppm, discontinue the auxiliary oxygen flow to the oxidation catalyst. Begin heating the trap by placing it in a furnace preheated to 200°C. Once heating has begun, carefully monitor the NDIR response to ensure that the catalyst effluent concentration does not exceed 50,000 ppm. Whenever the $CO_2$ concentration exceeds 50,000 ppm, supply auxiliary oxygen to the catalyst at the rate of 150 cc/min. Begin heating the tubing that connected the heated sample box to the condensate trap only after the $CO_2$ concentrate falls below 10,000 ppm. This tubing may be heated in the same oven as the condensate trap or with an auxiliary heat source such as a heat gun. Heating temperature must not exceed 200°C. If a heat gun is used, heat the tubing slowly along its entire length from the upstream end to the downstream end, and repeat the pattern for a total of three times. Continue the recovery until the $CO_2$ concentration drops to less than 10 ppm as determined by syringe injection as described under the condensate trap $CO_2$ purge procedure, section 4.3.2.

After the sample recovery is completed, use the carrier gas bypass valve to pressurize the ICV to approximately 1060 mm Hg absolute pressure with zero air.

*4.4 Analysis.* Before putting the NMO analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions in order to put the analyzer into proper working order; then conduct the performance test according to the procedures established in section 5.2. Once the performance test has been successfully completed and the $CO_2$ and NMO calibration response factors have been determined, proceed with sample analysis as follows:

*4.4.1 Daily Operations and Caliberation Checks.* Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in section 5.3. If the criteria of the daily calibration test cannot be met, repeat the NMO analyzer performance test (Section 5.2) before proceeding.

*4.4.2 Operating Conditions.* The carrier gas flow rate is 29.5 cc/min He and 2.2 cc/min $O_2$. The column oven is heated to 85°C. The order of elution for the sample from the column is CO, $CH_4$, $CO_2$, and NMO.

*4.4.3 Analysis of Recovered Condensate Sample.* Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the $CO_2$ in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the $CO_2$ peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195°C as rapidly as possible. A rate of 30°C/min has been shown to be adequate. Record the value obtained for the condensible organic material ($C_{cm}$) measured as $CO_2$ and any measured NMO. Return the column oven temperature to 85°C in preparation for the next analysis. Analyze each sample in triplicate, and report the average $C_{cm}$.

*4.4.4 Analysis of Sample Tank.* Perform the analysis as described in section 4.4.3, but record only the value measured for NMO ($C_{tm}$).

*4.5 Audit Samples.* Analyze a set of two audit samples concurrently with any compliance samples and in exactly the same manner to evaluate the analyst's technique and the instrument calibration. The same analysts, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples; if this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

Calculate the concentrations of the audit samples in ppm using the specified sample volume in the audit instructions. (Note.—Indication of acceptable results may be obtained immediately by reporting the audit results in ppm and compliance results in ppm by telephone to the responsible enforcement agency.) Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency during the 30-day period.

The concentration of the audit samples obtained by the analyst shall agree within 20 percent of the actual concentrations. Failure to meet the 20-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit anslysis problems, the Administrator may also choose to use the data to determine compliance or noncompliance of the affected facility.

5. *Calibration and Operational Checks*

Maintain a record of performance of each item.

*5.1 Initial Performance Check of Condensate Recovery Apparatus.* Perform these tests before the system is first placed in operation, after any shutdown of 6 months or more, and after any major modification of the system, or at the specified frequency.

*5.1.1 Carrier Gas and Auxiliary $O_2$ Blank Check.* Analyze each new tank of carrier gas or auxiliary $O_2$ with the NMO analyzer to check for contamination. Treat the gas cylinders as noncondensible gas samples, and analyze according to the procedure in section 4.4.3. Add together any measured $CH_4$, CO, $CO_2$, or NMO. The total concentration must be less than 5 ppm.

*5.1.2 Catalyst Efficiency Check.* With a clean condensate trap installed in the recovery system, replace the carrier gas cylinder with the high level methane standard gas cylinder (section 3.4.1). Set the four-port valve to the recovery position, and attach an ICV to the recovery system. With the sample recovery valve in vent position and the flow-control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

After the NDIR response has stabilized, switch the sample recovery valve from vent to collect. When the manometer or pressure gauge begins to register a slight positive pressure, open the flow-control valve. Keep the flow adjusted so that atmospheric pressure is maintained in the system within 10 percent. Continue collecting the sample in a normal manner until the ICV is filled to a nominal gauge pressure of 300 mm Hg. Close the ICV valve, and remove the ICV from the system. Place the sample recovery valve in the vent position, and return the recovery system to its normal carrier gas and normal operating conditions. Analyze the ICV for $CO_2$ using the NMO analyzer; the catalyst efficiency is acceptable if the $CO_2$ concentration is within 2 percent of the methane standard concentration.

*5.1.3 System Performance Check.* Construct a liquid sample injection unit similar to design to the unit shown in Figure 25–7. Insert this unit into the condensate recovery and conditioning system in place of a condensate trap, and set the carrier gas and auxiliary $O_2$ flow rates to normal operating levels. Attach an evacuated ICV to the system, and switch from system vent to collect. With the carrier gas routed through the injection unit and the oxidation catalyst, inject a liquid sample (see sections 5.1.3.1 to 5.1.3.4) into the injection port. Operate the trap recovery system as described in section 4.3.3. Measure the final ICV pressure, and then analyze the vessel to determine the $CO_2$ concentration. For each injection, calculate the percent recovery using the equation in section 6.6.

The performance test is acceptable if the average percent recovery is 100 ± 5 percent with a relative standard deviation (section 6.9) of less than 2 percent for each set of triplicate injections as follows:

*5.1.3.1 50 µl Hexane.*

*5.1.3.2 50 µl Hexane.*

*5.1.3.3 50 µl Decane.*

*5.1.3.4 50 µl Decane.*

*5.2 Initial NMO Analyzer Performance Test.* Perform these tests before the system is first placed in operation, after any shutdown longer than 6 months, and after any major modification of the system.

*5.2.1 Oxidation Catalyst Efficiency Check.* Turn off or bypass the NMO analyzer reduction catalyst. Make triplicate injections of the high level methane standard (section

3.4.1.). The oxidation catalyst operation is acceptable if the FID response is less than 1 percent of the injected methane concentration.

*5.2.2 Reduction Catalyst Efficienty Check.* With the oxidation catalyst unheated or bypassed and the heated reduction catalyst bypassed, make triplicate injections of the high level methane standard (section 3.4.1). Repeat this procedure with both catalysts operative. The reduction catalyst operation is acceptable if the response under both conditions agree within 5 percent.

*5.2.3 Analyzer Linearity Check and NMO Calibration.* While operating both the oxidation and reduction catalysts, conduct a linearity check of the analyzer using the propane standards specified in section 3.4.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (section 6.9) for each set of triplicate injections is less than 2 percent. Record the overall mean of the propane response factor values as the NMO calibration response factor ($RF_{NMO}$).

Repeat the linearity check using the $CO_2$ standards specified in section 3.4.3. Make triplicate injections of each gas, and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. Record the overall mean of the response factor values as the $CO_2$ calibration response factor ($RF_{CO2}$). The $RF_{CO2}$ must be within 10 percent of the $RF_{NMO}$.

*5.2.4 System Performance Check.* Check the column separation and overall performance of the analyzer by making triplicate injections of the calibration gases listed in section 3.4.4. The analyzer performance is acceptable if the measured NMO value for each gas (average of triplicate injections) is within 5 percent of the expected value.

*5.3 NMO Analyzer Daily Calibration.*

*5.3.1 $CO_2$* Response Factor. Inject triplicate samples of the high level $CO_2$ calibration gas (section 3.4.3), and calculate the average response factor. The system operation is adequate if the calculated response factor is within 5 percent of the $RF_{CO2}$ calculated during the initial performance test (section 5.2.3). Use the daily response factor ($DRF_{CO2}$) for analyzer calibration and the calculation of measured $CO_2$ concentrations in the ICV samples.

*5.3.2 NMO Response Factors.* Inject triplicate samples of the mixed propane calibration cylinder (section 3.4.4.1), and calculate the average NMO response factor. The system operation is adequate if the calculated response factor is within 5 percent of the $RF_{NMO}$ calculated during the initial performance test (section 5.2.4). Use the daily response factor ($DRF_{NMO}$) for analyzer calibration and calculation of NMO concentrations in the sample.

*5.4 Sample Tank and ICV Volume.* The volume, of the gas sampling tanks used must be determined. Determine the tank and ICV volumes by weighing them empty and then filled with deionized distilled water; weigh to the nearest 5 g, and record the results. Alternatively, measure the volume of water used to fill them to the nearest 5 ml.

6. *Calculations*

All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge or manometer pressure.

*6.1 Nomenclature.*

C=TGMMO concentration of the effluent, ppm C equivalent.

$C_c$=Calculated condensible organic (condensate trap) concentration of the effluent, ppm C equivalent.

$C_{cm}$=Measured concentration (NMO analyzer) for the condensate trap ICV, ppm $CO_2$.

$C_t$=Calculated noncondensible organic concentration (sample tank) of the effluent, ppm C equivalent.

$C_{tm}$=Measured concentration (NMO analyzer) for the sample tank, ppm NMO.

F=Sampling flow rate, cc/min.

L=Volume of liquid injected, μl.

M=Molecular weight of the liquid injected, g/g-mole.

$M_c$=TGNMO mass concentration of the effluent, mg C/$dsm^3$.

N=Carbon number of the liquid compound injected (N=12 for decane, N=6 for hexane).

$P_f$=Final pressure of the intermediate collection vessel, mm Hg absolute.

$P_b$=Barometric pressure, cm Hg.

$P_{ti}$=Gas sample tank pressure before sampling, mm Hg absolute.

$P_t$=Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.

$P_{tf}$=Final gas sample tank pressure after pressurizing, mm Hg absolute.

$T_f$=Final temperature of intermediate collection vessel, °K.

$T_{ti}$=Sample tank temperature before sampling, °K.

$T_t$=Sample tank temperature at completion of sampling, °K.

$T_{tf}$=Sample tank temperature after pressurizing, °K.

V=Sample tank volume, $m^3$.

$V_t$=Sample train volume, cc.

$V_v$=Intermediate collection vessel volume, $m^3$.

$V_s$=Gas volume sampled, $dsm^3$.

n=Number of data points.

q=Total number of analyzer injections of intermediate collection vessel during analysis (where k=injection number, 1 . . . q).

r=Total number of analyzer injections of sample tank during analysis (where j=injection number, 1 . . . r).

xi=Individual measurements.

x=mean value.

ρ=Density of liquid injected, g/cc.

θ=Leak check period, min.

ΔP=Allowable pressure change, cm Hg.

*6.2 Allowable Pressure Change.* For the pretest leak check, calculate the allowable pressure change:

Eq. 25-1

$$\Delta P = 0.01 \frac{F P_b \theta}{V_t}$$

*6.3 Sample Volume.* For each test run, calculate the gas volume sampled:

Eq. 25-2

$$V_s = 0.3857\ V \left[ \frac{\overline{P_t}}{\overline{T_t}} - \frac{\overline{P_{ti}}}{\overline{T_{ti}}} \right]$$

*6.4 Noncondensible Organics.* For each sample tank, determine the concentration of nonmethane organics (ppm C):

Eq. 25-3

$$C_t = \left[ \frac{P_{tf}}{T_{tf}} \right] \left[ \frac{\overline{P_t}}{\overline{T_t}} - \frac{\overline{P_{ti}}}{\overline{T_{ti}}} \right] \left[ \frac{1}{r} \sum_{j=1}^{r} C_{tm_j} \right]$$

*6.5 Condensible organics.* For each condensate trap determine the concentration of organics (ppm C):

Eq. 25-4

$$C_c = 0.3857 \frac{V_v P_f}{V_s T_f} \left[ \frac{1}{q} \sum_{k=1}^{q} C_{cm_k} \right]$$

*6.6 TGNMO.* To determine the TGNMO concentration for each test run, use the following equation:

Eq. 25-5

$$C = C_t + C_c$$

*6.7 TGNMO Mass Concentration.* To determine the TGNMO mass concentration as carbon for each test run, use the following equation:

Eq. 25-6

$$M_c = 0.4993\ C$$

*6.8 Percent Recovery.* To calculate the percent recovery for the liquid injections to the condensate recovery and conditioning system use the following equation:

$$\text{Percent recovery} = 1.604 \frac{M}{L} \frac{V_v}{\rho} \frac{P_f}{T_f} \frac{C_{cm}}{N}$$

Eq. 25-7

*6.9 Relative Standard Deviation.*

$$RSD = \frac{100}{\bar{x}} \frac{\Sigma (x_i - \bar{x})^2}{n - 1}$$

Eq. 25-8

7. *Bibliography*

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15–20, 1975.) 14 p.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado June 9–13, 1974.) 25 p.

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[FR Doc. 86–25192 Filed 11–6–86; 8:45 am]
BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[Gen. Docket No. 86–337]**

### Automatic Transmitter Identification Systems for Radio Transmitting Equipment; Extension of Deadlines for Comments and Replies

**AGENCY:** Federal Communications Commission.

**ACTION:** *Notice of proposed rulemaking and notice of inquiry:* Extension of deadlines for comments and reply comments.

**SUMMARY:** Acting under delegated authority, the Chief, Office of Engineering and Technology has issued on *Order* extending the comment and reply comment deadlines for the *Notice of Proposed Rulemaking and Notice of Inquiry* in General Docket No. 86–337, concerning an automatic transmitter identification system, published on September 10, 1986, 51 FR 32223.

This responds to extension requests from the Electronic Industries Association, the National Electrical Manufacturers Association, and the National Cable Television Association.

**DATES:** *Notice of Inquiry* comment deadline extended to January 19, 1987, and reply comment deadline extended to February 17, 1987. *Notice of Proposed Rulemaking* comment deadline extended to November 19, 1986, and reply comment deadline extended to December 19, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John Hudak, Field Operations Bureau (202) 632–6977.

Federal Communications Commission.

**Thomas P. Stanley,**

*Chief Engineer.*

[FR Doc. 86–25159 Filed 11–6–86; 8:45 am]
BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 86–384, RM–5223; RM–5476]**

### Radio Broadcasting Services; Lompoc, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on petitions filed by Crystal Broadcasting, Inc. to substitute FM Channel 262B1 for Channel 265A and modify the license for Station KRQK–FM at Lompoc, California, and by Gold Coast Broadcasting, Inc. and Broadcast Management Consultants, Inc., licensee and assignee, respectively, of Station KXCC–FM, Lompoc, California, seeking to substitute FM Channel 281B1 for Channel 224A and to modify its license accordingly.

**DATES:** Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Roger J. Metzler, Jr., Esq., Farrand, Malti, Cooper and Metzler, 701 Sutter St., San Francisco, California 94109 (Counsel for Crystal Broadcasting, Inc.); and Edgar W. Holtz, Esq. Hogan & Hartson, 815 Connecticut Ave. NW., Washington, DC 20006–4072 (Counsel for Broadcast Management Consultants, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–384, adopted September 26, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 86–25160 Filed 11–6–86; 8:45 am]
BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 86–386, RM–5449]**

### Radio Broadcasting Services; Kalkaska, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Northern Radio of Michigan, Inc., proposing the substitution of FM Channel 248C2 for Channel 249A at Kalkaska, Michigan, and modification of the license of Station WKLT–FM, to reflect the higher class of channel.

**DATES:** Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

**ADDRESS:** Federal Communications

Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas N. Frohock, McKenna, Wilkinson & Kittner, 1150 Seventeenth Street, NW., Washington, DC 20036 (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle (202) 634–6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–386, adopted September 26, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing precedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division Mass Media Bureau.*

[FR Doc. 86–25161 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 86–388, RM–5385]**

## Television Broadcasting Services; Kenansville, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a proposal to assign UHF Television Channel 31 to Kenansville, Florida at the request of Meredith Corporation. The channel assignment could provide Kenansville with its first television service.

**DATES:** Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Henry A. Solomon, Haley, and Bader and Potts, 2000 M Street, NW., Washington, DC (Attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree (202) 634–6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–388, adopted September 30, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 86–25162 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR PART 650**

**[Docket No. 51222–6189]**

## Atlantic Sea Scallop Fishery

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA proposes and requests comment on this rule to implement a Secretarial Amendment which would: (1) Supersede Amendment 1 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP), and (2) provide authority to the Director, Northeast Region, NMFS (Regional Director) to grant exemptions from the regulations for scientific research beneficial to the sea scallop resource or fishery. This action is intended to minimize fishing-related mortality on small scallops, and facilitate the development of an alternative management program for the fishery.

**DATE:** Comments on the Secretarial Amendment and this proposed rule must be received on or before December 19, 1986.

**ADDRESSES:** Copies of the Secretarial Amendment may be requested from and comments on this proposed rule and the Secretarial Amendment sent to Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. If commenting, please mark "Comments on the Scallop Secretarial Amendment" on the envelope.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Kilbride, Resource Policy Analyst, 617–281–3600 extension 311.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP (47 FR 35990, August 18, 1982) established a maximum average meat count standard with a range of 40 to 25 meats per pound, and a corresponding minimum shell height requirement for sea scallops landed in the shell. Enforcement of this standard was limited up to and including the point of first transaction in the United States.

The Council prepared Amendment 1 to the FMP which was approved by the Administrator of NOAA on October 17, 1985. Amendment 1 established a minimum weight standard, the four-

ounce standard, and extended enforcement beyond the point of first transaction. Its purpose was to reduce the taking of small sea scallops. The final rule implementing Amendment 1 (50 FR 46069, November 6, 1985) was to become effective on January 1, 1986.

By an emergency rule (51 FR 208, January 3, 1986) and an extension of its effective date (51 FR 11927, April 8, 1986, and 51 FR 16520, May 5, 1986), NOAA delayed implementation of Amendment 1 for 180 days, as authorized by section 305(e) of the Magnuson Fishery Conservation and Management Act, in order to avert severe economic hardship in the fishery. The emergency rule continued the regulations implementing the original FMP.

On May 28, 1986, the Council voted unanimously to forestall the implementation of Amendment 1 through an emergency action, and to supersede it through a Secretarial Amendment. The Council believes that such action is necessary due to the tremendous number of small scallops recently recruited into the fishery. Their abundance and distribution will render industry compliance with the minimum weight standrd set by Amendment 1 very difficult. In addition, such a strict standard would lead to increased mortality of scallops as a result of dredging and discarding.

In order to provide the Secretary with adequate time to develop and implement the Secretarial Amendment, another emergency interim rule was promulgated to delay implementation of Amendment 1 for 180 days, from July 3 through December 29, 1986 (51 FR 24841, July 9, 1986; 51 FR 34644, September 30, 1986). This emergency rule continued the management measures originally established in the FMP and provided authority to the Regional Director to grant exemptions from the regulations for research purposes.

Amendment 1 has lost vitually all industry support as evidenced by testimony before the Council on April 22, 1986. If it were to be implemented against the will of the industry, there is the potential for widespread abandonment of any conservation measures. In response to industry concerns, the Council has begun to explore alternative management measures, such as gear modifications and closed areas, to replace the meat weight and shell height standards of Amendment 1 to the FMP. The Secretarial Amendment which this rule would implement is intended to ensure that the Council has adequate time to develop and analyze alternative management measures that are appropriate and acceptable to meet the objectives of the FMP. The research exemption provision of the Secretarial Amendment is intended to facilitate the development of alternative measures.

For the reasons stated above, (1) the revisions published in the final rule for Amendment 1 (51 FR 46071, November 6, 1985) affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22, which have never come into effect, are hereby proposed to be withdrawn; and (2) authority is proposed to grant exemptions from the requirements of this part for research purposes.

### Classification

Section (c)(2)(iii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce to publish proposed regulations within 30 days following submission of a Secretarial Amendment to the Council.

This action is categorically excluded, by NOAA Directive 02–10, from the requirement to prepare an environmental assessment.

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP and their impacts are not changed by this action. Except for the research provisions, this action is identical to the management measures implemented in 1982.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because this action is simply a continuation of the regulatory measures currently in effect. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, had determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

### List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: November 4, 1986.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR Part 650 is proposed to be amended as follows:

## PART 650—[AMENDED]

1. The authority citation for 50 CFR Part 650 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. The entire regulatory text of Amendment 1 (50 FR 46069, November 6, 1985), presently in suspension, affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22, is withdrawn.

3. The table of contents is amended by adding a new section title to read as follows:

Sec.
650.23 Research exemption.

4. A new § 650.23 is added, to read as follows:

### § 650.23 Research exemption.

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not—

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted research activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking in the benefit of such exemption.

[FR Doc. 86–25285 Filed 11–6–86; 8:45 am]
BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 86-356]**

### Availability of a Draft Environmental Impact Statement on the Rangeland Grasshopper Cooperative Management Program

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** This document gives notice of the availability for public comment of a Draft Environmental Impact Statement (EIS) on the Rangeland Grasshopper Cooperative Management Program (USDA-APHIS-DEIS-86-01). The draft EIS addresses the environmental impact of cooperative control measures for grasshoppers and Mormon crickets on Western rangeland. The draft EIS was sent to the Environmental Protection Agency (EPA) on October 31, 1986, by USDA pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

**DATE:** Comments concerning the draft EIS must be received on or before December 22, 1986.

**ADDRESS:** Submit written comments concerning the draft EIS to Charles H. Bare, Staff Officer, Field Operations, Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket Number 86-356. Comments received may be inspected at Room 663 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Copies of the draft EIS are available by mail except from locations designated by an asterisk.

Copies may be inspected at any of the following locations:

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
Room 302-E, Administration Building,
14th & Independence Avenue, NW.,
Washington, DC 20250

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
Room 663, Federal Building,
6505 Belcrest Road,
Hyattsville, MD 20782

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
7100 West 44th Avenue, Suite 102,
Wheat Ridge, CO 80033

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
83 Scripps Drive, Second Floor,
Sacramento, CA 95825

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
2100 Boca Chica Boulevard, Suite 400,
Brownsville, TX 78521

**FOR FURTHER INFORMATION CONTACT:** Charles H. Bare, Staff Officer, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

#### Background

Grasshoppers and Mormon crickets are destructive native pests on rangeland, forage, and crops mainly in the States west of the Mississippi River. Infestations are often of such an extent as to be beyond the capability of individual ranchers or farmers to control. Additionally, the migratory and widespread nature of these pests makes coordination of cooperative control efforts across State boundaries essential. Therefore, the Department has, in conjunction with cooperating State Departments of Agriculture, provided direct supervision and leadership of grasshopper and Mormon cricket control programs.

A notice was published in the **Federal Register** on June 9, 1986, (51 FR 20950-20951) announcing the intent of the Department to prepare an EIS for the rangeland grasshopper cooperative management program. The notice also announced two public meetings, to provide the initial opportunity for involvement in the scoping process as the first step in the development of the draft EIS. Public meetings were held in Denver, Colorado, on July 8, 1986, and in Boise, Idaho, on July 10, 1986. Comments received during the scoping process have been addressed in the draft EIS.

The draft EIS addresses alternative methods of grasshopper control to be used in APHIS's cooperative programs beginning in 1987. The draft EIS indicates that the preferred alternative is integrated pest management (IPM). Under the preferred alternative, malathion, cabaryl, acephate sprays, carbaryl bait, and *Nosema locustae* bait would be available; testing will continue on other chemical and biological methods and on cultural/mechanical methods. Data base development based on survey results to enhance APHIS's outbreak prediction capabilities will also be tested. As methods in research become operational, APHIS would conduct environmental analyses tiered to this EIS for consideration in its program.

The draft EIS examines potential impacts on soils, vegetables, wildlife, water quality and aquatic systems, human health and worker safety, air quality, historic and cultural resources, visual resources, and noise levels. Potential adverse impacts would be avoided through adherence to the operational procedures and mitigation measures provided.

Copies of the draft EIS are available upon request. (See **"ADDRESSES"**).

Done at Washington, DC., this 5th day of November 1986.

**Donald F. Husnik,**

*Deputy Administrator Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 86-25392 Filed 11-6-86; 8:45 am]

**BILLING CODE 3410-34-M**

## Forest Service

### National Forest System Lands; Geophysical Exploration; Rental Fee Policy; Rocky Mountain Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed fee policy for geophysical exploration activities.

**SUMMARY:** The Forest Service proposes to establish policy and procedures for

determination of rental fees for geophysical exploration across National Forest System Lands within the Rocky Mountain Region. The Forest Service has coordinated this proposal with the International Association of Geophysical Contractors.

The proposal provides for a uniform rental fee for all types of geophysical exploration on National Forest System Lands administered by the Rocky Mountain Regional Forester. The fee is based upon average rental values of Federal oil and gas leases within the Region and adjacent areas and will be adjusted annually based upon average lease rentals and bonus bids received. The proposed policy is based upon sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

**DATE:** Comments must be received by January 30, 1987.

**ADDRESS:** Send written comments to Gary E. Cargill, Regional Forester (2820), Forest Service, USDA, P.O. Box 25127, Denver, CO 80225.

The public may inspect comments received on this proposed policy in the office of the Director, Watershed, Soils, and Minerals Area Management Staff, Second Floor, Regional Office, 11177 West 8th Avenue, Lakewood, CO, between the hours of 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** William M. Robinson, (303) 236–9477.

**SUPPLEMENTARY INFORMATION:** The Rocky Mountain Region of the Forest Service administers approximately 1,500 miles of geophysical exploration activity annually. The activity is temporary and short-term in nature and results in no permanent facility, occupation, or development of the lands involved.

The Organic Administration Act of June 4, 1897, (30 Stat. 34, as amended, 16 U.S.C. 551) authorizes the Secretary of Agriculture to make rules and regulations to regulate the occupancy and use of the National Forests. Geophysical exploration is a type of special use under the regulations at 36 CFR Part 251, requiring approval of an authorized officer of the Forest Service. The Forest Service may issue permits to do preliminary mineral related and other geologic investigations and surveys on National Forest System Lands. Such permits may not authorize the type and intensity of exploration more properly conducted under leases, licenses, and permits isssued by the U.S. Department of the Interior (USDI), under mining law surface use regulations issued by the Forest Service (36 CFR Part 228 C), or by land authorizations pursuant to reserved and outstanding mineral rights.

The Office of Management and Budget (OMB) Circular No. A–25, as amended and supplemented, requires agencies to establish user charges based on sound business management principles and to the extent feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

In 1964, the Bureau of the Budget (predecessor to OMB) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal land as follows:

> . . . the Government should recover the fair market value of the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 passage of the Federal Land Policy and Management Act (Pub. L. 94–579, 90 Stat. 2743 at 2745) reinforced long-standing Congressional support of fair market value as a basis for fees. Section 102(a) of the Act states that ". . . it is the policy of the United States that. . . the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute. . . ." Title V provides specific direction that fees for right-of-way uses and grants should reflect fair market values.

In accordance with these Acts and OMB directives, the Forest Service's special use regulations at 36 CFR 251.57 provide that special-use authorization shall require ". . . the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles."

The Forest Service Manual (FSM), section 2821.21, contained a recommended range of rates for various types of geophysical exploration and the Regional Foresters were authorized to establish other rates based on local activity. There was no reference to fair market value, but it stated that fees should be generally comparable to those charged by private landowners and other land management agencies in the area. Because the range of rates in FSM 2821.21 was not based upon a determination of fair market value it was superseded by the Forest Service Chief in Interim Directive No. 18, which directed all Regional Foresters to base fees for geologic exploration permits on fair market value as determined by appraisal or sound business management principles. Current fees are established on the basis of limited information regarding charges for crossing private lands in the vicinity of the National Forest System Lands. There has been debate and disagreement over the appropriateness of this method for establishing fees. The International Association of Geophysical Contractors (IAGC), an industry trade association, requested that the Forest Service review the permit fee setting process and work jointly with IAGC to establish a procedure for determining fair market values for geophysical exploration.

Review of the currently used basis for establishing geophysical permit fees showed that the market was unsatisfactory and did not lead to determination of fair market value. Problems with the private land-owner market data survey approach include:

1. Data from private landowners is difficult to obtain and many are very reluctant to divulge specific amounts of income received from geophysical operations on their lands.

2. Because there is no central location or registry from which fee data is available the FS has to individually contact each landowner and ask for information. This is a laborious and expensive process resulting in great expenditures of time with a relatively small return.

3. Many transactions with private landowners are verbal and there are no records which can be used to verify reported data. There are no State or local requirements for private landowners to file the fee data.

4. Private landowners commonly include entry or crossing fees, restoration, damages, and potential income losses in their charges. These are almost never separated in the reported data, making the actual land use portion of the charge very difficult to determine.

5. The other major Federal land management agency in the Region is the Bureau of Land Management. This agency does not impose a charge for geophysical exploration on lands it administers.

6. Most importantly, most private landowners that charge for geophysical activities do not own the mineral rights. Thus, in their view, the only way they can benefit from potential development of oil or gas resources is to charge for the use of the land. These charges often become exorbitant and cannot be realistically compared to the fees that an owner who has both surface and subsurface rights would require. Owners such as the Federal government who

have both surface and subsurface rights have a vested interest in encouraging exploration of all types because discovery will provide direct benefits in the form of lease bonuses, royalties, and other shares in the mineral resource.

To resolve the issues the IAGC and the Forest Service agreed to work together to develop a procedure for establishing fair and reasonable fees for geophysical exploration of National Forest System Lands in the Rocky Mountain Region. The two organizations established a working group for this purpose. The group agreed that the procedure should be: (1) Simple, with a minimum of calculations needed for application; (2) based on easily obtained and verifiable data; (3) objective in nature and capable of being replicated with predictable results in a variety of locales; (4) easy to update and correct for market changes; (5) a set rate for a measure of geographical work; and, (6) fair and equitable to both the industry and the public interest. Sound business principle was defined as those common activities of the private sector which reflect competition, supply and demand, efficiency, and minimization of costs. The group determined that utilization of sound business principles would not require the use of formal appraisals for geophysical exploration permits. These permits are essentially an annual and temporary special use and appraisals were believed to be too expensive, time consuming and complex for this type of use.

The use of market data surveys to determine average charges assessed by private landowners and other Federal land management agencies was the first approach considered. The problems encountered with this approach have already been discussed. There are difficulties in obtaining reliable data from private landowners and disparities between private lands in which the mineral estate is not owned by the surface owner and Federal lands where both the surface and subsurface are owned. The group determined that other bases of fair market value needed to be established.

The industry members of the group suggested that the permit fee for geophysical work could be related to oil and gas lease bonus values. There is a well established and accepted direct relationship between fees charge for geophysical exploration and lease values which can be quantified and correlated. The average lease value, which includes bonuses, annual rental and lease fees, is an independent variable which can be related to the dependent variable, geophysical exploration charges. The formula which was developed is based upon private land lease values and private geophysical exploration fees. These data were provided by industry for typical geologic basins in the Rocky Mountain Region. The data are grouped and exhibit average lease bonuses, average geophysical permit fees and the caclulated ratio of permit fees to lease values for eleven combinations of industry and basin information. Each group of information was provided by one of the industry members of the group. In some cases several industry firms reported lease and permit values for the same geologic basin. To avoid disclosure of proprietary or confidential information the data is presented in the form of weighted averages for each source and basin; the individual firm names are deleted. The averages represented transactions on hundreds of miles of geophysical exploration and thousands of acres of private land leases. When the averages of the eleven groups of data are themselves averaged the result is a permit fee of $716 per mile and a lease value of $30 per acre. The modal ratio of permit to lease value for the eleven sample areas is 20:1.

Forest Service members provided data on Federal leases from the Powder River, San Luis, and Paradox Basins. Federal leases from 1981 to 1986 were examined and first year lease values were determined for each lease that issued during the period. There were 4,558 leases covering 3,898,170 acres. The total lease values, including the first year rental, filing fees, and competitive lease bonuses, was $38,321,658, or $9.83 per acre. When the 20:1 ratio is applied this value is multiplied by 20, yielding a geophysical permit rate of $196.60 per mile. There were alternative methods, such as applying the ratio only to competitive leases, which increased the permit fee considerably, but reduced the area on which it could be applied to a fraction of the land in Region 2.

The use of the lease value as the primary variable is believed to satisfy the requirement for a fair market base permit fee. The lease data includes competitive and non-competitive areas, the bonus amounts on the competitive areas is reflective of the market value of potential oil and gas discoveries. As more exploration occurs and additional discoveries are made the area of competitive leasing expands. These leases are issued in open competition to the highest bidder. The value of information of knowledge is directly related to the potential for a discovery and production; thus where discoveries have already been made the knowledge from geophysical exploration has much greater value than will similar exploration activities in a non-competitive area that has no discoveries. The value of information is directly related to the geophysical fee that will be charged in this system.

The matter of making adjustments or reductions for the unique characteristics of operating on NFS lands was considered. It was the consensus of the group that, no adjustments should be made. Also, the Team decided that the rate should be applied Region-wide, with no consideration for competitive and non-competitive lease areas. It was recognized that in some areas the resulting geophysical fee would be lower than it currently is, but in many other areas the fee is expected to be greater. The rate appears to be a fair and reasonable compensation for the use of the public land. Some private landowners rates are higher because they do not usually own the mineral rights, and they include compensation for factors such as damages, reclamation, restoration, and opportunity costs of uses foregone, which the permittee is directly responsible for when operating on NFS land. The recommended method has built-in adjustments for excluding these costs.

Using the permit/lease value ratio approach has substantial administrative advantages, compared to the traditional market data survey process. The cost of collecting data from private landowners is very time consuming and expensive. Several National Forests have attempted to solicit information regarding fees charged by neighboring landowners and have reported that it is a slow and tedious process, requiring several weeks of intensive effort to obtain only a few bits of information. The information is of doubtful validity and is very inconsistent from one landowner to another. Savings in administrative costs of this method over the market transaction method are estimated to be 670 person hours and $16,000 annually.

**Summary of Proposed Geophysical Exploration Fee Procedure**

Using lease bonus values and geophysical permit fees from industry transactions on private land a value ratio was developed. To determine fees for geophysical exploration on National Forest System lands the average value of Federal leases in three large geologic basins was determined from historical records. To arrive at the recommended Federal geophysical exploration fee the average Federal lease value is

multiplied by the factor developed from the private industry values. For this proposal the calculated rate of $196.60 per mile was rounded to $200 per mile. The following example illustrates how the proposed permit fee is calculated.

Formula:
Average permit fee divided by average lease value equals lease value multiplier
Factors:
Private permit fees = $500/mile
Private lease value = $25/acre
Federal lease value = $10/acre
Calculation:
500 divided by 25 × 10 = $200/mile

The proposed fee that results from the application of the above formula will be adopted for geophysical exploration permits where required for the National Forest System lands within the Rocky Mountain Region of the Forest Service. A fee of $200 per mile will be imposed to all types of geophysical exploration in which temporary disturbance and occupancy of the land occurs. Permittees will be responsible for necessary land reclamation and restoration and for complying with all requirements of applicable Federal and State laws. The permit fee imposed is a charge for rental of the land and does not include costs of reclamation, restoration, or compliance with applicable laws, such as identification and protection of cultural resources. It is proposed that the fee be reevaluated annually and that adjustments which reflect the current value of Federal oil and gas lease be made. New geophysical exploration permit fees will be effective as of the date the final notice is published.

**Executive Order 12291 and Regulatory Flexibility Act:**

This proposed rule has been reviewed in accordance with Executive Order 12291. It is does not meet the criteria for major regulations established in the Order. Based on information compiled by the Forest Service, it has been determined that this rule will have no 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 not cause a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has been determined that this action will not have a substantial economic impact on a substantial number of small entities. In the analysis of the administrative costs the Forest Service estimates that approximately 670 person hours and $16,000 will be saved annually as a result of the rule.

**Paperwork Reduction Act**

The proposed rule contains no information collection of recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). The rule reduces the burden on applicants for permits and imposes no additional requirement on applicants.

Dated: October 23, 1986.

**S. H. Hanks,**

*Deputy Regional Forester.*

[FR Doc. 86-25281 Filed 11-6-86 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES-030-07-4133-09; ES-00157]**

### Environmental Impact Statement; Mark Twain National Forest, Shannon and Oregon Counties, Missouri

**AGENCY:** Forest Service, Department of Agriculture and Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Department of Agriculture, Forest Service and Department of the Interior, Bureau of Land Management will prepare an environmental impact statement for a proposal to lease Federal minerals beneath the Mark Twain National Forest. The analysis will be the basis for the Forest Service's lease consent and BLM's lease issuance decisions.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leon Kridelbaugh, Staff Officer for Lands, Minerals, Soil and Watershed, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401, telephone (314) 364-4621. Mr. Wink Hastings, Assistant District Manager for Energy and Minerals, Milwaukee District Office (BLM), P.O. Box 631, Milwaukee, Wisconsin 53201-0631, telephone (414) 291-4421.

**SUPPLEMENTARY INFORMATION:** USX has applied for two preference right leases for 3,743 acres of Federal minerals in the Mark Twain National Forest. The area is located in Shannon and Oregon Counties on the Winona Ranger District. Based on geologic information and industry interest, the study area will include the two lease applications and surrounding areas of possible future interest for mineral leasing.

The decisions to be made are whether or not to consent to and issue leases and, if so, under what terms and conditions. If a lease is issued, additional site specific environmental analysis, including public participation, will occur before any mineral activities will be permitted.

A range of alternatives will be considered including the denial of lease consent and issuance within the study area. Other alternatives will consider occupancy restrictions necessary to protect other resource values and uses. These restrictions will range from no occupancy to limited occupancy for the entire area. Alternatives will specify the kind of resource value and identify the area requiring occupancy restrictions.

Floyd J. Marita (FS) and G. Curtis Jones Jr. (BLM) are the responsible officials.

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 those 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 Forest Supervisor and Bureau of Land Management, Milwaukee District Manager will hold public meetings in Jefferson City and Winona, Missouri, December, 1986.

The U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, Missouri Department of Natural Resources and Missouri Department of Conservation will be invited to participate as Cooperating Agencies.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by April, 1987. The final environmental impact statement is scheduled to be completed by August, 1987.

Written comments and suggestions concerning the analysis should be sent to B. Eric Morse, Forest Supervisor, Mark Twain National Forest, Rolla, Missouri, 65401 by December 31, 1986.

Dated: October 31, 1986.

**Duane G. Breon,**

*Acting Regional Forester, USDA Forest Service.*

Dated: October 31, 1986.

**G. Curtis Jones, Jr.,**

*Director, Eastern States Office, Bureau of Land Management.*

[FR Doc. 86-25282 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-015]

### Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioners and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers eight manufacturers and/or exporters of this merchandise to the United States, and generally the period April 1, 1981 through March 31, 1983. In compliance with three orders entered by the Court of International Trade, the review does not cover Matsushita Industrial Co., Ltd. or Victor Company of Japan and only covers Toshiba Corporation for the period April 1981 through March 1982. Although the Department completed a preliminary determination with respect to all firms covered in this notice on October 21, 1986, one of the orders issued by the Court of International Trade prevents the Department from publishing the preliminary results for Sharp. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

When we received an inadequate response to our questionnaire, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 10, 1985, the Department of Commerce ("the Department") published in the **Fedeal Register** (50 FR 24278) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioners and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on November 27, 1985 (50 FR 48825).

#### Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, and include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers eight manufacturers and/or exporters of Japanese television receivers, monochrome and color, to the United States, and generally the period April 1, 1981 through March 31, 1983. In compliance with three orders issued by the Court of International Trade, the review does not cover Matsushita Electric Industrial Co., Ltd. and Victor Company of Japan. Toshiba Corporation is covered only for the period April 1, 1981 through March 31, 1982. Sharp is covered by this review through this particulary determination, and the Department will publish the preliminary results for Sharp as soon as the Court of International Trade permits it to do so.

We published tentative revocations for Sanyo and Sharp on August 18, 1983 (48 FR 37508), for Toshiba and Hitachi on September 27, 1983 (48 FR 44101), and for Otake on September 12, 1984 (49 FR 35821). These tentative revocations will cease to have any effect with respect to any firm for which a dumping margin as finally determined to exist for this review period.

#### United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, marine insurance, U.S. and Japanese inland freight, U.S. and Japanese brokerage fees, Japanese customs clearance fees, wharfage, export license fees, forwarding and handling charges, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiaries' selling expenses. No other adjustments were claimed or allowed.

#### Foreign Market Value

In calculating foreign market value the Department used either home market price or constructed value, as defined in section 773 of the Tariff Act. Home market price was based on the packed delivered price to related and unrelated purchasers in the home market. Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and packing. The amount added for general expenses was the statutory minimum of ten percent of the sum of materials and fabrication costs because actual general expenses for the period were less than that amount. The amount added for profit was the statutory minimum of eight percent of the sum of material and fabrication costs and general expenses because actual profit for the period was less than that amount. We accounted for taxes imposed in Japan, but rebated or not collected by reason of the exportation of the merchandise to the United States, by subtraction from home market price as best information available. Where applicable, we made adjustments for inland freight, rebates, credit expenses, discounts, warranties, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses for ESP calculations. We disallowed a claim level-of-trade

adjustment because the respondent did not demonstrate that distinct trade levels exist in the home and U.S. markets. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/Exporter | Time period | Margin (percent) |
|---|---|---|
| Fujitsu General Co | 4/81-3/82 | 2.54 |
| | 4/82-3/83 | 0.52 |
| Funai Electric Co. | 4/81-3/82 | 7.53 |
| | 4/82-3/83 | 32.69 |
| Hitachi Co. | 4/81-3/83 | [1] 0* |
| Mitsubishi Electric Co | 4/81-3/82 | 0.01 |
| | 4/82-3/83 | 0.36 |
| Nippon Electric Corp | 4/81-3/82 | 0.82 |
| | 4/82-3/83 | 18.48 |
| Otake Trading Co | 4/82-3/83 | 0 |
| Sanyo Electric Co | 4/81-3/82 | 0 |
| | 4/82-3/83 | 4.57 |
| Sharp Corp. | 4/80-3/81 | [2] |
| | 4/81-3/82 | [2] |
| | 4/82-3/83 | [2] |
| Toshiba Corp. | 4/81-3/82 | [1] 0* |

[1] No commercial shipments during the period.
[2] Not published.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary form the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the margin for Mitsubishi is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any shipments from Matsushita, Victor, Sharp, or Toshiba, the cash deposit will continue to be at the rate published in the final results of the last administrative review of each of these firms (50 FR 24278, June 10, 1985).

For any future entries of this merchandise from new exporter, not covered in this or prior reviews, whose first shipments occurred after March 31, 1983 and who is unrealated to any reviewed firm or any previously reviewed firm, a cash deposit of 32.69 percent shall be required. These deposit requirements and waiver are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 3, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 86-25251 Filed 11-6-86; 8:45 am]

BILLING CODE 3502-DS-M

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**[A-588-020]**

## Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumpting duty administrative review.

**SUMMARY:** In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise to the United States, and the period November 15, 1984 through October 31, 1985. The review indicates the existence of no dumping margins for one manufacturer/exporter combination and *de minimis* dumping margins for the second manufacturer/exporter combination during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Anne D'Alauro or Maureen Flannery, Office of Compliance International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-1130/3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47053) an antidumping duty order on titanium sponge from Japan. Two respondents, Toho Titanium Co., Ltd. and Osaka Titanium Co., Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on December 13, 1985 (50 FR 50933).

**Scope of the Review**

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates and sheets. Titanium sponge is currently classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers and their exporters of Japanese titanium sponge to the United States, and the period November 15, 1984 through October 31, 1985.

**United States Price**

In calculating United States price the Department used purchase price or exporter's sale price ("ESP"), as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price was based on the packed f.o.b., c.i.f., c.i.f. duty paid, or delivered price to the first unrelated purchaser in the United States.

Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for ocean freight, marine insurance, U.S. and foreign brokerage/handing fees, U.S. and foreign inland freight, U.S. and foreign insurance, U.S. customs duties, commissions to unrelated parties, and the parent's and U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act,

since there were sufficient home market sales of such or similar merchandise at or above the cost of production to provide a basis for comparison.

Sales to related purchasers were included if these sales were determined to be at prices equal to or greater than those of sales to unrelated purchasers. Home market price was based on the delivered packed price with adjustments, where applicable, for inland freight, insurance, rebates, warehousing, differences in the cost of packing and credit, and indirect selling expenses to offset U.S. commissions. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 15, 1984 through October 31, 1985:

| Manufacturer/exporter | Margin (pct) |
|---|---|
| Toho Titanium/Mitsui | 0.06 |
| Osaka Titanium/Sumitomo | 0 |

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, because no dumping margin exists for Osaka Titanium/Sumitomo and the margin for Toho Titanium/Mitsui is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms, as provided for by § 353.48(b) of the Commerce Regulations. For any shipments from the one known manufacturer and/or exporter not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for this firm (49 FR 47053, November 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this review, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication on the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(2) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: November 3, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 86-25252 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management: Federal Consistency Appeal by Exxon From an Objection by the California Coastal Commission

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Public comments solicited; correction.

**SUMMARY:** This document corrects a error contained in a request for public comments in the Exxon Santa Ynez Appeal filed under the Coastal Zone Management Act that appeared in the **Federal Register** of Friday, October 31, 1986 (51 FR 39778). This action is necessary to correct a typographical error in the description of one of the development options contained in Exxon's development and production plan.

**FOR ADDITIONAL INFORMATION CONTACT:** L. Pittman at (202) 673-5200.

The following correction is made in FR Doc. 86-24612 appearing on page 39778, column one, in the issue of October 31, 1986:

1. "80 million barrels of oil/day" is corrected to read "80 thousand barrels of oil/day".

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

Dated: October 4, 1986.

**Daniel W. McGovern,**

*General Counsel, National Oceanic and Atmospheric Administration.*

[FR Doc. 86-25279 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-08-M

### Marine Mammals; Application for Permit: National Marine Fisheries Service, Northwest and Alaska Fisheries Center (P77#22)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center.

b. Address: National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Marine Mammals: An unspecified number of all cetaceans may be incidentally harassed during the course of observational studies.

4. Location of Activity: Worldwide, principally in the waters of the North Pacific and the Bering, Chukchi and Beaufort Seas.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee on Scientific Advisers.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available

for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01950;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: November 3, 1986.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 86–25284 Filed 11–6–86; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Increasing the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 31, 1986.

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 October 31, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides consultation levels for certain categories, such as Category 369pt. (all T.S.U.S.A. numbers in the Category except 366.1720, 366.1740, 366.1955 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840), which may be adjusted upon agreement between the two governments. The Governments of the United States and Pakistan have agreed to further amend their bilateral agreement to increase this designated consultation level from 6,673,739 pounds to 6,934,609 pounds for the current agreement year which began on January 1, 1986 and extends through December 31, 1986 for goods exported during that period. The letter to the Commissioner of Customs which follows this notice implements this agreed increase.

A discription 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 (1986).

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

October 31, 1986.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 26, 1985, which directed you to prohibit entry of certain cotton textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 31, 1986, the directive of December 26, 1985 is hereby amended to increase the restraint limit previously established for cotton textile products in Category 369pt.[1] to 6,934 pounds.[2]

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. 553(a)(l).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86–25249 Filed 11–6–86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840).

[2] The level has not been adjusted to reflect any imports exported after December 31, 1985.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Image Recognition Systems; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Image Recognition Systems will meet in closed session on December 1, 1986 and January 28–29, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the current status and probable near- to medium-term development of computer-based image recognition systems with emphasis on the potential for further development in "smart weapons," especially those for attacking ground vehicles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

November 4, 1986.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 86–25268 Filed 11–6–86; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Follow on Forces Attack; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Follow on Forces Attack will meet in closed session on December 1–2, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

November 4, 1986.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 86–25269 Filed 11–6–86; 8:45 am]

BILLING CODE 3810–01–M

## Per Diem; Rate, Changes

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee, DOD.

**ACTION:** Publication of changes in per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 136. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 136 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** November 1, 1986.

**SUPPLEMENTARY INFORMATION:** This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

### Civilian Personnel Per Diem Bulletin Number 136 to the Heads of the Executive Departments and Establishments

**Subject:** *Maximum per diem Rates and actual Expense Reimbursement Ceilings For Official Travel in Alaska, Hawaii, The Commonwealth of Puerto Rico and Possessions of the United States By Federal Government Civilian Employees*

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, The Commonwealth of Puerto Rico and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 135 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

| Locality | Maximum Rate |
|---|---|
| Alaska: | |
| Adak [1] | $19 |
| Anaktuvuk Pass | 140 |
| Anchorage | 122 |
| Atqasuk | 215 |
| Barrow | 144 |
| Bethel | 124 |
| Cold Bay | 120 |
| Coldfoot | 122 |
| College | 105 |
| Cordova | 113 |
| Deadhorse | 113 |
| Dillingham | 114 |
| Dutch Harbor-Unalaska | 127 |
| Eielson AFB | 105 |
| Elmendorf | 122 |
| Fairbanks | 105 |
| Ft. Richardson | 122 |
| Ft. Wainwright | 105 |
| Juneau | 109 |
| Katmai National Park | 148 |
| Kenai | 119 |
| Ketchikan | 113 |
| King Salmon [3] | 134 |
| Kodiak | 110 |
| Kotzebue [3] | 126 |
| Murphy Dome [3] | 105 |
| Noatak | 126 |
| Nome | 136 |
| Noorvik | 126 |
| Petersburg | 113 |
| Point Hope | 160 |
| Point Lay | 179 |
| Prudhoe Bay | 113 |
| Sand Point | 103 |
| Shemya AFB [3] | 30 |
| Shungnak | 126 |
| Sitka-Mt. Edgecombe | 113 |
| Skagway | 113 |
| Spruce Cape | 110 |
| St. Mary's | 100 |
| Tanana | 136 |
| Valdez | 136 |
| Wainwright | 165 |
| Wrangell | 113 |
| Yakutat | 100 |
| All other localities [3] | 91 |
| American Samoa | 81 |
| Guam M.I. | 93 |
| Hawaii: | |
| Hawaii, Island of: | |
| Hilo | 59 |
| Other | 84 |
| Oahu | 98 |
| All other islands | 84 |
| Johnston Atoll [2] | 23 |
| Midway Islands [1] | 13 |
| *Puerto Rico: | |
| Bayamon: | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| Carolina: | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| Fajardo (including Luquillo): | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| Ft. Buchanan (including GSA Service Center, Guaynabo): | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| Roosevelt Roads: | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| Sabana Seca: | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| San Juan (including San Juan Coast Guard Units): | |
| 12–16—5–15 | 134 |
| 5–16—12–15 | 107 |
| All other localities | 107 |
| *Virgin Islands of U.S.: | |
| 12–1—4–30 | 156 |
| 5–1—11–30 | 126 |
| Wake Island [2] | 20 |
| All other localities | 20 |

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

November 4, 1986.

[FR Doc. 86–25273 Filed 11–6–86; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

## Privacy Act of 1974; Amendments to Systems of Records Notice

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of an amendment to a system of records.

**SUMMARY:** The Army proposes to amend one notice for a system or records subject to the Privacy Act of 1974. The specific changes to the notice being amended are set forth below followed by the system notice, as amended, published in its entirety.

**DATES:** This proposed action will be effective without further notice on December 8, 1986, unless comments are received which result in a contrary determination.

**ADDRESS:** Send comments to the system manager identified in the system notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, HQDA DAIM–FAR–RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon: 221–6044.

**SUPPLEMENTARY INFORMATION:** The Army's systems of records notices inventory to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

November 4, 1986.

Amendment

A01304.22aDASG

*System Name:* Medical Research Volunteer Registry (51 FR 23576) June 30, 1986

*Changes:* Change the record system identification from A01304.22aDASG to A1304.22aDASG.

*System Locations:* Lines 18, 19, and 20 change "U.S. Army Institute of Surgical Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010" to "U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010."

Lines 24, 25, and 26 change "U.S. Army Medical Research Institute of Infectious Defense, Fort Detrick, Frederick, MD 21701–5011" to U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011."

*Retention and Disposal:* Change "Records are destroyed when no longer needed for current operations" to "Records are destroyed after 65 years."

As amended,

System A01304.22aDAS6 reads as follows:

**A1304.22aDASG**

**SYSTEM NAME:**

Medical Research Volunteer Registry.

**SYSTEM LOCATION:**

Primary.

U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, MD 21701–15012

Alternates.

Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800

Walter Reed Army Institute of Research, Washington, DC 20307–5100

U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000

U.S. Army Institute of Dental Research, Washington, DC 20307–5300

U.S. Army Institute of Surgical Research, Fort Sam Houston, TX 78234–6200

U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Providing Ground, MD 21010–5425

U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011

U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records of military members civilian employees, and non DoD civilian volunteers participating in current and future research sponsored by the U.S. Army Medical Research and Development Command.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Account Number, and other such information as necessary to locate the individual.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 10 U.S.C. 1071–1090; 44 U.S.C. 3101; E.O. 9397

**PURPOSE(S)**

To assure that the U.S. Army Medical Research and Development Command (USAMRDC) can contact individuals who participated in research conducted/sponsored by the Command in order to provide them with newly acquired information, which may have an impact on their health. To answer inquiries concerning an individual's participation in research sponsored/conducted by USAMRDC. To facilitate retrospective medical and/or scientific evaluations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

To the Veterans Administration to assist in making determinations relative to claims for service-connected disabilities; and other such benefits. See also the "blanket routine uses" set forth at the beginning of the Army's listing.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

a. Laboatory-conducted research. Computer tapes are filed in the Laboratory.

b. Contractor-conducted research. Upon completion of research, files are turned over to the U.S. Army Medical and Development Command, Computer tapes are filed at the U.S. Army Medical Research and Development Command.

**RETRIEVABILITY:**

By SSN and name.

**SAFEGUARDS:**

Computerized records are accessed by the custodian of the records system, and by persons responsible for servicing the records system in the performance of their duties. Computer equipment and files are located in separate, secured area.

**RETENTION AND DISPOSAL:**

Records are destroyed after 65 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RGZ (SGRD–HR), 5111 Leesburg Pike, Falls Church, VA 22041–3258.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether this system of records contains information about them should submit a written request to the system manager, furnishing full name, SSN, military status or other information verifiable from the record itself.

**RECORDS ACCESS PROCEDURES:**

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification Procedure," and furnish information required therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents are contained in AR 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Information is obtained from medical research volunteers, and other medical research personnel assigned to the U.S. Army Medical Research and Development Command.

**SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 86-25274 Filed 11-6-86; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF THE DEFENSE

### Army Science Board; Closed Meeting; Effectiveness Review Panel on U.S. Army Human Engineering Laboratory

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 12-13 November 1986

Times of Meeting: 0830-1600 hours

Places: U.S. Army Tank Automotive Command Warren, Michigan

**Agenda**

The Army Science Board's Effectiveness Review Panel on the US Army Human Engineering Laboratory (HEL) will visit TACOM for the purpose of interacting with the HEL user community. Representatives from TACOM, several project management offices and TRADOC schools will interact with the panel. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 86-25297 Filed 11-6-86; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting; Ad Hoc Subgroup for Ballistic Missile Defense Follow-On

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 12-13 November 1986

Times of Meeting: 0800-1700 hours

Places: Pentagon

**Agenda**

The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on Theater Missile Defense and Terminal Imaging Radar. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 86-25299 Filed 11-6-86; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Open Meeting; ETL Laboratory Effectiveness Review, Ad Hoc Subgroup

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 13-14 November 1986

Time: 0900-1700 daily

Place: Society of American Military Engineers Old Towne, Alexandria

**Agenda**

The Army Science Board's Ad Hoc Subgroup, ETL Laboratory Effectiveness Review, will meet to finalize their report on this effort. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 86-25298 Filed 11-6-86; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Open Meeting; Ad Hoc Subgroup on Chief of Staff's Task Force on Soldiers and Families

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 17-20 November 1986

Time: 0900-1700 daily

Place: Eisenhower Metro Holiday Inn, Alexandria, VA

**Agenda**

The Army Science Board's Ad Hoc Subgroup on the Chief of Staff's Task Force on Soldiers and Families will be integrated into the Army Family Action Plan (AFAP) General Officer Steering Group and the AFAP Planning Conference which will address the concerns of soldiers and families in the Army. This forum will also provide the current status of issues in the Army Family Action Plan III. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 86-25300 Filed 11-6-86; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### National Advisory and Coordinating Council on Bilingual Education; Meeting

**AGENCY:** National Advisory and Coordinating Council on Bilingual Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attand.

**DATES:** November 24, 1986 and November 25, 1986 9:15 a.m. until 5:00 p.m. The meeting will be conducted at the Holiday Inn, 550 "C" Street SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245-2600.

**SUPPLEMENTARY INFORMATION:** The National Advisory and Coordinating Council on Bilingual Education is

established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

**November 24, 1986**

I. Roll Call
5
II. Minutes of Last Meeting
III. Welcoming Remarks and Introduction of New Members, Carol Pendas Whitten, Director
IV. Update on OBEMLA Activities, Anna Maria Farias, Deputy Director
V. Site Visits—Interim Report—Dr. Porter
VI. Subcommittee Report—Dr. Anderson
VII. Intergovernmental Cooperation Report—Dr. Leo Lopez
VIII. Subcommittee Assignments

**November 25, 1986**

IX. Recovene
X. Reports from Subcommittee
XI. Discussion of Annual Report—1987
Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.-5:30 p.m.

Dated: November 3, 1986.

**Carol Pendas Whitten,**

*Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 86-25225 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-01-M

## Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before December 8, 1986.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 426-7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 4, 1986.

**Carlos U. Rice,**

*Acting Director, Information Technology Services.*

### Office of Planning Budget and Evaluation

Type of Review: New
Title: Analysis of Rehabilitation Programs in the Proprietary Sector
Agency Form Number: P75-8P
Frequency: Once only
Affected Public: State or local governments; Business or for-profit; and small businesses or organizations
Reporting Burden: Responses: 1241; Burden Hours: 1001
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This study will collect data from private rehabilitation providers, insurance companies, corporations, state rehabilitation agencies and state workers' compensation agencies, to assist the Department in modifying the way in which public rehabilitation programs do business.

### Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants Under the Training Program for Special Programs Staff and Leadership Personnel
Agency Form Number: ED 883
Frequency: Once only
Affected Public: Non-profit institutions
Reporting Burden: Responses: 60; Burden Hours: 2040
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Department of Education collects information from institutions who apply for training grants under the Training Program for Special Programs Staff and Leadership Personnel. This information is utilized by the Department to make grant awards.

### Office of Elementary and Secondary Education

Type of Review: Revision
Title: Application for Civil Rights Technical Assistance and Training Desegregation Assistance Center Program
Agency Form Number: ED 296-2
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 30; Burden Hours: 1500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used by non-profit institutions to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964. The Department needs this information to evaluate these proposed projects and set the amount of each award in accordance with program regulations.

Type of Review: Revision
Title: Application for Civil Rights Technical Assistance and Training State Educational Agency Program

Agency Form Number: ED 296
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 50; Burden Hours: 1050
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used by State educational agencies to apply for assistance under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

[FR Doc. 86-25244 Filed 11-6-86; 8:45 am]
BILLING CODE 4000-1-M

## Notice Inviting Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B—Educational Personnel Development for Fiscal Year 1987 (CFDA No. 84.061F)

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Correction: Notice inviting applications for new awards under the Indian Education Act of 1972, as amended, Part B—Educational Personnel Development for Fiscal Year 1987 (CFDA No. 84.061F).

**SUMMARY:** In the application notice published in the **Federal Register** on September 17, 1986, on page 33005, in the third column under "Project Period:" 12–36 months should be changed to read 12–24 months.

In addition, the amounts for stipends under this program were inadvertently omitted from the notice. The estimated maximum stipend for participants in projects in fiscal year 1987 will be $600 per month at the graduate level, and $375 per month at the undergraduate level. An estimated maximum allowance of $90 per month will be allowed for each dependent.

**FOR FURTHER INFORMATION CONTACT:** Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 20 U.S.C. 3385(d), 3385a.

Dated: November 3, 1986.

**Lawrence F. Davenport,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 86-25242 Filed 11-6-86; 8:45 am]
BILLING CODE 4000-01-M

## Application Notices Inviting Applications for New Awards for Fiscal Year 1987 Under the Indian Education Act of 1972, as amended; Part C—Planning Projects for Indian Adults (CFDA No. 84.062C); Part C—Pilot Projects for Indian Adults (CFDA 84.062D); and Part C—Demonstration Projects for Indian Adults (CFDA 84.062E); Withdrawal of Applications

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Withdrawal Notice.

**SUMMARY:** Application notices for fiscal year 1987 new awards were published on September 17, 1986 at 51 FR 33006–33007.

These application notices are withdrawn because no funds are available for these programs.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202, Telephone: (202) 732–1918.

Program authority: 20 U.S.C. 1211a(a).

Dated: November 3, 1986.

**Lawrence F. Davenport,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 86-25243 Filed 11-6-86; 8:45 am]
BILLING CODE 4000-01-M

## Office of Postsecondary Education

## Guaranteed Student Loan Program and Plus Program; Special Allowance to Holders of Eligible Loans, Quarter Ending September 30, 1986

**AGENCY:** Department of Education.

**ACTION:** Notice of special allowance for quarter ending September 30, 1986.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Pursuant to the requirements of section 252 of Pub. L. 99–177, Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986, directing implementation of the reductions contained in that law. Congress ratified and affirmed the order as law. Public Law 99–366; July 31, 1986. Section 256 of Pub. L. 99–177 provides that if a sequestration order is issued, the special allowance formula for loans after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Actg by .4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986.

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending September 30, 1986, the special allowance will be paid at the following rates:

| | Applicable interest rate percent | Annual special allowance rate percent | Special allowance rate percent for quarter ending June 30, 1986 |
|---|---|---|---|
| I. GSLP loans or PLUS loans made prior to October 1, 1981 | 7 | 2.25 | 0.5625 |
| | 9 | 0.25 | 0.0625 |
| II. GSLP loans or PLUS loans made on or after October 1, 1981: | | | |
| A. Loans not subject to reduction order | 7 | 2.15 | 0.5375 |
| | 8 | 1.15 | 0.2875 |
| | 9 | 0.15 | 0.0375 |
| | 12 | 0.00 | 0.00 |
| | 14 | 0.00 | 0.00 |
| B. Loans subject to reduction order | 7 | 1.75 | 0.4375 |
| | 8 | 0.75 | 0.1875 |
| | 9 | 0.00 | 0.00 |
| | 12 | 0.00 | 0.00 |

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury Bill auctioned during the quarter for which this notice applies (5.65 percent for the quarter ending September 30, 1986);

(b) *Step 2.*

Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in case of loans subject to the reduction order pursuant to Pub. L. 99–177; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

**FOR FURTHER INFORMATION CONTACT:** Ralph B. Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84–032, Guaranteed Student Loan Program and PLUS Program)

Dated: November 2, 1986.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 86–25245 Filed 11–6–86; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

[86–924]

### Intent To Revise Transmission Rates To Become Effective October 1, 1987; Request for Recommendations and Suggestions

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of intent and request for recommendations. *BPA File No.:* TR–87. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR–87.

**SUMMARY:** Bonneville Power Administration (BPA) is in the initial stages of developing adjusted rates for the transmission of electric power of other entities over Federal facilities, which will become effective October 1, 1987. At this time BPA announces its intent to revise these rates and is seeking suggestions, advice, and recommendations from interested persons which can be used to assist in the development of BPA's proposals. BPA expects to have its initial proposed rates formulated in December 1986 and to issue an environmental assessment on the posposed adjustment in January 1987. BPA will then publish a notice of the proposed rates in the **Federal Register.**

The December notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

**DATES:** Suggestions and recommendations concerning the development of proposed transmission rates will be accepted through 5 p.m., November 24, 1986. This proceeding is a general rate proceeding under procedures governing BPA rate hearings. March 5, 1986, 51 FR 7611. Pursuant to the ex parte limitations contained in these Procedures, BPA will not accept oral recommendations on substantive issues, except in meetings for which notice has been given.

*Responsible Official:* Ms. Shirley Melton, Director, Division of Rates, is the official responsible for the development of BPA rates.

**ADDRESSES:** Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHFR INFORMATION CONTACT:** Ms. Kathleen S. Johnson, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

**SUPPLEMENTARY INFORMATION:** BPA, an agency of the U.S. Department of Energy, owns and operates the Federal Columbia River Transmission System (FCRTS), which includes approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. The FCRTS integrates and transmits electric power from Federal and non-Federal generating units. BPA also provides interregional transmission services to its customers outside the Pacific Northwest. BPA is undertaking studies to support changes to the current transmission rates and rate designs.

The current rates apply to four types of transmission service which generally involve: (1) Firm transmission of electric power and energy from points of generation to loads or between other points of supply and delivery (current contracts provide this service for periods of up to 20 years); (2) firm transmission of electric power and energy on a postage-stamp rate basis; (3) nonfirm transmission of electric energy when there is available capacity; and (4) firm transmission of electric power and energy over specified transmission facilities. BPA also will examine the adequacy of current charges for other transmission related services, including services provided over BPA's intertie.

In this rate proceeding, BPA is considering alternative methods for developing its Southern Intertie rates which will supersede the current IS–85 rate. BPA is seeking recommendations on the development of intertie rates which will specifically address the following intertie services: (1) Nonfirm use of BPA's intertie, (2) firm, long-term (assured delivery) use for firm power sales, (3) firm, long-term (assured delivery) use, if granted, for capacity/energy and seasonal exchange contracts, and (4) firm, long-term (assured delivery) use, if granted, for Canadian resources.

Anticipated transmission rate adjustments are needed to cover changing FCRTS costs. Normally, transmission costs are small compared to a utility's total costs, and BPA expects that the increase in FCRTS revenues will have minimal impact on ultimate power costs to the consumer.

The present transmission rates have been approved by the Federal Energy Regulatory Commission (FERC) on an interim basis, effective July 1, 1985. BPA is seeking public comment in developing its transmission rate proposal. In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later

than 5 p.m., November 24, 1986. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about December 19, 1986), both general public field hearings and formal public hearings will be conducted by BPA. Written comments will also be accepted throughout the 7-month hearing process. A final comment deadline will be announced in a future **Federal Register** notice. BPA intends to prepare an environmental assessment (EA) on the proposed transmission rate adjustment and distribute the document for public and agency review and comment in January 1987. Based on the information in the EA and on comments received during public and agency review, the Department of Energy will determine whether to prepare a Finding of No Significant Impact. After completion of the environmental process and following the hearings, BPA will announce its final proposed transmission rates and submit them by August 1, 1987, to FERC for approval.

Issued in Portland, Oregon, on October 30, 1986.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 86-25125 Filed 11-4-86; 10:00 am]

BILLING CODE 6450-01-M

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[86-925]

## Intent To Revise Wholesale Power Rates To Become Effective October 1, 1987; Request for Recommendations and Suggestions

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of intent and request for recommendations. *BPA File No.:* WP-87. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP-87.

**SUMMARY:** Bonneville Power Administration (BPA) is in the initial stages of developing adjusted wholesale power rates which will become effective October 1, 1987. At this time, BPA announces its intent to revise its rates and is seeking suggestions, advice, and recommendations from interested persons which can be used to assist in the development of BPA's proposals. BPA expects to have its initial proposed rates formulated in December 1986 and to issue an environmental assessment on the proposed adjustment in January 1987. BPA will then publish a notice of the proposed rates in the **Federal Register**

The December notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

**DATES:** Suggestions and recommendations concerning the development of proposed wholesale power rates will be accepted through 5 p.m., November 24, 1986. This proceeding is a general rate proceeding under procedures governing BPA rate hearings. March 5, 1986, 51 FR 7611. Pursuant to the ex parte limitations contained in these Rules, BPA will not accept oral recommendations on substantive issues, except in meetings for which notice has been given.

*Responsible Official:* Ms. Shirley Melton, Director, Division of Rates, is the official responsible for the development of BPA rates.

**ADDRESS:** Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Kathleen S. Johnson, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208-334-9137.

**SUPPLEMENTARY INFORMATION:**

### I. Background

BPA, an agency of the U.S. Department of Energy, is the Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 U.S. Army Corps of Engineers and U.S. Bureau of Reclamation projects on the Columbia River and its tributaries, as well as thermal power it acquires from interests in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 50 percent of the electric energy consumed in the Pacific Northwest and accounts for about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 168 customers, including publicly, cooperatively, and privately owned utilities; Federal and state agencies; and direct-service industries (DSIs). The power is sold wholesale to BPA utility customers for resale to ultimate consumers, and is sold directly to BPA's industrial and Federal agency customers. In addition, BPA sells power that is surplus to the needs to the Pacific Northwest to customers outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and certain other miscellaneous expenses. Inflation and contract obligations have increased BPA's costs; and BPA revenues have been adversely affected by the reduced oil and gas prices, the continued flagging economy, and reduction in aluminum smelter loads.

BPA's last wholesale power rate adjustment became effective on an interim basis on July 1, 1985. The process for the 1987 wholesale power rate proposal will be similar to that used to develop the 1985 wholesale power rates. BPA is preparing revenue

requirement studies to determine the extent to which anticipated revenue requirements for fiscal years 1988 and 1989 would exceed expected revenues collected under the current rates. Following a determination of the increase in revenues that will be necessary to meet revenue requirements, BPA will develop various studies to be used in designing rates. BPA will also assess the environmental effects of the proposed rates.

**II. Major Issues**

The development of BPA's rates is a complex process, raising numerous issues for resolution in the hearings process. The following is a brief explanation of several of the major issues that are expected to be addressed in the hearing. Some of these issues have been the subject of much discussion in previous BPA rate cases.

*A. Revenue Requirement*

BPA develops a Revenue Requirement Study that projects the costs of providing electricity and services to BPA's customers. The revenue requirement calculation will be a major factor in determining the overall level of BPA's proposed rates.

BPA has just completed its initial review of program levels for the FY 1988 and 1989 budgets. This public process has affected revenue requirement data for BPA's rate case. Accordingly, the Administrator will not reopen program level decisions in the rate case. However, further opportunity for informal public comment will be established outside the rate case.

*B. Loads and Resources Determination*

The energy and capacity loads and resources forecasted by BPA to occur during the forthcoming rate period determine BPA's forecasted power sales. Forecasted sales, combined with revenue requirements, determine the level of rates that must be charged in order to generate sufficient revenue.

*C. Allocation of Costs*

The rates charged each customer class reflect both the classification of costs between capacity and energy and the allocation of costs to a particular customer class. These determinations are proposed by BPA, and the parties to the rate case generally propose alternative cost classification and allocation schemes.

*D. Special Rates*

In the past, BPA has offered incentive rates to the Direct Service Industries (DSIs). Development and implementation of the Variable Industrial rate has eliminated future incentive rates to the aluminum smelter DSIs. Other sectors of the economy have requested special rates for economic reasons. BPA implemented a special rate for irrigators during the 1985 rate hearing. Economic conditions again may result in requests for additional special rates for irrigators and other groups.

*E. Marketing Assumptions*

Much of BPA's forecast of power sales depends on assumptions about certain marketing conditions. Because of the projected surplus of energy, BPA will continue to market power to the Pacific Southwest. Assumptions of future sales of surplus power and the prices for those sales play a key role in the level of rate adjustments. If BPA's assumptions are overly optimistic, the resulting rates could jeopardize BPA's ability to make scheduled payments to the Treasury.

*F. Cost Recovery Adjustment Clause*

BPA will attempt to mitigate its risks of underrecovering its costs in the event that its actual revenues and/or cost forecasts prove inaccurate. If the balance between revenues and costs during the rate period falls outside a predesignated range, BPA proposes that an adjustment to some or all power rates will be made to bring revenues back into balance with actual costs. The Cost Recovery Adjustment Clause may replace two adjustment clauses already in effect (Supply System and Exchange).

*G. DSI Rates*

The Variable Industrial rate (VI–86) has been developed by BPA and is now effective. The rate is available only to aluminum smelters and all Pacific Northwest smelters buy some or all of their power from BPA under the Industrial Firm Power (IP) rate. BPA has also developed an IP–PF Rate Link, via a separate 7(i) process, that links the Priority Firm and Industrial Power rate schedules. Linking the two rates will improve short and long-term planning for the DSIs.

*H. Nonfirm Energy Sales and Rates*

BPA's rates for and sales of nonfirm energy have recently become highly sensitive to the prices of oil and gas. Long-term resource decisions that affect the market for nonfirm energy are being made based on expectations about BPA's future nonfirm rates and other factors. BPA expects a significant amount of attention to be paid to the design of NF rates, the effect on marketability, and predictability of the rates to potential purchasers.

BPA also expects a significant amount of attention to be paid to assumed sales of nonfirm energy. Similar to assumptions of surplus power sales, assumptions of nonfirm sales play a key role in the level of rate adjustments and have a large impact on BPA's ability to make its projected payments to the Treasury.

In order to be considered in the development of BPA's initial proposal, suggestions and recommendations must be in writing and be submitted no later than 5 p.m., November 24, 1986. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about December 19, 1986), both general public field hearings and formal public hearings will be conducted by BPA. Written comments will also be accepted throughout the 7 month hearing process. A final comment deadline will be announced in a future **Federal Register** notice. BPA intends to prepare an environmental assessment (EA) on the proposed wholesale power rate adjustment and distribute the document for public and agency review and comment in January 1987. Based on the information in the EA and on comments received during public and agency review, the Department of Energy will determine whether to prepare a Finding of No Significant Impact. After completion of the environmental process and following the hearings, BPA will announce its final proposed wholesale power rates and submit them by August 1, 1987, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on October 30, 1986.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 86–25124 Filed 11–4–86; 10:00 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

### Algonquin Gas Transmission Co.; Application Proposing Changes in FERC Gas Tariff

**[Docket No. RP87–14–000]**

November 4, 1986.

Take notice that on October 31, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Road, Boston, Massachusetts 02135, filed revised tariff sheets reflecting proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act.

Algonquin Gas proposes that the filing take effect on December 1, 1986.

Algonquin Gas states that the filing would increase annual revenues by approximately $10.2 million. The Company asserts that the increased rates are required to provide revenues equal to the test period cost of service, when applied to the related test period quantities.

Algonquin Gas states that copies of its filing have been served upon its customers and interested state regulatory commissions.

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 November 12, 1986. 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. 86-25255 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ST86-2540-000 et al.]**

## Arkla Energy Resources et al.; Self-Implementing Transactions

November 4, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Parts 157 and 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(EU)" indicates transportation by an interstate pipeline company on behalf of an end-user pursuant to a blanket certificate issued under § 284.223 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation, which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before November 17, 1986, 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 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Acting Secretary.*

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date[2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST86-2540 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 09-02-86 | B | | |
| ST86-2541 | Arkla Energy Resources | Dayton Power and Light Co | 09-02-86 | B | | |
| ST86-2542 | Texas Gas Transmission Corp | Columbia Gas of Kentucky, Inc | 09-02-86 | B | | |
| ST86-2543 | Texas Gas Transmission Corp | Columbia Gas of Virginia, Inc | 09-02-86 | B | | |
| ST86-2544 | Texas Gas Transmission Corp | Columbia Gas of Pennsylvania, Inc | 09-02-86 | B | | |
| ST86-2545 | Texas Gas Transmission Corp | Columbia Gas of Maryland, Inc | 09-02-86 | B | | |
| ST86-2546 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 09-02-86 | B | | |
| ST86-2547 | Trunkline Gas Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2548 | Panhandle Eastern Pipe Line Co | Central Illinois Public Service Co | 09-02-86 | B | | |
| ST86-2549 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 09-02-86 | B | | |
| ST86-2550 | Louisiana Intrastate Gas Corp | Texas Gas Transmission Corp | 09-02-86 | C | 01-30-87 | 00.00 |
| ST86-2551 | ONG Transmission Corp | ANR Pipeline Co | 09-03-86 | C | 01-31-87 | 10.00 |
| ST86-2552 | Delhi Gas Pipeline Corp | Arkla Energy Resources | 09-02-86 | C | | |
| ST86-2553 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 09-02-86 | B | | |
| ST86-2554 | Colorado Interstate Gas Co | MGTC, Inc | 09-02-86 | B | | |
| ST86-2555 | Arkla Energy Resources | Consumers Power Co | 09-02-86 | B | | |
| ST86-2556 | Arkla Energy Resources | Shreveport Intrastate Gas Trans., Inc | 09-02-86 | B | | |

[1] Notice of these transactions does not constitute a determination that service will be approved.

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date[2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST86-2557 | Texas Eastern Transmission Corp | Elizabethtown Gas Co | 09-02-86 | B | | |
| ST86-2558 | Texas Eastern Transmission Corp | Brooklyn Union Gas co | 09-02-86 | B | | |
| ST86-2559 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2560 | Trunkline Gas Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2561 | Trunkline Gas Co | UGI Corp., et al | 09-02-86 | B | | |
| ST86-2562 | Trunkline Gas Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2563 | Trunkline Gas Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2564 | Trunkline Gas Co | Consumers Power Co | 09-02-86 | B | | |
| ST86-2565 | Panhandle Eastern Pipe Line Co | Union Electric Co | 09-02-86 | B | | |
| ST86-2566 | Delhi Gas Pipeline Corp | Transwestern Pipeline Co | 09-02-86 | C | | |
| ST86-2567 | Panhandle Eastern Pipe Line Co | Producer's Gas Co | 09-03-86 | B | | |
| ST86-2568 | Panhandle Eastern Pipe Line Co | Getty Gas Gathering, Inc | 09-03-86 | B | | |
| ST86-2569 | Trunkline Gas Co | Consumers Power Co | 09-03-86 | B | | |
| ST86-2570 | Panhandle Eastern Pipe Line Co | Llano, Inc | 09-03-86 | B | | |
| ST86-2571 | Dow Pipeline Co | Natural Gas Pipeline Co., of America | 09-08-86 | C | 02-05-87 | 10.13 |
| ST86-2572 | Trunkline Gas Co | Columbia Gas of Ohio, Inc., et al | 09-08-86 | B | | |
| ST86-2573 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2574 | Panhandle Eastern Pipe Line Co | Quivira Gas Co | 09-08-86 | B | | |
| ST86-2575 | Arkla Energy Resources | Columbia Gas of Kentucky, Inc | 09-08-86 | B | | |
| ST86-2576 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2577 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2578 | Trunkline Gas Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2579 | Trunkline Gas Co | Gulf Coast Energy, Inc | 09-08-86 | B | | |
| ST86-2580 | Panhandle Eastern Pipe Line Co | Central Illinois Light Co | 09-08-86 | B | | |
| ST86-2581 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2582 | Trunkline Gas Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2583 | Trunkline Gas Co | Consumers Power Co | 09-08-86 | B | | |
| ST86-2584 | Seagull Energy Corp | Northern Natural Gas Co | 09-08-86 | C | | |
| ST86-2585 | Arkla Energy Resources | New Jersey Natural Gas Co | 09-08-86 | B | | |
| ST86-2586 | Mountain Fuel Resources, Inc | Mountain Fuel Supply Co | 09-08-86 | B | | |
| ST86-2587 | Arkla Energy Resources | Columbia Gas of Pennsylvania, Inc | 09-08-86 | B | | |
| ST86-2588 | Arkla Energy Resources | Columbia Gas of Virginia, Inc | 09-08-86 | B | | |
| ST86-2589 | Arkla Energy Resources | Columbia Gas of Maryland, Inc | 09-08-86 | B | | |
| ST86-2590 | Arkla Energy Resources | Brooklyn Union Gas Co | 09-08-86 | B | | |
| ST86-2591 | Texas Eastern Transmission Corp | Michigan Consolidated Gas Co | 09-09-86 | B | | |
| ST86-2592 | Texas Eastern Transmission Corp | Carrollton Utilities | 09-09-86 | B | | |
| ST86-2593 | Texas Eastern Transmission Corp | Consumer Power Co | 09-09-86 | B | | |
| ST86-2294 | Panhandle Eastern Pipe Line Co | Central Illinois Public Service Co | 09-10-86 | B | | |
| ST86-2595 | Trunkline Gas Co | Consumers Power Co | 09-10-86 | B | | |
| ST86-2596 | Panhandle Eastern Pipe Line Co | East Ohio Gas Co | 09-10-86 | B | | |
| ST86-2597 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 09-10-86 | C | 02-07-87 | 10.00 |
| ST86-2598 | Arkla Energy Resources | Columbia Gas of Ohio, Inc | 09-08-86 | B | | |
| ST86-2599 | Arkla Energy Resources | Columbia Gas of New York, Inc | 09-08-86 | B | | |
| ST86-2600 | Arkla Energy Resources | Arkla Energy Resources, (La Intra. Seg.) | 09-08-86 | B | | |
| ST86-2601 | ANR Pipeline Co | Michigan Consolidated Gas Co | 09-10-86 | B | | |
| ST86-2602 | ANR Pipeline Co | Michigan Consolidated Gas Co | 09-10-86 | B | | |
| ST86-2603 | ANR Pipeline Co | Faustina Pipe Line Co | 09-10-86 | B | | |
| ST86-2604 | ONG Transmission Co | Arkla Energy Resources | 09-11-86 | C | 02-08-87 | 10.00 |
| ST86-2605 | ONG Transmission Co | Panhandle Eastern Pipe Line Co | 09-11-86 | C | 02-08-87 | 10.00 |
| ST86-2606 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 09-11-86 | C | 02-08-87 | 10.00 |
| ST86-2607 | United Gas Pipe Line Co | Eastex Gas Transmission | 09-11-86 | B | | |
| ST86-2608 | United Gas Pipe Line Co | City of Henderson, et al | 09-11-86 | B | | |
| ST86-2609 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Division | 09-11-86 | B | | |
| ST86-2610 | Texas Gas Transmission Corp | City of Carrollton | 09-11-86 | B | | |
| ST86-2611 | Texas Gas Transmission Corp | Illinois Gas Co | 09-11-86 | B | | |
| ST86-2612 | Texas Gas Transmission Corp | Town of Covington | 09-11-86 | B | | |
| ST86-2613 | Columbia Gulf Transmission Co | Pontchartrain Natural Gas System | 09-11-86 | B | | |
| ST86-2614 | Columbia Gulf Transmission Co | Alabama-Tennessee Natural Gas Co | 09-11-86 | G | | |
| ST86-2615 | Valero Transmission Co | Trunkline Gas Co | 09-12-86 | C | | |
| ST86-2616 | Valero Transmission Co | El Paso Natural Gas Co | 09-12-86 | C | | |
| ST86-2617 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2618 | Panhandle Eastern Pipe Line Co | Ohio Valley Gas Corp | 09-12-86 | B | | |
| ST86-2619 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2620 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2621 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2622 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2623 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2624 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2625 | Trunkline Gas Co | Consumers Power Co | 09-12-86 | B | | |
| ST86-2626 | Panhandle Eastern Pipe Line Co | Central Illinois Light Co | 09-12-86 | B | | |
| ST86-2627 | Transcontinental Gas Pipe Line Corp | Dayton Power and Light Co | 09-12-86 | B | | |
| ST86-2628 | Transcontinental Gas Pipe Line Corp | City of Danville | 09-12-86 | B | | |
| ST86-2629 | Transcontinental Gas Pipe Line Corp | Lynchburge Gas Co | 09-12-86 | B | | |
| ST86-2630 | Transcontinental Gas Pipe Line Corp | Wisconsin Natural Gas Co | 09-12-86 | B | | |
| ST86-2631 | Transcontinental Gas Pipe Line Corp | Wisconsin Public Service Co., et al | 09-12-86 | B | | |
| ST86-2632 | Transcontinental Gas Pipe Line Corp | Corpus Christi Gas Gathering, Inc | 09-12-86 | B | | |
| ST86-2633 | Transcontinental Gas Pipe Line Corp | City of Madison | 09-12-86 | B | | |
| ST86-2634 | Transcontinental Gas Pipe Line Corp | City of Buford | 09-12-86 | B | | |
| ST86-2635 | Transcontinental Gas Pipe Line Corp | Delmarva Power and Light Co | 09-12-86 | B | | |
| ST86-2636 | Transcontinental Gas Pipe Line Corp | Piedmont Natural Gas Co | 09-12-86 | B | | |
| ST86-2637 | Transcontinental Gas Pipe Line Corp | United Cities Gas Co., SC Div | 09-12-86 | B | | |
| ST86-2638 | Transcontinental Gas Pipe Line Corp. | City of Social Circle | 09-12-86 | B | | |
| ST86-2639 | Transcontinental Gas Pipe Line Corp. | Clinton Newberry Nat. Gas Authority | 09-12-86 | B | | |
| ST86-2640 | Transcontinental Gas Pipe Line Corp. | Bessemer City | 09-12-86 | B | | |
| ST86-2641 | Transcontinental Gas Pipe Line Corp. | Commission of Public Works, Greenwood | 09-12-86 | B | | |
| ST86-2642 | Transcontinental Gas Pipe Line Corp. | Rochester Gas & Electric Corp | 09-12-86 | B | | |
| ST86-2643 | Transcontinental Gas Pipe Line Corp. | City of Hartwell | 09-12-86 | B | | |
| ST86-2644 | Transcontinental Gas Pipe Line Corp. | Tri-County Natural Gas Co. | 09-12-86 | B | | |
| ST86-2645 | Transcontinental Gas Pipe Line Corp. | City of Lexington | 09-12-86 | B | | |
| ST86-2646 | Transcontinental Gas Pipe Line Corp. | Southwestern Virginia Gas Co. | 09-12-86 | B | | |
| ST86-2647 | Transcontinental Gas Pipe Line Corp. | City of Shelby | 09-12-86 | B | | |
| ST86-2648 | Transcontinental Gas Pipe Line Corp. | City of Greer | 09-12-86 | B | | |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date[2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST86-2649 | Transcontinental Gas Pipe Line Corp. | North Carolina Gas Service Co. | 09-12-86 | B | | |
| ST86-2650 | Transcontinental Gas Pipe Line Corp. | City of Covington | 09-12-86 | B | | |
| ST86-2651 | Transcontinental Gas Pipe Line Corp. | City of Clanton | 09-12-86 | B | | |
| ST86-2652 | Transcontinental Gas Pipe Line Corp. | City of Toccoa | 09-12-86 | B | | |
| ST86-2653 | Transcontinental Gas Pipe Line Corp. | Faustina Pipe Line Co | 09-12-86 | B | | |
| ST86-2654 | Columbia Gulf Transmission Co. | North Mississippi Natural Gas Corp. | 09-12-86 | B | | |
| ST86-2655 | Mountain Fuel Resources, Inc. | Mountain Fuel Supply Co. | 09-15-86 | B | | |
| ST86-2656 | ONG Transmission Co. | ANR Pipeline Co. | 09-15-86 | C | 02-12-87 | 10.00 |
| ST86-2657 | Panhandle Gas Co. | Columbia Gas of Ohio, Inc. | 09-15-86 | D | | |
| ST86-2658 | Panhandle Gas Co. | United Cities Gas Co. | 09-15-86 | D | | |
| ST86-2659 | Houston Pipe Line Co. | Consumers Power Co. | 09-15-86 | C | | |
| ST86-2660 | Shreveport Intrastate Gas Trans., Inc. | United Gas Pipe Line Co. | 09-15-86 | C | 02-12-87 | 25.00 |
| ST86-2661 | Transcontinental Gas Pipe Line Corp. | City of Lawrenceville | 09-15-86 | B | | |
| ST86-2662 | Transcontinental Gas Pipe Line Corp. | City of Monroe | 09-15-86 | B | | |
| ST86-2663 | Transcontinental Gas Pipe Line Corp. | City of Commerce | 09-15-86 | B | | |
| ST86-2664 | Transcontinental Gas Pipe Line Corp. | Town of Thomaston | 09-15-86 | B | | |
| ST86-2665 | Transcontinental Gas Pipe Line Corp. | Town of Rockford | 09-15-86 | B | | |
| ST86-2666 | Transcontinental Gas Pipe Line Corp. | Maplesville Water & Gas Board | 09-15-86 | B | | |
| ST86-2667 | Transcontinental Gas Pipe Line Corp. | Public Service Electric and Gas Co. | 09-15-86 | B | | |
| ST86-2668 | Transcontinental Gas Pipe Line Corp. | Pontchartrain Natural Gas System | 09-15-86 | B | | |
| ST86-2669 | Transcontinental Gas Pipe Line Corp. | City of Winder | 09-15-86 | B | | |
| ST86-2670 | Transcontinental Gas Pipe Line Corp. | Baltimore Gas and Electric Co. | 09-15-86 | B | | |
| ST86-2671 | Transcontinental Gas Pipe Line Corp. | United Cities Gas Co. | 09-15-86 | B | | |
| ST86-2672 | Transcontinental Gas Pipe Line Corp. | City of Elberton | 09-15-86 | B | | |
| ST86-2673 | Transcontinental Gas Pipe Line Corp. | Town of Fountain Inn | 09-15-86 | B | | |
| ST86-2674 | Transcontinental Gas Pipe Line Corp. | City of Bowman | 09-15-86 | B | | |
| ST86-2675 | Transcontinental Gas Pipe Line Corp. | East Central Alabama Gas District | 09-15-86 | B | | |
| ST86-2676 | Transcontinental Gas Pipe Line Corp. | City of Royston | 09-15-86 | B | | |
| ST86-2677 | Louisiana Resources Co. | Bridgeline Gas Distribution Co. | 09-15-86 | C | 02-12-87 | 35.08 |
| ST86-2678 | El Paso Natural Gas Co. | GGSI Gas Co. | 09-15-86 | B | | |
| ST86-2679 | El Paso Natural Gas Co. | El Paso Hydrocarbons Co. | 09-15-86 | B | | |
| ST86-2680 | Panhandle Gas Co. | Columbia Gas of Pennsylvania, Inc. | 09-15-86 | D | | |
| ST86-2681 | Delhi Gas Pipeline Corp. | Northern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2682 | Delhi Gas Pipeline Corp. | Northern Illinois Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2683 | Colorado Interstate Gas Co. | Pacific Gas and Electric Co. | 09-15-86 | B | | |
| ST86-2684 | Delhi Gas Pipeline Corp. | Northern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2685 | Delhi Gas Pipeline Corp. | Michigan Gas Utilities | 09-15-86 | C | 02-12-87 | 61.17 |
| ST86-2686 | Delhi Gas Pipeline Corp. | Baltimore Gas and Electric Co. | 09-15-86 | D | 02-12-87 | 54.70 |
| ST86-2687 | Delhi Gas Pipeline Corp. | United Gas Pipe Line Co | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2688 | Delhi Gas Pipeline Corp. | United Gas Pipe Line Co | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2689 | Delhi Gas Pipeline Corp. | Tennessee Gas Pipeline Co | 09-15-86 | C | 02-12-87 | 21.00 |
| ST86-2690 | Delhi Gas Pipeline Corp. | Southern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2691 | Delhi Gas Pipeline Corp. | Mississippi River Transmission Corp. | 09-15-86 | C | 02-12-87 | 46.78 |
| ST86-2692 | Delhi Gas Pipeline Corp. | Columbia Gas Transmission Corp. | 09-15-86 | C | 02-12-87 | 46.78 |
| ST86-2693 | Delhi Gas Pipeline Corp. | Northern Illinois Gas Co., et al. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2694 | Delhi Gas Pipeline Corp. | Washington Gas Light Co. | 09-15-86 | D | 02-12-87 | 54.70 |
| ST86-2695 | Delhi Gas Pipeline Corp. | Utah Gas Service Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2696 | Delhi Gas Pipeline Corp. | Louisiana Industrial Gas Supply System | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2697 | Delhi Gas Pipeline Corp. | Northern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2698 | Delhi Gas Pipeline Corp. | Northern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 46.78 |
| ST86-2699 | Delhi Gas Pipeline Corp. | Texas Eastern Transmission Corp. | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2700 | Delhi Gas Pipeline Corp. | Tennessee Gas Pipeline Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2701 | Delhi Gas Pipeline Corp. | Mississippi River Transmission Corp. | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2702 | Delhi Gas Pipeline Corp. | Northern Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2703 | Delhi Gas Pipeline Corp. | Wisconsin Natural Gas Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2704 | Delhi Gas Pipeline Corp. | Transwestern Pipeline Co. | 09-15-86 | C | 02-12-87 | 54.70 |
| ST86-2705 | Delhi Gas Pipeline Corp. | Tennessee Gas Pipeline Co. | 09-15-86 | C | 02-12-87 | 46.78 |
| ST86-2706 | Delhi Gas Pipeline Corp. | Spindletop Gas Distribution System | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2707 | Delhi Gas Pipeline Corp. | United Gas Pipe Line Co | 09-15-86 | C | 02-12-87 | 54.31 |
| ST86-2708 | Colorado Interstate Gas Co. | Greeley Gas Co. | 09-16-86 | B | | |
| ST86-2709 | Phenix Transmission Co. | Panhandle Eastern Pipe Line Co. | 09-16-86 | C | 02-13-87 | 30.00 |
| ST86-2710 | Transcontinental Gas Pipe Line Corp. | Washington Gas Light Co. | 09-16-86 | B | | |
| ST86-2711 | Dow Pipeline Co. | Michigan Consolidated Gas Co. | 09-17-86 | C | | |
| ST86-2712 | Panhandle Eastern Pipe Line Co. | Corning Natural Gas Corp. | 09-17-86 | B | | |
| ST86-2713 | Panhandle Eastern Pipe Line Co. | Indiana Gas Co. | 09-17-86 | B | | |
| ST86-2714 | Panhandle Eastern Pipe Line Co. | Central Illinois Public Service Co. | 09-17-86 | B | | |
| ST86-2715 | Panhandle Eastern Pipe Line Co. | Central Illinois Public Service Co. | 09-17-86 | B | | |
| ST86-2716 | Panhandle Eastern Pipe Line Co. | Illinois Power Co. | 09-17-86 | B | | |
| ST86-2717 | Producer's Gas Co. | ANR Pipeline Co. | 09-17-86 | C | 02-14-87 | 25.20 |
| ST86-2718 | Producer's Gas Co. | Panhandle Eastern Pipe Line Co. | 09-17-86 | C | 02-14-87 | 28.20 |
| ST86-2719 | Producer's Gas Co. | Southern California Gas Co. | 09-17-86 | C | 02-14-87 | 25.20 |
| ST86-2720 | Panhandle Eastern Pipe Line Co. | Yankee Pipeline Co. | 09-18-86 | B | | |
| ST86-2721 | ONG Transmission Co. | Columbia Gas Transmission Corp. | 09-18-86 | C | 02-15-87 | 24.32 |
| ST86-2722 | Dow Pipeline Co. | Michigan Consolidated Gas Co. | 09-18-86 | C | 02-15-87 | 10.13 |
| ST86-2723 | Seagull Energy Corp. | Southern Natural Gas Co. | 09-08-86 | C | | |
| ST86-2724 | Transcontinental Gas Pipe Line Corp. | City of Union | 09-19-86 | B | | |
| ST86-2725 | Transcontinental Gas Pipe Line Corp. | Utilities Board of Roanoke | 09-19-86 | B | | |
| ST86-2726 | Transcontinental Gas Pipe Line Corp. | Pontchartrain Natural Gas System | 09-19-86 | B | | |
| ST86-2727 | Transcontinental Gas Pipe Line Corp. | Baltimore Gas and Electric Co. | 09-19-86 | B | | |
| ST86-2728 | Transcontinental Gas Pipe Line Corp. | Blacksburg Natural Gas System | 09-19-86 | B | | |
| ST86-2729 | Texas Eastern Transmission Corp. | New York State Electric and Gas Co. | 09-19-86 | B | | |
| ST86-2730 | Texas Eastern Transmission Corp. | Elizabethtown Gas Co. | 09-19-86 | B | | |
| ST86-2731 | Texas Eastern Transmission Corp. | Niagara Mohawk Power Corp. | 09-19-86 | B | | |
| ST86-2732 | Texas Eastern Transmission Corp. | Bishop Pipeline Corp. | 09-19-86 | B | | |
| ST86-2733 | Texas Eastern Transmission Corp. | East Ohio Gas Co. | 09-19-86 | B | | |
| ST86-2734 | Texas Eastern Transmission Corp. | Houston Pipe Line Co. | 09-19-86 | B | | |
| ST86-2735 | Texas Eastern Transmission Corp. | Niagara Mohawk Power Corp. | 09-19-86 | B | | |
| ST86-2736 | Texas Eastern Transmission Corp. | Niagara Mohawk Power Corp. | 09-19-86 | B | | |
| ST86-2737 | Texas Eastern Transmission Corp. | Philadelphia Electric Co. | 09-19-86 | B | | |
| ST86-2738 | Transcontinental Gas Pipe Line Corp. | Niagara Mohawk Power Corp. | 09-19-86 | B | | |
| ST86-2739 | Transcontinental Gas Pipe Line Corp. | City of Butler | 09-19-86 | B | | |
| ST86-2740 | Transcontinental Gas Pipe Line Corp. | Utilities Board, Wedowee | 09-19-86 | B | | |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date[2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST86-2741 | Transcontinental Gas Pipe Line Corp | City of Sugar Hill | 09-19-86 | B | | |
| ST86-2742 | Transcontinental Gas Pipe Line Corp | Fort Hill Natural Gas Authority | 09-19-86 | B | | |
| ST86-2743 | Transcontinental Gas Pipe Line Corp | Pennsylvania Gas and Water Co | 09-19-86 | B | | |
| ST86-2744 | Louisiana Resources Co | Transcontinental Gas Pipe Line Corp | 09-22-86 | C | 02-19-87 | 35.08 |
| ST86-2745 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-22-86 | B | | |
| ST86-2746 | Texas Gas Transmission Corp | Louisville Gas & Electric Co | 09-22-86 | B | | |
| ST86-2747 | Texas Gas Transmission Corp | Texas American Energy Corp | 09-22-86 | B | | |
| ST86-2748 | Texas Gas Transmission Corp | Indiana Gas Co | 09-22-86 | B | | |
| ST86-2749 | Texas Gas Transmission Corp | Orange and Rockland Util. et al | 09-22-86 | B | | |
| ST86-2750 | Texas Gas Transmission Corp | City of Carrollton | 09-22-86 | B | | |
| ST86-2751 | Natural Gas Pipeline Co. of America | Delhi Gas Pipeline Corp | 09-23-86 | B | | |
| ST86-2752 | Panhandle Eastern Pipe Line Co | Quivira Gas Co | 09-23-86 | B | | |
| ST86-2753 | Truckline Gas Co | Louisiana Intrastate Gas Corp | 09-23-86 | B | | |
| ST86-2754 | Trunkline Gas Co | Shreveport Intrastate Gas Trans., Inc | 09-23-86 | B | | |
| ST86-2755 | Columbia Gas Transmission Corp | Shenandoah Gas Co | 09-23-86 | B | | |
| ST86-2756 | Columbia Gas Transmission Corp | Frederick Gas Co | 09-23-86 | B | | |
| ST86-2757 | Columbia Gas Transmission Corp | Cabot Corp | 09-23-86 | B | | |
| ST86-2758 | Columbia Gulf Transmission Corp | Louisiana Intrastate Gas Corp | 09-23-86 | B | | |
| ST86-2759 | Columbia Gulf Transmission Corp | Dow Intrastate Gas Co | 09-23-86 | B | | |
| ST86-2760 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 09-24-86 | B | | |
| ST86-2761 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2762 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2763 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2764 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 09-24-86 | B | | |
| ST86-2765 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2766 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2767 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2768 | Consolidated Gas Transmission Corp | Rochester Gas & Electric Corp | 09-24-86 | B | | |
| ST86-2769 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 09-24-86 | B | | |
| ST86-2770 | Consolidated Gas Transmission Corp | Hope Gas, Inc | 09-24-86 | B | | |
| ST86-2771 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2772 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 09-24-86 | B | | |
| ST86-2774 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2775 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2776 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2778 | Consolidated Gas Transmission Corp | East Ohio Gas Co | 09-24-86 | B | | |
| ST86-2779 | Consolidated Gas Transmission Corp | East Ohio Gas Co | 09-24-86 | B | | |
| ST86-2780 | Consolidated Gas Transmission Corp | Hope Gas, Inc | 09-24-86 | B | | |
| ST86-2781 | Consolidated Gas Transmission Corp | Rochester Gas & Electric Corp | 09-24-86 | B | | |
| ST86-2782 | Consolidated Gas Transmission Corp | Peoples Natural Gas Co | 09-24-86 | B | | |
| ST86-2783 | Consolidated Gas Transmission Corp | Rochester Gas & Electric Corp | 09-24-86 | B | | |
| ST86-2784 | Consolidated Gas Transmission Corp | River Gas Co | 09-24-86 | B | | |
| ST86-2785 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2786 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2787 | Consolidated Gas Transmission Corp | Niagara Mohawk Power Corp | 09-24-86 | B | | |
| ST86-2788 | ONG Transmission Co | Natural Gas Pipeline Co of America | 09-25-86 | C | 02-22-87 | 10.00 |
| ST86-2789 | Natural Gas Pipeline Co of America | Northern Indiana Public Service Co | 09-25-86 | B | | |
| ST86-2790 | Natural Gas Pipeline Co of America | Northern Illinois Gas Co | 09-25-86 | B | | |
| ST86-2791 | Natural Gas Pipeline Co of America | Northern Indiana Public Service Co | 09-25-86 | B | | |
| ST86-2792 | Natural Gas Pipeline Co of America | Northern Indiana Public Service Co | 09-25-86 | B | | |
| ST86-2793 | Texas Eastern Transmission Corp | Rochester Gas & Electric Corp | 09-25-86 | B | | |
| ST86-2794 | Texas Eastern Transmission Corp | Corpus Christi Industrial Pipeline Co | 09-25-86 | B | | |
| ST86-2795 | Trunkline Gas Co | Consumers Power Co | 09-25-86 | B | | |
| ST86-2796 | Trunkline Gas Co | Consumers Power Co | 09-26-86 | B | | |
| ST86-2797 | Trunkline Gas Co | Consumers Power Co | 09-26-86 | B | | |
| ST86-2798 | Transcontinental Gas Pipe Line Corp | Indiana Gas Co | 09-26-86 | B | | |
| ST86-2799 | Transcontinental Gas Pipe Line Corp | City of Laurens | 09-26-86 | B | | |
| ST86-2800 | Transcontinental Gas Pipe Line Corp | Alexander City | 09-26-86 | B | | |
| ST86-2801 | Transcontinental Gas Pipe Line Corp | Union Gas Co | 09-26-86 | B | | |
| ST86-2802 | Mustang Fuel Corp | | 09-26-86 | C | 02-23-87 | 30.46 |
| ST86-2803 | Mustang Fuel Corp | | 09-26-86 | C | 02-23-87 | 30.46 |
| ST86-2804 | Natural Gas Pipeline Co of America | Northern Illinois Gas Co | 09-26-86 | B | | |
| ST86-2805 | Natural Gas Pipeline Co of America | Northern Illinois Gas Co | 09-26-86 | B | | |
| ST86-2806 | Colorado Interstate Gas Co | Greeley Gas Co | 09-29-86 | B | | |
| ST86-2807 | Colorado Interstate Gas co | Llano, Inc | 09-29-86 | B | | |
| ST86-2808 | Houston Pipe Line Co | Emron Industrial Natural Gas Co | 09-29-86 | C | | |
| ST86-2809 | Houston Pipe Line Co | Niagara Mohawk Power Corp | 09-29-86 | C | | |
| ST86-2810 | Oasis Pipe Line Co | City of Long Beach | 09-29-86 | C | | |
| ST86-2811 | El Paso Natural Gas Co | LLano, Inc | 09-30-86 | B | | |
| ST86-2812 | El Paso Natural Gas Co | Southern California Gas Co | 09-30-86 | B | | |
| ST86-2813 | El Paso Natural Gas Co | Gas Co. of NM (Div. Public Serv. Co. NM) | 09-30-86 | B | | |
| ST86-2814 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-30-86 | B | | |
| ST86-2815 | Panhandle Eastern Pipe Line Co | East Ohio Gas Co | 09-30-86 | B | | |
| ST86-2816 | Trunkline Gas Co | Intrastate Gathering Corp | 09-30-86 | B | | |
| ST86-2817 | Panhandle Eastern Pipe Line Co | Central Illinois Light Co | 09-30-86 | B | | |
| ST86-2818 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 09-30-86 | B | | |
| ST86-2819 | Panhandle Eastern Pipe Line Co | Phenix Transmission Co | 09-30-86 | B | | |
| ST86-2820 | Panhandle Eastern Pipe Line Co | Kokomo Gas and Fuel Co | 09-30-86 | B | | |
| ST86-2821 | Texas Eastern Transmission Corp | Yankee Pipeline Co | 09-30-86 | B | | |
| ST86-2822 | Texas Eastern Transmission Corp | Hope Gas, Inc | 09-30-86 | B | | |
| ST86-2823 | Texas Eastern Transmission Corp | Columbia Gas of Ohio, Inc., et al | 09-30-86 | B | | |
| ST86-2824 | Texas Eastern Transmission Corp | Channel Industries Gas Co | 09-30-86 | B | | |
| ST86-2825 | ONG Transmission Co | ANR Pipeline Co | 09-30-86 | C | 02-27-87 | 10.00 |
| Below are two revised petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period. | | | | | | |
| ST86-2488 | PGC Pipeline | Texas Gas Transmission Corp | 09-17-87 | C | 02-14-87 | 21.50 |
| ST86-2041 | Supern Pipeline Co | United Gas Pipeline, et al | 09-18-87 | C | 02-15-87 | 20.72 |

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 86-25256 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-50-000]

## Cabot Energy Supply Corp.; Application

November 4, 1986.

Take notice that on November 3, 1986, Cabot Energy Supply Corporation (Applicant), 125 High Street, Boston Massachusetts 02110, filed an application in Docket No. CP87-50-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of imported liquefied natural gas (LNG) to its affiliate, Distrigas of Massachusetts Corporation (DOMAC), 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 to DOMAC one cargo of LNG (approximately 1.9 trillion Btu) which would be purchased by Applicant from Total International Limited (Total), an affiliate of Total Compagnie Francaise Des Petroles. Applicant would purchase the single cargo of LNG from Total pursuant to an assignment by Applicant's affiliate, Distrigas Corporation (Distrigas) to CESCO and a supply agreement between Distrigas and Total dated August 29, 1986. The LNG cargo would be lifted at the Bontang LNG Plant, Indonesia, in mid-to-late November 1986, and would arrive at DOMAC's facilities at Everett, Massachusetts, approximately thirty-three days after departure from Indonesia. The C.I.F. price of the LNG delivered to the DOMAC terminal is $3.99 per MMBtu, which would be the price charged DOMAC by CESCO. The LNG proposed to be sold by CESCO to DOMAC would be sold by DOMAC to certain distribution company customers located in the Northeastern United States, in accordance with DOMAC's application under section 7 of the Natural Gas Act filed in Docket No. CP87-49-000.

Applicant requests the issuance of temporary authority by mid-November 1986 to make the sale, noting the demands of DOMAC's customers, the need to avoid an emergency situation in DOMAC's service area this coming winter, and the extended lead time required to arrange for transportation and importation of the LNG from the foreign supply source.

Applicant requests a shortened notice period where petitions to intervene or protests shall be filed within seven (7) days of this filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1986, file with the Federal Energy Regulatory Commission, 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 385.214 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 Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 86-25257 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP87-49-000]

## Distrigas of Massachusetts Corp.; Application

November 4, 1986.

Take notice that on November 3, 1986, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed an application in Docket No. CP87-49-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of imported liquefied natural gas (LNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to sell one cargo consisting of approximately 1.9 trillion Btu of LNG due to arrive at Everett, Massachusetts, in mid-to-late December 1986. The LNG is to be purchased by Cabot Energy Supply Company (CESCO) from Total International, Limited (Total), an affiliate of Total Compagnie Francaise Des Petroles. CESCO is an affiliate of Applicant. Total and Distrigas have entered into a Supply Agreement dated August 29, 1986. The right to purchase LNG under that contract has been assigned to CESCO by Distrigas Corporation. Applicant states that it would sell the LNG to the following distribution company customers under its WS Rate Schedule at a rate of $4.67, including losses and uses: Bay State Gas Company, Essex County Gas Company, Fall River Gas Company, New Jersey Natural Gas Company, Providence Gas Company, South Jersey Gas Company, and Valley Gas Company.

Applicant requests the issuance of temporary authority by mid-November 1986 to make the sale, noting the demands of DOMAC's customers, the need to avoid an emergency situation in DOMAC's service area this coming winter, and the extended lead time required to arrange for transportation and importation of the LNG from the foreign supply source.

Applicant requests a shortened notice period were petitions to intervene or protests shall be filed within seven (7) days of this filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1986, file with the Federal Energy Regulatory Commission, 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 385.214 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 Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 86-25258 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-17-000]**

## East Tennessee Natural Gas Co.; Filing Changes in Rates

November 4, 1986.

Take notice that on October 31, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on December 1, 1986, consisting of the following revised tariff sheets:

Twenty-second Revised Sheet No. 4
First Revised Sheet No. 111
Second Revised Sheet Nos. 120, 192, 261 and 262
Fourth Revised Sheet Nos. 121 and 124.

The changes would increase non-gas revenues from jurisdictional sales by $6,494,969 based on the test period consisting of the twelve months ended July 31, 1986, adjusted for known and measurable changes through April 30, 1987. East Tennessee states that the increased rates are required to reflect increased plant and related expenses, a decline in sale volumes, changes in the cost of materials, supplies, wages and services, and other costs required to operate and maintain its pipeline system, and a claimed overall return of 14.08%. East Tennessee has also included in this filing Alternate Twenty-second Revised Sheet No. 4 to be effective in the event that the Commission in Docket No. RP82-124 orders that East Tennessee's minimum commodity bill be eliminated, thereby reducing East Tennessee's commodity billing determinants.

The changes also incorporate revisions to the tariff that are necessary to conform to East Tennessee's method of allocating demand costs on the basis of contract demands, to update its Index of Purchasers to reflect authorized revisions to various of its customers' contract demands, to conform the payment due date to the billing date provided for in the tariff and to clarify the form of Gas Sales Contract under the CD Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street 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 petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-25259 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-16-000]**

## El Paso Natural Gas Co.; Direct Billing of Take-or-Pay Buy-Out Payments

November 4, 1986.

Take notice that on October 31, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission"), the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 300
Original Sheet No. 366
Original Sheet No. 367
Original Sheet No. 368
Original Sheet Nos. 369 through 399.

El Paso states that the tendered tariff sheets, when accepted by the Commission an dpermitted to become effective, will establish a direct billing procedure which will permit El Paso to recover from its jurisdictional customers one-time buy-out payments made to suppliers as part of the renegotiation of take-or-pay contracts and/or in settlement of demands for prepayments under said contracts. Such direct billing will also apply to El Paso's nonjurisdictional customers to the extent the contract with such customers provides for this payment. The proposed direct billing provision, designated as section 21, Direct Billing of Take-or-Pay Buy-Out Payments, to the General Terms and Conditions of El Paso's First Revised Volume No. 1 Tariff, will remain in effect through the remainder of the term of El Paso's Stipulation and Agreement at Docket No. RP85-58-000; provided, however, the billing procedure specified therein will continue to be observed until the expiration of the final billing period applicable to the amortization of the take-or-pay buy-out payments.

Commencing July 1, 1986, El Paso will establish and maintain separate subaccounts for the accumulation of the jurisdictional portion of take-or-pay buy-out payments made during each six-month accumulation period. Accumulation periods will end December 31, and June 30, respectively. The accumulated balance as of the end of each accumulation period will then be amortized in equal amounts over the next following thirty-six month period. Amortization periods shall commence April 1 and October 1, respectively. Also commencing July 1, 1986, El Paso will establish and maintain separate subaccounts for the accumulation of interest on the remaining jurisdictional portion of unamortized take-or-pay buy-out payment balances during each six-month accumulation period, with the ending accumulated interest balance to be amortized in equal amounts over the next following six-month period commencing April 1 or October 1.

Commencing May 15, 1987, and on the 15th of each month thereafter, each customer will be billed for its allocable share, if any, of the accrued buy-out payment and interest amortization charges. A customer's allocable share, if any, of those chargs will be determined by multiplying the sum of the buy-out payment and accumulated interest amortization charges by a fraction, the numerator of which is that jurisdictional customer's purchase deficiency [1] and the denominator of which is the sum of the purchase deficiencies of all of El Paso's jurisdictional customers.

El Paso further states that having acquired a large base of gas reserve commitments to permit it to serve its traditional sales customers, El Paso now finds that its customers are not

[1] The term "purchase deficiency" as utilized in the calculation of take-or-pay buy-out payments is defined as the amount by which the customer's average of its 1985 and 1986 purchases of gas in dekatherms from El Paso, inclusive of the customer's share of any released gas purchased from suppliers, is less than the customer's 1982 purchases of gas in dekatherms from El Paso.

purchasing the volumes of gas from its base supply which are necessary to avoid supplier demands for prepayments. Particularly, since the first of this year, customer purchases have fallen so precipitously, and to such extraordinarily low levels, that the resulting potential take-or-pay exposure now threatens to grow beyond otherwise manageable levels. The subject tariff change is proposed as part of El Paso's effort to address this challenge.

El Paso requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective thirty (30) days after the date of filing.

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested State regulatory commissions.

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 §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before November 12, 1986. 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 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. 86-25260 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI86-744-000 et al.]**

## Exxon Corp. et al.; Applications for Abandonment November 4, 1986

Take notice that each of the Applicants listed herein have filed applicatons pursuant to section 7 of the Natural Gas Act for authorization to abandon service, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

**Lois D. Cashell,**

*Acting Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI86-744-000 (CI81-321), B, Oct. 22, 1986[1]. | Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180. | Valero Interstate Transmission Co., Kelsey Deep Field, Brooks County, TX. | ([2]) | |
| CI87-79-000, B, Oct. 23, 1986 | U.S. Oil and Gas, Inc., P.O. Box 9158, Houma, LA 70361. | United Gas Pipe Line Co., Hollywood Field, Terrebonne Parish, LA. | ([3]) | |

[1] Additional information received October 27, 1986.

[2] Applicant, requests authorization to permanently abandon a sale of gas to Valero which is covered under a contract dated February 1, 1981, on file as Applicant's FERC Gas Rate Schedule No. 675. Applicant states that effective with the granting of abandonment authorization herein the contract will be terminated. Valero has agreed to the release of this gas by amendatory agreement to the contract dated June 1, 1986. Applicant states that it is subject to substantially reduced takes without payment, that potential deliverability is 100 Mcf per day, and that the gas is classified as replacement and recompletion gas. Applicant anticipates that the gas will be sold to industrial customers within the state of Texas.

[3] Applicant requests authorization for a limited-term abandonment of certain sales of gas to United for a period expiring October 1, 1988. The wells are listed as follows:
UP KRUM SU C; SOUTHDOWN #3-D;
LOW KRUM RB SUB; SOUTHDOWN #3;
UP KRUM RB SUD; SOUTHDOWN #4-D;
LOW KRUM RB SU C; SOUTHDOWN #4;
UP KRUM SUI; SOUTHDOWN #C-1-D;
LOW KRUM RB SUG; SOUTHDOWN #C-1;
UP KRUM SUF; SOUTHDOWN #6-D;
LOW KRUM RB SUE; SOUTHDOWN #6;
UP KRUM RB SUG; SOUTHDOWN #7-D;
LOW KRUM RB SUF; SOUTHDOWN #7.
Applicant states that the contract which is dated February 5, 1981, expires July 1, 1990. Applicant states it is subject to substantially reduced takes without payment. By letter agreement dated October 1, 1986, Unitd released the gas it does not desire to produce for a primary term expiring October 1, 1987, and month to month thereafter until cancelled by either party. Applicant states that the wells are capable of a deliverability of approximately 2,000 Mcf per day: and produce NGPA section 106(a) gas. Applicant states that it proposes to sell the gas in the intrastate market.

Filling Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-25261 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI87-54-000 et al.]**

## Phillips Petroleum Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

November 3, 1986.

Take notice that each of the Applications listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**
*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| C187-54-000 (C171-48), B, Oct. 8, 1986. | Phillips Petroleum Co., 336 HS&L Building, Bartlesville, OK 74004. | Transcontinental Gas Pipe Line Corp., Crowley Field, Acadia Parish, LA. | (1) | |
| C187-63-000 (C184-506), B, Oct. 15, 1986. | ....do | Columbia Gas Transmission Corp., Duson Field, Lafayette Parish, LA. | (2) | |
| C187-56-000 (G-11904), B, Oct. 10, 1986. | ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221. | Columbia Gas Transmission Corp., Bourg Field, La-Fourche Parish, LA. | (3) | |
| C187-57-000 (G3287), B, Oct. 10, 1986. | ....do | Natural Gas Pipeline Company of America, La Gloria Field, Brooks and Wells Counties, TX. | (4) | |
| C187-58-000 (C172-350), B, Oct. 10, 1986. | Mobil Exploration and Producing North America Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046. | Florida Gas Transmission Co., Bayou Mallet Field, Acadia Parish, LA. | (5) | |
| C187-62-000 (G3894), B, Oct. 14, 1986. | ARCO oil and Gas Co., Division of Atlantic Richfield Co. | Texas Eastern Transmission Corp., San Domingo Field, Bee County, TX. | (6) | |
| C187-55-000, B, Oct. 9, 1986 | Sandlin Oil Corp., 2300 Security Life Building, Denver, CO 80202. | Panhandle Eastern Pipe Line Co., SW/4 of Sec. 9-T2S-R63W, Adams County, CO. | (7) | |
| C161-1102-002, D, Oct. 20, 1986 | Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880. | Michigan Wisconsin Pipeline Co., Seiling Field, Major County, OK. | (8) | |
| C187-65-000, B, Oct. 20, 1986 | Pecos River Gas Plant, Ltd., P.O. Box 4000, The Woodlands, TX 77387-4000. | El Paso Natural Gas Co., Tailgate of the White Ranch Plant, Chaves County, NM. | (9) | |
| C187-68-000, A, Oct. 20, 1986 | ....do | Oxy Cities Service NGL, Inc., Twin Lakes Field, Chaves County, NM. | (10) | |
| C187-60-000, B, Oct. 15, 1986 | Discovery Operating, Inc. | Cities Service Oil Co., Allison Penn Field, Lea County, NM. | (11) | |
| C187-66-000, B, Oct. 20, 1986 | Coquina Oil Corp., P.O. Drawer 2960, Midland, TX 79702. | El Paso Natural Gas Co., N/2 Sec. 12-T10S-R29E, Chaves County, NM. | (12) | |
| C187-69-000 (C176-488), B, Oct. 20, 1986. | Anadarko Petroleum Corp., P.O. Box 1330, Houston, TX 77251-1330. | Mountain Fuel Resources, Inc., Spearhead Area, Converse County, WY. | (13) | |
| C187-72-000, F, Oct. 22, 1986 | Anadarko Petroleum Corp., (Succ. in Interest to Samedan Oil Corp., P.O. Box 1330, Houston, TX 77251-1330. | Transcontinental Gas Pipe Line Corp., Well A-3, Vermilion Block A-76, Offshore Louisiana. | (14) | |
| C187-73-000 (C166-107), B, Oct. 23, 1986. | BHP Petroleum (Americas) Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, TX 77056. | Natural Gas Pipeline Company of America, Camrick Field, Beaver County, OK. | (15) | |
| G-7643-008, D, Oct. 20, 1986 | Mobil Oil Corp., Nine Greenway Plaza—Suite 2700, Houston, TX 77046. | Northern Natural Gas Co., Hugoton Field, Stevens County, KS. | (16) | |
| G-5716-032, D, Oct. 20, 1986 | ....do | Northern Natural Gas Co., Hugoton Field, Finney, Seward and Stevens Counties, KS. | (16) | |
| C167-1085-004, D, Oct. 27, 1986 | Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880. | National Fuels Corp. and Oklahomas Natural Gas Gathering Corp., Ringwood Field, Major County, OK. | (8) | |
| C185-412-001 D, Oct. 23, 1986 | ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221. | Texas Gas Transmission Corp., Bosco South Field, Acadia and Lafayette Parishes, LA. | (17) | |
| G-15541-000, D, Oct. 23, 1986 | ....do | Texas Gas Transmission Corp., Terryville Field, Lincoln Parish, LA. | (17) | |
| C187-78-000 (C162-416), B, Oct. 23, 1986. | ....do | Trunkline Gas Co., Riceland and South Mermentau field, Acadia and Vermilion Parishes, LA. | (18) | |
| C187-77-000 (C167-557), B, Oct. 23, 1986. | ....do | Trunkline Gas Co., East Lake Arthur Field, Jefferson Davis Parish, LA. | (19) | |
| C187-76-000 (G-11229), B, Oct. 23, 1986. | ....do | United Gas Pipe Line Co., Gibson Field, Terrebonne Parish, LA. | (20) | |
| C187-80-000 (C180-62), B, Oct. 23, 1986. | ....do | Transco Gas Supply Co., East Cameron Block 96 and 97, Offshore Louisiana. | (21) | |
| C187-74-000 (C181-490-000), B, Oct. 23, 1986. | ....do | Transco Gas Supply Co., Eugene Island Block 242 and 243, Offshore Louisiana. | (21) | |
| C177-210-006, D, Oct. 23, 1986 | ARCO Oil and Gas Co., Division of Atlantic Richfield Co. | Transco Gas Supply Co., N/2 High Island Block 138, Offshore Texas. | (22) | |
| G-9989-001, D, Oct. 14, 1986 | Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880. | Transcontinental Gas Pipe Line Corp., Kinder Field, Allen Parish, LA. | (23) | |
| C160-215-001, D, Oct. 17, 1986 | Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309. | Trunkline Gas Co., South Mermentau Field, Acadia Parish, LA. | (24) | |
| C175-181-001, D, Oct. 28, 1986 | Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102. | Trunkline Gas Co., N/2 Block 261, OCS-G-2306, South Marsh Island, Offshore Louisiana. | (25) | |
| C176-18-001, D, Oct. 28, 1986 | ....do | ....do | (25) | |
| C173-340-001, D, Oct. 29, 1986 | ARCO Oil and Gas Co., Division of Atlantic Richfield Co. | Mountain Fuel Resources, Inc., MAM Creek Field, Garfield County, CO. | (26) | |
| C187-75-000 (C177-210), B, Oct. 23, 1986. | ....do | Tranco Gas Supply Co., N/2 High Island Block 138, Offshore Texas. | (22) | |
| G-7168-000, D, Oct. 24, 1986 | Chevron U.S.A Inc. | United Gas Pipe Line Co., Pistol Ridge Field, Forrest and Pearl Counties, MS. | (27) | |
| G-10827-001, D, Oct. 24, 1986 | ....do | ....do | (27) | |
| C187-71-000, B, Oct. 21, 1986 | Pelto Oil Co., 500 Dallas Street, Houston, TX 77002 | Transwestern Pipeline Co., Twin Lakes Field, Chaves County, NM. | (28) | |
| C187-81-000, A, Oct. 21, 1986 | ....do | Pecos River Gas Plant, Ltd., Twin Lakes Field, Chaves County, NM. | (29) | |

[1] The gas reserves covered under contract dated 6-10-70, have been depleted. There have been so sales from this lease since June, 1985.
[2] Phillips Petroleum Company has assigned all its interest to Vernon E. Faulconer, Inc., by assignment effective 2-1-86 and executed on 2-4-86.
[3] Sales have ceased from ARCO's acreage under Rate Schedule No. 166. All wells are plugged and abandoned and ARCO has no development plans. Leases have ben surrendered and ARCO no longer has an interest in acreage subject to contract dated 10-5-56.
[4] Deletion of acreage. ARCO has sold all its interest covered by its Certificate to Kenneth W. Cory, by Assignment effective 5-1-86. ARCO retained some mineral interests which were leased to the purchaser, from which ARCO will receive royalty payments only.
[5] Reserves depleted and contract terminated.
[6] Acreage subject to Rate Schedule No. 36 was assigned to Mr. W.S. Chesnutt effective 2-13-86.
[7] Sandlin Oil Corporation has drilled a new well on the SW/4 of Sec. 9-T2S-R63W, Adams County, Colorado and has contracted Panhandle for the purchase of said gas. Panhandle, due to their oversupply situation, has no interest in the gas and Sandlin desires to market said gas with another purchaser, Koch Hydrocarbon Company, who is willing to purchase said gas at a mutually agreeable price and a contract between Sandlin and Koch.
[8] Property sold to Bill Bowers.
[9] Pecos River Gas Plant, Ltd. can no longer economically treat and condition natural gas at the Pecos River Plant and sell the residue gas to El Paso Natural Gas Company.
[10] Applicant is filing under contract dated 7-18-86.

[11] Cities Service Oil Company has abandoned the portion of their gas gathering system which services this well due to line deterioration.
[12] Coquina plugged & abandoned its Exxon Federal #1 well on 5-30-85, due to a depletion of recoverable reserves.
[13] By letter dated 12-16-85, Mountain Fuel gave Notice of Cancellation to be effective 365 days from 12-19-85.
[14] Effective May 19, 1985, Anadarko Production Company, as predecessor to Applicant, converted its overriding royalty interest attributable to Well No. A-3 to a 9.375 percent working interest.
[15] BHP Petroleum (Americas) Inc. has assigned all of its right, title and interest in all acreage under Rate Schedule No. 80 effective 10-1-83.
[16] To release gas for irrigation fuel.
[17] Purchaser's market-out price of $.322 per Mcf is unacceptable to ARCO. Pursuant to terms of the rollover contract, purchaser released the gas from the terms of the contract effective 7-23-86.
[18] ARCO's interest was assigned to Vernon E. Faulconer, effective 9-1-84.
[19] The last well covered by contract dated 9-28-66 was plugged and abandoned in 1983. Purchaser has concurred to terminate contract.
[20] The Gas Contract expired 7-1-80 and there has been no production since May, 1969. ARCO has no working interest in any acreage in subject field and has no plans for anymore leasing or production in this area.
[21] Acreage was assigned to Conoco, Inc., effective 6-1-86.
[22] Deletion of acreage. Applicant no longer holds an interest in the lease involved.
[23] Property sold to John W. McGowan.
[24] Acreage has been assigned to Vernon E. Faulconer and Amy H. Faulconer.
[25] Property assigned to Huffco Petroleum Corporation, Norse Petroleum (U.S.), Huthnance Drilling Contractors, Inc., and Mark Producing, Inc., executed 10-8-84.
[26] Deletion of acreage. ARCO released its interest in certain acreage under contract 3-20-64 and Rate Schedule No. 667.
[27] Acreage has been assigned to Gary L. Slade.
[28] Pelto Oil Company, as successor in interest to Stevens Operating Corporation (Stevens), requires authorization on behalf of Stevens to abandon the original service to transwestern for the small percentage of the Twin Lakes gas that remains subject to the Commission's jurisdiction under the NGA.
[29] Applicant is filing under contract dated 10-1-86.

Filing Code: A—Initital Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-25254 Filed 11-6-86; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. CP86-523-000 and CP86-524-000]**

## Iroquois Gas Transmission System; Additional Extension of Time

October 31, 1986.

On September 3, 1986, the Commission issued its Notice of Intent to Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope for the above-docketed proceeding. In a September 29, 1986 notice, the deadline for filing comments on the scope of the environmental analysis was extended from October 6, 1986 to November 20, 1986, in part because Iroquois Gas Transmission System (Iroquois) had not filed its final environmental report. Iroquois filed its 3-volume final environmental report on October 24, 1986.

Due to the amount of information contained in the Iroquois Final Environmental Report and the numerous comments at the Public Environmental Scoping meeting held in Torrington, Connecticut on October 28, 1986, Commission Chairman Martha O. Hesse extended the deadline for comments 45 days from October 28, 1986.

Therefore, notice is hereby given that an extension of time for the filing of comments in the above-docketed proceeding is granted to 5:00 PM on December 12, 1986. This extension should allow sufficient time for the parties to take the final environmental report into consideration in preparing their comments on the scope of the environmental impact of the project. To help the staff focus on environmental issues, commenters are encouraged to be as specific as possible on questions or concerns regarding the proposed and alternative routes.

Comments should reference Docket No. CP86-423-000 and be sent to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-25253 Filed 11-6-86; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. TA87-1-54-000,001]**

## Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

November 4, 1986.

Take notice that on October 31 1986, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Twelfth Revised Sheet No. 4 superseding Eleventh Revised Sheet No. 4

The proposed changes reflect a purchased gas cost adjustment under Louisiana-Nevada's Rate Schedules G-1 and X-2. The changes provide for a total adjustment of (.93) cents per MCF including a deferred gas cost adjustment of (6.10) cents per MCF, to amortize a deferred balance, and a cumulative cost of gas adjustment of 5.17 cents per MCF. An effective date of December 1, 1986 is requested.

Louisiana-Nevada states that copies of this filing were served on its jurisdictional customers and the Arkansas and Louisiana Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-25262 Filed 11-6-86; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. SA87-3-000]**

## Mobil Producing Texas and New Mexico Inc. and Mobil Exploration and Producing North America Inc.; Petition for Adjustment

Issued: November 3, 1986.

Take notice that on October 10, 1986, Mobil Producing Texas and New Mexico Inc. and Mobil Exploration and Producing North America Inc. (petitioners) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Petitioners seek a waiver of that portion of their Btu refund obligation attributable to royalties paid to the United States for sales of gas from federal leases. Under Order No. 399, these refunds are due by November 5, 1986.[4]

[1] Refunds Resulting from Btu Measurement Adjustments, 49 F.R. 46353 (Nov. 26, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-1117 (1986).

[4] 49 F.R. 37735 at 37740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas above NGPA ceilings as a result of Btu measurements based on an "as delivered" water vapor content of the gas, rather than on a water staturated basis. In so doing, the Commission was implementing the decision in

Continued

Petitioners base their request for waiver on grounds that the United States Department of the Interior's Mineral Management Service (MMS) has denied petitioners' request for Btu refund amounts attributable to royalty interests under federal leases. MMS based its denial on its interpretation of the two-year statute of limitations in the Outer Continental Shelf Lands Act. MMS' decision has been appealed by petitioners to the Department of Interior's Board of Land Appeals. In the alternative, petitioners request an extension of the November 5, 1986, deadline until their controversy with MMS is resolved.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provision of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-25263 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA87-1-55-000-001]**

## Mountain Fuel Resources, Inc.; Rate Change

November 4, 1986.

Take notice that Mountain Fuel Resources, Inc. (MFR) on October 31, 1986, tendered for filing and acceptance tariff sheets to its FERC Gas Tariff as follows:

Fifth Revised Sheet Nos. 12 and 14 to First Revised Volume No. 1 to be effective December 1, 1986, Sixth Revised Sheet No. 12 to First Revised Volume No. 1, First Revised Sheet No. 5 to Original Volume No. 1-A, and Fourth Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1987.

MFR states that these sheets provide for rates applicable to service which is subject to its Purchased Gas Adjustment (PGA) provision.

MFR further states that the purpose of this filing is two-fold. First, to adjust the purchase gas cost charge under MFR's sale-for-resale Rate Schedule CD-1; and second, to implement the Gas Research Institute (GRI) adjustment authorized in Docket No. RP86-117-000 to be effective January 1, 1987.

MFR's Fifth Revised Sheet No. 12 shows a Commodity Base Cost of Purchased Gas as adjusted at $2.29661/Dth for sales under Rate Schedule CD-1 which is $0.21935/Dth less than the currently effective rate of $2.51596/Dth. MFR's demand component of gas costs remains unchanged at $1.10944/McF as accepted and made effective in Docket No. TA86-2-55-002. MFR's Unrecovered Purchase Gas Cost Adjustment also remains unchanged at $(0.02157)/Dth.

MFR proposes to implement the GRI charge adjustment to be effective January 1, 1987. Sixth Revised Sheet No. 12 to First Revised Volume No. 1, First Revised Sheet No. 5 to Original Volume No. 1-A, and Fourth Revised Sheet No. 8 to Original Volume No. 3 of MFR's FERC Gas Tariff reflect the new GRI charge.

MFR has requested any necessary waivers of the Commission's Regulations to allow the tendered tariff sheets to become effective as proposed, and states that it has provided a copy of the filing to interested parties and state public service commissions.

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 Capital 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 will be filed on or before November 12, 1986. 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. 86-25264 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ST85-385-001]**

## Producer's Gas Co.; Extension Report

November 4, 1986.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of its intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before November 17, 1986, file with the Federal Energy Regulatory Commission, 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 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Acting Secretary.*

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST [1] SEPTEMBER 15-30, 1986

| Docket No. | Transporter/Seller | Recipient | Date filed | Part 284 subpart | Effective date | Expiration date [2] |
|---|---|---|---|---|---|---|
| ST85-385-001 | Producer's Gas Co., 950 One Energy Square, Dallas, TX 75206. | El Paso Natural Gas Co. | 09-18-86 | | 01-05-87 | |

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 86-25265 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

Interstate Natural Gas Association of Ameica v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[Docket No. RP87-13-000]

## South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 4, 1986.

Take notice that South Georgia Natural Gas Company (South Georgia) on October 31, 1986 tendered for filing proposed changes in its FERC Gas tariff, First Revised Volume No. 1. The proposed changes are based on the twelve-month period ending June 30, 1986, as adjusted, and would increase jurisdictional revenues by $1,525,020.

The Base Tariff Rates in this filing reflect South Georgia's cost of gas as reflected in its July 1, 1986 Purchased Gas Cost Adjustment. South Georgia states that it will file substitute tariff sheets reflecting any change in the cost of gas in South Georgia's PGA filing which becomes effective on or before the effective date of the tariff sheets in this filing.

South Georgia states that the principal reasons for the rate increase are increased operating costs and a reduction in the sales volume for the test year.

Additionally, South Georgia respectfully requests the Commission to grant such waivers of its regulations as may be necessary to allow the proposed tariff sheets to become effective December 1, 1986.

Copies of this filing have been served upon South Georgia's jurisdictional customers and interested State public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 12, 1986. Petitions will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-25266 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-000]

## Trunkline Gas Co.; Proposed Changes

November 4, 1986.

Take notice that Trunkline Gas Company (Trunkline) on October 31, 1986 tendered for filing the revised tariff sheets as listed on the attached Appendices A and B,[1] which reflects an increase in rates. Trunkline requests an effective date of December 1, 1986 for the tariff sheets listed on Appendix A, and notes that this is the first phase of a proposed two-phase increase.

The filed tariff sheets implement a general rate increase of $42 million. Trunkline stated that the primary reason for the filing of these revised tariff sheets is to adjust Trunkline's rates for sales and transportation services to bring the revenues to be derived therefrom into line with total costs which have increased since Trunkline's previous base tariff rates became effective. Trunkline noted that in traditional cost areas management efficiency and cost control has reduced operating expenses from prior periods.

Trunkline states that the accompanying Statement of Nature, Reason and Basis for the Proposed Change in Rates outlines the various factors which have given rise to the rate adjustments for sales services and transportation services to which this section 4 filing applies. Trunkline also stated that it is not proposing any change in several of the significant factors underlying its rates. For example, the rates filed propose no change from the rate design of Trunkline's present sales rates which utilize the modified fixed and variable method adopted in the Docket No. RP83-93 proceeding. Trunkline also stated that no change is proposed in the rate of return on equity, even though additional risk causes capital for Trunkline to be more costly than heretofore. Other factors which remain unchanged in the present rate filing are Trunkline's depreciation rates.

Trunkline stated that with respect to the rates for sales service, the instant filing is based upon existing tariff structure and applies to the resale customers that Trunkline has been certificated to serve, with the exception of Illinois Power Company, a purchaser under Trunkline's P-1 Rate Schedule, which has discontinued that service and is no longer a customer (except for minor deliveries under the SG-2 Rate Schedule). All other customers are included in the Phase I rates reflected in the tariff sheets set forth in Appendix A. Trunkline stated that this rate filing also includes Phase II tariff sheets set forth in Appendix B which will be applicable in the event Mississippi River Transmission Company (MRT) loses its status as a purchaser as a result of Commission authorization pursuant to section 7(b) of the Natural Gas Act. The Phase II tariff sheets which would become effective if that event occurs prior to the end of the test period herein, April 30, 1987, are designed to produce the same revenue from sales customers as the Phase I tariff sheets, but would involve recovering from the remaining resale customers, and the transportation customers the $25 million of fixed costs assigned to MRT in the Phase I rates. Trunkline noted that it reserves the right to collect from MRT such costs in any appropriate proceedings relating to regulatory approval of the discontinuance of service to or by MRT.

Trunkline stated that the filing reflects representative projected transportation volume levels for all currently effective transportation services rendered under section 7(c) and Parts 157 and 284 of the Commission's Regulations.

Trunkline stated that in accordance with Ordering Paragraph (A)(i) of the Commission's Order dated August 29, 1986 in Docket No. TA86-3-30-000 and 001, it has included the additional carrying charges of $18 million offset by the $2.6 million overrecovery of the three year deferred account balance in Sub-Account 191.1005. Trunkline stated that the filing reflects a one-year recovery period for these deferred account carrying charges commencing December 1, 1986, and that it will reduce its rates at the end of the one-year period commencing with the effective date of these rates to reflect the removal of this special component of the demand rates.

Copies of this letter an enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

[1] Not printed in the **Federal Register**, but available from the Commission's Division of Public Reference.

Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 86-25267 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

## Office of Hearings and Appeals

## Crude Oil Overcharges Proposed Supplemental Order

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Proposed supplemental order.

**SUMMARY:** This Proposed Supplemental Order announces that the Office of Hearings and Appeals (OHA) will use the Department of Energy (DOE) policy enunciated at 51 F.R. 27899 (August 4, 1986) to distribute monies received from Marathon Petroleum Company (Marathon). Under that policy, monies remitted to settle alleged crude oil violations will be divided among the states, the Federal government, and eligible purchasers of refined products. This Proposed Supplemental Order also announces the proposed procedures by which eligible claimants may receive a portion of the Marathon crude oil monies.

**DATE AND ADDRESS:** Comments must be filed in duplicate by December 5, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case No. KFX-0023.

**FOR FURTHER INFORMATION CONTACT:** Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252-2390 (Wieker) or (202) 252-2400 (Bleiweiss)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given to the issuance of the Proposed Supplemental Order set out below. The Proposed Supplemental Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Marathon Petroleum Company (Marathon). Marathon remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

Distribution of the monies received from Marathon will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, which states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined products. *See* 51 FR 27899 (August 4, 1986F). Proposed claims procedures are explained in the Proposed Supplemental Order.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted by December 5, 1986 and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 30, 1986.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

## PROPOSED DECISION AND ORDER

*Supplemental Order*

Name of Case: Marathon Petroleum Co.
Date of Filing: October 17, 1986.
Case Number: KFX-0023.

October 30, 1986.

On June 11, 1986 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order concerning distribution of alleged overcharge funds which Marathon Petroleum Company (Marathon) remitted to the DOE. *Marathon Petroleum Company*, 14 DOE ¶ 85,269 (1986) (*Marathon*). The OHA concluded that the $8,433,014 in crude oil monies in the *Marathon* case should be distributed in accordance with departmental policies concerning crude oil overcharges.[1] *Id.* at 88,509. However, since the departmental policy in effect at the time of the *Marathon* Decision did not authorize the submission of refund claims, the *Marathon* Decision did not establish claims procedures for the Marathon crude oil pool. Departmental policies were modified shortly after we issued that Decision, and we are issuing this Proposed Supplemental Order to propose claims procedures for the Marathon crude oil monies.

The DOE modified its policy of restitution concerning crude oil overcharges on July 28, 1986. *Statement Of Modified Restitutionary Policy In Crude Oil Cases*, 51 FR 27899 (August 4, 1986) (the Modified Policy). Under the Modified Policy, crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products. On August 8, 1986 the OHA announced its intention to follow the Modified Policy. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 29689 (August 20, 1986).[2]

*Refund Procedures*

Under the Modified Policy, claimants who allege injury as a result of crude oil overcharges may file claims. The OHA will reserve 20 percent of crude oil overcharge funds to satisfy successful claims. *Mountain Fuel Supply Company*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received by the total U.S. Consumption of Petroleum Products during the period of price control. *Id.* at 88,867-68. The per gallon refund amount for the Marathon crude oil refund pool is $.0000042.[3]

In order to receive a refund from the *Marathon* crude oil pool, we propose that a petroleum purchaser will be required to file an application for refund. The application should contain: (1) A short description of the applicant's business and use of petroleum products. If the applicant's business operated under more than one name the applicant should list these names; (2) a statement identifying the petroleum products which the applicant purchased during the period of crude oil price controls (August 19, 1973 through January 27, 1981), the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim; (3) a description of the method

[1] The total Marathon settlement was for $21,082,535.86 and resolved alleged violations of both crude oil and refined product regulations. The DOE determined that 40 percent of the settlement amount ($8,433,014) was attributable to alleged crude oil overcharges. *Marathon*, 14 DOE at 88,056.

[2] The OHA is evaluating comments to that notice.

[3] We derived this figure by dividing the crude oil monies received from Marathon ($8,433,014) by an estimate of the number of gallons of petroleum products consumed in the United States during the period August 1973 through January 1981 (2,020,997,335,000). *Cf.* "Petroleum Consumption for OECD Countries," *Monthly Energy Review*, Energy Information Administration, April 1986, page 109. Successful applicants will also receive their proportion of interest accrued.

by which the applicant determined its purchase volumes. If the applicant used estimates it should describe its method of estimation; (4) a showing that the applicant was injured by the alleged overcharges; and (5) a statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in this case.[4]

The OHA will evaluate applications for refund from purchasers of refined petroleum products using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel,* 14 DOE at 88,869. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond Transit Company,* 15 DOE ¶ ——— (October 10, 1986). The standards for showing injury which the OHA has developed in analyzing and deciding non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorchester Gas Corp.,* 14 DOE ¶ 85,240 (1986).

The 80 percent portion of the crude oil funds which is not reserved for direct restitution, as well as any portion of the 20 percent reserve which is not distributed, will be divided between the states and the federal government for indirect restitutionary purposes. Half of these funds will go to the states, in proportion to each state's consumption of petroleum products, and the other half will go to the federal government.[5]

[4] Pursuant to the Settlement Agreement in *In Re Department Of Energy Stripper Well Litigation,* M.D.L. 378 (D. Kan.) escrow funds were established for refiners, resellers, retailers, agricultural cooperatives, airlines, privately owned utilities, surface transporters, and rail and water transporters. Firms which claim refunds for crude oil overcharges from those escrow funds waive their rights to receive refunds from Subpart V cases based on alleged crude oil overcharges.

[5] In this case the actual distribution will reflect a ratio of 25 percent to the state governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. *Settlement Agreement,* Paragraph II.B.3.c.ii. This arrangement shall continue until the OHA has distributed $400 million under the 75/25 arrangement.

*See* "Calculation of Ratios For Distribution to States and Territories," *Final Settlement Agreement,* Exhibit H, *In Re: Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378, (D. Kan. 1986) (reproduced at 6 Federal Energy Guidelines, ¶ 90,509 at 90,687).

Before taking the action we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals by December 5, 1986.

It is Therefore Ordered That:

The crude oil refund amount remitted to the Department of Energy by Marathon Petroleum Company pursuant to a Consent Order finalized on January 30, 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-25183 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $9,663,400.36 (plus accrued interest) obtained from McAlester Fuel Company, Case No. KEF-0045. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESS:** Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585. All comments should display a reference to Case No. KEF-0045.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2383.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from McAlester Fuel Company (McAlester). McAlester remitted monies to the DOE pursuant to a January 30, 1986 Judgment of the United States District Court for the District of North Dakota. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from McAlester will be governed by the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the addresss set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 27, 1986.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

October 27, 1986.

### Proposed Decision and Order of the Department of Energy

*Implementation of Special Refund Procedures*

Name of Case: McAlester Fuel Company
Date of Filing: June 30, 1986
Case Number: KEF-0045.

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 refund procedures. 10 CFR 205.281. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On June 30, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures with respect to crude oil overcharge funds obtained from McAlester Fuel Company (McAlester). The DOE received $9,663,400.36 from McAlester pursuant to a January 30, 1986 Judgment entered by the Unted States District Court for the District of North Dakota.[1] This Proposed Decision and Order sets forth OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE either cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or cannot ascertain the amount of each person's injury. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82–597 (1981).

We have considered ERA's request to implement Subpart V procedures with respect to the monies received from McAlester and have determined that such procedures are appropriate. Accordingly, we will grant ERA's request.

The monies which McAlester remitted to the DOE settle alleged crude oil overcharge violations. Therefore, these cases are subject to the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, issued on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP was issued in conjunction with the approval by the United States District Court for District of Kansas of a settlement agreement in *The DOE Stripper Well Litigation*, M.D.L. 378.[2] On August 8, 1986, the OHA announced its intention to follow the MSRP. 51 FR 29689 (August 20, 1986).

The MSRP provides that a refund process will be employed for restitution of alleged crude oil violation amounts held in escrow by the DOE or received in the future, using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts will be reserved for such direct refunds to claimants who prove injury. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. In addition, after all valid claims are paid, unclaimed funds from the claims reserve will be divided equally between the state governments and the federal government. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The OHA will institute a claims process, pursuant to the MSRP, for the $9.6 million involved in this proceeding. We have decided to reserve the full 20 percent of the alleged crude oil violation amount for direct restitution to claimants. The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e. that they did not pass on alleged overcharges to their own customers). The standards for showing injury which the OHA has developed in analyzing non-crude oil claims will also apply to claims based on alleged crude oil violations. *Id.; see, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money obtained from McAlester by the total consumption of petroleum products in the United States during the period of price controls.[3] Using this method, the refund amount in this case would be $.0000047815 per gallon. Successful applicants will also receive their proportion of accrued interest.

We propose that the remaining 80 percent of the funds—$7,730,720.29—be immediately disbursed to the State and Federal governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $1,932,680.07 plus appropriate interest to the States and $5,798,040.22 plus appropriate interest to the Federal government.[4] Appendix A to this Decision lists the share (ratio) of the funds in the state account which each State will receive if these procedures are adopted.

Before taking the action we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with OHA within 30 days of publication in the **Federal Register.**

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by McAlester Fuel Company pursuant to the January 30, 1986 Judgment of the United States District Court for the District of North Dakota shall be distributed in accordance with the foregoing Decision.

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[1] McAlester entered into a consent order with the Federal Energy Administration on July 19, 1977, in order to settle certain claims that McAlester had violated the crude oil price regulations. On January 12, 1982, Conoco, Inc. (Conoco), a purchaser of crude oil from McAlester, filed a complaint against that firm in the North Dakota District Court. Conoco, Inc. v. McAlester Fuel Co., Civ. No. A3–82–3 (D. N.Dak.). The January 30, 1986 Judgment of that Court dismissed Conoco's complaint, enforced the provisions of the consent order, and ordered McAlester to pay the DOE over $10 million plus interest for disbursement pursuant to 10 CFR Part 205, Subpart V. All parties appealed the January 30 Judgment, but shortly thereafter they reached a settlement and sought dismissal of the appeals. The District Court ordered McAlester to satisfy the Judgment by depositing into a private escrow account $10,499,616.47 plus interest which accrued after April 30, 1986. The parties agreed, and the Court ordered, that 8.1% of these funds should be paid to Conoco in lieu of any rights Conoco might have to apply to the DOE for any part of the funds pursuant to Subpart V. The remaining 91.9% of the funds were transferred to the DOE to be subsequently distributed.

[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the MSRP, see *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

[3] It is estimated that 2,,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868, n.4 (1986).

[4] This distribution reflects a ratio of 25 percent to the State governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the State and Federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, Paragraph II.B.3.c.ii.

[Case No. KEF-0045]

## Appendix A

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

| State | Consumption | Ratio |
|---|---|---|
| Alabama | 626,803,520 | .01534512450 |
| Alaska | 158,047,980 | .0038692603 |
| American Samoa | 7,275,000 | .00017810331 |
| Arizona | 418,994,930 | .01025764719 |
| Arkansas | 519,811,670 | .01272579770 |
| California | 3,739,318,300 | .09154432453 |
| Colorado | 439,201,380 | .01075233249 |
| Connecticut | 693,689,220 | .01698259040 |
| Delaware | 193,932,730 | .00474777469 |
| District of Columbia | 97,574,660 | .00238877935 |
| Florida | 1,887,260,600 | .04620307312 |
| Georgia | 909,619,880 | .02226890861 |
| Guam | 60,196,000 | .00147369165 |
| Hawaii | 280,655,260 | .00687087703 |
| Idaho | 167,643,790 | .00410418057 |
| Illinois | 1,876,159,080 | .04593129065 |
| Indiana | 1,006,156,560 | .02463227660 |
| Iowa | 532,229,530 | .01302980621 |
| Kansas | 457,905,310 | .01121023378 |
| Kentucky | 523,601,010 | .01281856663 |
| Louisiana | 971,591,210 | .02378606310 |
| Maine | 300,279,730 | .00735131456 |
| Maryland | 731,363,020 | .02790490359 |
| Massachusetts | 1,398,309,100 | .03423278036 |
| Michigan | 1,391,772,090 | .03407274419 |
| Minnestoa | 708,814,590 | .01735288297 |
| Mississippi | 557,786,510 | .01365548081 |
| Missouri | 806,514,320 | .01974472423 |
| Montana | 184,882,510 | .00452621123 |
| Nebraska | 301,217,700 | .00737427752 |
| Nevada | 165,454,200 | .00405057600 |
| New Hampshire | 190,375,330 | .00466068401 |
| New Jersey | 1,507,862,710 | .03691482302 |
| New Mexico | 267,574,460 | .00655063871 |
| New York | 3,162,994,520 | .07743502253 |
| No. Mariana Islands | 3,763,000 | .00009212409 |
| North Carolina | 916,800,700 | .02244470625 |
| North Dakota | 149,717,090 | .00366530709 |
| Ohio | 1,534,904,170 | .03757684000 |
| Oklahoma | 504,488,400 | .01235066023 |
| Oregon | 404,894,790 | .00991245384 |
| Pennsylvania | 1,901,863,900 | .04656058461 |
| Puerto Rico | 389,132,000 | .00952655624 |
| Rhode Island | 161,953,570 | .00396487514 |
| South Carolina | 486,978,850 | .01192199923 |
| South Dakota | 146,053,670 | .00357562087 |
| Tennessee | 660,920,850 | .01618036977 |
| Texas | 3,013,545,120 | .07377626891 |
| Utah | 240,978,330 | .00589952410 |
| Vermont | 97,762,860 | .00239338678 |
| Virgin Islands | 188,953,000 | .00462586316 |
| Virginia | 1,048,324,650 | .02566461699 |
| Washington | 623,786,920 | .01527127344 |
| West Virginia | 244,121,480 | .00597647330 |
| Wisconsin | 718,698,070 | .01759484593 |
| Wyoming | 166,569,650 | .00407788395 |
| Totals | 40,847,079,480 | 1.00000000000 |

[FR Doc. 86-25185 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed; Week of October 3 Through 10, 1986

During the Week of October 3 through October 10, 1986, the applications for 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, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

October 29, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 3 through October 10, 1986]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Oct. 6, 1986 | Tenneco Oil Company Washington, DC | KEG-0001 | Request for Special Redress. *If Granted:* The Office of Hearings and Appeals would reopen several proceedings in which exception relief was granted to Kern Oil and Refining Company. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 9/25/86 | E.B. Lynn/Chubby's Garage | RF246-9 |
| 10/3-10/86 | Mobil Refund Applications | RF225-10329 Thru RF225-10347 |
| 10/3-10/86 | Marathon Refund Applications. | RF250-1484 Thru RF250-1550 |
| 10/3-10/86 | Surface Transporters Refund Applications. | RF270-110 Thru RF270-144 |
| 10/6/86 | Bunge Corp. | RF271-25 |
| 10/6/86 | Bunge Towing, Inc. | RF271-24 |
| 10/6/86 | Providence and Worcester Railroad Co. | RF271-23 |
| 10/6/86 | Power Transportation Co | RF271-22 |
| 10/6/86 | Mid-America Transportation Co. | RF271-21 |
| 10/6/86 | La Gloria/Columbia LNG Corp. | RF263-2 |
| 10/7/86 | Farstad/Dale's Case Supply | RF261-5 |
| 10/7/86 | River Parishes Co., Inc. | RF271-25 |
| 10/7/86 | Gull/Earl Lamar Millet | RF259-5 |
| 10/8/86 | Little America Refining Co./ Best Oil and Gas Co. | RF112-197 |
| 10/8/86 | Inland Marine Co., Inc | RF271-26 |
| 10/8/86 | Conoco/Service Station | RF220-420 |
| 10/8/86 | Conoco/Rhodes Oil Co. | RF220-419 |
| 10/8/86 | Conoco/G.L. Manuel Oil Co | RF220-418 |
| 10/8/86 | Conoco/Wingfield's 271 Service. | RF220-417 |
| 10/8/86 | Conoco/Leonard's Conoco | RF220-416 |
| 10/8/86 | LARCO/Curt's Sinclair | RF112-198 |
| 10/8/86 | La Gloria/Delta Oil Co | RF263-2 |
| 10/8/86 | La Gloria/Mothershead Oil Co., Inc. | RF263-3 |
| 10/8/86 | La Gloria/J.L. Mothershead | RF263-4 |
| 10/9/86 | Farstad/Gustafson Oil Co | RF261-6 |
| 10/9/86 | Gull/Harry Russell | RF259-5 |
| 10/9/86 | Gull/Harry Russell | RF259-6 |
| 10/9/86 | Dalco/Pyramid Distributing Co., Inc. | RF248-6 |
| 10/10/86 | Conoco/Joe's Conoco | RF220-421 |

[FR Doc. 86-25184 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $66,217 obtained as a result of consent orders which the DOE entered into with the following firms:

National Propane Corporation/ Conservative Gas Division (Conservative) of New Hyde Park, New York.

Parman Oil Corporation of Nashville, Tennessee.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund of a portion of either the Conservative or the Parman consent order fund must be filed in duplicate on or before December 8, 1986. Applications should refer to the appropriate case number, HEF-0315 for Conservative, and HEF-0145 for Parman. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602

**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 explains the procedures that the DOE has formulated to distribute to adversely affected parties the $66,217, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with National Propane Corporation/Conservative Gas Division, and Parman Oil Corporation. Conservative and Parman provided these funds to settle all claims and disputes with the DOE regarding the manner in which each firm applied the federal price regulations to its sales of refined petroleum products; specifically, propane in the case of Conservative, and motor gasoline and No. 2 oil in the case of Parman. The Conservative consent order covered the firm's propane sales between November 1, 1973, and November 30, 1975; the Parman consent order covered the firm's motor gasoline and No. 2 oil sales between November 1, 1973, and February 29, 1976. Firms or individuals that purchased propane from Conservative or motor gasoline and/or No. 2 oil from Parman during these time periods may be eligible to receive a portion of the consent order funds.

The DOE solicited comments concerning the distribution of the consent order funds in two Proposed Decision and Orders, one for the Conservative case issued on July 24, 1986, and one for the Parman case issued on January 8, 1986. 51 FR 27588 (August 1, 1986). 51 FR 2559 (January 17, 1986). Following this, the DOE determined the final refund application procedures. The Decision describes the process by which purchasers of either firm may apply for refunds. A purchaser must submit monthly schedules of its propane purchases from Conservative or its motor gasoline and/or No. 2 oil purchases from Parman, and proof that it was injured by the alleged pricing violations of the firm from which it purchased product. Applicants claiming $5,000 or less, as well as all end user customers, need only document their purchase volumes to establish injury.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days for the publication of this Decision and Order in the **Federal Register.**

Dated: Oct. 27, 1986.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

Names of Firms: National Propane Corporation/Conservative Gas Division. Parman Oil Corporation.
Dates of Filing: October 13, 1983. October 13, 1983.
Case Numbers: HEF–0135. HEF–0145.
October 27, 1986.

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 distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with National Propane Corporation, Conservative Gas Division (Conservative), and Parman Oil Corporation (Parman). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to these consent orders.

**I. Background**

Both Conservative and Parman are "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. Conservative's home office is located in New Hyde Park, New York; Parman is located in Nashville, Tennessee. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. In addition, each consent order states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

In the Conservative proceeding, the DOE audit alleged that between November 1, 1973 and November 30, 1975, the firm committed pricing violations in its sales of propane. The Conservative consent order, executed on September 26, 1979, settled all claims and disputes between Conservative and the DOE regarding the firm's propane sales during the period covered by the audit. Under the terms of the consent order, Conservative agreed to pay a total settlement amount of $70,491, including interest, to cover alleged overcharges committed in its sales of propane during the consent order period. ERA ordered that the total settlement amount be divided between Conservative's various customer classes and be distributed by two different methods.[1] In connection with this settlement, all of Conservative's retail and certain of its wholesale customers received direct payments totaling $49,274. The remaining $21,217 represents the settlement of alleged overcharges on sales to Conservative's wholesale customers that were not included in the direct-payment schedule.[2] Conservative deposited that amount into an interest-bearing escrow account for ultimate distribution by the DOE.[3]

In the Parman proceeding, the DOE alleged that between November 1, 1973 and February 29, 1976, Parman committed certain pricing violations with respect to its sales of motor gasoline and No. 2 oil. In order to settle all claims and disputes between Parman and the DOE regarding the firm's sales of motor gasoline and No. 2 oil during the period covered by the audit, Parman and the DOE entered into a consent order on September 20, 1979. The consent order resolved a Notice of Probable Violation (NOPV) issued on December 2, 1976. Under the terms of the consent order, Parman agreed to deposit $45,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order was paid in full on October 26, 1979.[4]

**II. Jurisdiction and Authority to Fashion Refund Procedures**

The general guidelines which OHA may use to formulate and implement a

[1] Apparently Conservative marketed its propane in cylinder and bulk form to ten separate customer categories at wholesale and retail prices.

[2] The purchasers eligible for refunds in the present proceeding are resellers which purchased bulk and cylinder propane, and wholesale dealers which purchased "bulk cylinder" propane from Conservative during the consent order period.

[3] As of September 30, 1986, the Conservative escrow account contained a total of $41,578.19, representing $21,217 in principal and $20,361.19 in accrued interest.

[4] As of September 30, 1986, the Parman escrow account contained a total of $88,940.12, representing $45,000 in principal and $43,940.12 in accrued interest.

plan to distribute funds received as a result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981) (*Coline*), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

OHA issued Proposed Decisions and Orders (PD&Os) in the Conservative and Parman proceedings on July 24, 1986 and January 8, 1986, respectively. 51 FR 27,588 (August 1, 1986); 51 FR 2,559 (January 17, 1986). The PD&Os outline tentative plans for distributing refunds to parties that show that they were injured by the firms' alleged overcharges during the respective consent order periods. The PD&Os state that the basic purpose of the special refund proceeding is to make restitution for injuries experienced as a result of actual or alleged violations of the DOE regulations.

In order to notify all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed procedures were solicited. In addition, copies of the PD&Os were sent to purchasers identified in the ERA audits and various petroleum dealers' associations. Comments were submitted in both proceedings on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. At this time, we will not address comments regarding second-stage refunds. Procedures for apportioning remaining monies will depend upon the size of the fund. *See Coline*, 9 DOE at 85,055. Since we received no comments concerning the first stage procedures in either case, we will adopt the procedures as proposed.

## III. Refunds To Identifiable Purchasers

In the first stage of the Conservative and Parman refund proceedings, we will distribute the funds in the escrow accounts to claimants that demonstrate that they were injured by the alleged overcharges. To be eligible to receive a refund, a purchaser must file an application, and, with the three exceptions outlined below, show the extent to which injury resulted from the alleged overcharges. To the extent that a firm or individual can establish injury, it will be eligible for a share of the monies in the appropriate consent order fund.

We will presume that purchasers of Conservative propane or Parman motor gasoline and/or No. 2 oil that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. In the absence of compelling material, we will also presume that spot purchasers were not injured. In addition, we find that end-users or ultimate consumers of Coservative propane or Parman motor gasoline and/or No. 2 oil whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Conservative propane or Parman motor gasoline and/or No. 2 oil and passed the alleged overcharges associated with those products through to their end-user members.[5] These presumptions and findings permit claimants to apply for refunds without incurring prohibitively high expenses. Prior OHA decisions explain additional reasons for adopting these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&Os. 51 FR 27588 at 27590–27591 (August 1, 1986); 51 FR 2559 at 2560–61 (January 17, 1986).

In both cases, a reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods for making such a showing, a claimant is generally required to demonstrate (1) that it maintained a "bank" of unrecovered product costs, and (2) that market conditions would not permit it to pass on the increased costs to its customers in the form of higher selling prices.[6]

## IV. Calculation of Refund Amounts

In both the Conservative and Parman proceedings, we will use a volumetric method to compute the refunds to eligible applicants.[7] This method presumes that, during the respective consent order periods, the alleged overcharges were dispersed evenly among all sales of motor gasoline and No. 2 oil made by Parman, and all sales of propane made by Conservative to the customer classes that were not previously refunded. Under the volumetric method, a claimant will be eligible for a refund equal to the number of gallons of Conservative propane or Parman motor gasoline and/or No. 2 oil that it purchased during the consent order period times the appropriate volumetric factor. The volumetric factor, or average per gallon refund, equals $0.002491 per gallon in the Conservative case, and $0.001227 per gallon in the Parman proceeding.[8]

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

As in previous cases, only claims for at least $15 plus interest will be processed. We have found in the past that the cost of processing claims for less than $15 outweights the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims in either of the two proceedings exceed the funds available in the particular escrow account, all refunds in that proceeding will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

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[5] We will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to notify the appropriate regulatory body of their receipt of any refund money.

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,125 (1982) (Ada).

[7] In view of the direct payments which Conservative made to all retail and certain wholesale customers, the Conservative PD&O proposed that such pruchasers be ineligible to receive refunds in this proceeding. Since no objections were received, we will adopt this proposal. A further payment to these firms on the basis of the sales covered by the audit would produce a double refund. However, if such a customer can show that it was also a purchaser of the propane sales covered in this proceeding, and that it did not previously receive a refund for such purchases, then that customer may apply for a refund on those purchases.

[8] The Conservative volumetric factor has been calculated from information contained in ERA's audit workpapers. The figure was derived by dividing the $21,217 in escrow by the 8,516,162 gallons of propane sold by Conservative to its previously unrefunded customers during the consent order period. The Parman volumetric is computed by dividing the $45,000 principal amount by the 36,683,588 gallons of motor gasoline and No. 2 oil which Parman sold throughout the consent order period.

V. Applications for Refund

Through the procedures described above, we will be able to distribute the Conservative and Parman consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased Conservative propane during the period November 1, 1973 through November 30, 1975, and Parman motor gasoline and/or No. 2 oil between November 1, 1973 and February 29, 1976. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Conservative propane or Parman motor gasoline and/or No. 2 oil during the appropriate consent order period along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the product claimed was originally sold by Conservative or Parman;

(2) Whether the applicant has previously received a refund, directly or through price rollbacks, with respect to the alleged overcharges identified in the ERA audit underlying the proceeding in which it is claiming a refund;

(3) Whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) whether the applicant is or has been involved as a party in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in the status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each applicant must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c): 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the confidential information has been deleted. All applications should refer to the appropriate case number (HEF–0135 for Conservative and HEF–0145 for Parman) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by National Propane Corporation, Conservative Gas Division pursuant to the Consent Order executed on September 26, 1979, may now be filed.

(2) Applications for Refund from the funds remitted to the Department of Energy by Parman Oil Corporation pursuant to the Consent Order executed on September 20, 1979, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: October 27, 1986.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 86–25179 Filed 11–6–86; 8:45 am]

BILLING CODE 6450–01–M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**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 $15,907,465.76 (plus accrued interest) obtained as a result of a settlement agreement which the DOE entered into with Howard Oil Company, Inc. of Maspeth, New York (Case No. KEF–0008). The fund will be available to customers who purchased middle distillates and residual fuel oil from Howard during the settlement period.

**DATE AND ADDRESS:** Applications for refund of a portion of the settlement fund must be postmarked on or before February 5, 1987, and should be addressed to: Howard Oil Company Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF–0008.

**FOR FURTHER INFORMATION CONTACT:** Ted Hochstadt, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252–4921.

**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 a settlement agreement entered into by Howard Oil Company of Maspeth, New York and the DOE which settled possible regulatory violations in the firm's sales of middle distillates and residual fuel oil during the settlement period, August 1973 through January 27, 1981.

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 settlement fund. The Proposed Decision and Order discussing the distribution of the settlement fund was issued on August 12, 1986. 51 FR 30420 (August 26, 1986).

As the Decision and Order indicates, applications for refunds from the settlement fund 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 middle distillates or residual fuel oils from Howard during the relevant settlement period. The specified 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 settlement funds until the first-stage claims procedure is completed.

Dated: October 27, 1986.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

October 27, 1986.

**Decision and Order of the Department of Energy**

*Special Refund Procedures*

Name of Firm: Howard Oil Company, Inc.

Date of Filing: October 28, 1985

Case Number: KEF–0008.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 28, 1985. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Settlement Agreement entered into by the DOE and Howard Oil Company, Inc. of Maspeth, New York (Howard).[1]

I. Background

Howard was a "reseller-retailer" of middle distillates and residual fuel oils as those terms were defined in 10 CFR 212.31, and was therefore subject to the Mandatory Petroleum Price Regulations. As a result of an ERA audit, the ERA alleged that Howard violated the price regulations in sales of middle distillates and residual fuel oil during 1973 and 1974 and also failed to pass through a refund made by Sun Oil Company (Sun) to Howard in 1974. On April 9, 1985, Howard entered into a Settlement Agreement with the DOE in a proceeding in the United States District Court for the Eastern District of New York. *DOE v. Howard Oil Co.*, Civ. No. 78–C–2002 (E.D.N.Y. Apr. 9, 1985). This agreement settled all disputes and claims between Howard and the DOE regarding the firm's compliance with the price regulations in sales of petroleum products during the the period from August 1973 through January 27, 1981. Specifically, Howard agreed to remit $15.4 million to the DOE for deposit in an interest bearing escrow account. Of that amount, $3 million was stated to be in settlement of the alleged overcharges by Howard in sales of middle distillates and residual fuel oil during 1973 and 1974; $4.5 million settled allegations regarding Howard's failure to pass through the refund received from Sun in 1974;[2] and $7.9 million was accrued interest on both Howard's alleged overcharges and the Sun refund through October 31, 1984.[3]

On August 12, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the settlement fund. 51 FR 30420 (August 26, 1986). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution of injuries that were experienced as a result of actual or alleged violations of the DOE regulations. In order to effect restitition in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Howard. We noted that the ERA audit files identify six wholesale customers and three groups of unidentified wholesale customers who purchased either middle distillates and/or residual fuel oil from Howard. The audit file also specifies the amounts these individual customers and classes of purchaser were allegedly overcharged. We specifically proposed to refund proportionate shares of the settlement fund to these customers.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, copies of the PD&O were mailed to potential claimants identified in the audit file whose addresses were available. None of Howard's customers submitted comments on the proposed procedures. Comments were submitted by the successor to Howard, Rossrock Company, Inc. (Rossrock),[4] and the States of Pennsylvania, California, Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Rossrock requests that any funds remaining after first stage claims have been satisfied be returned to Rossrock. All of the comments received from the States assert that they are the appropriate recipients of second-stage refunds. Furthermore, California suggests that the OHA at this time propose a second-stage refund procedure to avoid delay and "assist in the expeditious distribution of the funds that remain when the first stage is completed." Comments at 2. California reasons that the "OHA has ample experience upon which to base a proposal, at the outset of each refund proceeding." *Id.* Although we agree that the OHA has ample experience in the refund area, it is this experience which dictates to us that we wait until the first stage is complete before we propose second-stage procedures. Any proposals concerning residual funds would be premature since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. *See Office of Enforcement*, 9 DOE ¶82,508 (1981). Therefore, we will not address the issues raised by Rossrock or the States concerning the disposition of any residual funds until all meritorious first stage claims have been paid.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals 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 the 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 Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Howard settlement. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted. The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those wholesale customers who purchased Howard middle distillates or residual fuel oil during the specific time periods described in the Settlement Agreement [5] and who demonstrate that they were injured by Howard's alleged actions. Such purchasers must file claims and

[1] Other parties to the Settlement Agreement were York Oil Trading and Transport Company (York Oil); South Pacific Oil Company Limited (Sopac); Howard Ross, a principal stockholder and officer of Howard, York Oil and Sopac; H. Peter Ross, a principal stockholder and officer of York Oil and Howard; and Theodore Ross, a principal stockholder and officer of York Oil and Howard.

[4] Subsequent to the audit period, Howard Oil Company, Inc. changed its name to Rossrock Company, Inc.

[5] These time periods are described in Part IIIB, *infra*.

document their purchases in order to be eligible for a portion of the settlement funds.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. In determining the manner of indirect restitution, we will act in accordance with the provisions of the recently enacted Petroleum Overcharge Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., 132 Cong. Rec. H11319–21 (daily ed. October 17, 1986).

A. Refund Claimants. During the first stage of the refund process the settlement fund will be distributed to those customers of Howard who were injured by the alleged overcharges or by Howard's alleged failure to pass through the Sun refund. Since the Settlement Agreement allocates the refund monies to alleged violations during specific periods of time, we will limit eligibility to firms who purchased product that was sold by Howard during those periods. *See* Part IIIB, *infra*. We expect that claimants will fall into one of the following general categories: (i) Resellers, retailers and refiners (hereinafters collectively referred to as resellers) who resold Howard middle distillates and residual fuel oil, (ii) individuals or firms that consumed Howard petroleum products for their own use (end-users), or (iii) public utilities. The product purchased by these claimants will have been purchased directly from Howard, or from other firms in the chain of distribution leading back to Howard. In this case, the ERA audit files identified certain customers who may have been injured by Howard's allegedly wrongful actions. These parties are listed in the appendices to this Decision and Order. In our view, these identified customers are only some of the parties who were adversely affected, at least initially, by Howard's alleged overcharges or failure to distribute the Sun refund. We therefore will accept refund applications from the customers identified in the Appendices and any other parties who can demonstrate that they were injured by Howard's pricing practices.

1. *Reseller Showing of Injury.* As in prior refund proceedings, we will require claimants who were reseilers of products purchased from Howard to demonstrate that during the settlement period they would have maintained their prices for the products 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 the product from Howard, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges.[6] *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 claimant is generally required to show that it had a "bank" of unrecovered costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its own prices. As we noted in the PD&O, however, the maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A.*, Inc., 10 DOE ¶ 85,014 (1982).

2. *Small Claims Presumption.* As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of Howard petroleum products. 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 presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, any reseller claiming a refund of $5,000 or less need only document its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.[7]

3. *End-Users.* As in many other refund proceedings, 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 covered by the Howard settlement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit peroid, and were not required to keep records which justified selling price increases by reference to cost increases. *See, e.g., Marion; Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this 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. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of Howard petroleum products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

4. *Regulated Firms.* Firms whose prices for goods and services are regulated by a government agency, e.g., public utilities, will also not be required to make a detailed demonstration of injury in this case. Although these firms generally passed overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass through any refund received to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body of their receipt of the refund money. *See Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

5. *Spot Purchasers.* Resellers that made spot purchases from Howard will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot purchases of a firm's product at increased prices unless it was also to pass through to its customers the full amount of the firm's selling price. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser and establish the extent to which it was injured by the spot purchase(s).

6. *$15 Minimum.* We will also establish a minimum amount of $15 for refund 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 outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9

[6] These alleged violations would have been committed by either Howard or by Sun and passed through by Howard.

[7] As in prior speical refund proceedings, reseller applicants whose purchase volume might qualify them for a larger refund may choose to limit their claims to $5,000 in lieu of making a detailed showing of injury.

DOE ¶ 82,541 (1982); *See also* 10 CFR 205.286(b).

### B. Calculation of Refund Amounts

We must further determine the proper method for dividing the settlement fund among successful applicants. The Settlement Agreement explicitly states that $3 million (plus interest) is intended as restitution for alleged overcharges by Howard during 1973 and 1974, and that $4.5 million (plus interest) is intended as restitution for Howard's failure to pass through to its customers Sun's 1974 refund for overcharges in sales of No. 2 oil and kerosene to Howard in November and December 1973.[8] Since the settlement comprises restitution for two very different types of allegation, we will establish separate refund pools based on these allegations. One refund pool will be for Howard's middle distillate and residual fuel oil customers during the period from August 19, 1973, when the price regulations went into effect, through December 31, 1974, and a second pool will be for the customers to whom Howard allegedly failed to pass through the Sun Oil refund to which they were entitled in sales of No. 2 oils and kerosene. *See Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The former pool totals $7,776,743.71 consisting of $3 million plus $4,776,743.71 interest which accrued on the alleged overcharges prior to payment to the DOE. The latter pool totals $8,130,722.05 consisting of $4.5 million plus $3,630,722.05 interest on the unpaid Sun refund accrued prior to payment.

1. *Claims Based Upon Howard's Alleged Overcharges.* The maximum potential refund for the identified firms listed in Appendix A will be based on the amounts they were allegedly overcharged, as indicated in the Howard audit files.[9] To calculate the size of each identified firm's potential refund, we will multiply the alleged overcharge amount for that claimant by 0.451478, a pro rata factor representing the portion of the total alleged overcharges that Howard remitted to the DOE pursuant to the Settlement Agreement.[10] In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

For firms who were allegedly overcharged by Howard but who are not identified in the audit files, we will adopt a volumetric refund presumption. The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a firm were spread equally over all gallons of product marketed by that firm. In the absence of better information this assumption 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. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons of middle distillates and residual fuel oils purchased from Howard between August 19, 1973 through December 31, 1974, times the volumetric factor. The volumetric factor for this refund pool equals $0.008186 per gallon.[11] In addition, successful claimants will receive a proportionate share of the interest which has accrued since the deposit of the funds in the escrow account.

2. *Claims Based Upon the Sun Oil Refund.* The audit files show four identified purchasers and two groups of unidentified customers who allegedly did not receive their full share of the Sun refund from Howard. *See* n.7, *supra*. To calculate the size of each identified firm's potential refund, we will multiply the Sun refund amount designated for that claimant by 0.668646, a pro rata factor representing the portion of the total Sun refund amount that Howard remitted to the DOE pursuant to the settlement.[12] These potential refund amounts are set forth in Appendix B.[13] Also, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds in the escrow account.

The unidentified firms who are eligible for a portion of the Sun Oil refund consist of Howard wholesale customers that purchased kerosene in November 1974 or No. 2 oils in November or December 1973. The audit files set forth the total Sun refund amounts attributable to these two groups. Accordingly, in order to calculate refunds for claimants in these groups, we will adopt two volumetric refund amounts.[14] Based upon the information available to us, the volumertic refund amount for unidentified kerosene purchasers will be $0.381705 per gallon ($403,169.98 divided by 1,056,233 gallons). For unidentified No. 2 oil purchasers the volumetric refund amount will be $0.357903 per gallon ($343,644.97 divided by 960,161 gallons). Successful claimants will also receive a proportionate share of the interest which has accrued since the deposit of the funds into the escrow account.

## IV. Application for Refund Procedures

These procedures should equitably and efficiently distribute the Howard Settlement fund. We shall now accept applications for refund from eligible wholesale customers who purchased middle distillates and/or residual fuel oil during the relevant time periods. All potential applicants should review the Appendices of this Decision and specify

[8] The Settlement Agreement, ¶ 2 states:

Howard Oil will pay the sum of $15,500,000 in full settlement of the above captioned civil action through November 1, 1984. Of that amount, $3,000,000 is paid as restitution to the Department of Energy on behalf of any customers of Howard Oil who may be entitled to refunds for alleged overcharges during 1973 and 1974; $4,500,000 is paid to the Department of Energy on behalf of customers of Howard Oil who may be entitled to refunds in connection with the refund received by Howard Oil from Sun Oil Company in 1974; $7,900,000 is paid on account of claims for accrued interest on the alleged overcharges and the Sun Oil refund through October 31, 1984 and $100,000 represent civil penalties to be paid to the Treasury of the United States.

We recognize that the time periods of the alleged violations described in this provision of the Settlement Agreement are not as comprehensive as the August 1973 through January 27, 1981 settlement period established by provision six of the Settlement Agreement. Nonetheless, as indicated above, we will follow the specific allocation terms of the Settlement Agreement.

[9] Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we will use this information in the present case as a basis for identifying overcharged customers and their potential refunds since it can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See Marion.*

[10] The alleged overcharge amount upon which Howard's remittance was based included accrued interest through October 31, 1984.

[11] The $0.008186 volumetric factor was derived by dividing the $6,280,461.49 balance of this refund pool by 767,127,246, the total number of gallons of middle distillates and residual fuel oil sold by Howard to unidentified wholesale purchasers during the August 1973–December 1974 period.

[12] The Sun refund amount upon which Howard's remittance was based included accrued interest through October 31, 1984.

[13] Since York Oil is affiliated with Howard and was a party to the Settlement Agreement (*see* footnote 1), it and any other applicant similarly affiliated with Howard will be ineligible for refunds in this proceeding. *See Dalco Petroleum Inc.*, 14 DOE ¶ 85,248 at 88,468 (1986); *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 at 88,381–82 (1985).

[14] These volumetric factors were derived by multiplying the aggregate Sun refund amounts attributable to the respective customer group by the pro-rated overcharge factor 0.668646, and then dividing each amount by the respective number of gallons of kerosene and No. 2 oils sold by Howard during the applicable time period.

the refund pool(s) from which they are requesting a refund. There is no official application form. Applications for refund should be written or typed on business letterhead or personal stationery. The following information should be included in all applications for refund:

1. The name of the settlement agreement firm, Howard Oil Company, Inc., the case number, KEF–0008, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

3. The manner in which the applicant used the Howard petroleum products, i.e., whether it was a reseller, end-user, or public utility.

4. The volume of Howard middle distillates and/or residual fuel oil that the applicant purchased in each month of the period for which it is claiming it was injured by Howard's alleged overcharges and/or failure to pass through the Sun refund.

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, and

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for Howard petroleum products with the prices paid for that product by its competitors to show that price increases to recover alleged overcharges were infeasible.

6. If the applicant is a regulated firm, e.g., a public utility, it must:

(a) Certify that it will pass through any refund received to its customers, and provide the OHA with a full explanation of how it plans to accomplish this restitution, and

(b) Explain how it will notify the appropriate regulatory body of the receipt of the refund money.

7. If an applicant purchased Howard middle distillates and/or residual fuel oil from a firm other than Howard, it must establish its basis for the belief that the product(s) originated with Howard and identify the reseller from whom the product(s) was purchased.

8. A statement of whether the applicant was in any way affiliated with Howard. If so, the applicant should state the nature of the affiliation.

9. A statement of whether there has been any change in ownership of the entity that purchased middle distillates and/or residual fuel oil from Howard since the end of the relevant time periods. If so, the name and address of the current (or former) owner should be provided.

10. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the application 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 the application for refund. *See* 10 CFR 205.9(d).

11. 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 and must be filed within 90 days after publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference 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 material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Howard Oil Company pursuant to the Settlement Agreement executed on April 9, 1985 may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

*Director, Office of Hearings and Appeals.*

Date: October 27, 1986.

APPENDIX A

| Customers allegedly overcharged by Howard | Potential refund |
|---|---|
| Melanol Corp.[1] | $833,496.77 |
| Orange and Rockland Utilities, Inc. | 371,839.19 |

APPENDIX A—Continued

| Customers allegedly overcharged by Howard | Potential refund |
|---|---|
| Carbonit Curacao, N.V.[1] | 218,599.32 |
| Texaco Inc. | 72,344.94 |
| Unidentified Wholesale Customers (middle distillates, residual fuel) 8/19/73–12/31/74 | [2] 6,280,461.49 |
| Total | 7,776,743.71 |

[1] Copies of the PD&O were sent to these firms but they were returned to this Office because of outdated addresses. These firms may still apply for refunds.
[2] $0.008186 per gallon.

APPENDIX B

| Sun Oil refund customers | Potential refund |
|---|---|
| Melanol Corp.[1] | $6,087,024.41 |
| Carbonit Curacao N.V.[1] | 910,153.03 |
| York Oil Trading & Transportation Co. Inc.[2] | 345,815.87 |
| Con Edison | 40,913.79 |
| Unidentified Wholesale Customers: | |
| Kerosene sold during 11/74 | [3] 403,169.98 |
| No. 2 oils sold from 11/6/73–12/31/73 | [4] 343,644.98 |
| Total | 8,130,722.05 |

[1] Copies of the PD&O were sent to these firms but they were returned to this Office because of outdated addresses. These firms may still apply for refunds.
[2] See footnote 13 concerning eligibility.
[3] $0.381705 per gallon.
[4] $0.357903 per gallon.

[FR Doc. 86–25180 Filed 11–6–86; 8:45 am]

BILLING CODE 6450–1–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS–59230A; FRL–3105–2]**

### Certain Chemical Approval of Test Marketing Exemption

**AGENCY:** Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–86–59. The test marketing conditions are described below.

**EFFECTIVE DATE:** October 23, 1986.

**FOR FURTHER INFORMATION CONTACT:** John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–613, 401 M St., SW., Washington, DC 20460, (202–382–3373).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds

that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approved TME–86–59. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–59. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

**T–86–59**

*Date of Receipt:* September 9, 1986.

*Notice of Receipt:* September 19, 1986 (51 FR 33298).

*Applicant:* Confidential.

*Chemical:* (S) Maleic anhydride/tetrahydrofuran adduct and solution.

*Use:* (G) Open, non-dispersive use in resin systems.

*Production Volume:* Confidential.

*Number of Customers:* Confidential.

*Worker Exposure:* Manufacture; inhalation, a total of 4 workers, up to 2 hrs/day, up to 200 days/yr.

*Test Marketing Period:* Twelve Months.

*Commencing on:* October 23, 1986.

*Risk assessment:* No significant health concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified potential environmental concerns; however, no releases of the test market substance to the environment are anticipated. Therefore, under these conditions the test market substance will not pose any unreasonable environmental risk.

*Public Comments:* None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 23, 1986.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 86–24994 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–51465D; FRL–3105–3]**

## Certain Chemical Premanufacture Notice; Termination of Review Period

**AGENCY:** Office Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is revoking the remaining portion of a 90-day extension of the review period for (PMN) P–83–677, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA).

**FOR FURTHER INFORMATION CONTACT:** Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–609, 401 M St., SW., Washington, DC 20460, (202–382–3394).

**SUPPLEMENTARY INFORMATION:** The original 90-day review period for Premanufacture Notice (PMN) P–83–677 was scheduled to expire on July 26, 1983. EPA published a section 5(c) extension notice for the PMN, in the **Federal Register** of July 27, 1983 (48 FR 34121), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States pending the submission and evaluation of test data addressing the potential risk of injury to human health. The company suspended the notice review period and submitted more health data and other information. In light of this new data and information, EPA concluded that there were no longer significant concerns for the PMN substance. The review period, including the extension under section 5(c), is scheduled to expire October 21, 1986.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: October 8, 1986.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 86–24995 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

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**[ER–FRL–3105–8]**

## Environmental Impact Statements and Regulations Prepared October 20 through 24, 1986; Availability of EPA Comments

Availability of EPA comments prepared October 20, 1986 through October 24, 1986 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) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

**Draft EISs**

*ERP No. D–AFS–L65103–WA,* Rating EC2, Wenatchee Nat'l Forest, Land and Resource Mgmt. Plan, WA. SUMMARY: EPA suggested more detailed direction be included in the Standards and Guidelines of the EIS/Plan to ensure adequate protection of water quality and beneficial uses. In particular, EPA suggested that the final documents include a specific commitment to collect necessary baseline data for fisheries and soils prior to initiating activities, and provide a more detailed monitoring program that both adequately addresses the plan's Standards and Guidelines and can rectify the significant data gaps existing for some of the Forest's resources.

*ERP No. D–COE–G32051–TX,* Rating EO2, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, TX. SUMMARY: EPA's review has identified significant environmental impact with the HG50 proposal and believes such impacts can be avoided or significantly minimized with the selection of other or newly developed alternatives. The selection of the HG50 Plan was primarily based upon maximization of navigation benefits only. EPA believes this is inconsistent with the stated National

planning objectives and would cause unnecessary environmental impact to Galveston Bay. EPA, therefore, objects to the selection of the HG50 Plan and recommends that the COE further evaluate the H45/G50 Plan as the preferred action.

*ERP No. D–COE–K36088–CA,* Rating E02, Coyote Creek Flood Control Project, Facilities Construction, CA. SUMMARY: EPA expressed objections because the draft EIS Clean Water Act section 404(b)(1) evaluation is inadequate. EPA specifically objected to the selected "preferred alternative" since other "practicable alternatives, less damaging to the environment, were presented in the draft EIS. EPA also requested: (1) The final EIS provide more information and analysis on other practicable alternatives, and impacts to water quality, fish and wildlife of Coyote Creek; and (2) the cumulative impacts of other projects impacting Coyote Creek be more fully addressed, due to the limited amount of wetlands remaining in the southern San Francisco Bay region.

*ERP No. D–FRC–G05045–00,* Rating EU3, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, 404 Permit, AR and OK.

**Summary**

EPA has determined that the selected alternative, Lee Creek Reservoir and hydropower facility, has the potential to cause unacceptable adverse environmental impacts and severe water quality degradation to Lee Creek that could be avoided by other less costly and feasible alternatives. Also, the draft EIS did not adequately investigate all the alternatives including the use of Arkansas River water or groundwater as a water supply and did not adequately analyze the potentially significant environmental impacts of the total project which includes both Phase I and II of the construction and operation of Lee Creek Reservoir. Unless a satisfactory agreement is reached on the significant unresolved issues prior to the final EIS, this EIS is a candidate for referral to the Council on Environmental Quality.

*ERP No. D–NRC–K2203–CA,* Rating EC2, Humboldt Bay Powser Plant, Unit 3, Decommission, Approval, CA. SUMMARY: EPA has agreed that the proposed action (storage of spent fuel on-site for 30 years) appears to be a reasonable alternative, however, EPA noted that such storage was an interim measure only. EPA requested that NRC prepare a supplemental EIS on the final dismantling of the unit, once numerous technical and environmental issues were resolved. EPA also requested that the final EIS discuss the relationship of Humboldt decommissioning with other NRC rules such as NRC's proposed Decommissioning Criteria for nuclear facilities.

*ERP No. D–USN–E11018–00,* Rating EC2, Gulf Coast Strategic Homeporting, Dredging, Construction, Operation and Maintenance, FL, MS, AL, LA, and TX. SUMMARY: EPA is sensitive to the national security considerations which prompted the Navy's initiative to disperse this fleet of ships. EPA also noted that the magnitude of the project would require extensive mitigation for just the unavoidable environmental losses attendant to its implementation. Certain of the current selected alternatives foster a number of specific adverse impacts which EPA believes are neither sufficiently mitigated or unavoidable. In particular, EPA's concerns center on the Corpus Christi Ship Channel dredging and disposal activity, exclusive naval use of the Signing River Island at Pascagoula, and the plan to open water dispose of maintenance material within the confines of Mobile Bay.

**Final EISs**

*ERP No. F–AFS–D65010–00,* George Washington Nat'l Forest, Land and Resource Mgmt. Plan, WV and VA. SUMMARY: EPA determined that, while most of the concerns with the draft EIS were addressed in the final EIS, there were areas which will require further evaluation in the implementation of the management plan. These areas are: potential adverse water quality impacts from the proposed activities, revision in the categorization of streams, a more detailed mapping of the baseline conditions of the affected area, and a more detailed analysis of the impacts of timber harvesting on critical areas. EPA looks forward to staff involvement in the future development and implementation of the proposed activities.

*ERP NO. F–BLM–J70007–UT,* House Range Resource Area, Resource Mgmt. Plan, UT. SUMMARY: EPA supports the proposed action as being consistent with environmentally acceptable uses of the resource area. EPA recommended that grazing allotments presently in fair to poor condition or where known resource conflicts exist, either be withdrawn or allotments be reduced.

*ERP No. F–FHW–B40061–VT,* Chattenden County Circular Highway Construction, VT–127 to I–89, VT. SUMMARY: The final EIS is responsive to EPA's comments on the draft EIS. EPA will work with the project sponsors during design to achieve further reductions in wetland loss and mitigation for unavoidable losses.

*ERP No. F–FHW–E–40683–NC,* NC–280 Improvement, NC–280 and NC–191 Intersection to I–26 Near Asheville Airport, Construction, 404 Permit, TVA 26A Permit, FAA Permit, NC. SUMMARY: EPA still has concerns about the project as the additional requested at the draft EIS stage was not provided or only partially provided. Information in a short follow-up letter or in the Record of Decision is therefore requested for noise abatement, aquatic ecology/fisheries, and secondary impacts.

*ERP No. F–IBR–J35008–CO,* Stagecoach Reservoir, Multipurpose Project, Construction, Upper Yampa River Valley, Yampa River, Loan, 10 and 404 Permits, CO. SUMMARY: EPA identified several incomplete responses to EPA concerns. Even though substantial improvements have been made over the draft EIS, resolution of wetlands mitigation, water quality management, and downstream fisheries habitat and channel stability concerns have been only partially achieved in the final EIS. Resolution of the wetlands and water quality management requirements are progressing outside of the EIS process.

*ERP No. F–NRC–G06007–TX,* South Texas Nuclear Power Plant, Units 1 and 2, Operating Licenses, Colorado R., TX. SUMMARY: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has not identified any new issues of concern with regard to the proposed action.

**Regulation**

*ERP No. R–CGD–A52162–00,* 46 CFR Part 150, Incinerator Vessels, Safety Rules (CGD 84–025) (51 FR 30241). SUMMARY: EPA believes that the proposed rule provides adequate environmental safeguards. EPA did, however, suggest clarification of some specific technical issues.

Dated: November 4, 1986.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 86–25229 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

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**[ER–FRL–3105–7]**

## Environmental Impact Statements; Filed October 27, through 31, 1986; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements

Filed October 27, 1986 Through October 31, 1986, Pursuant to 40 CFR 1506.9.

*EIS No. 860433,* Draft, FHW, CA, CA–1 Highway Improvement, Carmel River Bridge to CA–17, CA–68/Pacific Grove Interchange, Monterey County, Due: January 11, 1987, Contact: C. Glenn Clinton (916) 551–1310.

*EIS No. 860444,* Final FHW, IL, US 51/FAP–412 Improvement, I–55 at Bloomington-Normal to IL–71 near Oglesby, Due: December 8, 1986, Contact: Jay Miller (217) 492–4600.

*EIS No. 860445,* Final, FHW, TN, TN Connector Route Construction, TN–6/US 31 to I–65, Maury and Williamson Counties, Due: December 8, 1986, Contact: Thomas Ptak (615) 736–5394.

*EIS No. 860446,* Report, COE, OK, Parker Lake, Muddy Boggy Creek Multipurpose Project, Effects of Dredged or Fill Material Discharges into Waters, Evaluation, Coal County, Contact: Richard Makinen (202) 272–0166.

*EIS No. 860447,* Final, AFS, NM, Carson National Forest, Land and Resource Management Plan, Due: December 8, 1986, Contact: John Bedell (505) 758–6200.

*EIS No. 860448,* Final, MMS, AL, MS, LA, TX, 1987 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales Nos. 110 and 112, Lease Offering, Due: December 8, 1986, Contact: Archie Melancon (202) 343–6264.

*EIS No. 860449,* Final, BLM, WY, Lander Resource Area, Resource Management Plan, Due: December 8, 1986, Contact: Jack Kelly (307) 332–7822.

*EIS No. 860450,* FSuppl, FHW, RI, Woonsocket Industrial Highway/RI–99 Construction, I–295 Interchange to RI–146/RI–146A with Connection to RI–122/Mendon Road, Due: December 8, 1986, Contact: Gordan Hoxie (401) 528–4541.

*EIS No. 860451,* Draft, APH, SEV, PRO, 1987 Rangeland Grasshopper Cooperative Management Program, Due: December 22, 1986, Contact: Charles Bare (301) 436–8295.

**Amended Notice**

*EIS No. 860392,* Draft, AFS, CA, Mendocino National Forest, Land and Resource Management Plan, Due: February 2, 1987, Published FR 10–03–86—Review period extended.

*EIS No. 860339,* Draft, AFS, CA, Eldorado National Forest, Land and Resource Management Plan, Due: January 10, 1987, Published FR 8–29–86—Review period extended.

Dated: November 4, 1986.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 86–25228 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

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**[SAB–FRL–3106–7]**

## Science Advisory Board Stratospheric Ozone Subcommitee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a two day meeting of the Stratospheric Ozone Subcommittee of the Science Advisory Board. The meeting will be held on November 24–25, 1986 at the Hyatt Regency Bethesda Hotel, 1 Bethesda Metro Center, Bethesda, MD 20814. The meeting will begin at 8:30 a.m. each day and will adjourn at approximately 3:00 p.m. on November 25.

This is the first meeting of the Stratospheric Ozone Subcommittee. The purpose of the meeting is to provide the Subcommitte with the opportunity to conduct an independent scientific review of the scientific adequacy of the assumptions, interpretations and conclusions of scientific information used by the U.S. Environmental Protection Agency in preparing its draft document

**An Assessment of the Risks of Stratospheric Modification**

The meeting is open to the public. Any member of the public wishing to attend or obtain information about the meeting should notify Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer, secretary, at (202) 382–4126. Seating is limited, therefore, notification of your attendance must be received by November 14, 1986. Opportunity will be provided for members of the public to make oral presentations to the Subcommitte, and a total time of one hour is available for this purpose. Written scientific comments will be accepted in any form. Any member wishing to present oral comments should notify Dr. Yosie by close of business November 14, 1986. A copy of the Subcommittee roster is available upon request.

EPA submitted its draft document, *An Assessment of the Risks of Stratospheric Modification,* to the Science Advisory Board on October 23, 1986, and also has released it for public review and comment.

Until the SAB review is completed and the document revised, the Assessment will not represent the official views of EPA. The estimates of risks in the document and the numbers contained in it should be viewed as preliminary, and EPA requests that they not be cited or quoted.

The document contains no recommendations for risk management actions. Rather, it is a compilation of scientific assessments of risks. When reviewed and revised it will serve as the basis for EPA decisionmaking. Thus, the review that is now being initiated is solely a scientific review.

The Assessment builds on the atmospheric assessments conducted by the World Meteorological Organization, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, the Chemical Manufacturers' Association, and other national and international scientific organizations. Much of this previous work has already been peer reviewed.

The Assessment addresses and integrates information in a variety of areas: Industrial emissions of trace gases that can modify the stratosphere; biogenic emissions of such gases; possible changes in atmospheric concentrations which may occur in response to these atmospheres; the response of ozone in the stratosphere to these changes; the response of the global climate system to stratospheric modification and trace gas build up; basal and squamous skin cancers; melanoma; immune suppression by ultraviolet radiation; crop and terrestial ecosystem effects; aquatic system effects; the effects of UV–B on polymers; the effects of UV–B on tropospheric air quality; sea level rise; and the effects of climate change.

In some cases qualitative assessments are made of these impact areas; in other cases quantitative estimates are made. In all cases, uncertainties are identified and their ramifications examined. An effort is made to examine how these areas are linked together so that the risks can be examined over time.

The reviewed and revised Assessment will serve as a basis for EPA to decide what regulations, if any, to adopt. EPA is scheduled to propose a decision on regulation of chlorofluorocarbons by May 1, 1987 and to make a final decision on such regulation by November 1, 1987. In addition, international negotiations are underway under the United Nations Environmental Programme to develop a protocol to limit chlorofluorocarbons globally.

The risk assessment document, *An Assessment of the Risks of Stratospheric Modification,* can be obtained by contacting Maria Tikoff, U.S. Environmental Protection Agency, PM–220, 401 M Street, SW., Washington, DC 20460 or by calling (202) 382–4036.

EPA's Office of Air and Radiation is also accepting public comment on the risk assessment document. Written comments should be submited (in duplicate if possible) to: Central Docket Section (LE–130), Environmental Protection Agency, Attention: Docket No. A–86–18, 401 M Street, SW., Washington, DC 20460. Comments will be accepted until December 12, 1986.

A copy of the risk assessment document and comments received will be available for review at the Public Information Reference Unit, (202) 382–5926, EPA Headquarters Library, 401 M Street, SW., Washington, DC 20460, between the hours of 8:00 a.m. and 4:30 p.m. The same materials may also be found in Docket No. A–86–18. The docket is located at the above address in the West Tower Lobby, Gallery 1, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged by EPA for copying docket materials.

Dated: October 31, 1986.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

Dated: October 31, 1986.

**J. Craig Potter,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 86–25196 Filed 11–6–86; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 30, 1986

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB No.: 3060–0235
Title: Part 31—Uniform System of Accounts
Action: Extension
Respondents: Common carriers
Estimated Annual Burden: 234 Responses; 68 Recordkeepers; 3,326,264 Hours

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 86–25163 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

### Public Information Collection Requirement Approved by Office of Management and Budget

October 30, 1986.

The following information collection requirement was approved by the Office of Mangement and Budget in accordance with the Paperwork Reduction Act of 1980, (44 U.C.S. 3507 et seq.) on September 30, 1986. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0166
Title: Part 42—Preservation of Records of Communication Common Carriers
Action: Revision
Respondents: Communication common carriers
Estimated Annual Burden: 68 Recordkeepers; 136 Hours

This information collection requirement has been approved for use through September 30, 1986.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 86–25164 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

**[Report No. CF–3]**

### Window Notice for the filing of FM Broadcast Applications

Released: October 28, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending December 8, 1986 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process. *See* § 73.3564(d)(5) of the Commission Rules.

**Channel—244 A**

Moab, UT

**Channel—284 C**

Garberville, CA

**Channel—296 A**

Sweet Home, OR

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 86–25165 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

**[REPORT NO. 1626]**

### Petitions for Reconsideration of Actions in Rulemaking Procedures

November 3, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Woodstock and Broadway, Virginia)
Number of petitions received: 1
Subject: Amendment of Part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VEC's) to Maintain Pools of Questions for Amateur Operator Examinations. (PR Docket No. 85–196)
Number of petitions received: 1
Subject: WATS-Related and Other Amendments of Part 69 of the Commission's Rules. (CC Docket No. 86–1)
Number of petitions received: 1

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 86–25166 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

### Applications for Consolidated Hearing; Companion Broadcasting Service Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and State | File No. | MM Docket No. |
|---|---|---|
| A. Companion Broadcasting Service, Inc.; Andalusia, AL | BPH–840919JC | 86–401 |

| Applicant, city, and State | File No. | MM Docket No. |
|---|---|---|
| B. Jeffrey Jerome Jackson and Michael Purnell, d/b/a Jackson-Purnell Broadcasting Co.; Andalusia, AL. | BPH-841228MG | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief Audio Services Division Mass Media Bureau.*

[FR Doc. 86–25167 Filed 11–6–86; 8:45 am]

**BILLING CODE 6712-01-M**

## Applications for Consolidated Hearing; Kimberly Harrison et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Kimberly Harrison; Galveston, TX. | BPH-840423IG | 86-403 |
| B. Irvin Davis, Galveston, TX. | BPH-841114ND | |
| C. Ellen Louise Gardner; Galveston, TX. | BPH-841114MN | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. City Coverage–FM, B, C
2. Air Hazard, B
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division Mass Media Bureau.*

[FR Doc. 86–25168 Filed 11–6–86; 8:45 am]

**BILLING CODE 6712-01-M**

## Applications for Consolidated Hearing, Charles J. Saltzman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and State | File No. | MM Docket No. |
|---|---|---|
| A. Charles J Saltzman; Van Buren, IN. | BPH-850702MC | 86-402 |
| B. Marion College; Van Buren, IN. | BPH-850711MI | |
| C. Umberger Radio; Van Buren, IN. | BPH-850711MJ | |
| D. Marion Radio Corp.; Van Buren, IN. | BPH-850711ML | |
| E. Randall L (Ron) Houston; Van Buren, IN. | BPH-850712MP | |
| F. Altcom of Indiana, Inc.; Van Buren, IN. | BPH-850712MQ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Main Studio, B
2. Air Hazard, A,C,F,
3. Comparative, ALL
4. Ultimate, ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 86–25169 Filed 11–6–86; 8:45 am]

**BILLING CODE 6712-01-M**

## Applications for Consolidated Hearing; Winstanley Broadcasting Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Winstanley Broadcasting, Inc.; Panama City Beach, FL. | BPH-840210AS | 86-392 |
| B. Marcus D. Sloan and Herlinda Valdez Thompson d/b/a Gulf Coast Broadcasting; Panama City Beach, FL. | BPH-840228CA | |
| C. Jane O'Quinn and Kim E. Walker d/b/a Panama City Beach Broadcasters; Panama City Beach, FL. | BPH 840608IA | |
| D. Gulf Property and Investment Co., Inc.; Panama City Beach, FL. | BPH-840611IG | |
| E. Bay One Hundred, Inc.; Panama City Beach, FL. | BPH-840611IS | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify

whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, B, D
2. Comparative, A, B, C, D, E
3. Ultimate, A, B, C, D, E.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 86–25170 Filed 11–6–86; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

### The Bank of New York Co., Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 November 21, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire 100 percent of the voting shares of North American Bancorp, Inc., Garden City, New York, and thereby indirectly acquire Long Island Trust Company, N.A., Garden City, New York.

In connection with this application, Applicant also proposes to acquire NABAC Investment Services, Inc., Garden City, New York, and thereby engage in securities brokerage services, related securities credit activities pursuant to Regulation T and incidental activities such as offering custodial services, IRAs and management services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86–25143 Filed 11–6–86; 8:45 am]

BILLING CODE 6210–01–M

### Citicorp; Proposal To Issue Variably Denominated Payment Instruments Having Unlimited Maximum Face Values

Citicorp, New York, New York, has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage directly or indirectly through its subsidiary, Citicorp Services Inc., Chicago, Illinois, in the issuance of variably denominated payment instruments without limitation as to their face anount. The Board previously has approved the issuance of certain payment instruments with no maximum limitation on their face amount but subject to a number of restrictions absent in the instant application. *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986).

In the current proposal, Citicorp proposes to issue payment instruments through nonaffiliates as well as through its own depository institution subsidiaries. Where payment instruments are issued or sold by these nonaffiliates, Citicorp proposes that reserve requirements be eliminated. Where payment instruments with face amounts of over $10,000 are issued or sold by Citicorp affiliates, Citicorp would place only the excess over $10,000, rather than the entire face amount, in demand deposit accounts at Citicorp bank subsidiaries until the instruments are paid.

The issue presented by this application is whether the proposal is consistent with the policies expressed by the Board in its *Wells Fargo* order.

In its *Wells Fargo* order, the Board expressed concern that the issuance of such instruments by a bank holding company or its nonbanking subsidiaries with a face amount of over $10,000 could result in an adverse, possibly erosive, effect on the reserve base, and hence an adverse effect on monetary policy, because such instruments generally are not subject to transaction account reserve requirements. In that regard, the Board conditioned its approval of the proposal on a commitment that Wells Fargo cause to be deposited into a demand deposit account at its bank subsidiary all of the proceeds of any official check having a face value in excess of $10,000, thereby rendering the proceeds subject to reserve requirements. The Board also made its approval subject to its own continued evaluation of the activity's potentially adverse effects on monetary policy.

Citicorp contends that since its nonbanking competitors in this activity are not required to maintain reserves with respect to the instruments, Citicorp, which is so required, is at a competitive disadvantage. Citicorp claims that it cannot simultaneously comply with the reserve requirements and competitively price its services. Citicorp also argues that its proposal would not adversely affect monetary policy because: (1) The volume of third-party remittance service checks outstanding is only a small part of the total money supply; (2) seasonal

fluctuation in the volume of remittance service balances is large but predictable, while irregular variations are modest; and (3) Citicorp plans to prepare frequent, timely reports of the amounts issued by bank and non-bank clients.

Interested persons may express their views in writing on the question of whether consummation of this 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 views or requests for hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 28, 1986. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James Mc Afee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25144 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## First Hawaiian, Inc., 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 November 26, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Hawaiian, Inc.*, Honolulu, Hawaii; to acquire Crocker Financial Corporation, Ltd., Honolulu, Hawaii, and thereby engage in operating an industrial bank, Morris Plan bank, or industrial loan company pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25145 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## First Mid-Illinois Bancshares, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

November 3,1986.

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 November 26, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to engage de novo through its subsidiary Mid-Illinois Data Services, Inc., Mattoon, Illinois, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission Valley Bancorp*, Pleasanton, California; to engage *de novo* in providing investment and financial advice in real estate development to non-depository institutions or individuals who would hold equity interests in real estate development projects as limited partners including project location, analysis, monitoring (contract and document review, site inspection, market analysis review, financial accounting, budgetary analysis and reporting to investor, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *The Tokai Bank, Ltd.*, Nagoya, Japan; to engage *de novo* through its subsidiary, Tokai Trust Company of New York, New York, New York, in trust company activities permissible under § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25146 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## First Union Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) 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. 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 November 26, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, First Union Brokerage Services, Inc., Charlotte, North Carolina, in the purchase and sale of precious metals (i.e. gold and silver bullion and coins) for the account of customers.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James MoAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25147 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## Irving Bank Corp.

This notice corrects a previous **Federal Register** document (FR Doc. 86-23601), published at page 37494 of the issue for Wednesday, October 22, 1986.

Under the Federal Reserve Bank of New York, the entry for Irving Bank Corporation is corrected to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Life Insurance Corporation, Phoenix, Arizona, in underwriting, as reinsurer, credit life insurance and credit accident and health insurance directly related to extensions of credit by banking and nonbanking subsidiaries of Applicant pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Comments on this application must be received by November 11, 1986.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25148 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## Sterling Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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 225.14) 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)).

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 to the Reserve Bank 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sterling Bancorp, Inc.*, Eleanor, West Virginia; to acquire 100 percent of the voting shares of Milton Tri-County Bank, Milton, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation*, Birmingham, Alabama; to merge with First Tuskaloosa Corporation, Tuscaloosa, Alabama, and thereby indirectly acquire The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

2. *Bank Corporation of Georgia*, Fort Valley, Georgia; to acquire 84 percent of the voting shares of Southern Bank and Trust Company, Savannah, Georgia. Comments on this application must be received by November 22, 1986.

3. *Citizens Bancorp, Investment, Inc.*, Lafayette, Tennessee; to acquire 80 percent of the voting shares of Dale Hollow Holding Company, Celina, Tennessee, and thereby indirectly acquire Bank of Celina, Celina, Tennessee.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Zeeland, Michigan; to acquire 100 percent of the voting shares of State Savings Bank, Lowell, Michigan. Comments on this application must be received by November 24, 1986.

2. *Valley Bancorporation*, Appleton, Wisconsin; to acquire 100 percent of the voting shares of Suburban State Bank, Hartland, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ballard Kevil Bancorp, Inc.*, Kevil, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Kevil Bank, Kevil, Kentucky.

Board of Governors of the Federal Reserve System, November 3, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-25149 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0582]

## Fees for Federal Reserve Bank Check Collection Services; Request For Comment

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comments.

**SUMMARY:** The Board is requesting public comment on a proposal to allow the Federal Reserve Banks to provide a redeposit service for low-dollar cash items that are returned unpaid. Under this service, Reserve Banks, following the instructions of their senders, would intercept low-dollar cash items being returned for insufficient or uncollected funds, and redeposit them for collection.

**DATE:** Comments must be received by December 18, 1986.

**ADDRESS:** Comments, which should refer to Docket No. R-0582, may be mailed to the Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

**FOR FURTHER INFORMATION CONTACT:** Earl G. Hamilton, Assistant Director (202/452-3879), or Gayle Thompson, Senior Analyst (202/452-2934), Division of Federal Reserve Bank Operations, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Currently, approximately 42-44 billion checks are written each year. According to a study conducted by the Bank Administration Institute in 1985, slightly less than one per cent of all checks are returned unpaid. Of these, 53 per cent had a dollar value of less than $100. Many collecting institutions routinely redeposit for collection low-dollar checks returned for insufficient funds, because a large proportion of these items are paid upon their second presentment. The collecting institutions find this practice to be simpler and less expensive than returning the items to their depositing customers. Several years ago, institutions engaging in this practice requested that the Federal Reserve consider offering a service to accelerate this process.

In resonse to these requests, a pilot program was implemented in the St. Louis Federal Reserve District in July, 1984, to test the feasibility of accelerating the reclearing of certain low-dollar return items. The pilot was designed to determine what benefits could be provided to collecting institutions and the payments mechanism if the Reserve Banks were to intercept and redeposit these items on behalf of their senders.[1]

In May, 1985, based on encouraging results from the initial St. Louis program, the pilot was expanded to include the Atlanta and Cleveland Reserve Banks. The purpose of the expansion was to provide comparative data to enable the System to evaluate more accurately the benefits of the return item reclearing service.

During the pilot, the reclearing service was offered as an optional sevice to senders. The pilot Reserve Banks would intercept cash items below a specified dollar value [2] being returned for the first time due to insufficient or uncollected funds.

Thirty-three senders located in the three pilot Districts chose to participate in the pilot. The majority were in the original pilot District (St. Louis), where the service was provided to a cross-section of senders, including large commercial banks, small commercial banks, and thrifts.

Data collected by the three pilot Districts show that substantial proportions of the senders' return items are eligible for the reclearing service. In St. Louis and Cleveland, approximately 40 per cent of the items to be returned to the participating senders are eligible to be redeposited. In Atlanta, where the dollar cutoff for some institutions is higher, eligible volume is 55 per cent. Approximately 64 per cent of the recleared checks are paid on the second presentment in St. Louis. In Cleveland and Atlanta, the success rates are 57 and 58 per cent, respectively.

Results of the pilot indicate that the reclearing service can benefit senders by reducing the costs associated with low-dollar return items and by accelerating collection times. A survey of selected users of the pilot service found that depositor savings will vary based on the degree that special handling services are provided to corporate customers, procedures for charging the item back to the institution's depositors, and the overall volume of returned checks. While senders of all sizes indicated cost savings, large senders reported labor savings averaging $.034 per redeposited check. Other types of savings include fewer out-of-balance conditions and missing items, postage expense for notifying depositing customers of returned checks, and elimination of the need to expand their return items processing facilities.

The reclearing service accelerates presentment times for most returned checks by one day, because the item no longer travels back to the sender before being redeposited. Thus, for most of the returns that clear when redeposited, the time required for the check to be finally paid [3] is also reduced by at least one day. One pilot participant reported that the increased availability reduces clearing float costs by approximately $.021 per item.

One potential disadvantage to senders using the service is the delay in learning of each specific return. For those returned items that are not paid upon their second presentment, the sender will not be able to associate a particular returned item with a customer's account until it has received the actual item. This time delay could be several days. Nevertheless, the Board believes that this disadvantage is minimized because the dollar value of redeposited items is minimal, and in most cases the sender will still be able to recover the funds from its depositor. In any event, participation by senders will be voluntary, and those senders that believe this factor will be a serious

[1] A "sender" is an entity that sends items to a Federal Reserve Bank. A sender may be a depository institution, an international organization, a foreign correspondent, a branch or agency of a foreign bank, or another Reserve Bank. 12 CFR 210.2(k). As Reserve Banks will not be reclearing items for other Reserve Banks, they will be excluded from the meaning of the term "sender" when it is used in this notice.

[2] The dollar cutoff is $100 in St. Louis. Atlanta and Cleveland allow the sender to choose its own dollar cutoff. Experience in Cleveland indicates that $100 is favored by the majority of senders. In Atlanta, however, one sender elected to use a dollar cutoff of $900.

[3] "Final payment" occurs when the paying bank becomes accountable for an item under 12 CFR 210.9(a) and no longer has the right to recover payment under 12 CFR 210.12(a).

disadvantage to them may opt not to participate.

The experience of the pilot indicates that allowing Reserve Banks to offer this service on a voluntary basis could be beneficial to both the participating senders and the payments mechanism. Participating senders will have the opportunity to lower their cost and final payment of recleared items will be advanced by at least one day. To the extent that an optional reclearing service could make the processing of low-dollar returns more efficient, it could provide significant improvements for the overall return process. Removing these items from the return items processing at the senders and prior collecting institutions also allows these institutions more resources to devote to the processing of large-dollar returns.

The incremental costs to the Reserve Banks of providing this service are minimal. Because the service can be provided using existing equipment, incremental costs to the Reserve Banks consist primarily of labor costs associated with sorting, listing, balancing, and preparing the items for collection. To recover these costs, the Board proposes that the Federal Reserve Banks establish a two-part price structure for the service, consisting of a fixed daily fee for reclearing items up to a volume level specified by the Reserve Bank and a per item fee for any additional volume above the specified level. The fixed daily fee will recover from each participating sender the daily costs of ascertaining whether there are returns eligible for redeposit. Even if no eligible returns are found on a given day, the Reserve Bank should charge a fee for the service.

The Board is also proposing that Reserve Banks allow participating senders to select their own dollar limits for reclearable returns. Pilot experience suggests that, although preferences may vary considerably regarding the dollar threshold used to select items for automatic redeposit, most institutions would select a cutoff of $100 or less.

In its policy statement, "The Federal Reserve in the Payment System" August 14, 1984), the Board established a policy that before the Federal Reserve introduces a new service or a major service enhancement, all of the following criteria must be met:

(1) The Federal Reserve must expect to achieve full recovery of costs over the long run.

(2) The Federal Reserve must expect its provision of the service to yield a clear public benefit, including, for example . . . improving the efficiency of the payment mechanism or reducing the use of real resources. . . .

(3) The service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

The Board believes that the proposed low-dollar reclearing service meets all of these criteria:

(1) Reserve Banks will recover all costs associated with the service.

(2) The service will yield clear public benefits through improving the efficiency of the return item process and reducing the amount of real resources expended by collecting institutions in the return item process.

(3) For checks that are collected through the Federal Reserve, Reserve Banks alone can provide the service to their senders. Thus, while other collecting institutions can and do provide reclearing services for institutions that send items to them for collection, the Federal Reserve must provide this service for it to be available to institutions that choose to collect some or all of their cash items through a Reserve Bank.

Accordingly, the Board is proposing that Reserve Banks be permitted to offer a redeposit service for low-dollar cash items that are returned unpaid, and invites all interested members of the public to comment on all aspects of the proposed service.

By order of the Board of Governors of the Federal Reserve System, November 3, 1986.

**Williams W. Wiles,**

*Secretary of the Board.*

[FR Doc. 86-25142 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HSS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 31, 1986.

**Public Health Service**

(Call Reports Clearance Officer on 202-245-2100 for copies of packages.)

*Centers for Disease Control*

Subject: Prevention Practices in Adult Medicine—NEW—
Respondents: Individuals or households; Businesses or other for-profit

*Food and Drug Administration*

Subject: New Drug for Investigational Use—21 CFR 312—Reinstatement—(0910-0014)
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

*Office of the Assistant Secretary for Health*

Subject: NCHS Laboratory-Based Questionnaire Research—NEW—
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

*Health Care Financing Administration*

(Call Reports Clearance Officer on 301-594-8650 for copies of package.)
Subject: Medicare Participating Physician or Supplier Agreement—Extension—(0938-0373) HCFA-460/463
Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

*Office of Human Development Services*

(Call Reports Clearance Officer on 202-472-4415 for copies of package.)
Subject: Title XX of the Social Security Act, Social Services Block Grant Program—Extension—(0980-0125)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

*Social Security Administration*

(Call Reports Clearance Officer on 301-594-5706 for copies of package.)
Subject: Request for Correction of Earnings Record—Extension—(0960-0029)
Respondents: Individuals or households
Subject: Modified Benefit Formula Questionnaire—Extension—(0960-0395)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent

directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Dated: October 4, 1986.

**Wallace O. Keene,**

*Acting Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 86-25247 Filed 11-6-86; 8:45 am]

BILLING CODE 4150-04-M

## Food and Drug Administration

**[FDA 225-86-2001]**

## Memorandum of Understanding Between the Export Inspection Service, Australia, and the Food and Drug Administration

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Export Inspection Service, Australia Department of Primary Industry (DPI), and FDA, U.S. Department of Health and Human Services. This MOU describes the cooperative methods that FDA and DPI will employ to assure that fresh frozen molluscan shellfish exported from Australia and offered for import into the United States are safe and wholesome and have been harvested, processed, transported, and labeled in accordance with the provisions of the National Shellfish Sanitation Program and the requirements of law.

**DATE:** The agreement became effective September 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

**SUPPLEMENTARY INFORMATION:** In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: October 31, 1986.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services, United States of America and the Export Inspection Service, Department of Primary Industry, Australia, Concerning the Sanitary Control of Fresh Frozen Molluscan Shellfish Destined for Exportation From Australia to the United States**

*I. Purpose*

The Food and Drug Administration (FDA) and the Department of Primary Industry (DPI) affirm by this memorandum their intention to cooperate in seeking to assure that fresh frozen molluscan shellfish exported from Australia and offered for import into the United States of America (U.S.) are safe and wholesome and have been harvested, processed, transported, and labeled in accordance with the provisions of the National Shellfish Sanitation Program (NSSP) and the requirements of the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, and the Australian Export Control Act. This memorandum defines the sanitation practices and administrative controls and describes the responsibilities of FDA and DPI in implementing these practices and controls. By this document, under the NSSP, FDA officially recognizes DPI as the authority for certifying shellfish shippers intending to export fresh frozen shellfish from Australia to the United States.

*II. Background*

The sanitary control of shellfish in interstate commerce in the United States is administered by FDA in cooperation with the American States under the NSSP. The NSSP provides the States and industry with a mechanism by which shellfish dealers can be "certified" as shipping shellfish that have been harvested, handled, and processed in conformity with the sanitation and administrative guidelines of the NSSP. In most instances, food control authorities rely on the integrity of the NSSP certification controls to determine the acceptability of the shellfish product.

FDA, the States, and many foreign control authorities recognize the substantial benefit that can result from the use of a similar procedure for imported shellfish. Therefore, it is FDA's policy to enter into memoranda of understanding with foreign control authorities willing to apply the sanitation and administrative controls of the NSSP to exported lots of shellfish that are to be offered for import to the United States. These agreements permit the foreign control authorities to certify foreign processors and shippers of fresh frozen shellfish and to have these dealers listed on FDA's "Interstate Certified Shellfish Shippers List" (ICSSL). FDA and American State authorities, in turn, will recognize these shipments as being certified under the NSSP.

Certification of foreign shellfish dealers exporting to the United States is normally limited to those dealers shipping fresh frozen products. This limitation is based on fishery conservation concerns over the possible introduction of exotic infectious organisms into U.S. fishery stocks from foreign fishery stocks. The processing and freezing of shellfish substantially reduce the possibility that such introductions will occur.

The sanitary control of shellfish in Australia is administered by DPI in cooperation with Australian State control agencies. DPI has authority under the Australian Export Control Act of 1982 to inspect shellfish processors preparing products for export, to set quality standards, and to certify compliance of export lots with these standards. Australian State public health and fishery authorities have jurisdiction under various Australian Federal and State public health and fishery regulations to survey and classify shellfish growing areas and to control harvesting and shipping operations. Laboratory support is provided by private laboratories under agreements with Australian Federal and State authorities.

*III. Substance of Agreement*

A. Definitions

1. *Advisory agencies.* Advisory agencies are the Australian Government Analytical Laboratories or other laboratories accredited by the Australian National Association of Testing Authorities that provide analytical support to shellfish control authorities associated with this memorandum.

2. *Central file.* Central file is the location where each shellfish sanitation authority stores and maintains program information, data, and reports.

3. *Enforcement agencies.* Enforcement agencies are the Department of Primary Industry (DPI) and the Australian State enforcement agencies having regulatory authority over the production, harvesting, processing, transport, classification, and export of certified shellfish to the United States under the terms of this memorandum.

4. *Lot.* A lot is a collection of primary containers or units of the same size, type, and style, produced under conditions as nearly uniform as possible, designated by a common container code or marking, and in any event, containing no more than a day's production.

5. *Shellfish.* Shellfish are edible species of oysters; clams, including cockles; and mussels.

6. *State enforcement agencies.* State enforcement agencies are the Australian State departments that have regulatory authority over the production, harvesting, transport, and processing of shellfish and the classification, monitoring, and control of harvest areas, and that have entered into an agreement with DPI for the purposes of this memorandum.

B. DPI Responsibilities

DPI will: 1. Develop and maintain interagency agreements and protocols with Australian State enforcement agencies to coordinate Australian Federal and State implementation of NSSP controls, as necessary.

2. Maintain NSSP required legal, administrative, and sanitation controls over shellfish exported by certified Australian

dealers by ensuring that Australian State enforcement agencies:

(a) Classify shellfish harvesting areas based upon comprehensive sanitation surveys;

(b) Prepare sanitation survey reports and maintain survey data in a central file;

(c) Update survey data annually and periodically review the classification status of each harvest area;

(d) License and supervise harvesting and relaying operations and provide proper source labeling for shellstock;

(e) Restrict harvesting of shellfish from unapproved areas and take appropriate enforcement action against violators; and

(f) Evaluate laboratory practices at least annually and encourage participation in FDA's voluntary quality assurance programs.

3. Inspect firms processing fresh frozen shellfish for export to ensure compliance with NSSP controls.

4. Certify dealers exporting fresh frozen shellfish that comply with NSSP requirements on an annual basis and notify FDA of the name, location, and certification number of those firms on Form FD-3038B, "Shellfish Certification."

5. Cancel the certificate of any firm operating out of compliance with the requirements of the NSSP, utilizing shellfish from nonapproved areas, or shipping shellfish that do not conform to the requirements of the U.S. Federal Food, Drug, and Cosmetic Act and the U.S. Public Health Service Act.

6. Ensure that all containers of each lot of fresh frozen shellfish certified for export are identified with the shipper's address, certification number, and lot number or code, together with all other information required by the U.S. Federal Food, Drug and Cosmetic Act, the U.S. Public Health Service Act, and the U.S. Fair Packaging and Labeling Act.

7. Maintain a central file of program records including but not necessarily limited to sanitation survey reports, inspection reports, laboratory evaluation reports, and enforcement actions. These records are made available to FDA for review upon request.

8. Provide inspection results, as appropriate, and other program information, including FDA evaluation reports, interpretations, and laboratory quality assurance program information, to Australian State enforcement and advisory agencies.

9. Review periodically, but at least annually before recertification, the level of conformity to NSSP requirements that is being enforced by DPI and the Australian State enforcement and advisory agencies and provide a report of the review to FDA as necessary, or at least annually.

10. Provide FDA with information about current or potential new public health problems affecting shellfish intended for export to the United States.

11. Make travel arrangements in Australia for, and conduct joint inspections with, FDA evaluation officers at FDA's request. Meet transportation expenses in Australia of FDA officials making inspections in accordance with this memorandum.

C. FDA Responsibilities

FDA will: 1. Recognize Australia as a participant in the NSSP with full rights to participate in national workshops, cooperative research programs, seminars, training courses, and other NSSP activities; to make recommendations for changes or improvements in the procedures, methods, standards, and guidelines of the NSSP; and to have DPI certify Australian dealers for inclusion in FDA's ICSSL.

2. Publish the names, locations, and certification numbers of Australian shellfish shippers certified by DPI in the monthly publication of the ICSSL upon receipt of Form FD-3038B.

3. Provide limited training and technical assistance to enforcement agency personnel in shellfish sanitation program administration, laboratory procedures, and growing area classification procedures upon request of DPI and subject to availability of funds for such purposes.

4. Inform DPI of the reasons for any FDA detentions of certified frozen shellfish shipments from Australia. Additional information that FDA will provide shall include, but not necessarily be limited to:

(a) Commodity identification;

(b) Commodity code, lot, and certification number;

(c) Name and address of the shipper;

(d) Sampling procedure;

(e) Methods of analysis and confirmation; and

(f) Administrative guidelines.

5. Advise DPI of any questions that FDA has received from U.S. food control officials concerning the safety or wholesomeness of frozen shellfish imported into the United States from Australia. Upon receiving such questions, FDA will seek to determine the reason for the problems and will inform DPI of any action taken under American State and local laws or regulations with regard to such frozen shellfish imports.

6. Participate with DPI in joint evaluations of the Australian shellfish sanitation program as it pertains to certifying dealers. Joint evaluations normally will be conducted at 2-year intervals to ascertain Australia's level of conformity with the requirements of the NSSP and the responsibilities specified in this memorandum. FDA will pay round trip transportation expenses between the United States and Australia and the per diem of the members of the FDA evaluation team while in Australia.

7. Facilitate the exchange of information between DPI and U.S. Federal and State agencies concerned with the introduction and proliferation of exotic infectious organisms that might be carried by Australian shellfish.

D. Shared Responsibilities

DPI and FDA will: 1. Exchange information through nominated liaison officers concerning significant proposed and final changes in program operations and procedures including:

(a) Methods and procedures for sampling;

(b) Methods of analysis;

(c) Methods of confirmation;

(d) Administrative guidelines, tolerances, specification standards, and nomenclature;

(e) Reference standards; and

(f) Inspection procedures.

Final changes will be considered incorporated into the appropriate provisions of this memorandum 90 days after receipt unless written objection is provided to the other party.

2. Provide written notification to the other party of any changes in liaison officers. Changing liaison officers will not otherwise constitute a change in the provisions of this memorandum.

E. References

1. U.S. Department of Health and Human Services (formerly U.S. Department of Health, Education, and Welfare), PHS, National Shellfish Sanitation Program, Manual of Operations: Part I *Sanitation of Shellfish Growing Areas*, 1965 Revision; Part II *Sanitation of the Harvesting and Processing of Shellfish*, 1965 Revision; Part III *Public Health Service Appraisal of State Shellfish Sanitation Programs*, 1965 Revision, PHS Publication No. 33.

2. Association of Official Analytical Chemists, Official Methods of Analysis, 14th Ed., Association of Official Analytical Chemists, Inc., 1111 North 19th St., Suite 210, Arlington, VA 22209, U.S.A., 1984.

3. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF-344), 200 C St. SW., Washington, DC 20204.

4. Federal Food, Drug, and Cosmetic Act, 1938, as amended, U.S. Code, Title 21.

5. Public Health Service Act, as amended, U.S. Code, Title 42.

6. Fair Packaging and Labeling Act, Pub. L. 89-755, approved November 3, 1966.

7. American Public Health Association, Recommended Procedures for the Examination of Seawater and Shellfish, 4th Ed., 1970, APHA, Inc., 1015 15th St. NW., Washington, DC 20036.

8. Food and Drug Administration, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food," regulations, 21 CFR Part 110.

9. Food and Drug Administration, "Definitions and Standards for Food," "Fish and Shellfish" regulations, 21 CFR Part 161.

10. Food and Drug Administration, "Specific Administrative Decisions Regarding Interstate Shipments," "Shellfish," 21 CFR 1240.60.

11. Food and Drug Administration, "Food Service Sanitation on Land and Air Conveyances, and Vessels," "Special Food Requirements," 21 CFR 1250.26.

12. Export Control Act, 1982.

13. Prescribed Goods [Orders] Regulations.

14. Prescribed Goods [General] Orders.

15. Fish Orders.

*IV. Participating Parties*

A. Export Inspection Service, Department of Primary Industry, Edmund Barton Bldg., Canberra ACT 2600, Australia.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, U.S.A.

*V. Liaison Officers*

A. For Department of Primary Industry: Director (Fish Export Standards), (currently David Walter), Export Inspection Service, Department of Primary Industry, Canberra

ACT 2600, Australia. Telephone: 062–725399, Telex: 62188.

B. For Food and Drug Administration: Chief, Shellfish Sanitation Branch, (currently J. David Clem), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0149.

*VI. Period of Agreement*

This agreement will become effective upon acceptance by both parties and will remain in effect indefinitely. It may be modified by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Dated: June 9, 1986.

Approved and accepted for the Department of Primary Industry of Australia.

P.H. Langhorne,

*Director, Export Inspection Service.*

Dated: September 12, 1986.

Approved and accepted for the Food and Drug Administration, Department of Health and Human Services, United States of America.

John M. Taylor,

*Acting Associate Commissioner for Regulator Affairs.*

[FR Doc. 86–25153 Filed 11–6–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0367]

## Petition Requesting 10 Years' Exclusivity for Divalproex Sodium

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting a period of 10 years' marketing exclusivity under section 505(j)(4)(D)(i) and (c)(3)(D)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(4)(D)(i) and (c)(3)(D)(i)) for divalproex sodium, an antiepileptic drug. The agency previously has accorded divalproex sodium a period of 2 years' exclusivity under section 505(j)(4)(D)(v) and (c)(3)(D)(v) of the act. FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of divalproex sodium may be made effective.

**DATE:** Comments by December 8, 1986.

**ADDRESS:** Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Kimbrough, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

**SUPPLEMENTARY INFORMATION:** On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 Amendments). The 1984 Amendments amend the Federal Food, Drug, and Cosmetic Act authorizing, among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, the 1984 Amendments provide for periods of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act. An ANDA or application described in section 505(b)(2) of the act for such a drug may not be submitted (under some provisions) or its approval made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of the 1984 Amendments are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of "exclusivity" is shown. Further, the list also shows those products that are covered by a patent and when the patent expires.

The agency believes that all exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded exclusivity information that should have been included, or included exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved applications described in section 505(b)(2) of the act, the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or applications described in section 505(b)(2) of the act or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such applications may be affected.

Although the agency has made an initial determination that divalproex sodium is entitled only to 2 years' exclusivity, in accordance with the policy above, FDA is announcing the filing of a petition submitted on behalf of Abbott Laboratories (Abbott), requesting that divalproex sodium be accorded 10 years' exclusivity. Abbott, which has submitted both a petition for exclusivity (86P–0367/CP) and a petition for stay (86P–0367/PSA), requests that FDA reconsider its determination on exclusivity for divalproex sodium. Abbott states that the drug should be accorded 10 years' exclusivity under section 505(j)(4)(D)(i) and (c)(3)(D)(i) of the act. Abbott asks for a stay of approval of ANDA's and applications described in section 502(b)(2) of the act for potential generic divalproex sodium products pending issuance of a response to its citizen petition, and for 30 days afterward if the citizen petition is denied.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before December 8, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: November 3, 1986.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 86-25152 Filed 11-6-86; 8:45 am]

BILLING CODE 4160-01-M

## Office of Human Development Services

### Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:30 am and ends at 5:00 pm on Wednesday, November 19, 1986 and begins at 9:30 am and ends at 3:00 pm on Thursday, November 20, 1986.

Place: Department of Health and Human Services, HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, OIG Conference Room, 5542 (Fifth Floor).

Status: Meeting is open to the public.

Contact Persons: Pete Conroy, Room 4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, section 10, 1976) that the Council will hold a meeting on November 19 and 20, 1986 from 9:30 am-5:00 pm and from 9:30 am-3:00 pm respectively in Room 5542 in the Health and Human Services North Building, 330 Independence Avenue SW., Washington, DC 20201.

The agenda will include: An update on the Administration on Aging programs by Commissioner, Carol Fraser Fisk; an outline of ACTION senior programs by Director, Donna M. Alvarado; a briefing on the Administration for Native Americans by Commissioner, W. "Lynn" Engles; a roundtable with representatives of veterans organizations on the subject of the contributions to seniors at the community level by veterans belonging to the American Legion, Veterans of Foreign Wars, and Disabled American Veterans. A representative of the Veterans Administration will also participate. In addition, a substantial amount of time will be devoted to FCoA committee meetings and reports.

Dated: November 3, 1986.

Ingrid Azvedo,

*Chairperson, Federal Council on the Aging.*

[FR Doc. 86-25246 Filed 11-6-86; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

### Availability of the Draft Supplement to the Final Environmental Impact Statement (DSEIS) for Noxious Weed Control in Five Northwestern States; Idaho, Montana, Oregon, Washington and Wyoming

**AGENCY:** U.S. Department of the Interior, Bureau of Land Management.

**ACTION:** Notice of availability of the Draft Supplement to the Final Environmental Impact Statement for noxious weed control in five northwestern states (DSEIS).

**DATE:** Comments will be accepted until January 5, 1987.

**ADDRESS:** Comments should be sent to: Noxious Weed Team Leader, Bureau of Land Management (935), P.O. Box 2965, Portland, OR 97208.

**FOR FURTHER INFORMATION CONTACT:** Steve Ellis, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83707, Telephone (208) 334-9516.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a draft supplement to the final environmental impact statement for noxious weed control in the States of Idaho, Montana, Oregon, Washington and Wyoming.

The DSEIS provides more discussion on possible impacts to the human environment from the chemical treatment portion of the proposed program. Many portions of the final EIS (FEIS) have not been changed or readdressed because BLM considers them to be adequately covered in the FEIS.

All of the references in the References Cited section of the DSEIS are on file and may be reviewed during office hours (7:30 am-4:15 pm) at the BLM Oregon State Office (Lloyd Center Tower, 16th floor, 825 NE Multnomah Street, Portland, Oregon). Please call Lynne Hamilton (503-231-6268) for an appointment to review any of this material. Copies of material without copyright protection may be acquired at standard copying fees of $0.25 per page.

A limited number of individual copies of the draft EIS may be obtained upon request to any BLM District or State Office in the five states.

Dated: October 29, 1986.

Charles W. Luscher,

*State Director.*

[FR Doc. 86-25171 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-33-M

## Minerals Management Service

### Alaska Region: Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings; Proposed Beaufort Sea Lease Sale 97 (January 1988)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1988 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Beaufort Sea. The proposed Beaufort Sea Sale 97 will offer for lease approximately 21.2 million acres. The draft EIS contains, among other things, an evaluation pursuant to section 810, Alaska National Interest Lands Conservation Act (ANILCA).

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries; Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114-4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley

Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/ Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/ Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Libray, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqsut, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold pubic hearings to receive comments and suggestions relating to the EIS. The hearings are also being held for the purpose of receiving comments and suggestions regarding subsistence pursuant to ANILCA.

The hearings will be held on the following dates and times indicated:

**December 8, 1986**

North Slope Borough Assembly Chambers, Barrow, Alaska, 7:30 p.m.

**December 9, 1986**

City Office, Wainwright, Alaska, 6:30 p.m.

**Decebmer 10, 1986**

Community Center, Kaktovik, Alaska, 8:30 p.m.

**December 11, 1986**

Community Center, Nuiqsut, Alaska, 7:30 p.m.

**December 17, 1986**

University Plaza Building, 949 East 36th Avenue, Room 601, Anchorage, Alaska, 12 noon.

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Richard Roberts by telephone, (907) 261–4662, by Friday, December 5, 1986.

Time limitation may make it necessary to limit the length of oral presentation to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until Janaury 6, 1987. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until January 6, 1987, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: November 4, 1986.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

Approved

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 86–25272 Filed 11–6–86; 8:45 am]

BILLING CODE 4310-MR-M

## Proposed Offshore Oil and Gas Lease Sale 91, Northern California; Public Meetings

**AGENCY:** Department of the Interior, Minerals Management Service, Pacific OCS Region.

**ACTION:** Announcement of public scoping meetings for Proposed Offshore Oil and Gas Lease Sale 91, northern California, and the close of the written scoping comment period.

**SUMMARY:** This notice announces two public scoping meetings to be held regarding the proposed Offshore Oil and Gas Lease Sale 91, northern California. The purpose of these scoping meetings is to indicate the area to be studied, gather public information, identify sale related issues and concerns, and reveiw the offshore leasing process. The first meeting will take place in Ft. Bragg, California, the second meeting will take place in Eureka, California. In addition, this announcement identifies the close of the written scoping comment period as December 10, 1986.

**DATES:** The public meeting in Ft. Bragg, CA, will be held December 2, 1986, the public meeting in Eureka, CA, will be held December 4, 1986. Both meetings will begin at 9 a.m. and continue until 8 p.m. or until all information is received. The written scoping comment period closes December 10, 1986.

**ADDRESSES:** The public meeting on December 2, 1986, will be held at the Eagle's Lodge, 210 North Corry Street, Ft. Bragg, CA. The public meeting on December 4, 1986, will be held at the Red Lion Inn, Redwood Ballroom, 1929 4th Street, Eureka, CA. Any written scoping comments should be sent to the address below.

**FOR FURTHER INFORMATION CONTACT:** Steven R. Alcorn, Chief, Environmental Assessment Section, Office of Leasing and Environment, Minerals Management Service, 1340 West Sixth Street, Los Angeles, CA 90017. (213) 894–6741, or FTS 798–6741.

**SUPPLEMENTARY INFORMATION:** On February 13, 1986, MMS published notices in the **Federal Register** (Volume 51, Number 30) announcing the Call for Information and Nominations and the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed Oil and Gas Lease Sale 91, Offshore Northern California. This began the pre-lease process leading to the lease sale tentatively scheduled for February, 1989, and opened the public scoping period. To ensure that the public concerns and issues are identified, and to assist the technical staff preparing the EIS in incorporating these concerns into the pre-lease process, two public scoping meetings are scheduled. At these meetings concerned citizens, interest groups, representatives of governmental agencies and the oil industry, will have the opportunty to meet individually with MMS technical staff to discuss issues of concern, and to hear a brief overview of the offshore leasing program. The written scoping comment period formally ends on December 10, 1986. There will be several other periods prior to the lease sale where the public will have opportunities to comment on both the EIS and the proposal, including the period following the release of the draft EIS.

Dated: October 29, 1986.

**William E. Grant,**

*Regional Director, Pacific OCS Region, Minerals Management Service.*

[FR Doc. 86–25271 Filed 11–6–86; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Intention to Negotiate Concession Contract; Lake Mead Ferry Service, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Lake Mead Ferry Service, Inc., authorizing it to continue scheduled and unscheduled sightseeing, tourboat and group charter facilities and services for the public at Lake Mead National Recreation Area, for a period of approximately fifteen (15) years from the date of execution through September 30, 2001.

The contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirement of the proposed contract.

Dated: October 2, 1986.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 86-25294 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

### Revision of Park Boundary; Sagamore Hill National Historic Site, NY

Whereas, the Act of July 25, 1962 (76 Stat. 217) authorized the Secretary of the Interior to acquire Sagamore Hill consisting of not to exceed ninety acres at Cove Neck, Oyster Bay, Long Island, New York and the improvements thereon together with the furnishings and other contents, of the structures; and

Whereas, lands, interests in lands, and improvements thereon, described in and conveyed to the United States by the Theodore Roosevelt Association by deed dated July 8, 1963, which was recorded on July 10, 1963 in the Office of the Clerk of the County of Nassau, New York in Liber 7179 at Page 353, conveyed 78.00 acres; and

Whereas, Sagamore Hill National Historic Site was established by publication of notice thereof in the **Federal Register** dated July 15, 1963 and filed on July 18, 1963; and

Whereas, lands and interests in lands described in and conveyed to the United States by the Trust for Public Land by deed dated December 26, 1984 which was recorded on March 4, 1985 in the Office of the Clerk of the County of Nassau, New York in Liber 9623 at Page 118 conveyed 5.02 acres with funds appropriated by Pub. L. 98-473 dated October 12, 1984.

Therefore pursuant to section 3 of the Act of July 25, 1962, notice is given that the boundary of Sagamore Hill National Historic Site has been revised to include the 5.02 acre tract identified and described as Tract 01-102 on Land Status Map numbered 419/92,000, Segment 01, Sheet 1 of 1 dated April, 1974 prepared by the Land Resources Division of the North Atlantic Region, National Park Service.

The map is on file and available for inspection in the office of the North Atlantic Region, Land Resources Division, Boston, Massachusetts and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240.

Dated: October 15, 1986.

**Herbert S. Cables, Jr.,**

*Regional Director, North Atlantic Region.*

[FR Doc. 86-25292 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

### Ferry Service Operators Sought; Between Patchogue, NY, and Watch Hill site, Fire Island National Seashore, NY

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, is seeking parties interested in providing ferry service for passengers and freight between Patchogue, New York, and the Watch Hill site within Fire Island National Seashore, New York. The National Park Service proposes to negotiate a concession contract with the best qualified offeror for a period of ten years from Janaury 1, 1987, through December 31, 1996.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following the formal release of the information and application document to be considered and evaluated. This release is expected within two weeks of the date of this notice or sooner.

Interested parties should contact Mr. David Luschinger, Concession Specialist, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, for a copy of the Statement of Requirements, including information as to the requirements of the proposed contract and application materials.

This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 28, 1986.

**Samuel H. Reck,**

*Acting Regional Director, North Atlantic Region.*

[FR Doc. 86-25290 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

### Ferry Service Operators Sought; Between Long Island, NY, and Sailor's Haven Site, Fire Island National Seashore, NY

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, is seeking parties interested in providing ferry service for passengers and freight between Long Island, New York, and the Sailor's Haven site within Fire Island National Seashore, New York. The National Park Service proposes to negotiate a concession contract with the best qualified offeror for a period of ten years from January 1, 1987, through December 31, 1996.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following the formal release of the information and application document to be considered and evaluated. This release

is expected within two weeks of the date of this notice or sooner.

Interested parties should contact Mr. David Laschinger, Concession Specialist, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, for a copy of the Statement of Requirements, including information as to the requirements of the proposed contract and application materials.

This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 28, 1986.

**Samuel H. Reck,**

*Acting Regional Director, North Atlantic Region.*

[FR Doc. 86-25291 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701-TA-283 and 731-TA-364 (Preliminary)**

### Certain Acetylsalicylic Acid (Aspirin) From Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-283 (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 Turkey of acetylsalicylic acid (aspirin), containing no additives other than starch, and not imported in tablets, capsules, or similar forms for direct human consumption, provided for in item 410.72 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Turkey.

The Commission also gives notice of the institution of preliminary antidumping investigation No. 731-TA-364 (Preliminary) under section 733(a) of the act (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 establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of the subject merchandise which is alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a) of the act, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by December 15, 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:** October 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202-523-0296), 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 October 31, 1986, by Monsanto Co., St. Louis, Missouri.

#### Participation in the Investigations

Persons wishing to participate in the 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 the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, 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 §§ 202.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the 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 November 20, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-523-0296) not later than November 17, 1986, to arrange for their appearance. Parties in support of the imposition of countervailing and 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 November 25, 1986, a written statement of information pertinent to the subject of the 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).

By order of the Commission.

Issued: November 3, 1986.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 86-25141 Filed 11-6-86; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

### Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 1052(b).

A.1. Parent corporation and address of principal office:

a. Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 37420.

2. Wholly owned subsidiaries which will participate in the operations, and address of its principal offices, and state and country of incorporation:

a. B.I. Transportation, Inc., Tucker Street Extension, P.O. Box 691, Burlington, NC 27216-0691; Incorporated in the State of Delaware

b. Burlington Canada Inc., 205 Bouchard Boulevarad, Dorvale, Quebec H9S 1A9; Incorporated in Canada

c. Textile Morelos, S.A. de C.V., San Juan del Aguila No. 401, Cuetnazaca, Motelos, Mexico; Incorporated in Mexico

d. Noblis-Lees, S.A. de C.V., Calzada Ermita-Ixtapalapa, No. 401 local "C", Colonial Unidad Modelo, Mexico 13 D.F. Mexico; Incorporated in Mexico

e. C.H. Masland & Sons, Spring Road 1 Box 40, Carlisle, PA 17013; Incorporated in the State of Pennsylvania

B.1. Parent corporation and address of principal office: Contico International, Inc., 1101 No. Warson Road, St. Louis, MO 63132

2. Wholly owned subsidiaries which will participate in the operation, address of their respective principal offices:

a. Pol-Tex International, Inc., 13830 Hatcherville Road, Mont Belvieu, TX 77580

b. John's International, Inc., 305 North Frisco, Winters, TX 79657

C.1. Parent corporation and address of principal office: Dean Foods Co., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation.

2. Wholly-owned subsidiaries which will participate in the operation, and address of their respective principal offices:

a. Creamland Dairies, Inc., 1911 Second Street, NW., P.O. Box 22067, Albuquerque, New Mexico 87125; A New Mexico Corporation

b. Bowman Dairy Co., Inc., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation

c. Carnival Ice Cream Co., Box 305, St. Maarten, Netherlands Antilles; A Netherlands Antilles Corporation

d. Dean Foods International Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation

e. Dean International Sales Corp., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation

f. Bell Dairy Products, Inc., P.O. Box 2588, 201 University, Lubbock, Texas 79408; A Texas Corporation

g. Budlong Pickle Co., Inc., 857 School Place, Green Bay, Wisconsin 54303; An Illinois Corporation

h. Dean Dairy Products Co., RFD #1, P.O. Box 69, Orangeville Road, Sharpsville, Pennsylvania; A Pennsylvania Corporation

i. Dean Food Products Co., 2040 Madison Avenue, P.O. Box 41259, Memphis, Tennessee 38104; A Tennessee Corporation

j. Dean Milk Co., Inc., 4420 Bishop Lane, Louisville, Kentucky 40218; A Kentucky Corporation

k. DFC Transportation Co., 12007 Smith Drive, Huntley, Illinois 60142; A Delaware Corporation

l. Gandy's Dairies, Inc., 332 Pulliam Street, San Angelo, Texas 76903, and P.O. Box 992, San Angelo, Texas 76902; A Texas Corporation

m. Green Bay Food Co., 857-897 School Place, P.O. Box 19057, Green Bay, Wisconsin 54303; A Wisconsin Corporation

n. Hart's Dairy, Inc., 2330 Anderson Avenue, P.O. Box 2337, Ft. Myers, Florida 33901; A Florida Corporation

o. The Larsen Co., 520 North River Street, Green Bay, Wisconsin 54307; A Wisconsin Corporation

p. Liberty Dairy, 530 North River Street, Evart, Michigan 46931; A Michigan Corporation

q. McCadam Cheese Co., Inc., 12 Annette Street, Heuvelton, New York 13654; A New York Corporation

r. St. Thomas Egg Co., Inc., No. 7-1 Estate Street, Joseph and Rosendahl, St. Thomas, Virgin Islands 00801; A Virgin Islands Corporation

s. DFC Transportation Systems International, Inc., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation

t. Gill Edge Farms, Inc., 302 South Porter, Norman, Oklahoma 73070; An Oklahoma Corporation

u. Juice Services, Inc., Blackstone Valley Way, 146-295 Industrial Park, P.O. Box 304, Lincoln, Rhode Island 02865; A Rhode Island Corporation

v. T.G. Lee Foods, Inc., 315 N. Bumby Avenue, P.O. Box 3033, Orlando, Florida 30802; A Florida Corporation

w. McArthur Dairy, Inc., 6851 N.E. Second Avenue, Miami, Florida 33138; A Florida Corporation

x. Park-it Market Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation

y. St. Thomas Dairies, Inc., P.O. Box 4800, CHA, Charlotte Amalie, St. Thomas, Virgin Islands; A Virgin Islands Corporation

z. St. Thomas Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation

aa. Ye Olde Tavern Cheese Co., Inc., 3949-53 West Lake Street, Chicago, Illinois 60624; An Illinois Corporation

bb. Ryan Milk of Pa., Inc., P.O. Box 554, 53 Canal Street, Greenville, Pennsylvania 16125; A Pennsylvania Corporation

cc. Ryan Milk Co., Inc., P.O. Box 1175, East Chestnut Street, Murray, Kentucky 42071; A Kentucky Corporation

dd. Heifetz Pickling Co., 11821 Westline Industrial Dr., St. Louis, Missouri 63141; A Missouri Corporation

ee. South Keys Distributing, Inc., 6851 NE Second Avenue, Miami, Florida 33138; A Florida Corporation

ff. Amboy Packaging Co., P.O. Box 529, 820 Palmyra Avenue, Dixon, Illinois 61021; An Illinois Corporation

gg. Fieldcrest Foods, Inc., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation

D.1. Parent corporation and address of principal office: Thomas Supply Co., Rt. 12, Cumming, Georgia 30130. (Thomas Supply Co. is a Georgia corporation.)

2. Wholly-owned subsidiaries which will participate in the operation, and state(s) of incorporation: T.P. Lumber Sales Co., Rt. 12, Cumming, Georgia 30130. (T.P. Lumber Sales Co. is incorporated under the laws of the State of Georgia and is 100% owned by Thomas Supply Company.)

Noreta R. McGee,

*Secretary.*

[FR Doc. 86-25188 Filed 11-6-86; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**List of recordkeeping/Reporting Requirements Under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into a new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

A abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

*Employment Standards Administration*

CM-1173
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
75,000 responses; 18,750 hours; 1 form

This is a computer generated document sent to medical providers who submitted incomplete information on the HCFA-1500 or UB-82. This document describes errors made on the HCFA-1500 or UB-82 and requests correct information.

**Extension**

*Occupational Safety and Health Administration*

Acrylonitrile
1281-0126; OSHA-2500
On occasion
Businesses or other for profit
21 responses; 9,302 hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to acrylonitrile (AN). Employers must monitor employee exposure to AN, keep employee exposures within permissible limits, and provide medical exams, training and other information about AN to employees.

Signed at Washington, DC, this 4th day of November, 1986.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 86-25241 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-27-M

### State Unemployment Compensation Laws Approval and Certification to the Secretary of the Treasury

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1986, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1986.

**William E. Brock,**

*Secretary of Labor.*

[FR Doc. 86-25172 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

### Certification of State Unemployment Compensation Laws to the Secretary of the Treasury

In accordance with the provisions of paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1986.

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, West Virginia, Wisconsin, and Wyoming.

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1986.

**William E. Brock,**

*Secretary of Labor*

[FR Doc. 86-25173 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

## Bureau of Labor Statistics

### Labor Research Advisory Council Committees; Meetings and Agenda

The regular fall meetings of committees of the Labor Research Advisory Council will be held on November 18, 19, and 20. The meetings will be held in Rooms S–4512 and N–5437 A and B, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with a respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The meetings of the Committee on Productivity, Technology and Economic Growth and the Committee on Foreign Labor Statistics will be combined. The schedule and agenda of the meetings are as follows:

**Tuesday, November 18, Room S–4215**

*9:30 a.m.—Committee on Wages and Industrial Relations*

1. Review of work in progress
2. PATC Expansion: First year results
3. Employee Benefits Survey (EBS): An update on results and plans
4. Proposed compensation cost levels for the Employment Cost Index
5. Other business

**Wednesday, November 19, Rooms N–5437 A and B**

*9:30 a.m.—Committee on Prices and Living Conditions*

1. CPI Revision status report
2. Publication plans for semiannual CPI's
3. Rebasing of indexes
4. Other business

**Wednesday, November 19, Rooms N–5437 A and B**

*1:30 p.m.—Committee on Productivity, Technology, and Economic Growth and the Committee on Foreign Labor Statistics*

1. Developmental work on measures of productivity for hospitals
2. Extension of hours worked study to 2-digit industries
3. Study of energy price increases effects on life of capital equipment
4. BLS international training program
5. Declining earning hypothesis
6. Update on the projections cycle
7. Review of deindustrialization analysis
8. International comparision of unemployment

**Thursday, November 20, Rooms N–5437 A and B**

*9:30 a.m.—Committee on Occupational Safety and Health Statistics*

1. Annual Survey results
2. Status of National Academy of Sciences panel
3. Records audit
4. Guidelines/outreach
5. Health Interview Survey follow-up
6. State health department project

**Thursday, November 20, Rooms N–5437 A and B**

*1:30 p.m.—Committee on Employment Structure and Analysis*

1. The 1987 budget and program plans
2. Update on the Mass Layoff Report and dislocated worker data
3. Review of findings of May 1985 data on work schedules
4. Plans for the National Longitudinal Survey
5. Findings of the BLS survey of contracting-out by industry
6. Other business.

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1327.

Signed at Washington, DC, this 3rd day of November 1986.

**Janet L. Norwood,**

*Commissioner of Labor Statistics.*

[FR Doc. 86–25177 Filed 11–6–86; 8:45 am]

BILLING CODE 4510–24–M

### Request for Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures; Republication

[Editorial Note.—The following document was originally published at page 39818 in the issue of Friday, October 31, 1986. The document is being republished in its entirety because of typesetting errors]

**AGENCY:** Bureau of Labor Statistics, Labor.

**ACTION:** Request for comments on proposed changes in local area unemployment statistics methodology.

**SUMMARY:** With the completion of various research projects and the receipt of numerous comments and simulations for a number of research areas, the Bureau of Labor Statistics intends to introduce methodological improvements in the procedures for developing local area unemployment statistics. Proposals to improve the procedures include the mandatory introduction of an updated procedure for multi-county employment disaggregation and an improved procedure for the estimation of unemployed exhaustees. Optional methodological revisions are proposed in estimation of agricultural employment and the estimation of Federal and Railroad unemployment.

**DATE:** Comments must be submitted on or before December 1, 1986.

**ADDRESS:** Send comments to: U.S. Department of Labor, Bureau of Labor Statistics, 441 G Street NW., Room 2083, Washington, DC 20212.

**FOR FURTHER INFORMATION CONTACT:** Sharon Brown 202–523–1807.

**SUPPLEMENTARY INFORMATION:**

Dated at Washington, DC, this 24th day of October, 1986.

**Janet L. Norwood,**

*Commissioner.*

[FR Doc. 86–24688 Filed 10–30–86; 8:45 am]

BILLING CODE 1505–01–M

## 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 are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, 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 Part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. 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 current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications, and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions 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, must 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 and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit 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, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

### New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

*Volume II:*

Texas:
- TX86-39 ..... pp. 944a-944c.
- TX86-40 ..... pp. 944d-944f.
- TX86-41 ..... pp. 944g-944i.
- TX86-42 ..... pp. 944j-944l.
- TX86-43 ..... pp. 944m-944o.
- TX86-44 ..... pp. 944p-944r.
- TX86-45 ..... pp. 944s-944u.
- TX86-46 ..... pp. 944v-944x.
- TX86-47 ..... pp. 944y-944aa.
- TX86-48 ..... pp. 944ab-944ad.
- TX86-49 ..... pp. 944ae-944ag.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I:*

Massachussetts:
- MA86-1 (January 3, 1986)..... pp. 347-349.
- MD86-2 (January 3, 1986)..... p. 391.
- MD86-11 (January 3, 1986)... p. 411.
- MD86-15 (January 3, 1986)... p. 420.

Pennsylvania:
- PA86-10 (January 3, 1986).... p. 880.
- PA86-12 (January 3, 1986).... p. 888.
- PA86-14 (January 3, 1986).... pp. 895-896.

*Volume II:*

Iowa:
- IA86-1 (January 3, 1986)..... p. 24.
- IA86-2 (January 3, 1986)..... p. 29.
- IA86-5 (January 3, 1986)..... pp. 43-44 p., 47.

Louisiana:
- LA86-4 (January 3, 1986)..... p. 357.
- LA86-5 (January 3, 1986)..... pp. 360, 363, p. 366.

Minnesota:
- MN86-7 (January 3, 1986)..... p. 507.
- MN86-8 (January 3, 1986)..... p. 526.

New Mexico:
- NM86-1 (January 3, 1986)..... pp. 638-638a, p. 639, pp. 641-642, pp. 645, 649.

Ohio:
- OH86-1 (January 3, 1986)..... pp. 661-674.
- OH86-2 (January 3, 1986)..... pp. 676, 678, pp. 680-684, p. 691.
- OH86-28 (January 3, 1986)... pp. 752-753.
- OH86-29 (January 3, 1986)... pp. 756-758, pp. 760-765, pp. 768-784, pp. 794-795.

Texas:
- TX86-27 (January 3, 1986).... pp. 910-912.
- TX86-28 (January 3, 1986).... pp. 913-915.
- TX86-29 (January 3, 1986).... pp. 916-918.
- TX86-30 (January 3, 1986).... pp. 919-921.
- TX86-31 (January 3, 1986).... pp. 923-924.
- TX86-32 (January 3, 1986).... pp. 926-927.
- TX86-33 (January 3, 1986).... pp. 928-930.
- TX86-34 (January 3, 1986).... pp. 931-933.
- TX86-35 (January 3, 1986).... pp. 934-935.
- TX86-36 (January 3, 1986).... pp. 937-938.
- TX86-37 (January 3, 1986).... pp. 939-941.
- TX86-38 (January 3, 1986).... pp. 942-944.

Listing by Location (index)..... p. xxxviii, pp. xli-xlvi.

Listing by Decision (index)..... pp. lvi-lviii.

*Volume III:*

Washington:
- WA86-9 (January 3, 1986).... pp. 3675f-365g.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st Day of October 1986.

**James L. Valin,**

*Assistant Administrator.*

[FR Doc. 86-25012 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

[TA-W-17,415]

### Burlington Industries, Inc., Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 1986 applicable to all workers of the Domestics Division, Burlington Industries, Inc., Sherman, Texas. The certification notice will soon be published in the Federal Register.

The company provided additional information to the Department indicating that production continued after the July 1, 1986 termination date and that several workers are currently still involved in closing down the plant. The intent of the certification is to cover all workers at the Sherman, Texas plant of Burlington Industries, Inc. who are affected by the decline in production and sales of greige sheeting fabric related to import competition. The notice, therefore, is amended by deleting the termination date.

The amended notice applicable to TA-W-17,415 is hereby issued as follows:

"All workers of the Sherman, Texas plant of the Domestic Division of Burlington Industries, Inc., who became totally or partially separated from employment on or after April 29, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 28th day of October 1986.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 86-25174 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; BTA Producers, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the data on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 17, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of October 1986.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| (Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| BTA Producers (Workers) | Midland, TX | 10/14/86 | 9/18/86 | TA-W-18, 436 | Curde oil and natural gas. |
| Donlin Sportswear, Inc. (Workers) | New Tazewell, TN | 10/14/86 | 10/7/86 | TA-W-18, 437 | Means flammel shirts, ladies blouses, dresses and skirts. |
| Pennsylvania Mines Corp. (UMW) | Barnesboro, PA | 10/14/86 | 9/4/86 | TA-W-18, 438 | Coal. |
| Herman Lowensteen, Inc. (Workers) | Johnston, NY | 10/16/86 | 10/9/86 | TA-W-18, 439 | tanning of leather. |
| Perfection Services, (Workers) | Laredo, TX | 10/14/86 | 10/8/86 | TA-W-18, 440 | Inspection of pipes at oil drilling sites. |
| BWAB, Inc. (Workers) | Sidney, MT | 10/9/86 | 9/22/86 | TA-W-18, 441 | Oil |
| Halliburton Services (Workers) | Flora, IL | 10/14/86 | 10/6/86 | TA-W-18, 442 | Cementing pipe in the ground, stimulating and fracturing oil wells. |
| Welex (Workers) | Houston, TX | 10/7/86 | 9/26/86 | TA-W-18, 443 | Oil well logging. |
| American Motors, Inc. (UAW) | Toledo, OH | 10/7/86 | 9/26/86 | TA-W-18, 444 | Automobiles/Jeeps. |
| Baker Packers (Workers) | Beaumont, TX | 10/9/86 | 10/1/86 | TA-W-18, 445 | Packers, safety values. |
| Russell Newman Mfg. Co. (Workers) | Saint Jo, TX | 10/9/86 | 10/1/86 | TA-W-18, 446 | Sleep wear and lingerie. |
| Air Equipment Rental Inc. (Workers) | Victoria, TX | 10/9/86 | 10/1/86 | TA-W-18, 447 | Provides crews and equipment in the installation of casting in oil. |
| Dana Corp. Spicer Axle Division (UAW) | New Castle, IN | 10/1/86 | 9/29/86 | TA-W-18, 448 | Castings for use in making up the axle for light to heavy truck markets. |
| Monsanto Co. #1 Plant, (Workers) | Nitro, WV | 10/14/86 | 10/9/86 | TA-W-18, 449 | Rubber chemicals. |
| Todd Pacific Shipyards (Workers) | Seattle, WA | 10/7/86 | 9/4/86 | TA-W-18, 450 | Ship building. |
| Bowen Tools, Inc. (Workers) | Houston, TX | 10/10/86 | 10/6/86 | TA-W-18, 451 | Oil well fishing tools. |
| Carter Day Co. (Workers) | Minneapolis, MN | 10/7/86 | 9/30/86 | TA-W-18, 452 | Grain cleaning and porcessing equipment. |
| Mundy Maintenance Circle, Inc. (Workers) | Houston, TX | 10/10/86 | 10/7/86 | TA-W-18, 453 | Installed oil pipeline. |
| Daniel International Corp. (Workers) | Greenville, SC | 10/10/86 | 10/7/86 | TA-W-18, 454 | Installed oil pipeline. |
| Lockheed Marine (Workers) | Seattle WA | 10/7/86 | 9/8/86 | TA-W-18, 455 | Ship building. |
| Modern Machine Shop Inc. (Workers) | Laredo, TX | 10/9/86 | 10/2/86 | TA-W-18, 456 | Structural steel. |
| Torrington/Fafnir (Company) | Arkadelphia, AR | 10/9/86 | 10/7/86 | TA-W-18, 457 | Anti-friction bearings. |
| Alpha Consulting, Inc., Pintex Petroleum Corp. (Workers) | Boulder, CO | 10/1/86 | 9/8/86 | TA-W-18, 458 | Oil drilling. |
| L.E. Jones Co. (UAW) | Menominee, MI | 10/10/86 | 9/29/86 | TA-W-18, 459 | Insert values. |
| Estate of William G. Helis, a Partnership (Workers) | Denver, CO | 10/14/86 | 9/4/86 | TA-W-18, 460 | Oil and gas exploration. |
| Micro Components Tech (Workers) | St. Paul, MN | 10/10/86 | 10/8/86 | TA-W-18, 461 | Equipment for testing and handling integrated circuits. |
| Dresses Atlas (Workers) | Alice, TX | 10/14/86 | 10/7/86 | TA-W-18, 462 | Oil drilling. |
| U-Joints, Inc. (Workers) | Odessa, TX | 10/14/86 | 10/61/86 | TA-W-18, 463 | Drive lines for oil field truck. |
| Lee Company (Workers) | Sulphur Springs, TX | 10/17/86 | 10/9/86 | TA-W-18, 464 | Blue jeans. |
| Pride Oil Well Service (Workers) | Alice TX | 10/16/86 | 10/1/86 | TA-W-18, 465 | Extraction of raw petroleum. |
| Texaco Producing, Inc. Houston District (Workers) | Bellaire, TX | 10/16/86 | 9/25/86 | TA-W-18, 466 | Oil and gas exploration. |
| Halliburton Services (Workers) | Amarillo, TX | 10/16/86 | 10/9/86 | TA-W-18, 467 | Tools for packing oil. |
| CMC Energy (Workers) | Alice, TX | 10/7/86 | 10/1/86 | TA-W-18, 468 | Oil gas producer. |
| Worcester Controls Corp. (USWA) | Boylston, MA | 10/20/86 | 10/9/86 | TA-W-18, 469 | Ball values. |
| Weyenberg Shoes (UFCW) | Beaver Dam, WI | 10/20/86 | 10/14/86 | TA-W-18, 470 | Men's shoes. |
| T.R.J. Corp. (Firm) | Abilene, TX | 10/20/86 | 10/13/86 | TA-W-18, 471 | Contract oil well drilling. |
| American Drilling and Exploration Co. Inc. (Firm) | Corpus Christi, TX | 9/15/86 | 9/10/86 | TA-W-18, 472 | Contract oil well drilling. |

APPENDIX—Continued

| (Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Hughes Production Tool (now Huges Production Equipment) (Workers). | Huntsville, TX | 10/20/86 | 10/6/86 | TA-W-18, 473 | Manufactures of oilfield equipment. |
| Kerr-McGee Corp. (Workers) | Oklahoma City, OK | 10/20/86 | 9/30/86 | TA-W-18, 474 | Oil and natural gas exploration service. |
| Gray Tool Co. (Workers) | Houston, TX | 10/20/86 | 10/14/86 | TA-W-18, 475 | Manufactures land and offshore oil equipment. |
| Lance Drilling Corp. (Workers) | Laredo, TX | 10/9/86 | 10/3/86 | TA-W-18, 476 | Contract oil driling. |
| Emphasis Oil Operations (Workers) | Russell, KS | 10/8/86 | 10/2/86 | TA-W-18, 477 | Contract oil drilling. |
| Armco Tubular Division (Workers) | Logan, OH | 10/9/86 | 10/6/86 | TA-W-18, 478 | Tubular pipes. |
| Hockensmith Corp. (USW) | Penn., PA | 10/9/86 | 10/6/86 | TA-W-18, 479 | Cast iron ingot molds. |
| Drilling Chemicals, Inc. (Firm) | Carthage, TX | 9/15/86 | 9/9/86 | TA-W-18, 480 | Sells oilfield chemicals. |
| Lloyd Schoenheit Truck and Tractor Service, Inc. (Workers). | Grayville, IL | 9/17/86 | 9/9/86 | TA-W-18, 481 | Moves drilling rigs and field equipment. |

[FR Doc. 86-25175 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,748]

## Glen Irvan Corp., Affirmative Determination Regarding Application for Reconsideration

By an application dated September 29, 1986, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at the Glen Irvan Corporation, Penfield, Pennsylvania. The determination was published in the **Federal Register** on October 3, 1986 (51 FR 35440).

The application claims that imports of cheaper oil adversely affected the sale of coal from the Glen Irvan Corporation to utility companies.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 28th day of October 1986.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 86-25175 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

[Docket No. M-86-138-C]

## Big Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Diamond Coal Company, 1744 Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Big Diamond Slope (I.D. No. 36-07554) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 30, 1986.

**Patricia W. Silvey,**

*Director, Office of Standard, Regulations and Variances.*

[FR Doc. 86-25232 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-72-C]

## Black Thunder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Black Thunder Coal Company, 299-C Luke Fidler, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Black Thunder Slope No. 1 (I.D. No. 36-06759) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which are pumps, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperature making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25233 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-123-C]**

## Canada Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Canada Coal Company, Inc., P.O. Box 2686, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phrase alternating current equipment, circuit breakers) to its No. 2 Mine (I.D. No. 15-02410) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phrase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and that such breakers be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

2. As an alternate method, petitioner proposes to use a vacuum contactor of no less interrupting capacity than that provided by the circuit breaker to obtain undervoltage protection in lieu of a circuit breaker. Overcurrent and short circuit protection will continue to be provided by the circuit breaker. Ground fault circuits will be altered to maintain the vacuum contactor in the off condition until faulted power circuits are acknowledged. Ground monitoring and ground fault circuitry will be directed to the control of the coil of the vacuum contactor. Undervoltage release will be obtained by the nature of contactors and relays, which drop out at 40 to 50 percent of the rated coil voltage. The vacuum contactor will be placed in the power boxes in the space presently used for the spare circuit breaker.

3. Prior to each conveyor belt start-up, an audible alarm will be sounded for 15 seconds that can be heard throughout the affected system. All start-up horns will operate on 120 VAC or less, and all remote control voltage will be 120 VAC or less.

4. All affected personnel will be trained in the circuit plans used at these locations.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25234 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-121-C]**

## Olaf Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Olaf Coal Company, 1475 Scott Street, Kulpmont, Pennsylvania 17839 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07469) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 30, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25235 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-88-C]**

## Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.1403-9 (shelter holes) to its Sunnyhill No. 9 North Mine (I.D. No. 33-01069) located in Perry County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shelter holes should be provided on track haulage roads at intervals of not more than 105 feet.

2. When the mine opened in 1969, extraction was by the conventional method of mining. The results of blasting and weathering have taken their toll on top conditions used for shelter holes, and many falls have occurred in many of the crosscuts and adjacent crosscuts.

3. As an alternate method, petitioner proposes to extend shelter hole intervals to 500 feet.

4. In support of this request, petitioner states that—

(a) Vehicle operators will be instructed to slow down and sound warning devices, insuring right of way to persons working in the track entry; and

(b) Clearance on the walkway side of the track entry will be at least 24 inches from the farthest projection of normal traffic, except where the installation of roof support prohibits such clearance, in which case pedestrians will always have the right of way.

4. For these reasons, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25236 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-137-C]**

## Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 4240-1990 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Camp No. 11 Mine (I.D. No. 15-08357) locted in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine uses a continuous haulage coal loading system on units number one and number six. Each system consists of two mobile bridge units which are used to complete the belt linkage from the continuous miner. The mobile bridge units do not operate inby the last open crosscut.

3. Mining conditions at unit number one consist of rolling bottom and a seam height of 60 inches, which is decreased 6 inches by use of crossbars for roof support, and will continue to decrease as mining progresses. Unit number six consists of rolling bottom and a seam height of 52 inches, which is decreased 6 inches by use of crossbars for roof support.

4. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would restrict the equipment operator's vision, and limit the operator's mobility hampering the operator's ability to exit from the machine in an emergency.

5. In addition, the rolling bottoms at both units would cause the cab or canopy to strike roof bolts. The very nature of a continuous haulage system, causes operators to be near the rib while the unit is in active operation. The use of a cab or canopy would expose miners to injury because of their proximity to the rib.

6. The equipment operator's lack of vision would result in curtains being displaced and thus affect the ventilation plan.

7. For these reasons, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 30, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25237 Filed 11-6-86; 8:45 am]

BILLION CODE 4510-43-M

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**[Docket No. M-86-131-C]**

## Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Meigs No. 2 Mine (I.D. No. 33-01173) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires, trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

2. The main roof in the mine consists primarily of competent limestone.

3. As an alternate method, petitioner proposes to locate trolley wires, trolley feeder wires, and high-voltage cables between 100 and 150 feet from longwall panels.

4. In support of this request, petitioner states that a row of permanent stoppings will be constructed between longwall panels and any trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels. The stoppings will be 6" x 8" x 16" concrete blocks and plastered on the intake or high pressure side with an approved sealant for coating masonry block stoppings. These stoppings will be examined on a weekly basis.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 2203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 29, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25238 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-132-C]**

### Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Meigs No. 2 Mine (I.D. No 33-01173) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electric equipment other than trolley wires, trolley feeder wires, high-voltage cables, and transformers be permissible and maintained in permissible condition when such electric equipment is located within 150 feet from pillar workings.

2. The main roof in the mine consists primarily of competent limestone.

3. As an alternate method, petitioner proposes to locate nonpermissible electric equipment between 100 and 150 feet from longwall panels.

4. In support of this request, petitioner states that a row of permanent stoppings will be constructed between longwall panels and any trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels. The stoppings will be 6" × 8"× 16" concrete blocks and plastered on the intake or high pressure side with an approved sealant for coating masonry block stoppings. These stoppings will be examined on a weekly basis.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 29, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25239 Filed 11-6-86; 8:45am]

BILLING CODE 4510-43-M

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**[Docket No. M-86-11-M]**

### Southern Paving Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Paving Company, Box 819, Moab, Utah 84532 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Southern Paving Pit (I.D. No. 42-01457) located in Grand County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

2. There is a 8 and ½ foot drive line, 7 feet off the ground to a cross shaft on the crusher through which V-belts drive a 6 foot bull wheel and the jaws and rolls. In this immediate area are two jaw fly wheels. In the event of a U-joint failure on the drive line, it could destroy its guard with the whipping action and increase the potential hazard to workers anywhere in the area.

3. As an alternate method, petitioner proposes to install a six-foot chain link fence around the drive-line/bull wheel section of the crusher, which is in a common 10 foot by 20 foot area. Therefore, during operation, no workers can come into this area, thereby omitting the danger. The crusher operator is on the opposite side of the crusher from this area at all times with no access to this designated area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 27, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-25240 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-321]**

### Georgia Power Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nucler Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Facility Operating License No. DPR-57, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Unit 1 (the facility), located in Appling County, Georgia.

The amendment, as proposed by the licensee, modified the Hatch Unit 1 Technical Specifications, section 3.7 to delete Tables 3.7-2, 3.7-3 and 3-7-4. These Tables contain lists of primary containment penetrations and containment isolation valves. It also deletes the reference to a specific revision of Appendix J. The licensee's application for the amendment was dated March 5, 1979 and supplemented February 7, 1984. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 25, 1984 (49 FR 17860). All of the requested changes

were granted, except the request to delete Tables 3.7–2, 3.7–3 and 3.7–4.

Notice of Issuance of Amendment No. 131 will be published in the Commission's Bi-Weekly Federal Register Notice.

The portion of the application which requested deletion of Tables 3.7–2, 3.7–3 and 3.7–4 was denied.

The request to delete Tables 3.7–2, 3.7–3 and 3.7–4 was found to be unacceptable because they provide guidance in measuring the compliance of the licensee with the requirements of Appendix J and because deletion would be contrary to current Standard Technical Specifications.

The licensee was notified of the Commission's denial of this request by letter dated.

By December 8, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or 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.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Equire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

For further details with respect to this action, see (1) the application for amendment dated March 5, 1979, as supplemented February 7, 1984, and (2) the Commission's letter to Georgia Power Company dated October 30, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing.

Dated at Bethesda, Maryland, this 30th day of October, 1986.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, BWR Project Directorate No. 2, Division of BWR Licensing.*

[FR Doc. 86–25288 Filed 11–6–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–321]

## Georgia Power Co. et al. (Edwin I. Hatch Nuclear Plant, Unit No. 1); Exemption

I

The Georgia Power Company (GPC or the licensee) and three other co-owners are the holders of Facility Operating License No. DPR–57 which authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 1 (Hatch 1 or the facility) at steady state reactor power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Appling County, Georgia. The license is subject to all rules and regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.54(b) of 10 CFR 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973, and by letter dated August 7, 1975, the Commission requested GPC to review the containment leakage testing program for the facility and to provide a plan for achieving full compliance where necessary.

GPC responded on August 28, 1975, by stating that the containment leak rate test program for Hatch 1 had been reviewed and the program was in full compliance with Appendix J. However, in a letter dated November 16, 1977, GPC reported that in formulating a test program for the Edwin I. Hatch Nuclear Plant, Unit 2 (Hatch 2) it discovered that the Hatch 1 program needed to be updated. Consequently, proposed changes to the Hatch 1 Technical Specifications were also submitted in the November 16, 1977 letter. In response to GPC's proposed changes, the Commission issued Amendment No. 53 to Facililty Operating License No. DPR–57 for Hatch 1 on April 12, 1978. In its letter of April 12, 1978, the Commission indicated that Amendement No. 53 did not resolve all of GPC's proposed changes but that they would be reviewed as part of the review of the Hatch 2 program.

Subsequently, on March 5, 1979, GPC submitted an updated containment leak rate test program which was developed utilizing the recently-approved test program for Hatch 2. In addition to providing the updated program, the March 5, 1979, letter also provided proposed changes to the Technical Specifications for Hatch 1 and proposed piping modifications, both of which were necessary for the full implementation of the updated program.

Since GPC developed this updated test program by comparing each penetration at Hatch 1 with its similar penetration at Hatch 2 and applying the same guidelines used to develop the Hatch 2 program, the updated test program at Hatch 1 should meet all the requirements of 10 CFR Part 50, Appendix J. To ensure that the guidelines utilized in the development of the Hatch 2 program were properly carried over and applied to Hatch 1, the updated Hatch 1 program was independently reviewd in detail by our contractor, the Franklin Research Center (FRC). FRC prepared a Technical Evaluation Report (TER) "Containment Leakage Rate-Testing—Edwin I Hatch Nuclear Plant Unit 1" dated April 22, 1982, documenting the results of its review of GPC's March 5, 1979 submittal.

The TER identified six proposed test items as exceptions to the requirements of Appendix J and determined that exemptions to the requirements of Appendix J were required as to these six items. These items concern: (1) Isolation valves tested with water (2) main steam isolation valves (MSIVs) (3) airlocks (4) closed systems outside containment (5) transversing incore probe system and (6) control rod drive lines. However, additional staff review, documented in the Safety Evaluation Report (SER), has shown that only the MSIV test item is an exception to the Appendix J requirements and that the other five items are in compliance with Appendix J. This additional staff review included consideration of additional information concerning items 4 and 5 above that was provided by the licensee in a May 14, 1986 submittal.

III

Appendix J to 10 CFR 50 requires leak rate testing of BWR main steam isolation valves (MSIVs) (Paragraph II.H.4) at Pa, the peak calculated containment pressure related to the design-basis accident (Paragraph II.C.2). Further, Appendix J requires that the measured leak rates be included in the summation of the leak rates for the local leak rate tests of all penetrations and valves subject to Type B and C tests (Paragraph III.C.3).

The licensee proposes to leak test the MSIVs at a reduced pressure and

exclude the measured leakage from the combined local leak rate test results.

Each main steam line is provided with two MISVs that are oriented to seal in the direction of post-accident containment atmosphere out-leakage. The design of the MSIVs is such that testing in the reverse direction tends to unseat the valve. Simultaneous testing of the two valves, at design pressure, by pressurizing between the valves, would lift the disc of the inboard valve and result in a meaningless test. The proposed test calls for a test pressure of 28 p.s.i.g. (one-half of Pa) to avoid lifting the disc of the inboard valve. The total observed leakage through both valves (inboard and outboard) is then conservatively assigned to the penetration. The staff concludes that this procedure is acceptable based on the conservative test direction for the inboard valve. Furthermore, excluding the leakage from the summation for the local leak rate tests is acceptable because a separate leakage rate acceptance criterion of 11.5 standard cubic feet per hour is used for the MSIVs. The separate limit of 11.5 sofh was also included in the original facility Technical Specifications. This separate limit was found acceptable during the operating license review for Hatch 1, as discussed in Section 5.4.4 of the SER, dated May 11, 1973, and Supplement No. 1 to the SER, dated December 10, 1973. The radiological consequence of this separate leakage was considered generically as described by Regulatory Guide 1.96, "Design of Main Steam Isolation Valve Leakage Control Systems for Boiling Water Reactor Nuclear Power Plants," Rev. 1, dated June 1976, which recommended the installation of a supplemental control system for plants with construction permits issued after March 1, 1970, but concluded that the Hatch 1 plant and other plants for which construction permits were issued prior to March 1, 1970 did not need to add such a leakage control system.

Pursuant to Final Rule 10 CFR 50.12 (50 FR 50764) published on December 12, 1985, the special circumstances for granting this exemption have been identified, as follows. The purpose of the requirements to leak test the MSIVs at Pa is to assure that pressure conditions during testing represent pressure conditions that could be experienced in a design-basis accident so that potential leakage during a design-basis accident will be identified adequately during testing. However, as noted above, application of this requirement to valves with configurations similar to these MSIVs tends to unseat the valves and give meaningless results and would not serve the underlying purpose of the rule. The proposed alternate test, while at a somewhat reduced pressure, conservatively treats the resulting leakage indication and provides a more meaningful indication of potential leakage across the valves. Accordingly, with respect to the exemption from the requirement for full pressure testing, application of the rule in this instance would not serve the underlying purpose of the rule.

The purpose of the requirement to include the measured leak rates of the MSIVs in the summation of the local leak rate tests for all of the penetrations and valves subject to Type B and C tests is to assure that there is adequate margin between the detected combined valve leakage and the leakage limit. Experience has demonstrated that adequate margin can be maintained even if leakage from MSIVs is considered separately and subject to a separate specific leakage restriction of 11.5 standard cubic feet per hour. Accordingly, with respect to the exemption from the requirement to combine the result of all valve leakage tests, application of the rule in this instance is not necessary to achieve the underlying purpose of the rule. Consequently, special circumstances described by 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

The staff concludes that leak testing the MSIVs in the way described above is an acceptable alternative to the requirements of Appendix J, and that an exemption to Appendix J is justified and acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; furthermore, in accordance with 10 CFR 50.12(a)(ii) special circumstances, as discussed above, are present. Therefore, the Commission hereby grants the exemption identified above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 36762).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of October, 1986.

For the Nuclear Regulatory Commission.

**Robert M. Bernero,**

*Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 86-25287 Filed 11-6-86; 8:45 am]

BILLING CODE 7590-01-M

## Illinois Municipal Electric Agency; Reevaluation and Affirmation of No Significant Change Finding

Notice is hereby given that the Illinois Municipal Electric Agency has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Antitrust Change" pursuant to the operating license antitrust review of the Braidwood Station Unit 1. After further review by my staff, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 29th day of October 1986.

For the Nuclear Regulatory Commission.

**Harold R. Denton,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 85-25289 Filed 11-6-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

## Niagara Mohawk Power Corp., et al.; of Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-54 to Niagara Mohawk Power Corporation, acting for itself and as agent for Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, and Long Island Lighting Company (the licensees) which authorizes operation of the Nine Mile Point Nuclear Station Unit 2 (the facility), at reactor core power levels not in excess of 3323 megawatts thermal in accordance with the provisions of the

License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (166 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The Nine Mile Point Nuclear Station Unit 2 is a boiling water nuclear reactor located on the southeast shore of Lake Ontario in the town of Scriba, Oswego County, New York. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on May 13, 1983 (48 FR 21680).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–54, with Technical Specifications (NUREG–1193) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 11, 1985; (3) the Commission's Safety Evaluation Report, dated February 1985 (NUREG–1047), and Supplements 1 through 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated May 1985 (NUREG–1085).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and at the Penfield Library, State University College, Oswego, New York 13126. A copy of Facility Operating License No. NPF–54 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 4 (NUREG–1047) and the Final Environmental Statement (NUREG–1085) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or by calling (202) 275–2060 or (202) 275–21712.

Dated at Bethesda, Maryland this 31st day of October 1986.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, BWR Project Directorate No. 3, Division of BWR Licensing.*

[FR Doc. 86–25286 Filed 11–6–86; 8:45 am]

BILLING CODE 7590–01–M

## POSTAL RATE COMMISSION

**[Order No. 718; Docket No. A87–3]**

### Wallpack Center, New Jersey 07881 (Anna Doremus et al., Petitioners), Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued November 3, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket Number: A87–3

Name of Affected Post Office: Wallpack Center, NJ 07881

Name(s) of Petitioner(s): Anna Doremus, *et al.*

Type of Determination: Closing

Date of Filing of Appeal Papers: October 29, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

*The Commission orders:*

(A) The record in this appeal shall be filed on or before November 13, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

**Charles L. Clapp,**

*Secretary.*

**Appendix**

*Docket No. A87–3, Wallpack Center, NJ 07881*

October 29, 1986: Filing on Petition.

November 3, 1986: Notice and Order of Filing of Appeal.

November 24, 1986: Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 3, 1986: Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

December 23, 1986: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 7, 1987: Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

January 14, 1987: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

February 26, 1987: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86–25154 Filed 11–6–86; 8:45 am]

BILLING CODE 7715–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

**Extension**

*17 CFR Part 257*

[File No. 270–252]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Part 257 under the Public Utility Holding Company Act of 1935, Preservation and destruction of records of registered public utility holding companies and of mutual and subsidiary service companies.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs,

Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Jonthan G. Katz,
*Secretary.*
October 30, 1986.
[FR Doc. 86-25198 Filed 11-6-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-15387; File No. 812-6496]

## Bank Leu Ltd. and Leu Finance (North America) Inc.; Application

October 30, 1986.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* Bank Leu Ltd. ("Leu") Finance (North America) Inc. ("Finance").

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provision of the 1940 Act.

*Summary of Application:* Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the issuance and sale of their debt securities in the United States.

*Filing Date:* The application was filed on October 8, 1986.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 24, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of services by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Leu or Finance, c/o F. Sedgwick Brown, Esq., Lord, Day & Lord, 25, Broadway New York, NY 10004.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Niehoff, Esq., (202) 272-2048, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

### Applicants' Representations

1. Leu was chartered as a bank in Zurich, Switzerland in 1755. It is one of the big five Swiss commercial banks. As of December 31, 1985, it had assets of approximately $6.5 billion, deposits of $3.3 billion and capital funds (including reserves) of $430 million (based on the exchange rate on December 31, 1985—approximately 2 Swiss francs for each U.S. dollar). In addition to its offices in the City and Canton of Zurich, it also has banking subsidiaries in Geneva and Basle. Its foreign offices include a branch in New York, subsidiaries in Nassau, the Bahamas, Luxembourg and London and a representative office in Tokyo.

2. Leu's Principal business, similar to that of major U.S. banks, is deposit-taking and loan-making. As of December 31, 1985, approximately 85% of its total liabilities and net worth consisted of deposits (including due-to-banks). Its loans and advances totalled approximately $1.8 billion, representing a wide variety of loans and borrowers. Cash and due-from-banks were approximately 49% of its total assets. Its principal other assets, bills and money market papers and securities, were approximately 10% of its total assets. In addition to taking deposits and making loans and advances, Leu engages in other banking and bank-related activities typical of the world's major international banks, including: investment advisory and custodial services, foreign exchange, precious metals trading, and underwriting in the Swiss and Euro-capital markets.

3. As a Swiss bank, Leu is subject to the Swiss Federal Law Relating to Banks and Savings Banks of November 8, 1934/ March 11, 1971 and its Implementing Ordinance of May 17, 1972 as amended on December 1, 1980. These regulations are administered by the Federal Banking Commission and the Swiss National Bank through mandatory annual audits, specific capital requirements and specific liquidity requirements. This regulatory structure is comparable to that imposed on U.S. banks.

4. Finance was organized under the laws of the State of Delaware. All of its outstanding capital stock is owned by Leu. It was organized as a means for Leu to sell commercial paper to, among others, certain U.S. institutional purchasers that are limited to purchasing obligations of domestic issuers. Finance's sole business will be issuing debt obligations, the proceeds of which will be provided to Leu. It will not issue any common or capital stock except for that already owned by Leu. Substantially all of Finance's assets will consist of amounts receivable from Leu.

5. The Applicants propose to issue or sell, in the United States, unsecured prime quality commercial paper notes ("notes"). The notes will arise out of, or the proceeds will be used to finance, Leu's current transactions. The notes will qualify for the exemption from registration under the the Securities Act of 1933, as amended ("1933 Act"), provided by section 3(a)(3) of that Act. They will not be issued or sold until U.S. counsel gives an opinion that the notes qualify for the exemption. Leu and Finance do not request SEC review or approval of U.S. counsel's opinion letter regarding the availability of the exemption and the SEC expresses no opinion as to the availability of the exemption.

6. The notes will be issued in bearer form and denominated in U.S. dollars. They will be issued in minimum denominations of $100,000. They will be sold to a commercial paper dealer in the United States ("dealer") that will re-offer them in the United States as principal to institutional investors and entities and individuals that normally purchase commercial paper notes. The notes will not be advertised or otherwise offered for sale to the general public. An announcement of the issuance of the notes may be as a matter of public record only.

7. Applicants will ensure that the dealer will provide each offeree of the notes, prior to purchase, with a memorandum which briefly describes the business of Leu, including its most recent publicly available fiscal year-end balance sheet and profit and loss statement audited in the manner customarily done by its statutory auditors for financial statements contained in its Annual Report. The memorandum will describe any differences that are material to investors between the accounting principles applied in the preparation of the financial statements and "generally accepted accounting principles" employed by U.S. banks. The memorandum and financial statements will be at least as comprehensive as those customarily used by U.S. bank holding companies in offering commerical paper in the United States and will be updated promptly to reflect material changes in Leu's financial condition.

8. Prior to issuance, the notes will receive one of the two highest investment grade ratings from at least two "nationally recognized statistical rating organizations" that are not

affiliated persons, as that term is defined in the 1940 Act, of Leu. Applicants' U.S. counsel will certify that the rating has been obtained. A rating need not be obtained, however, if, in the opinion of U.S. counsel, after taking into consideration the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and no-action letters made public by the Commission, an exemption from registration is available under section 4(2) of the 1933 Act.

9. Leu will unconditionally guarantee the payment of principal, interest, and premium, if any, on the notes issued or sold by Finance. The notes, whether direct liabilities of Leu or unconditionally guaranteed obligations of Finance, will rank *pari passu* among themselves, prior to equity securities of Leu and equally with all other unsecured indebtedness of Leu, including liabilities to depositors, except that, under Swiss Banking Law, savings deposits at Leu up to Swiss Franc 10,000 per deposit will have priority over the notes.

10. Leu may appoint a bank or other financial institution in the United States as Applicants' authorized agent to issue and pay the notes. Leu will appoint the financial institution, Finance, Leu's U.S. counsel, or some other U.S. person that normally acts in such a capacity to accept any process that may be served in any action based on a note by a noteholder in any State or Federal court. The authorized agent will not be a trustee for the noteholders. Leu and Finance will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in any action based on the notes. The appointment of an agent for service of process and consent to jurisdiction will be irrevocable until all amounts due and to become due on the notes have been paid by Leu.

11. Leu may offer other debt securities, but not shares of its capital stock in the United States. Finance may also offer other debt securities in the United States that will be unconditionally guaranteed by Leu. The proceeds of Finance's offerings will be deposited with, or loaned to, Leu.

12. Any future offerings of Applicants' securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Leu, its business and its financial condition as those customarily used by U.S. bank holding companies offering similar securities under similar circumstances. They undertake to ensure that each offeree that indicates an interest in the securities will be provided with the disclosure documents prior to any sale of the securities to the offeree. Any future offerings registered under the 1933 Act will be made by the use of a disclosure document and in the manner required by the 1933 Act and and the rules and regulations thereunder.

13. Leu will appoint a U.S. person as its agent for services of process in any action based on the securities and instituted in any State or Federal court by any holder of the securities. Leu and Finance will expressly accept the jurisdiction of State and Federal courts in the City and State of New York in any action based on the securities. The appointment of an agent for service of process and consent to jurisdiction will be irrevocable until all amounts due or to become due on the securities have been paid.

14. Leu and Finance will obtain a rating for any future offerings of its debts securities (except deposits) under the conditions described in paragraph 8, above.

15. Approval of the application is both necessary and appropriate in the public interest. If Leu were registered as an investment company, it would not be permitted to engage in many of the activities which it and other foreign banks engage, such as underwriting government securities and foreign enchange. This would effectively preclude Leu from selling its debt securities in the United States. Such a result is both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978. That Act was intended to place U.S. and foreign banks on an equal basis in their transactions in the United States. Approval of the application would also provide an alternate source of U.S. dollars to Leu. An exemption is consistent with the protection of investors because Leu is already subject to a regulatory framework that affords sufficient investor protection. An exemption is also consistent with the purposes of the 1940 Act. Congress foresaw that entities that did not pose the problems associated with investment companies would come within the definition of "investment company" contained in the 1940 Act. It therefore provided a means section 6(c) for the SEC to exempt those types of entities from the 1940 Act. Leu is a closely regulated banking entity with investments and objectives totally different from the investment companies at which the 1940 Act is directed and for which its substantive provisions are neither necessary nor suitable.

16. The rationale for an exemption under section 6(c) for Leu extends to Finance because of the close relationship between the two companies and because the obligations of Finance will in effect be obligations of Leu. Finance's sole business is and will continue to be operating as a financing vehicle for Leu.

**Applicants' Conditions**

The Applicants agree that if an order is granted it will be expressly conditioned on the representations set forth above and more fully described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 86-25209 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15377; File No. 812-3469]**

## The Light Street Income Fund, Inc.; Application

October 27, 1986.

Notice is hereby given that The Light Street Income Fund, Inc. ("Applicant"), 100 Light Street, Baltimore, Maryland 21201, a registered open-end management investment company, filed an application on August 11, 1986 for an order, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act"), declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the applicable provisions thereof.

Applicant, a Maryland corporation, states that it filed a Notification of Registration and a Registration Statement on May 20, 1982. On that date, it registered an indefinite number of shares of common stock under the Securities Act of 1933. Applicant's initial public offering of common stock commenced on August 5, 1982.

Applicant represents that on May 15, 1986, its Board of Directors declared advisable a merger of Applicant with and into United States Fidelity and Guaranty Company ("USF&G"), a Maryland corporation. A similar authorization in regard to the proposed merger was made by USF&G's Board of Directors at its regular meeting on May 7, 1986. The proposed merger was approved at a special meeting on May 27, 1986, by the vote required under the Maryland General Corporation Law and the Act. On June 30, 1986, following the

filing of appropriate Articles of Merger with the State of Maryland, Applicant was merged with and into USF&G. On such date, USF&G was the sole shareholder of Applicant's common stock. All shares of Applicant's common stock outstanding immediately prior to the merger were cancelled and, by operation of state law, Applicant ceased to have a separate legal existence. Applicant represents that USF&G is an insurance company as such term is used under section 3(c)(3) of the Act, and, accordingly, is exempt from the definition of an "investment company" under the Act.

According to the application, all fees and expenses incurred by Applicant in connection with the merger are being borne by USF&G as successor to Applicant. All of Applicant's liabilities have been assumed by USF&G. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 17, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secreatary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25210 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15384; File No. 812-6445]**

## Application and Opportunity for Hearing; Massachusetts Mutual Life Insurance Co. et al.

October 30, 1986.

Notice is hereby given that the Massachusetts Mutual Life Insurance Company "Mass Mutual"), a mutual life insurance Company organized under the laws of Massachusetts, and two separate investment accounts of Mass Mutual, Massachusetts Mutual Variable Annuity Separate Account 1 ("Separate Account 1"), and Massachusetts Mutual Variable Annuity Account 2 ("Separate Account 2") filed an application on August 4, 1986 and an amendment thereto on October 7, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a daily mortality and expenses risk charge ("risk charge") in connection with certain flexible and single premium individual variable annuity contracts (the "Contracts") described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from Separate Accounts 1 and 2 a risk charge equal to an effective annual rate of up to 1.25 percent of the net assets attributable to the Contracts. Applicants state that the mortality component (.40 percent) of the risk charge is intended to compensate Mass Mutual for assuming the risk that its actuarial estimates of mortality rates built into the Contracts' guaranteed annuity rates may prove inadequate, and that the expense component (.85 percent) of the risk charge is intended to compensate Mass Mutual for assuming the risk that the contingent deferred sales charge and the administrative charges may be insufficent to cover sales and administrative expenses associated with the sale and maintenance of the Contracts.

Applicants state that they will deduct two administrative charges: an annual $30 charge (which may be increased by Mass Mutual to no more than $50) for the accumulated value of each contract and a daily charge assessed against the assets of Separate Accounts 1 and 2 at an annualized rate of .15 percent.

Applicants state that the sales charge is calculated as a percent of the amount redeemed or the accumulated value of the Contract at maturity. Under the flexible premium contracts the charge is 8 percent in the first four contract years and 4 percent in the next four contract years. Under the single premium contracts it is 5 percent in the first contract year and declines 1 percent per year until it becomes 1 percent in the fifth contract year.

Applicants state that they compute variable and fixed annuity benefits using a different mortality table for each. Applicants state that for computing minimum fixed income payments, the Contracts provide that the Company will use mortality rates from the 1983 Table "a" with Projection G for thirty years and with female rates set back for five years. For variable income payments, the Contracts provide that the Company will use mortality rates based on the 1971 Individual Annuity Mortality Table projected to decrease 1½% annually from 1971.

Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by Mass Mutual under the Contracts and within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based on Mass Mutual's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, charge level or annuity rate guarantees, the manner in which the charges are imposed and the markets in which the Contracts will be offered. Applicants state that Mass Mutual has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request. Applicants represent that the deferred sales charge assessed in connection with certain partial or total redemptions or at maturity may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the surrender charge prove insufficient to cover actual expenses, the deficiency will be met from Mass Mutual's general corporate funds, which could include amounts derived from the risk charge that exceed the expenses the charge was designed to cover. Applicants represent that Mass Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Accounts and the owners of Contracts. Applicants further state that the basis for this conclusion has been incorporated into a memorandum which Mass Mutual will maintain and make available to the Commission or its staff upon request.

Mass mutual also represents that the assets of Separate Accounts 1 and 2 will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 of the Act, to have such plan formulated and approved by a board of directors or trustees, the majority of whom are not "interested persons" of the management company within the meaning of section 2(a)(19) of the Act.

Notice is further given that any person wishing to request a hearing on the application may, not later than November 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–25211 Filed 11–6–86; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–15379; 812 6477]**

## North Side Capital Corp.; Application for Collateralized Mortgage Obligations

October 28, 1986.

Notice Is Hereby Given that North Side Capital Corporation ("Applicant") 1100 North Market Street, Suite 780, Wilmington, Delaware 19890, filed an application on September 11, 1986, for an order, pursuant to section 6(c) of the Investment Company Act of 1940, (the "Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

Applicant states that it was incorporated for the limited purpose of acquiring, owning, holding and pledging Mortgage Certificates (as described below), issuing and selling series of bonds secured by such Mortgage Certificates ("Bonds") and engaging in activities incidental thereto. Applicant represents that the Bonds will be separately secured by collateral consisting primarily of mortgage pass-through certificates ("GNMA" Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"), mortgage participation certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC") and/or guaranteed mortgage pass-through certificates ("FNMA Certificates") issued and guaranteed by the National Mortgage Association ("FNMA"). As used herein, "Mortgage Certificates" means GNMA, FHLMC and/or FNMA Certificates. The Mortgage Certificates assigned to secure a series of Bonds may or may not represent the entire beneficial interest in the related mortgage pools.

According to the application, each series of the Bonds will be issued pursuant to an indenture (the "Indenture") between Applicant and an independent trustee (the "Trustee"). Indentures for each public offering will be qualified under the provisions of the Trust Indenture Act of 1939. The Mortgage Certificates securing each series of Bonds will be assigned to and held by the Trustee or its nominee, in registered or book-entry form, and the Trustee will have a first perfected security interest in all such Mortgage Certificates.

Applicant anticipates that the Mortgage Certificates securing each series of Bonds will be acquired by Applicant using the net proceeds of sale of such Bonds. Except for the limited power to substitute Mortgage Certificates as described below, Applicant will not be permitted to release from the lien of the Indenture such Mortgage Certificates assigned to secure a series of Bonds until such Bonds are paid.

Applicant represents that except when exercising remedies following default (and except for substitutions of Mortgage Certificates), the Trustee will not be permitted to release from the lien of the Indenture any Mortgage Certificates which are required to collateralize Applicant's Bonds. Pursuant to the Indenture, the proceeds of the Mortgage Certificates held by the Trustee pending distribution to Bondholders may only be invested in United States obligations, cash equivalents, and other investments meeting requirements of the rating agencies rating the Bonds of such series. The Bonds will be structured so that the cash flow generated by the Mortgage Certificates and the reinvestment earnings thereon, together with the other collateral pledged to secure the Bonds, will be sufficient to provide for the full and timely payment of principal and interest on the Bonds. It is anticipated that the cash flow from the Mortgage Certificates and other collateral securing a series of Bonds will be sufficient to pay principal and interest on the Bonds when due to Bondholders.

In addition to the Mortgage Certificates, the other collateral pledged to secure the Bonds will include a separate collection account ("Collection Account") for each series of Bonds and may include a reserve fund ("Reserve Fund"). A Reserve Fund would consist of cash, a letter of credit, other eligible investments ("Eligible Investments"), or a combination thereof in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall related to any Mortgage Certificates. The amount held in such Reserve Fund for any series of Bonds is expected to be insubstantial relative to the total amount of the Collateral securing such series of Bonds. The Collection Account for each series will be established by the Trustee for receipt of all monthly principal and interest distributions on the Mortgage Certificates securing the series, reinvestment income thereon, and any initial deposit required by the prospectus supplement. Amounts in the Collection Account will be invested by the Trustee in Eligible Investments, which include, among other investments, obligations of the United States or any agency thereof, federal funds, certificates of deposit, highest rated commercial paper, time deposits and banker's acceptances sold by eligible commercial banks, certain purchase agreements, securities having ratings acceptable to the rating agencies rating the Bonds, and guaranteed investment contracts. Such Collection Account investments will mature on or prior to the next payment date for the series, and will thus be available to make required payments on the Bonds of such series.

Certain series of Bonds may provide for optional and mandatory redemptions on terms specified for each series of Bonds. A series may provide for mandatory redemptions if, due to low reinvestment yields and/or substantial payments of principal on the mortgage loans underlying the Mortgage Certificates, it is determined that the cash anticipated to be in the Collection

Account, as defined in the Indenture, might not be sufficient to make the required payments on the Bonds. Bondholders will not be entitled to compel the liquidation of the Mortgage Certificates in order to redeem the Bonds prior to maturity.

Applicant asserts that it is not the type of entity the Act was intended to regulate. Since the Mortgage Certificates are guaranteed by agencies or instrumentalities of the United States, the Applicant maintains that the Bond investor is protected whether or not each of the Mortgage Certificates represents the entire beneficial interest in the related mortgage pool. Furthermore, Applicant submits that the requested exemption will increase its ability to purchase Mortgage Certificates and that the public interest will therefore be served by expanding the sources of funds available to finance the purchase and retention of Mortgage Certificates and, thereby, the sources of funds available for the housing finance needs of the nation. Applicant further submits that it will exercise no investment discretion with respect to the Mortgage Certificates assigned as collateral for each series of Bonds except for its limited ability to substitute collateral. Also, the Trustee is permitted to invest the cash proceeds of the Mortgage Certificates only in United States obligations and other investments which meet the criteria of the rating agency or agencies rating the Bonds specified in the Indenture, and only for the limited period of time between receipt of such proceeds and payment to Bondholders. Applicant states that, under these circumstances, a Bondholder's risk and return will in no material respect depend upon the ability of Applicant to successfully invest and reinvest amounts distributed on the Mortgage Certificates.

Applicant has consented to the imposition of the following conditions with respect to the requested order:

(1) Each series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgage collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to Mortgage Certificates (the "Mortgage Collateral").

(3) If new Mortgage Collateral is substituted, the substitute Mortgage Collateral must: (i) Be of equal or better quality than, and insured or guaranteed to the same extent as, the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; and (iii) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant. The Bond Trustee will be provided with a first priority perfected security or lien in and to all collateral for the Bonds.

(5) Each series of Bonds will be rated in the highest bond rating category by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant requests that the Commission exempt it from all provisions of the Act. Applicant submits that the exemptive relief requested is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act" because it is not an entity to which the provisions of the Act were intended to be applied and its activities will enhance the national goal expressly articulated by Congress of expanding financing for housing.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than November 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25212 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15390; File No. 812-6454]**

## Application and Opportunity for Hearing; Phoenix Mutual Life Insurance Co. et al

October 31, 1986.

Notice is hereby given that Phoenix Mutual Life Insurance Company (the "Company"), Phoenix Equity Planning Corporation ("Equity Planning"), and Phoenix Mutual Variable Universal Life Account ("VUL Account"), (referred to collectively herein as "Applicants") at One American Row, Hartford, Connecticut 06115, filed an application on August 11, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants and certain transactions from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rule 6e-3(T) (b)(12), (b) (13) and Rule 22c-1 thereunder, to the extent necessary, as described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

Applicants state that the Company is a mutual life insurance company chartered in the State of Connecticut and is admitted to do business in forty-nine states, the District of Columbia, Canada, the Virgin Islands and Puerto Rico. The Company is the depositor and sponsor for VUL Account, a segregated investment account of the Company, which is registered under the Act as a unit investment trust. Equity Planning will be the distributor for the VUL Account. Applicants state that VUL Account was established for the purpose

of funding individual flexible premium variable life insurance contracts (the "Contracts"), as defined in paragraph (c)(1) of Rule 6e–3(T). Applicants are relying on the provisions of Rule 6e–3(T) in issuing the Contracts. Under the Contracts, neither the timing nor the amount of premium payments are fixed by Phoenix Mutual. Also, the death benefit may, and the cash value will, increase or decrease based upon the investment performance of amounts allocated to the sub-accounts of VUL Account.

Applicants state that under the Contract, net premiums are allocated, according to the instructions of the owner of the Contract ("Contractowner"), among the sub-accounts of VUL Account. Each sub-account of VUL Account will invest exclusively in shares of a corresponding portfolio of The Big Edge Series Fund (the "Fund"), an open-end management investment company. Shares of the Fund are also expected to be sold to another separate account of Phoenix Mutual in connection with certain variable annuity contracts.

Applicants state that as a general condition to the requested order, they agree that to the extent the final version of Rule 6e–3 (or any other rule adopted as the final version of Rule 6e–3(T)) imposes terms or conditions on the granting of exemptive relief of the nature requested n the application, Applicants shall take such steps as may be necessary to comply with that rule. Applicants assert the relief requested in the application meets the standards of section 6(c), is well precedented, and involves technical matters and matters unforeseen when Rule 6e–3(T) was adopted. Applicants state that the Contract provides for the deduction from cash value of a deferred acquisition expense charge ("Acquisition Expense Charge"). According to the application, a pro-rata portion of the Acquisition Expense Charge is deducted from the Contract's cash value on a monthly basis during the first ten Contract Years. The unpaid balance of the Acquisition Expense Charge is payable upon lapse of the Contract or its surrender. In addition, Applicants state that a portion of any unpaid Acquisition Expense Charge is deducted in connection with a partial surrender.

Applicants state that the total amount of the Acquisition Expense Charge under the Contract is the sum of three elements. Applicants state that the first element is a sales charge equal to 5.5% of the issue premium. According to the application, the other two elements of the Acquisition Expense Charge are (i) a charge equal to the premium tax assessed in connection with the Policy and (ii) a cost-based administrative charge to reimburse Phoenix Mutual for administrative costs it incurs in issuing the Contract. Applicants state that since the premium tax portion of the charge is at cost, the amount accessed will be different in various states and municipalities. Applicants state that the amount of the issue administrative charge element of the Acquisition Expense Charge is equal to 1.0% of the issue premium.

Applicants recognize that it could be argued that the deduction of an administrative charge or a charge for premium taxes upon a full or partial surrender could result in an impermissible deduction from the cash value of the VUL Account, or in the redemption of the Contract in an amount less than its net asset value. Applicants request exemption from sections 2(a)(32), 22(c), 26(c), 27(c)(1), 27(c)(2) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(iii) and 22c–1 to the extent necessary to permit the administrative charge for issuance expenses and premium taxes to be deducted on full or partial surrender of the Contract's cash value. Applicants represent that the administrative charge element is cost-based and is not expected to produce a profit, and that the premium tax element will equal the actual tax, if any, charged by a state or other governmental entity. Applicants submit that imposition of the issue administrative charge and premium tax charge in the form of a deferred charge as part of the Acquisition Expense Charge, is much more favorable to the Contractowner than the deduction of these charges from premiums paid—the conventional way of imposing such charges. First, Applicants assert that the amount of the Contractowner's investment in VUL Account is not reduced as it would be if these charges were taken in full in the first Contract Year. Second, Applicants represent that the total amount charged to any Contractowner is no greater than it would be if these charges were taken in full in the first Contract Year. Finally, Applicants state that the fact that the entire amount of the charges has not been deducted will favorably affect the amount of the death benefit under the Contract during the first ten Contract Years since cash value will be greater.

Applicants represent that the administrative charge and premium tax elements of the Acquisition Expense Charge are the same amounts as would have been imposed under the Contract if the expense of issuing the Contract and the premium taxes had been recovered through a front-end charge. In particular, Applicants represent that the administrative charge and premium tax elements of the Acquisition Expense Charge do not take into account the time-value of money (which would increase the charge to factor in the investment cost to Phoenix Mutual of deferring the charge). As a result, Applicants submit that Contractowners will obtain the advantages described above, which arise from the deferred nature of the charge, without incurring any additional cost.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 26, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–25213 Filed 11–6–86; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–15382; File No. 812–6466]**

## Application and Opportunity for Hearing; The Prudential Insurance Co. of America et al

October 30, 1986.

Notice is hereby given that the Prudential Insurance Company of America ("Prudential"), the Prudential Variable Contract Account–10 ("VCA–10") and The Prudential Variable Contract Account–11 ("VCA–11") (referred to collectively as "Applicants"), located at Prudential Plaza, Newark, NJ 07101, filed an application on August 29, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemption from the provisions of Rule 11a–2(e) under the Act and of section 22(d) of the Act, to the extent necessary

to permit certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicant states that Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and that VCA–10 and VCA–11 (referred to collectivley as the "Accounts") are separate accounts of Prudential established for the purpose of funding certain group annuity variable contracts (the "Contracts") issued by Prudential. Both VCA–10 and VCA–11 are registered under the Act as open-end management invested companies.

Applicant states that the Contracts (and a companion-fixed dollar annuity contract) are issued to employers and associations ("Contractholders"). Applicants state that no sales charge is deducted from participants' contributions under the Contracts as they are made. Applicants state that a deferred sales charge will in some circumstances be assessed in the event of a full or partial withdrawal of contributioins from participants' VCA–10 or VCA–11 accumulation accounts. The deferred sales charge assessed at the time of each such withdrawal is a specified percentage of the lesser of (i) the participants's total contributions (not previously withdrawn[1] to the Account of contract from with the withdrawal is made or (ii) the amount withdrawn. Applicants explain that the specified percentages vary depending on the number of years the participant has participated under the Contracts and the different kinds of retirement arrangement funded by the Contracts.

Application state that the deferred sales charge is designed to reimburse Prudential for sales expenses, such as compensation paid to sales personnel, costs of advertising and sales promotions, prospectus costs, and costs of sales administration. Applicants also state that, traditionally, these expenses are recouped through a sales load deducted from contributions when they are made, but the deferred sales charge is preferable from the standpoint of the investor because it permits investment of the entire contribution and, in many cases, permits wilthdrawal without the imposition of any sales charge whatsoever.

Applicants further state that Prudential has since 1968 offered variable contracts providing for participation in the Prudential Variable Contract Account–2 ("VCA–2"), which is registered under the Act as an open-end management investment company. Applicants explain that Contracts providing for participation in VCA–2 have been issued to employers and associations in connection with tax-deferred annuities. Contracts providing for participation in VCA–2 have generally been issued along with a separate, companion fixed-dollar annuity contract and are collectively referred to as Prudential's Group Tax-Deferred Annuity Program (the "TDA Program").

According to the Applicants, Prudential deducts a sales charge from contributions to VCA–2 made on behalf of participants in the TDA Program before those contributions are invested in VCA–2. Applicants state that the maximum sales charge is 4%, which may drop to 2.5% under terms described in the application. Applicants further state that they propose to offer to TDA Program participants employed by TDA Contractholders who also purchase the Contracts, the opportunity to exchange their interests in the TDA Program for interests in the Contracts.

Applicants represent that the proposed exchanges would be made without any charge to the TDA Program participants. Participants' interests withdrawn from VCA–2 and any companion fixed-dollar annuity contract in connection with the exchange would be invested at net asset value in VCA–10 or VCA–11 as directed by the participant. Applicants state that amounts invested in the Contracts as a result of the exchange would be considered to be contributions to the receiving Accounts for purpose of calculating the contingent deferred sales load upon subsequent withdrawals from the Contracts. However, because a front-end sales load would already have been paid on such amounts, Applicants would not charge any contingent deferred sales load on contributions withdrawn from the Accounts and Contracts until the participant had withdrawn an amount of contribution equal to the amount the participant had transferred from the TDA Program. Applicants represent that amounts transferred would be considered to be the first amounts withdrawn from a participant's account under the Contracts.

Applicants further state that for Participants who transfer all or a part of their interests in the TDA Program to the Contracts the calculation of the deferred sales load would be made using as a starting date the date of their first contribution to the TDA Program. This adjustment would apply to withdrawals of all contributions made under the Contracts which are in excess of and are made after the initial transfer of the participant's interest from the TDA Program to the Contracts.

Applicants state that they seek exemption from the provisions of Rule 11a–2(e) to the extent necessary to make their proposed offers because the language of the rule might be read to require that the offering account track, in each instance where a withdrawal is made after the exchange, whether any of the withdrawal is attributable to purchase payments made for the exchanged security (or appreciation thereon) transferred in connection with the exchange. Applicants state that they will allow TDA Program participants to withdraw from the Contracts the total amount transferred from the TDA Program, without payment of deferred sales charges that might otherwise be charged upon such withdrawals. All withdrawals of contributions under the Contracts, regardless of whether those withdrawals may be traced to purchase payments transferred in connection with the exchange or to subsequent contributions, would be made without imposition of a deferred sales charge until the total amount withdrawn equalled the amount transferred.

Applicants further state that they proposed to institute the foregoing procedure because TDA participants who exchange their interests will always be assured that their first withdrawals from the Contracts will be free of any deferred sales charge, as long as those withdrawals do not exceed the amount transferred in connection with the exchange, even though the withdrawals might actually consist of contributions made to the Contracts subsequent to the exchange transfer.

Applicants state that their proposed system comports with the policies underlying Rule 11a–2, which are to prevent charging duplicative sales loads as the result of an exchange from a separate account with a front-end sales load to one with a deferred sales load. Applicants state that their procedure might in some instances result in the charging of a sales load on the withdrawal of contributions traceable to the exchange of interests in VCA–2, but that this will only happen where the

[1] Applicants clarified this representation in a letter wherein they represent that amounts not previously withdrawn are calculated on a first-in-first-out basis, and that deferred sales loads will never be calculated on any appreciation attributable to purchase payments made for interests in Prudential's VCA–2 which may be exchanged for interests in VCA–10 and VCA–11 in connection with the Contracts.

participant in question has already received an earlier and offsetting benefit in the form of a waiver of sales loads which otherwise would have been payable on previous withdrawals consisting of contributions made subsequent to the exchange.

Applicants further seek exemption from section 22(d) of the Act to the extent necessary to permit the years of Contract participation, for purposes of the deferred sales charge, to be calculated from a participant's first contribution to the TDA Program, rather than from his or her first contribution under the Contracts.

Applicants state that the objectives of section 22(d) would not be impaired if Applicants are permitted to give participants who transfer all or part of their interests to the Contracts credit for their years of participation in the TDA Program. Applicants state that their proposal would not unfairly discriminate against other Contract owners or participants since transferring TDA Program participants are properly distinguishable from other Contract participants. Applicants further state their belief that sales expenses related to contributions from transferring TDA Program participants shall be lower than those related to future contributions from other Contract participants.

Notice is further given that any interested persons wishing to request a hearing on the application may, no later than November 25, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for his or her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After this date, an order disposing of the application will be issued unless the Commission orders hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25214 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-23751; File No. SR-MSE-86-7]**

## Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated ("MSE") Relating to Automatic Execution of Agency Limit Orders Under MSE's MAX System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XX, Rule 34 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

*Additions italicized*—[Deletions Bracketed]

ARTICLE XX.—MAKING EXCHANGE CONTRACTS

*Guaranteed Execution System*

Rule 34. No change in text.

*. . . Interpretations and Policies:*

*.01 Specialists shall be provided the opportunity to elect an alternative method by which agency limit orders are automatically executed under the Midwest Automated Execution System (MAX System). Specialists electing to utilize this alternative method will continue to be subject (except as modified herein) to the existing rules and procedures governing the execution of agency limit orders pursuant to the MAX System. Once a specialist elects to utilize this alternative method, all agency limit orders entered through MAX will be executed pursuant hereto. Where a specialist subsequently elects to cease utilization of this alternative method, reasonable prior notice thereof must be provided to the Exchange. Agency limit orders submitted pursuant to this alternative method shall be automatically executed subject to the following requirements:*

*(a) Agency limit orders will be automatically executed when the best consolidated quote system bid is equal to the limit order sell price or the best consolidated quote system offer is equal to the limit order buy price,*

*(b) Agency limit order execution as provided herein shall occur only under those circumstances where the best consolidated quote size is equal to or greater than the size of the limit order, and*

*(c) Agency limit orders submitted pursuant hereto will execute only at such time as a last sale has occurred at, or better than the limit order price.*

*This alternative method shall be available to electing specialists between the hours of 9:00 a.m. and 2:45 p.m. CST only. Specialists not electing to utilize this alternative method will continue to be subject to the existing rules and procedures governing the execution of agency limit orders under the MAX System.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Currently, MAX agency limit orders are automatically executed only where there has been a price penetration of the limit in the primary market. The effect of the current rule is that orders entitled to a fill because the market is at the limit price presently will not automatically execute under MAX. In these situations, the specialist must manually execute such limit orders.

This method will be limited to MAX orders only, will apply only to specialists electing to utilize it, and will be effective only between the hours of 9:00 a.m. and 2:45 p.m. This change will enable agency limit orders to execute automatically once the limit price touches the market and the other applicable criteria are met.

The purpose of this proposed change is to provide customers of specialists in certain situations, *e.g.*, high volume periods, with the ability to receive automatic execution of their agency limit orders rather than manual execution as is presently the case.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it protects investors by providing automatic executions at the best consolidated quote.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organizaiton. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Dated: October 24, 19865.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25199 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-23752; File No. SR-NASD-86-28]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to the By-Laws

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend Article VII, Section 8 of the NASD By-Laws to preclude members of the Board of Governors who are absent from meetings of the Board from voting by proxy on issues before the Board.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change*

(a) *Purpose.* The proposed amendment codifies NASD policy that members of the Board of Governors who are absent from a meeting of the Board may not vote by proxy on issues before the Board. Questions have arisen from time to time on the NASD's policy in this area and this amendment has been proposed to avoid further confusion. The proposed amendment is consistent with the law in Delaware, the NASD's state of incorporation.

(b) *Basis.* The proposed amendment is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, as amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Association does not foresee any burden on competition by this proposed rule change not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to detemine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17. CFR 200.30-3(a) (12).

Dated: October 27, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25200 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-23754; File No. SR-NASD-86-29]**

## Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to Article III, Section 28 of the Rules of Fair Practice

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed amendment to Article III, section 28 of the National Association of Securities Dealers, Inc.'s ("NASD") Rules of Fair Practices. (New language is italicized; deleted language is bracketed).

**Transactions for [Personnel of Another Member] or by Associated Persons**

*Determine Adverse Interest*

(a) A member ("executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member ("employer member"), or for any account over which such associated person has discretionary authority, shall use reasonable diligence to determine that the execution of such transaction will not adversely affect the interests of the employer member.

*Obligations of Executing Member*

(b) Where an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member shall:

(1) Notify the employer member in writing, prior to the execution of a transaction for such account, of the executing member's intention to open or maintain such an account;

(2) Upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account; and

(3) Notify the person associated with the employer member of the executing member's intention to [transmit] *provide the notice and* [the] information required by paragraphs (1) and (2) of this subsection (b).

*Obligations of Associated Persons [Associated] Concerning an Account With a Member*

[(d)] (c) A person associated with a member who opens an account or places an order for the purchase or sale of securities with [any other] *another* member, shall[, where such associated person has a financial interest in such transaction and/or any discretionary authority over such account] notify the executing member of his or her association with [an] *the* employer member [regardless of any other function, capacity, employment or affiliation of such associated person. If]; *provided, however, that if* the account [is] *was* established prior to the association of [such] *the* person with [an] *the* employer member, the associated person shall notify the executing member promptly after becoming so associated.

*Obligations of Associated Persons Concerning an Account With an Investment Adviser, Bank, or Other Financial Institution*

*(d) A person associated with a member who opens a securities account or places an order for the purchase or sale of securities with a domestic or foreign investment adviser, bank, or other financial institution, except a member; shall:*

*(1) Notify his or her employer member in writing, prior to the execution of any initial transaction, of the intention to open the account or place the order; and*

*(2) Upon written request by the employer member, request in writing and assure that the investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order; provided, however, that if an account subject to this subsection (d) was established prior to a person's association with a member, the person shall comply with this subsection promptly after becoming so associated.*

*(e) Subsections (c) and (d) of this section shall apply only to an account or order in which an associated person has a financial interest or with respect to which such person has discretionary authority.*

*Exemption for Transactions in Investment Company Shares and Unit Investment Trusts*

[(c)] (f) The provisions [of subsection (b)] of this section shall not be applicable to transactions in *unit investment trusts and* variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Board of Governors approved amending Article III, Section 28 of the Rules of Fair Practice to require any associated person to notify his or her employer member when opening a securities account with an investment adviser, bank or other financial institution or before placing an order to buy or sell securities with such an organization. The amendment would apply to any account or transaction in which the associated person has a financial interest or discretionary authority. The amendment would also require associated persons to arrange for the employer member to receive duplicate confirmations and account statements upon request. The amendment was approved to help member firms discharge their supervisory responsibility over the securities activities conducted in their associated persons personal securities accounts.

The NASD believes this amendment is consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, as amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the rule proposal will impose no borden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

A total of 13 comment letters were received. Of these, nine expressed unqualified approval. Two comments suggested amending the transactional exemption to include unit investment trusts, direct participation programs and other products not subject to free-riding

and withholding restrictions or market manipulation, and shares of money market funds, certificates of deposit and like instruments. One of these comments suggested adopting requirements similar to NYSE Rule 407 to avoid unnecessary correspondence between the associated person and his or her member firm. One comment suggested that expansion to investment advisers and other financial institutions was too broad and placed an unnecessary burden on compliance by broker-dealers. One comment favored the approach but questioned the consequences if the associated person failed to notify the broker-dealer. An informal comment noted that under subsection (d)(1) a literal reading might require notice for each transaction, even though a blanket notice had already been given. Lastly, one comment suggested that the proposal placed an unnecessary burden on broker-dealers that outweighed any benefits. This comment suggested that the rule should be limited to securities transactions. To accomplish this, it recommended to securities transactions. To accomplish this, it recommended deleting the language in paragraph (d)(1) after the word "transaction" and limiting paragraph (d)(2) to require duplicate copies of confirmations and statements.

In response to the comments received, the Board adopted three changes to the proposed amendments:

1. Unit investment trusts were added to the transactional exemption contained in the rule.

2. The rule was changed to reflect its applicability to an initial transaction only.

3. An affirmative obligation was imposed on the associated person to notify his or her member firm.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30 3(a)(12).

Dated: October 28, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25201 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-23750; File No. SR-NSCC-86-12]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corp. Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure Regarding the Release of Clearing Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 1,1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change is set forth in the Important Notice attached as Exhibit 1.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

NSCC's present discount policy, when revenues exceed costs, is to discount certain fees. NSCC has determined that, in certain cases, while revenues may exceed costs, it is not appropriate to discount fees for a new service that would otherwise be eligible for a discount, until the development costs for the service have been recovered.

Accordingly, the purpose of this rule change is to notify participants that the Automated Customer Account Transfer Service fees are ineligible for a discount until NSCC has recovered its development costs for the Service.

Insofar as the proposed rule change provides for the equitable allocation of reasonable fees among its participants, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No comments on the proposed rule change have been solicited or recieved. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (3) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of

such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 24, 1986.

**Jonathan G. Katz,**

*Secretary.*

**Exhibit 1**

**IMPORTANT**

September 30, 1986

A 2620
P&S 2155
To: All Participants
Attention: Managing Partners/Officers, Cashiers, Manager Purchase and Sale Department
Subject: Elimination of ACAT Service Fee Discount

National Securities Clearing Corporation's ("NSCC") present discount policy, when revenues exceeds costs, is to discount certain fees. NSCC has determined however that, in certain circumstances, while revenues may exceed costs, a discount should not be applied to a new service until the development costs for the service have been recovered. NSCC has determined that this policy should be applied to the Automated Customer Account Transfer ("ACAT") Service Fees. Accordingly, effective with fees for the month of October, 1986, until NSCC recovers development costs for the Service, the ACAT Service fees will no longer be discounted.

Questions regarding ACAT Service fees and the discount policy should be directed to the undersigned at (212) 510-0416.

**John F. Elberfeld,**

*Senior Vice President.*

[FR Doc. 86-25202 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-23758; File No. SR-NSCC-86-13]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 8, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The rule change is set forth in the Member's Agreement attached to NSCC's filing as Exhibit 1.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

International Securities Clearing Corporation ("ISCC") is a wholly-owned subsidiary of NSCC. In order to provide comparison, settlement and ancillary services for United States issues to members of Foreign Financial Institutions (as defined in ISCC Rule 1) with whom ISCC has entered into a link agreement, ISCC will become a Member of NSCC.

The purpose of the proposed rule change is to modify NSCC's Member's Agreement in order to limit ISCC's liability for pro-rata charges pursuant to Rule 4, to those losses or liabilities attributable to transactions between Members of ISCC and members of the Foreign Financial Institutions with whom ISCC has established links. By limiting ISCC's liabilities, it will foster cooperation and coordination with persons engaged in the clearance and settlement of foreign transactions because it will encourage participation in ISCC by foreign clearing corporations and exchanges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not perceive that the purposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Paticipants, or Others*

No comments on the proposed rule change have been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such purposed rule change, the Commission may summarily abrogate such rule change it it appears to the Commission at such action. It is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

**IV. Soliciation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the purposed rule change that are filed with the Commission, and all written communications relating to the purposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25203 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-23743; File No. SR-NYSE-86-30]**

## Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendment to Rule 431, "Margin Requirements"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 6, 1986, the New York Stock Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to revise Rule 431, "Margin Requirements," to establish specific margin requirements for certain privately issued mortgage related securities.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this proposed rule change is to revise Rule 431, "Margin Requirments," to extablish specific margin requirements for certain privately issued mortgage related securities.

In 1984, Congress enacted the Secondary Mortgage Market Enhancement Act ("SMMEA") for the express purpose of broadening the market for mortgage related securities and encouraging more extensive involvement in that market by the private sector. In part, SMMEA sought to accomplish that goal by reducing the regulatory advantages of federaly sponsored agency (e.g., the Government National Mortgage Association ("GNMA") and the Federal National Mortgage Association ("Fannie Mae")) mortgage related securities ("agency issues") over privately issued mortgage related securities ("private issues").

SMMEA, in part, created a class of privately issued "mortgage related securities," defined by section 3(a)(41) of the Act, which were provided with a series of regulatory reforms, including exemption from the margin requirements of section 7 of the act for payment on original purchases for 180 days. Currently, most "mortgage related securities," as defined by section 3(a)(41), are fully collateralized by agency issues and therefore may be viewed as essentially agency issues repackaged. Some section 3(a)(41) mortgage related securities are directly backed by mortgages without federally sponsored agency backing. However, for any security to be deemed a mortgage related security for the purposes of section 3(a)(41), and thereby be eligible for the reforms provided by SMMEA, the security must be rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization and therefore must meet various requirements concerning geographical diversity, size of loans, and loan to value ratios and must carry pool and other insurance in specified amounts.

Rule 431 currently does not contain specific margin requirements for section 3(a)(41) mortgage related securities. Rather, such securities (if eligible for margining under Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T")) are subject to the margin requirement for non-convertible corporate debt securities of 25% of market value (proposed to be reduced to 20% of market value with a minimum requirement of 7% of principal amount, pending Commission approval (see File No. SR-NYSE-86-4)).[1] Agency issues, however, are subject to the margin requirement for exempt securities of 5% of principal amount (proposed to be replaced by a sliding scale of 1-6% of principal amount depending on maturity, pending Commission approval (see File No. SR-NYSE-86-4)).

The Exchange is proposing to revise Rule 431 to establish a margin requirement of 5% of market value for mortgage related securities as defined by section 3(a)(41) of the Act carried in exempt accounts.[2] Private issues carried in non-exempt accounts and mortgage related securities not meeting the section 3(a)(41) definition would continue to be subject to the margin requirement for other non-covertible corporate debt securities, if marginable under Regulation T. The Exchange's proposal is in response to the enactment of SMMEA, the development and evolution of a sizeable market in private issues, and the determination that Rule 431 does not adequately address the credit risks associated with such issues. The Exchange believes that the proposed 5% margin requirement for section 3(a)(41) mortgage related securities carried in exempt accounts is appropriate because of the following factors:

1. The desirability of coordinating the requirements of Rule 431 with the Congressional policies expressed by SMMEA, in particular the goal of reducing the regulatory advantages of agency issues over private issues.

2. The determination that the credit risks of agency issues and mortgage related securities as defined by section 3(a)(41) were substantially similar.

3. The results of a volatility study conducted by the Exchange staff covering a two year period, which determined that a 5% margin requirement for section 3(a)(41) mortgage related securities carried in exempt accounts would create a 99%

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[1] For notice of the filing, *see* Securities Exchange Act Release No. 22875 (February 7, 1986); 51 FR 5819 (February 18, 1986).

[2] An exempt account would be defined in Rule 431 as a member organization, non-member broker/dealer, "designated account" (i.e., the account of a bank, trust company, insurance company, investment trust, state or political subdivison thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to the Employee Retirement Income Security Act of 1974 or of an agency of the United States or of a state or a political subdivision thereof) or any person having net tangible assets of at least sixteen million dollars.

confidence level (i.e., a margin level sufficient to respond to the credit risk associated with ordinary market fluctuations in the price of the security 99% of the time).

4. The limitation on the types of accounts to which the requirement would be applicable (i.e., exempt accounts), which serves to ensure the relative creditworthiness and financial sophistication of such eligible accounts.

The proposed rule change is consistent with the requirements of the Act in that it is designed to protect investors and the public interest, in accordance with section 6(b)(5) of the Act, by ensuring that the Exchange's margin requirements adequately reflect current regulatory and credit risk concerns. In addition, the change is consistent with section 7(a) of the Act, and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities. The proposal is also consistent with and furthers the purposes of SMMEA by reducing the margin related regulatory advantages of agency issues over section 3(a)(41) mortgage related securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants, or others.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 22, 1986.

**Jonathan G. Katz,**

*Secretary.*

**Additions Italicized—Exhibit 1** [1]

*Margin Requirements*

Rule 431. (a) through (3)(2)(B) Unchanged

(C) Non-Convertible Corporate Debt Securities.—On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond", as defined in § 220.2(r) of Regulation T of the Board of Governors of the Federal Reserve System, the margin to be maintained shall be 20% of the current market value or 7% of the principal amount, whichever amount is greater, *except on mortgage related securities as defined in section 3(a)(41) of the Securities Exchange Act of 1934 the margin to be maintained for an exempt account shall be 5% of the current market value.*

*For purposes of this paragraph (e)(2)(C), an exempt account shall be defined as a member organization, non-member broker/dealer, "designated account" or any person having net tangible assets of at least sixteen million dollars.*

(e)(2)(D) through Supplementary Material .10 Unchanged

[FR Doc. 86-25204 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[1] This exhibit sets forth Rule 431 as previously proposed to be revised, pending Securities and Exchange Commission approval (see File No. SR-NYSE-86-4).

[Release No. 34-23747; File No. SR-NYSE-86-19]

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of the Effectiveness of NYSE Rule 103A From June 30, 1986 to March 31, 1987

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

The proposed rule change would extend the effectiveness of NYSE Rule 103A until March 31, 1987. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of the proposed rule change is to extend the effectiveness of Rule 103A to March 31, 1987.

Prior to that time the Exchange intends to enhance, codify, and file with the Commission its procedures for specialist performance review and counseling. That filing will also reiterate the Exchange's request that Rule 103A be approved as a permanent rule of the Exchange.

As described in more detail in File No. SR–NYSE–81–11, Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stocks if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.

As described in File No. SR–NYSE–85–14, the Exchange conducted a pilot program to test revisions to the current Specialist Performance Evaluation Questionnaire and its associated processes. The revisions included changes to the design and content of the SPEQ questionnaire itself, the sampling method by which brokers are selected to rate particular units, and the scoring and analysis methodology. The pilot program has been successfully completed and the Exchange believes that the revised SPEQ provides enhancements which make the specialist performance evaluation process more effective. Hence, effective for the first quarter of 1986 evaluation period, the revised SPEQ replaced the "old" SPEQ as the key element of the Exchange's specialist performance evaluation process.

As noted above, one of the revisions in the SPEQ process is a new method of scoring and analyzing the results. However, the numeric standards currently in place in Rule 103A (as described in paragraph 103A.10) to measure acceptable levels of performance are not applicable to the new scoring system. The Exchange acknowledges that until such time as new standards and procedures are drafted and approved by the Commission, the Exchange cannot initiate reallocation proceedings against a specialist unit under Rule 103A based on the performance evaluations a unit receives on the revised SPEQ.

The Exchange believes that additional experience is needed with the data produced by the revised SPEQ before appropriate standards as to acceptable performance can be developed.

However, the exchange is requesting this extension of Rule 103A, in part, because it views the Rule as providing a basis for on-going performance improvement initiatives, such as counseling of specialist units by the Market Performance Committee, which has proven to be effective in improving both individual and overall specialist performance on the Exchange. The Exchange intends that the Market Performance Committee will continue its counseling procedures during the period when appropriate standards as to acceptable performance are being developed.

In addition, the Exchange is requesting Rule 103A be extended as the Options Specialist Performance Information Questionnaire (attached hereto as Exhibit A) based upon the "old" equity SPEQ, conforms to the seven-point scoring and analysis methodology defined in existing Rule 103A.10. Therefore, the standard of acceptable performance described in the Rule remains applicable for the Options Specialist Performance Information Questionnaire and would provide a basis for the Exchange to initiate reallocation proceedings against an options specialist unit under Rule 103A. The Exchange may at a future date, based on experience, adopt the revised equity SPEQ for the options specialist performance evaluation process, subject, obviously, to Commission approval.

Upon completion of the development of acceptable standards of performance, the Exchange expects to file with the Commission all pertinent details of a revised specialist performance review and counselling procedure, and reiterate its request that Rule 103A (with such amendments as may be appropriate at that time) be approved as a permanent rule of the Exchange.

(2) Basis Under the Act for Proposed Rule Change

The statutory basis for the rule change in section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act in order that the Rule 103A pilot program may continue in its revised format without interruption. The Exchange states that the program has proven to be an effective means of improving specialist performance, thereby adding to the overall quality of the NYSE market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed revisions to the Exchange's Rule 103A pilot represent potentially significant improvements to the program that may enhance incentives toward improved specialist performance. The Commission believes, therefore, that the Exchange's specialist evaluation procedures should continue uninterrupted in order that the Exchange may gain additional experience with its revised procedures.

The Commission, however, has two continuing concerns regarding the pilot and has expressed these to the Exchange.[1] First, as noted above, the Exchange has not yet developed a revised numerical standard for a minimum level of acceptable performance on the revised SPEQ, principally because the Exchange has not had the necessary experience with new data to develop revised standards. The Commission expects that the Exchange will submit such revised standards prior to filing for permanent approval of the program or requesting

[1] *See* letters from Richard S. Ketchum, Director, Division of Market Regulation, to John J. Phelan, Chairman, NYSE, and Henry Poole, General Counsel, NYSE, dated July 30 and August 1, 1986, respectively, and letter from Robert J. Birnbaum, President and Chief operating Officer, NYSE, dated August 15, 1986.

an extension beyond March 31, 1987. As noted above, until such time as appropriate standards are filed by the Exchange and approved by the Commission, the Exchange will be unable to commence reallocation proceedings under Rule 103A.

In addition, the Commission continues to be concerned over the absence of a relative standard of performance in the Rule 103A pilot.[2] The Commission believes that the incorporation of a relative standard of performance would be the single most effective means of strengthening the Exchange's evaluation program. The Commission expects, and the Exchange has represented, that it will review this recommendation prior to filing for permanent approval of the program of requesting an extension beyond March 31, 1987.

Nonetheless, the Commission believes that the proposed changes in the SPEQ, evaluating broker screener data and performance standards are likely to result in a more effective evaluation program and should be implemented on a pilot basis. The changes were recommended in a thorough study of the program conducted by an outside statistical consulting firm,[3] and were tested by the NYSE on a limited experimental basis.[4] The Exchange has stated that the revisions have enhanced the effectiveness of the program, and the Commission believes they should now be fully implemented into the Rule 103A pilot.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 23, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25205 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-23764; File No. SR-PSDTC-86-10]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company Amending its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change amends its schedule of fees and charges with respect to rejected reclaims, as set forth below. (Italics indicate language to be added.)

### Reclaims

- $5.00 for each reclaim initiated by a participant using same day delivery vs. payment or delivery vs. free settlements.
- *$50.00 to the original deliverer for rejecting a valid reclaim.*
- *$50.00 for submitting an invalid or incomplete reclaim.*

PSDTC states that reclaims are the return of a book entry movement made in its Delivery Versus Payment ("DVP") system within the previous 72 hours. Rejected reclaims are classified into three categories: (1) *Valid Reclaims*—reclaims that should not have been rejected because they are the return of a delivery; (2) *Invalid Reclaims*—movements which should not have been submitted as a reclaim because they are regular deliveries made during the reclaim cycle; and (3) *Incomplete Reclaims*—reclaims that were validly rejected because the information provided by the participant is insufficient or inaccurate.

PSDTC states that rejected reclaims create operational problems and additional expense because of special handling outside the normal processing cycle. The imposition of a charge is intended to deter rejected reclaims and to offset the cost of processing them.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-86-10 and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 31, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25206 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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[2] The Commission has expressed this concern to the Exchange on numerous occasions. *See, e.g.*, letters from Douglas Scarff, Director, Division of Market Regulation, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981, and August 18, 1982. *See also* note 1, *supra*, citing the most recent letters.

[3] *See* report by Opinion Research Corporation ("ORC") dated August, 1984, attached as Exhibit B to File No. SR-NYSE-85-14.

[4] The Exchange recently has conducted a "pilot within a pilot" to test the ORC recommendations. *See* Securities Exchange Act Release No. 22036, May 18, 1985, 50 FR 21007, May 21, 1985.

[Release No. 34-23757; File No. SR-PSE-85-22]

## Self/Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Incorporated, Relating to Member Organizations' Fidelity Bond Coverage

On August 19, 1985, the Pacific Stock Exchange, Incorporated ("PSE") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 18b-4 thereunder, a proposed rule change that would modify requirements found in Rule IX, sections 7 and 8 of the PSE's By-Laws governing blanket bonds and fidelity bonds that must be maintained by PSE member organizations to cover their respective partners, officers and employees. The proposal (i) eliminates the PSE's existing bonding requirement with respect to organizations that do not do business with the public or clear transactions for other members, or that are members of another self-regulatory organization ("SRO") subject to that SRO's bonding requirement; (ii) eliminates the separate categories of "broker's blanket bond" and "fidelity bond" and requires PSE member firms to maintain fidelity bond coverage only; (iii) requires that fidelity bond coverage extend to limited partners who are also employees and to outside organizations that provide electronic data processing services and the handling of United States Government securities in bearer form; and (iv) revises the schedule of required minimum coverage amounts. At the request of the Commission's staff, the PSE clarified its requirement that a member organization's bonding requirement be recomputed on an annual basis and agreed to retain the requirements found in Section 7(d) that members obtain greater coverage where experience or the nature of the business warrants such coverage and that members notify the PSE in writing if such coverage is entirely or partially cancelled.[1]

The proposed rule change was noticed in Securities Exchange Act Release No. 22365 (August 28, 1985), 50 FR 35899 (September 4, 1985). No comments were received.

In its filing, the PSE states that the purpose of this proposed rule change is to relieve those member organizations that are members of one or more other SROs and thereby subject to those SRO's respective bonding requirements from possible duplicative costs and administrative burdens; to exempt from coverage those member organizations which neither transact business with the public nor clear transactions for other Exchange members or member organizations; and to cause the PSE's bonding requirement to be consistent with the rules and practices of other SROs, such as the Midwest, Boston and New York ("NYSE") Stock Exchanges.[2]

In light of the fact that the PSE's proposed changes to its fidelity bonding requirement serve to conform the PSE's fidelity bond requirement to those of other SROs, and since the proposed rule change is consistent with section 6(b)(5) of the Act in that it is intended to prevent fradulent and manipulative acts and practices, and to protect investors and the public interest, and is not designed to permit unfair discrimination between brokers or dealers who are members of the PSE, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25207 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 30, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Texas American Bancshares Inc.
Common Stock, $5.00 Par Value (File No. 7-9314)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 21, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25208 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 35-24226]

## Filings Under the Public Utility Holding Company Act of 1935

October 30, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Public Utility Holding Company Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy

[1] Letter from Kenneth J. Marcus, Staff Attorney, PSE, to Ellen Dry, Division of Market Regulation, SEC, dated September 8, 1986. In a subsequent letter dated October 16, 1986 from Mr. Marcus to Ms. Dry, the PSE clarified language in the rule proposal with respect to bonding requirements of outside organizations that provide electronic data processing services and that handle U.S. Government securities in bearer form.

[2] The NYSE has filed with the Commission (File No. SR-NYSE-83-13) a proposal which would alter the basis upon which bond requirements for NYSE members are determined. Before the Commission acts on this proposal, the staff has requested the NYSE to provide further information on the potential impact of its proposal on member firms.

on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Consolidated Natural Gas Company (70–7291)**

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

Consolidated proposes to terminate an existing revolving credit agreement with The Chase Manhattan Bank, N.A. ("Chase"), (January 8, 1982 (HCAR No. 22362)), and to enter into a new credit agreement ("Agreement") with Chase, acting for itself and as agent for other banks. Under the Agreement, each bank will make loans up to the maximum of its commitment to Consolidated from time to time through December 30, 1991. During this period, Consolidated may borrow, pay or prepay and reborrow up to the limit of each bank's commitment.

Under the Agreement, these revolving credits may be converted to three-year term loans on December 31, 1991. At that time also, each bank will make a term loan to Consolidated in an amount not exceeding its commitment as of that date. All such term loans will be evidenced by promissory notes of Consolidated maturing no later than December 31, 1994.

During the revolving credit period under the Agreement, Consolidated will make loans in the form of revolving credit advances to subsidiary companies. These loans will be evidenced by letter agreements payable to Consolidated on or before June 30, 1992 and will bear interest at a rate based upon and substantially equal to the effective cost of money to Consolidated under the Agreement. Following the conversion by Consolidated of its revolving credit loans into term loans, revolving credit advances to subsidiary companies will be converted into term loans, evidenced by promissory notes with maturities substantially the same as those of the Consolidated notes.

**The Southern Company (70–7292)**

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Southern proposes to issue and sell from time-to-time, through December 31, 1988, pursuant to an exception from competitive bidding: (1) A maximum of 10 million shares of its authorized but unissued common stock, par value $5 per share (HCAR No. 23777, July 31, 1985), in addition to the balance of 14,260,316 previously approved shares to its Dividend Reinvestment and Stock Purchase Plan; and (2) a maximum of 1 million shares of its authorized but unissued common stock, par value $5 per share, plus the balance of 2,411,874 shares also authorized by the Commission in HCAR No. 23777 to the employee Savings Plan for The Southern Company System.

**Monongahela Power Company, et al. (70–7312)**

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740 and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (collectively, "Companies"), wholly owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

By orders dated June 7, 1985 (HCAR No. 23719) and October 8, 1986 (HCAR No. 24210), the Companies were authorized to issue short-term notes to commercial banks and to dealers in commercial paper from time to time through December 31, 1986, in aggregate principal amounts not exceeding $75 million, $70 million and $80 million at any one time outstanding for Monongahela, Potomac Edison and West Penn, respectively. As of September 30, 1986, the Companies had no short-term debt outstanding.

The Companies now propose to issue and sell to certain commercial banks and dealers in commercial paper from time to time through June 30, 1988, their respective short-term promissory notes, in aggregate principal amounts not exceeding $75 million, $76 million and $132 million at any one time outstanding for Monongahela, Potomac Edison and West Penn, respectively. These amounts include any notes which may remain outstanding under the previously mentioned orders of the Commission. No Company will permit the amount of its short-term debt outstanding at any one time to exceed the limits set forth in its corporate charter.

The Companies each request that the proposed issuance of sale of notes to dealers in commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–25215 Filed 11–6–86; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–15386; File No. 812–6494]**

## SSI Equity Associates, L.P., SSI Partners, L.P.; Application

October 30, 1986.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (Act).

*Applicants*: SSI Equity Associates, L.P. ("Partnership"); SSI Partners, L.P. ("General Partner").

*Relevant Section of Act*: Section 6(c).

*Summary of Application*: The Partnership and the General Partner seek an order to exempt the Partnership, formed at the direction of Kohlberg Kravis Roberts and Co. ("KKR") in connection with a management buyout of Safeway Stores, Incorporated ("Safeway"), from all provisions of the Act.

*Filing Date*: October 7, 1986.

*Hearing or Notification of Hearing*. If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5-30 p.m., on November 21, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Reqeust notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549;

Applicants, 9 West 57th Street, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** George Martinez, Attorney (202) 272–3024, or H.R. Hallock, Jr., Special Counsel (202) 272–3030, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (201) 253–4300).

### Applicants' Representations

The Partnership is a Delaware limited partnership formed at the direction of KKR as part of a series of transactions pursuant to which KKR intends to effect a management buyout of Safeway. The General Partner of the Partnership is also a Delaware limited partnership and affiliated with KKR. KKR, a New York limited partnership, is engaged in finding, financing and investing, through affiliates, in management buyouts. Safeway Stores Holding Corporation ("Holdings"), a Delaware corporation, was also formed at the direction of KKR in connection with the Safeway acquisition and has, among others, a direct wholly owned subsidiary known as SSI Merger Corporation ("Merger Sub").

Holdings, Merger Sub and Safeway have entered into a merger agreement dated July 25, 1986 ("Merger Agreement"), pursuant to which, on August 29, 1986, Holdings acquired approximately 73% of the outstanding Safeway common stock through a tender offer ("Offer") by a wholly owned subsidiary of Holdings. Upon the approval and adoption of the Merger Agreement by at least two-thirds of the Safeway common stockholders and the satisfaction of certain other matters, Merger Sub will be merged with and into Safeway ("Merger"). The business of Safeway will continue to be conducted under the name "Safeway" through Holdings and its subsidiaries.

Holdings expects to raise a portion of the financial requirements of the Merger through registered public offerings of securities ("Securities") and the sale of certain warrants, including warrants to the Partnership ("Warrants"). The sole business of the Partnership will be to acquire, hold and eventually dispose of the Warrants and, if exercised, underlying shares of common stock of Holdings ("Warrant Shares"). The Warrants will entitle the Partnership to purchase for $22,284,800 an aggregate of 11,142,400 Warrant Shares, approximately 12% of the outstanding shares of Holdings on a fully diluted basis, at an exercise price of $2.00 per share (subject to possible adjustments).

Purchasers ("Limited Partners") of interests in the Partnership ("Limited Partnership Interests") will contribute approximately $1,654,646 in cash to the Partnership and will be given corresponding capital accounts. The General Partner will contribute $16,714. With the capital of $1,671,360, the Partnership will purchase the Warrants from Holdings.

The General Partner has decided to register, under the Securities Act of 1933 ("1933 Act"), the offering of the Limited Partnership Interests because it might be concluded that the offering of the Limited Partnership Interests should be integrated with the registered offerings of Securities. Despite the fact that the Limited Partnership Interests will have been sold pursuant to a public offering, Applicants expect that only highly sophisticated investors will be permitted to invest in the Partnership. Only parties to whom Securities are offered and their affiliates will be offered Limited Partnership Interests. It is expected that these investors, or their affiliates, will purchase some combination of Securities and Limited Partnership Interests in a substantial amount and will invest no more than 5% of their total assets in the Limited Partnership Interests. Investors which have a net worth are expected to have a minimum positive net worth of $1 million. Upon completion of the initial public offering of the Limited Partnership Interests, the Partnership will not make another offering of Limited Partnership Interests or of any other kind of security whatsoever. In no event will the Limited Partnership Interest have more than 100 beneficial owners within the meaning of section 3(c)(1) of the Act.

Transfers of Limited Partnership Interests are subject to the prior approval of the General Partner, which may be withheld in its sole discretion if such transfer requires registration under the 1933 Act or constitutes a sale to the public for purposes of any state securities laws or otherwise. In circumstances where an exemption from registration is available, or where the proposed transfer is not a public sale, a Limited Partner may transfer a Limited Partnership Interest if the Limited Partner provides satisfactory documentation establishing the basis for such exemption to the General Partner. However, Applicants represent that no transfer shall be effective if giving effect to such transaction would cause the aggregate number of Limited Partners to exceed 100 and if at such time the Partnership would be subject to regulation under the Act.

The management of the Partnership will be the full and complete responsibility of the General Partner. Limited Partners will have no control over the Partnership's sole asset, the Warrants and, if any, the Warrant Shares. The General Partner has broad authority to perform any acts necessary, proper, convenient or advisable to effectuate the purposes of the partnership agreement governing the Partnership ("Partnership Agreement") including when, whether and at what price the Warrants will be sold, when the Warrants will be exercised (subject to certain restrictions), when and at what price any Warrant Shares will be sold or how any Warrant Shares will be voted. Applicants contend that the General Partner and the holders of the Limited Partnership Interests share a common and overriding interest in maximizing the appreciation of the value of the common stock of Holdings because the General Partner's compensation from the Partnership depends exclusively on such appreciation and the subsequent realization of profits.

If the General Partner, at any time after the Partnership Agreement permits, determines or is required to exercise the Warrants, each Limited Partner shall have the right, but not the obligation, to provide its pro rata share of the exercise price of the Warrants. Assuming that all of the Warrants are exercised and that each Limited Partner elects to make the maximum optional additional capital contribution ("Additional Contribution"), the maximum amount of the Additional Contribution payable in respect of each Limited Partnership Interest would be $222.85. A Limited Partner who determines not to make an Additional Contribution will not be able to participate in the profits or losses of the Partnership based upon the exercise of such Warrants or the holding and disposition of the Warrant Shares. Limited Partners may not withdraw or demand distribution of any of their capital contributions prior to dissolution. Applicants state that the risk of the Limited Partners cannot exceed the initial purchase price of the Limited Partnership Interests, while the potential return is a pro rata share of the capital appreciation of the Holdings common stock which, pursuant to the Warrants, the Partnership has the option to purchase.

In support of their exemption request, Applicants submit that regulation of the Partnership under the Act is not necessary to accomplish the Act's

objectives and policies, that the Partnership falls within the intent, if not the letter, of the exemption contained in section 3(c)(1) of the Act, that the Partnership has been structured so as to maximize the protection of investors, and that it is in the public interest that sophisticated investors desiring to invest in the Partnership be permitted to do so. In requesting an exemption from the Act, Applicants do not seek Commission approval or endorsement of the terms of the Offer, the Merger or the related financing thereof in particular or of management buyouts in general.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25216 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15381; File No. 812-6426]**

## Sears Investment Trust, Dual Value Series I, et al.; Application for an Order Granting Exemptions Approving Certain Affiliated Transactions and Granting Confidential Treatment

October 29, 1986.

Notice is hereby given that the Sears Investment Trust, Dual Value Series 1, subsequent series of the Dual Value Series and similar series of the Sears Investment Trust (collectively, "Trusts"), Dean Witter Reynolds Inc. ("Sponsor"), the sponsor of the Trusts, and Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities Inc., Dean Witter High Yield Securities Inc., Dean Witter Industry-Valued Securities Inc., Dean Witter Natural Resources Development Securities Inc., Dean Witter Option Income Trust, Dean Witter Tax-Exempt Securities Inc., Dean Witter U.S. Government Securities Trust and Dean Witter World Wide Investment Trust and any future fixed income or equity mutual funds that are part of the group of mutual funds managed by the Sponsor through its InterCapital Division ("Funds", collectively with Sponsor and Trusts, "Applicants"), 101 Barclay Street, New York, NY 10048, filed an application on July 3, 1986, and an amendment thereto on October 15, 1986, requesting an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants, to the extent necessary, from the provisions of sections 12(d)(1), 14(a) and 22(d) of the Act, pursuant to section 17(d) of the Act and of Rule 17d-1 thereunder, permitting certain affiliated transactions, and, pursuant to section 45(a) of the Act, granting confidential treatment to the Sponsor's profit and loss statements. With respect to prospective relief sought on behalf of future Trusts, Applicants undertake that such relief shall be availed of upon the same terms and conditions set forth in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, the Sears Investment Trust will be comprised of unit investment trusts registered or to be registered under the Act and the Funds are registered as open-end management investment companies under the Act. Each Trust will be governed by an Indenture and a master trust agreement ("Agreement") to be entered into by the Sponsor, an independent third party bank or trust company acting as trustee ("Trustee") and an independent third party acting as evaluator ("Evaluator"). Pursuant to such Agreement, Applicants state that the Sponsor will deposit with the Trustee securities consisting of (1) shares of one Fund per Trust and (2) stripped U.S. government obligations, or certificates of interest or receipts for or other evidences of an ownership interest thereof ("zero-coupon obligations" collectively with Fund shares, "Securities"), which the Sponsor will have accumulated for such purpose. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for units representing the entire beneficial ownership of each Trust ("Units"). Following the declaration of effectiveness of a Trust's registration statement under the Securities Act of 1933 and clearance under applicable state law, the Units will be offered for sale to the public by the Sponsor at the public offering price described in the applicable prospectus.

Applicants represent that in acquiring the Securities, the following factors are considered: (i) The nature of the Trust and (ii) where appropriate given the nature and purposes of the Trust, (a) the quality of the Securities (based on the Sponsor's judgment as to the potential for dividends or growth taking into account an appraisal relating to the maintenance and growth of earnings in light of the past performance of the issuer); (b) the yield and price of the Securities relative to other securities of comparable quality and maturity, and (c) diversification of the issuer and location of the issuer taking into account the availability or the market of the securities that meet the Trust's quality, yield and price criteria. Applicants also represent that each Trust's assets will consist of the Securities, accrued and undistributed income, dividends, capital gains and undistributed cash.

Applicants state that the purpose of the Trusts is to provide preservation of capital and the opportunity for capital appreciation. Accordingly, each Trust will contain a sufficient amount of zero-coupon obligations to ensure that, at the specified maturity date for such Trust, investors purchasing Units on the initial date of deposit of Securities ("Deposit Date") will receive back the approximate total amount of their original investment in such Trust, including the sales charge. Applicants note that, although it is possible that investors who purchase Units on a date other than the Deposit Date may be able to purchase Units at a price that would result in their receipt of an amount at maturity approximately equal to their purchase price, the only date when such result can be predicted with reasonable certainty is the Deposit Date. Applicants state that, even if the Fund shares deposited in a Trust were valueless at maturity, investors who purchased Units on the Deposit Date would receive back the amount of their original investment because the principal value of the maturing zero-coupon obligations would approximately equal the original purchase price of Units.

With respect to the operation of each Trust, Applicants represent that shares of one of the Funds will be sold at net asset value for deposit in any one Trust. Applicants also represent that, because Fund shares have their net asset values calculated daily and this value is readily available to the Sponsor, no evaluation fee will be charged with respect to determining the value of Fund shares that constitute part of a Trust's portfolio. An evaluation fee will be charged, however, with respect to that portion of a Trust's portfolio that consists of zero-coupon obligations.

Applicants state that investors may be provided a reinvestment vehicle for distributions made during the life of a Trust whereby a Unitholder may elect to invest such distributions directly in Fund shares underlying a Trust. Applicants also state that such reinvestment will be permitted upon maturity of a Trust. In either case, the Fund shares will be registered in the Unitholder's name and will not become part of a Trust's assets.

According to the application, all of the Funds except Dean Witter High Yield Securities Inc. and Dean Witter Tax-

Exempt Securities Inc. have adopted plans of distribution in accordance with Rule 12b–1 under the Act. Recognizing that the Sponsor will receive a sales charge in connection with the sale of Trust Units, Applicants represent that the Sponsor will rebate to the Trustee the 12b–1 fees it receives on Fund shares attributable to the Fund shares held by the Trusts. Applicants further represent that the rebated 12b–1 fees will be distributed on a monthly basis by the Sponsor to the Trustee who will then allocate such amounts to the Unitholders' accounts for distribution to Unitholders.

Applicants state that the Sponsor intends to maintain a secondary market for Units of each Trust, although it is not legally obligated to do so. Applicants believe that the existence of such a secondary market will reduce or eliminate the number of Units tendered for redemption and, thus, alleviate the necessity to sell portfolio securities to meet redemption obligations. In the event that the Sponsor does not maintain a secondary market, Applicants state that underlying Fund shares will be sold first to meet redemption obligations. To ensure that the benefit of the zero-coupon obligations is not impaired, Applicants also state that the Agreement provides that the Sponsor will not instruct the Trustee to sell zero-coupon obligations from any Trust's portfolio until the Fund shares held therein have been liquidated, unless the Sponsor is able to sell such zero-coupon obligations and still maintain at least the original proportional relationship to Unit value. According to the application, the Agreement also provides that zero-coupon obligations may not be sold to meet Trust expenses.

Applicants state that their proposal is structured to eliminate the pyramiding of expenses and control problems contemplated by section 12(d)(1) of the Act and that the unit investment trust format is uniquely adaptable to avoiding the concerns that section 12(d)(1) addresses. In this regard, Applicants note that each of the Funds sold with a front-end sales charge will sell shares to each Trust and to Unitholders in connection with reinvestments at net asset value. Moreover, pursuant to Applicants' requested order, the Funds propose to waive any applicable contingent deferred sales load ("CDSL") on all redemptions of Fund shares that have been invested in a Trust's portfolio. Applicants also point out that there will be no duplicative evaluation fees because the evaluation fee for Fund shares held by a Trust will be waived. In addition, the Sponsor will rebate to each Trust the 12b–1 fees that otherwise would be imposed on Fund shares while such shares are held by a Trust. Finally, Applicants state that because a unit investment trust has an unmanaged portfolio, there will be no duplicative advisory fees charged as there would be in the case where a managed mutual fund purchased shares of other managed mutual funds. Applicants assert that the costs and expenses of the administration and operation of the Trusts and the Funds will be reduced by the proposed arrangement.

Addressing the potentially abusive control problems resulting from concentration of voting power in a fund holding company, Applicants represent that the Agreement governing the Trusts will provide that the Trustee must vote all shares of a Fund held in a Trust in the same proportion as all other shares of that Fund, which are not held by the Trust, are voted. Regarding the threat of large-scale redemptions, Applicants believe that this concern is alleviated by permitting the Trustee to sell Fund shares only when necessary to meet redemption obligations (which will only occur if the Sponsor is not maintaining a secondary market) or in the unlikely event that distributions from the underlying Fund shares are insufficient to meet the Trustee's expenses. Applicants also note that after the Deposit Date neither the Trustee nor the Sponsor will have any discretionary authority to determine when to sell Fund shares nor will they have the ability to substitute shares of another Fund for those already deposited. To further alleviate the concerns contemplated by section 12(d)(1) of the Act, Applicants undertake not to permit more than 10 percent of a Fund's shares to be held in a single Trust, and to structure the Trusts so that their maturity dates will occur at least thirty days apart from one another.

With respect to the approval sought pursuant to section 17(d) of the Act and Rule 17d–1 thereunder in connection with the purchase of Fund shares by the Trusts, it is submitted and the Trusts will be structured to eliminate as many potential areas of concern regarding affiliate transactions as possible. For example, Applicants state that there will be no duplication of sales charges with respect to the Fund shares and Trust Units because Fund shares will be sold at net asset value. Applicants also state that there will be no overlapping management or evaluation fees because there is no management fee at the Trust level and the evaluation fee with respect to that portion of the Trust's portfolio represented by Fund shares will be waived. Applicants submit that, in light of the restrictions imposed in connection with the proposed transactions, neither the Funds nor the Trusts will be disadvantaged by the arrangement and that each stands to gain significant benefits from the proposed transaction. Applicants further submit that the arrangement is consistent with the provisions, policies and purposes of the Act and that the concerned investment companies will not participate on a basis that is less advantageous than that of any other participant.

In connection with the requested exemption from section 14(a) of the Act, Applicants assert that because the Sponsor will deposit Securities into each Trust having a net worth in excess of $100,000, the proposed arrangement will be in compliance with section 14(a). Applicants recognize, however, that by withdrawing certificates representing the entire beneficial interest in each Trust prior to a public offering, the Sponsor could be deemed to be reducing the net worth of each Trust below the requirements of section 14(a). The Sponsor agrees to distribute to each investor his or her pro-rata share of the net worth of each Trust and will refund, on demand without reduction, all sales charges to purchasers of Units of a Series if, within ninety days from the time that Series becomes effective under the 1933 Act, the net worth of such Series shall be reduced to less than $100,000 or if the Series shall have been terminated. The Sponsor further agrees to instruct the Trustee on the Deposit Date of each Trust that in the event that redemptions by the Sponsor of Units, constituting a part of the unsold Units shall result in that Series having a net worth of less than 40 percent of the aggregate value of Securities originally deposited in the Trust, the Trustee shall terminate the Series in the manner provided in the Agreement and distribute to each investor his or her pro-rata share of the Trust assets and refund any sales charges on demand and without deduction.

Applicants also request an exemption from section 22(d) of the Act to permit the waiver of any otherwise applicable CDSL on: (a) Redemptions by the Sears Investment Trust of any of its holdings of the Funds; and (b) redemptions by investors of their holdings of the Funds attributable to their (i) reinvestment of proceeds of the zero coupon obligations at maturity of a Trust, (ii) transfer of registration at maturity of (or upon

dissolution) a Trust, of the proportionate number of Fund shares from the Trust to the investor and (iii) reinvestment, if any, of Trust distributions made during the life of a Trust. Applicants note that imposition of the CDSL on the above-described redemptions of Fund shares would be duplicative to investors in the Trusts and, accordingly, would raise concerns under section 12(d)(1) of the Act regarding the pyramiding of expenses. Applicants submit that waiver of the CDSL will not harm the Funds or their remaining shareholders or unfairly discriminate among shareholders or purchasers of Fund shares. Applicants represent that the Funds will fully disclose the waiver provision in the applicable prospectuses.

Applicants also seek an order pursuant to section 45(a) of the Act, granting confidential treatment to the Sponsor's profit and loss statements contained in documents filed with the Commission by the Trusts. Applicants believe that public disclosure of the Sponsor's profit and loss statements is neither necessary nor appropriate in the public interest or for the protection of investors. In this regard, Applicants state that investors in the Trusts are not offered an opportunity to acquire any interest in the Sponsor and that the Sponsor will function solely as underwriter of the Trusts and perform only the limited duties described in the Agreement. Accordingly, Applicants assert that there is no legitimate interst on the part of Unitholders in the public disclosure of the Sponsor's profit and loss statement and that disclosure of the Sponsor's financial operations will not enhance or diminish the prospect for an orderly payment on a Trust's underlying Securities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 20, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request, and the issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon each of the Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued, unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25217 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15389; File No. 811-3920]**

## The Sector Investment Fund, Inc.; Application

October 31, 1986.

**AGENCY:** Securities and Exchange Commission (SEC).

**ACTION:** Notice of application under the Investment Company Act of 1940 ("1940 Act").

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*Applicant:* The Sector Investment Fund, Inc. ("Sector").

*Relevant 1940 Act Section and Rule:* The application was filed under section 8(f) and Rule 8f-1.

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company on the basis that all of its shareholders have redeemed their shares and it intends to dissolve.

*Filing Date:* October 10, 1986.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 25, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Sector, 220 East 42nd, Street, New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Niehoff, Esq., (202) 272-2048, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

**Applicant's Representations**

1. Sector is a Maryland Corporation. It is currently in good standing under the laws of that state. It is registered under the 1940 Act as an open-end, non-diversified management investment company. It filed a registration statement under section 8(b) of the Act on December 2, 1983. It also filed a registration statement under the Securities Act of 1933 in order to make a public offering of common stock. The registration statement became effective on April 6, 1984.

2. On May 7, 1986, Sector's Board of Directors adopted resolutions approving and directing Sector's liquidation and dissolution.

3. On or about May 16, 1986, Sector informally notified all of its shareholders of its intent to terminate operations, liquidate, and dissolve. On that date, it had assets of $3.5 million and had outstanding 167,999.372 shares of its common stock which were held by 37 shareholders. All of its shareholders subsequently redeemed their shares receiving the then-current net asset value.

4. All of Sector's portfolio securities were sold in open market transactions in connection with shareholder redemptions. No assets were transferred to a trust for the benefit of any Sector security holders. Because all Sector shareholders redeemed their shares prior to Sectors liquidation and dissolution, no shareholder vote is required.

5. Sector has no liabilities. All legal expenses and disbursements incurred in connection with its liquidation and dissolution will be borne by its principal underwriter, Smilen Investment Research and Management Corporation.

6. Sector is not a party in any litigation or administrative proceeding. It is not engaged in any activities other than those necessary to wind-up its affairs. It intends to file articles of dissolution with the Secretary of State of Maryland and will have its authority to transact business as a foreign corporation in the State of New York withdrawn.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25218 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15388; ( File No. 812-6447)]

## Southwestern Bell Capital Corp. Filing of Application for an Order Exempting Applicant From All Provisions

October 31, 1986.

Notice is hereby given that Southwestern Bell Capital Corporation ("Applicant"), One Bell Center, St. Louis, Missouri 63101, filed an application on August 6, 1986, and amendments thereto on October 16, 1986 and October 28, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations therein, which are summarized below and to the Act for the text of those provisions of the Act relevant to the Application.

According to the application, Applicant, a Delaware corporation, is a wholly-owned subsidiary of Southwestern Bell Corporation (the "Corporation"), also a Delaware corporation. The Corporation is one of seven regional holding companies (collectively, the "RHCs") formed by AT&T pursuant to its Plan of Reorganization (the "Plan") approved by the United States District Court for the District of Columbia (the "Court") in conjunction with the settlement by AT&T and the Department of Justice ("DOJ") of antitrust litigation brought by the DOJ. The settlement is embodied in the Modification of Final Judgments (the "MFJ") agreed to by AT&T and the DOJ and entered by the Court after certain changes required by the Court had been made.

Applicant represents that the Corporation owns Southwestern Bell Telephone Company (the "Telephone Company"), a telephone operating company, which is subject to regulation by public utilities or public service commissions in each of the states in which it operates. In addition, the Telephone Company is regulated as to interstate matters by the Federal Communications Commission (the "FCC"). The Corporation also engages in other business activities as permitted under the MFJ and pursuant to waivers obtained thereunder from the Court, through the activities of various subsidiaries ("Diversified Subsidiaries"). The application states that additional waiver requests are pending and more waivers may be sought in the future. Applicant represents that neither the Corporation nor any of the Diversified Subsidiaries which is to obtain financing through the Applicant is an investment company under section 3(a) of the 1940 Act.

The application states that as of December 31, 1985, the Corporation had total assets of $19.5 billion and as of June 30, 1986, the Corporation's total assets were $19.5 billion. For the year ended December 31, 1985, the Corporation had net income of $996.2 million and revenue of $7.9 billion, and for the six month period ended June 30, 1986, the Corporation's net income and revenue were $484.0 million and $3.9 billion, respectively. In the year ended December 31, 1985, the Telephone Company declared payable $844.5 million in cash dividends to the Corporation.

Applicant represents that its sole business will be to provide funds which the Corporation will use to finance its diversification activities and the activities of the Diversified Subsidiaries. Applicant states it will offer and sell debt securities in the United States, European and other overseas markets (the "Securities") and, in turn, loan the proceeds to the Corporation and the Diversified Subsidiaries. The Applicant also represents that all loans by it to the Corporation and the Diversified Subsidiaries will bear interest equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Further, Applicant states that the amounts and maturity of these loans will allow it to make timely payments of principal and interest on its borrowings. According to the application, Applicant will remit to the Corporation at least 85% of the cash or cash equivalents raised by Applicant as soon as practicable after receipt thereof, but in no event later than six months after Applicant receives such cash or cash equivalents. Applicant represents that it will not issue voting securities to any person other than the Corporation, and that it will not hold securities other than Government securities and other securities as permitted by Rule 3a-5(a)(6).

Applicant represents that the MFJ limits the lines of business which may be engaged in by the RHCs (or their subsidiaries). Pursuant to the MFJ, the Court has held that the RHCs may be permitted to engage in certain new competitive ventures (such as many of the activities of the Diversified Subsidiaries) under certain circumstances, so long as any guarantee of obligations owned in Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the Telephone Company. Applicant represents that the Corporation is therefore prohibited from guaranteeing obligations owed on Securities issued by or for the benefit of such Diversified Subsidiaries if the guarantee would permit resource against the stock or assets of the Telephone Company.

Applicant states that before it issues any Securities, the Corporation and the Applicant will enter into a Support Agreement (the "Support Agreement"). Pursuant to the Support Agreement, the Corporation will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium if any, owed by it in connection with the Securities, then the Corporation shall provide funds to the Applicant to assure that the Applicant will be able to pay when due such principal, interest and premium, if any. Applicant also represents that the Support Agreement will provide that in the event of any default by the Corporation in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of Securities or, if applicable, a trustee acting on their behalf shall be entitled to proceed directly against the Corporation, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of the Telephone Company.

Applicant further represents that the Support Agreement will also provide that the Corporation shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement, that without the written consent of all the holders of the then outstanding Securities the Support Agreement may not be modified or amended in ways less favorable to holders of Securities than the existing agreement, and that it may be terminated only after all outstanding Securities have been retired.

Applicant states that the Securities are expected to consist of short-term, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. The Applicant further represents that, in the case of a public offering of any of its securities not exempt from the

registration requirements of the 1933 Act. Applicant and the Corporation will, prior to offering such securities, file a registration statement under the 1933 Act with the Commission and will not sell such securities until the registration statement is declared effective by the Commission and any related idenfure is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. Applicant futher represents that it and the Corporation will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such Securities.

The Applicant represents that, in the case of an offering of securities not requiring registration under the 1933 Act, it will provide each offeree with disclosure materials which will include a description of the business of the Corporation and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, those materials will be updated at the time thereof to reflect material changes in the financial condition of the Corporation and its subsidiaries, taken as a whole. Further, prior to any issuance and sale of Applicant's debt Securities in the United States capital market, Applicant represents that such Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized rating organization. No such rating shall be required, however, if Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

Applicant asserts that it was formed to function as a financing conduit for the diversification activites of the Corporation and the Diversified Subsidiaries, and to advance the efficient administration and management of financing activities for the Corporation and certain of the Diversified Subsidiaries. The Applicant states that it meets all of the requirements for the Rule 3a–5 exemption under the Act except for the rule's requirement that the securities issued by a finance subsidiary be unconditionally guaranteed by its parent company. The Applicant argues that the Corporation's execution and delivery of the Support Agreement provides a satisfactory alternative to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against the Corporation in the event of a failure by the Applicant to pay principal, interest or premium, if any, when due on the Securities, limited only so as to exclude the stock or assets of the Telephone Company. Applicant states that, despite this limitation, funds available to satisfy the Corporation's obligations under the Support Agreement include dividends paid by the Telephone Company, as well as the revenue and assets of the Corporation and the Diversified Subsidiaries other than the stock or assets of the Telephone Company. Therefore, Applicant argues that the Support Agreement enables purchasers of Applicant's debt instruments to look ultimately to the Corporation, not the Applicant, for repayment. In addition, the Applicant points out that, given the limitations of the MFJ and the subsequent orders in which the Court has restricted the kind of guarantee that the Corporation is able to provide to the Applicant, by means of the Support Agreement the Corporation intends to support the Securities with all legally available assets. By means of the Support Agreement, the Corporation will make available to the holders of the Securities the same assets which would be available to the holders of the Corporation's own securities used to fund the Corporation's similar diversification activities, and thus Applicant argues that the Support Agreement will put the purchasers in the same position as if the Corporation itself had issued the Securities directly.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–25219 Filed 11–6–86; 8:45 am]

BILLING CODE 8010–01–M

**[Release NO. IC–15383; 812–6489]**

## Winthrop Focus Funds; Application October 30, 1986.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption and approval under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Winthrop Focus Funds ("Applicant").

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1 and approval requested under section 11(a).

*Summary of Application:* Applicant seeks an order to permit it to assess and waive a contingent deferred sales charge on redemptions of its initial and future series or classes of shares, and to permit certain offers of exchange of its shares.

*Filing Dates:* The application was filed on October 1, 1986, and amended on October 22 and 24, 1986.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 24, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, c/o Deborah R. Schumer, Esq., 140 Broadway, New York, NY 10005.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari (202) 272–2847 or Special Counsel Brion R. Thompson (202) 272–3016 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 253–4300).

**Applicant's Representations**

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on November 26, 1985. On March 4, 1986, Applicant filed with the SEC (A) a Notification of Registration on Form N-8A pursuant to section 8(a) of the 1940 Act and (B) a Registration Statement on Form N-1A under the 1940 Act and the Securities Act of 1933, as amended. Applicant is currently composed of two series—the Growth Fund and the Bond Fund (collectively, the "Funds").

2. Shares of each Fund are proposed to be distributed by Donaldson Lufkin & Jenrette Securities Corporation ("DLJ Securities Corp."). Wood, Struthers and Winthrop Management Corp. ("Wood, Struthers & Winthrop"] will serve as the investment manager to each Fund. Wood, Struthers & Winthrop is a wholly-owned subsidiary of DLJ Securities Corp. which is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., which in turn is an indirect wholly-owned subsidiary of The Equitable Life Assurance Society of the United States.

3. Shares of each Fund will be offered and sold without the reduction of a sales charge at the time of the purchase. However, certain redemptions of shares of the Funds will be subject to a contingent deferred sales charge (the "Charge"). The proceeds of the Charge will be paid to DLJ Securities Corp. and will be used by DLJ Securities Corp. in whole or in part to defray costs incurred in connection with the sale of Applicant's shares.

4. The Charge will only be assessed on a redemption by a shareholder that reduces the current net asset value of the shareholder's account in the relevant Fund to an amount lower than the total dollar amount of payments by the shareholder for the purchase of shares of the Fund made by the shareholder during the preceding four years. In the event that at the time of purchase payments made, the Charge will be assessed on the then current value of the purchase payments.

5. No Charge will be assessed to the extent that the net asset value of the shares redeemed by a shareholder did not exceed (A) the net asset value of shares of the Fund purchased more than four years prior to the redemption ("Old Share Value"), (B) the current net asset value of shares of the Fund purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Share Value"), and (C) increases in the net asset value of the shares of the Fund above the total amount of purchase payments made in respect of the Fund during the preceding four years, as adjusted to exclude the amount of appreciation therein compensating for a decrease in value below said purchse payments ("Appreciation Value").

In effecting a particular redemption request, Applicant will first redeem an amount that represents Appreciation Value. If the amount of the requested redemption exceeded Appreciation Value, Applicant will next redeem an amount that represents Reinvestment Share Value. If the amount of the redemption exceeded the sum of Appreciation Value and Reinvestment Share Value, Applicant will then redeem an amount that represents Old Share Value. The amount by which a redemption exceeds the total of Appreciated Value, Reinvestment Share Value and Old Share Value will be subject to the Charge.

6. The amount of the Charge assessed will depend on the number of years that the shareholder has held the shares from which an amount is being redeemed. Such charge will be 4% in the first year, 3% in the second year, 2% in the third year, 1% in the fourth year, and no charge thereafter. All purchase payments for shares of a Fund made by a shareholder during a month will be aggregated and deemed to have been made on the last day of the preceding month. The amount of the Charge (if any) will be calculatd by first determining the date on which the purchase that is the source of the redemption was made, and then applying the appropriated percentage to the amount of the redemption subject to the Charge.

7. Shares of one Fund may be exchanged for shares of another Fund or for shares of either Alliance Government Reserves or Alliance Tax-Exempt Reserves (collectively, the "Alliance Money Market Funds"). Each exchange will be made on the basis of relative current net asset value per share next determined after receipt of an order for exchange.

8. No Charge will be assessed on exchanges of shares between Funds at the time of the exchange. For purposes of assessing the Charge at the time of redemption of such exchanged shares, the purchase date for the exchanged shares will be assumed to be the date on which the initial shares were purchased and not the date of exchange. In addition, no Charge will be assessed on the exchange of shares of the Funds which are reinvested and retained in either of the Alliance Money Market Funds. The Charge would be deferred until the shareholder ultimately redeems the shares of the Alliance Money Market Funds that were acquired in exchange for shares of the Funds. However, an exchange of shares of the Funds into either of the Alliance Money Market Funds will stop the running of the four year holding period until such shares are exchanged back into one of the Funds.

9. The Charge will be waived on redemptions by the following persons or entities: (A) Shareholders of record (as of date on or near the effective date of Applicant's Registration Statement) of Neuwirth Fund, Inc., Pine Street Fund, Inc. and deVegh Mutual Fund, Inc., each of which is a diversified, no-load, open-end management investment company to which Wood, Struthers and Winthrop provides investment advisory services; (B) redemptions effected by investment advisory clients of Wood, Struthers and Winthrop; (C) redemptions effected by (i) officers, employees and directors of Wood, Struthers and Winthrop and any of its directly or indirectly wholly owned subsidiaries or any entity by which Wood, Struthers and Winthrop is directly or indirectly owned ("Related Entities"), (ii) officers, directors or trustees of any investment company for which Wood, Struthers and Winthrop or any of its Related Entities serves as investment adviser or distributor, (iii) IRAs, Keogh plans and employee benefit plans for persons in (i) and (ii) above, and (iv) spouses, siblings, children or grandparents of persons in (i) and (ii) above, and trusts of which those individuals are beneficiaries; (D) redemptions effected by shareholders of an investment company registered under the 1940 Act, which receives shares of one or more of the Funds in connection with the combination of the investment company with Applicant by merger, acquisition or transfer of assets or by any other transaction; and (E) redemptions effected pursuant to Applicant's right to liquidate involuntarily a shareholder's account in any Fund with a current net asset value of less than $500. In applying any waiver of the Charge, Applicant will comply with the disclosure and other requirements of Rule 22d-1 under the 1940 Act.

10. Applicant proposes to finance its distribution expenses under a distribution services agreement adopted under Rule 12b-1 under the 1940 Act (the "Distribution Agreement"). Under the Distribution Agreement, Applicant will pay a distribution fee to DLJ Securities Corp. for its expenses incurred in connection with the offering of shares of the Funds. DLJ Securities

Corp's distribution fee will be accured daily and paid monthly by Applicant with respect to the Funds at the annual rate of up to 1.00% of the average daily net assets of each Fund for which the Distribution Agreement is in effect. The Trustees of Applicant will consider receipts from the Charge obtained by DLJ Securities Corp. in connection with their annual review of the Distribution Agreement.

11. Any additional series or classes of shares Applicant may offer in the future will be operated in a manner substantially similar to the manner described above with respect to Applicant's Funds provided, however, that the distribution fee which would be payable to DLJ Securities Corp. could be lower than, equal to or higher than the fee to be paid by Winthrop.

12. The Charge and any waivers, deferrals or other variations are fair and euitable to Applicant's shareholders while at the same time giving them necessary flexibility in their financial planning. Further, the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Moreover, such waivers, deferrals or variations of the Charge will not harm Applicant's remaining shareholders or unfairly discriminate among shareholders or purchasers.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-25220 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 22-15665]**

## Application and Opportunity for Hearing; Union Pacific Corp.

November 4, 1986.

Notice Is Hereby Given that Union Pacific Corporation (the "Applicant" or the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Citibank, N.A. ("Citibank") under certain indentures of Union Pacific Corporation, which were heretofore qualified under the Act or exempt from registration under the Securities Act of 1933, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under any of such indentures.

The Company has outstanding, as of July 16, 1986, the following debt securities secured by the following identures, in each case, between the Company and Citibank as trustee, all of which are the subject of this application:

(i) $4,800,100 principal amount of 4¾% Convertible Debentures Due 1999 issued under an indenture dated April 1, 1969 (the "1969 Indenture");

(ii) $250,000,000 principal amount of 11⅞% Sinking Fund Debentures Due 2010 issued under an indenture dated September 1, 1980 (the "1980 Indenture");

Citibank is also trustee of the following:

(iii) $1,000,000 principal amount of Adjustable Rate Industrial Development Bonds Series 1984 issued under an indenture dated August 1, 1984 (the "1984 Indenture") between Salt Lake County, Utah and Citibank, which are guaranteed by the Company and the proceeds from sale of which were loaned to Rocky Mountain Energy Company, a wholly owned subsidiary of the Company;

(iv) $8,000,000 principal amount of Adjustable Rate Pollution Control Revenue Bonds Series 1985 issued under an indenture dated December 1, 1985 (the "1985 Indenture") between Albany County, Wyoming and Citibank, the proceeds from sale of which were loaned to Union Pacific Railroad Company, a wholly owned subsidiary of the Company with repayment guaranteed by the Company;

(v) $150,000,000 principal amount of 8.4% Sinking Fund Debentures Due 2001, issued under an indenture dated March 1, 1976 (the "1976 Indenture");

On April 30, 1986, Morgan Guaranty Trust Company of New York (the "Resigning Trustee') gave written notice to the Company of its intention to resign as trustee under the 1976 Indenture effective upon appointment of a successor trustee. On July 15, 1986, the Company appointed Citibank as successor trustee, which appointment Citibank accepted as of that date.

Section 310(b) of the Act, contained in section 6.08 of the 1969 Indenture and section 608 of the 1976 and 1980 Indentures, provides in part that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign.

Pursuant to section 608 of the 1976 Indenture, Citibank shall not be deemed to have a conflicting interest by reason of being a trustee under another indenture or indentures under which any other securities of the Company are outstanding if the Company shall have sustained the burden of proving, on application for hearing thereon, that the trusteeships of Citibank under the 1976 Indenture and such other indenture or indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under one of such indentures.

The Company's obligations with respect to the debentures issued under the 1969, 1976 and 1980 Indentures and the Company's obligation as a guarantor with respect to the revenue bonds issued under the 1984 and 1985 Indentures are in each case wholly unsecured and rank *pari passu* with each other.

There is no default under the 1969, 1976, 1980, 1984 or 1985 or indenture.

Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as principal obligor under the 1969, 1976 and 1980 Indentures and as guarantor with respect to the revenue bonds issued under the 1984 and 1985 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as successor trustee under the 1976 Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application on file in the offices of the Commission at 450 Fifth Street, NW., Washington, DC 20549 under File No. 22-15665.

Notice Is Further Given that an order granting the application may be issued by the Commission at any time on or after November 24, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, no later than November 24, 1986, at 5:30 p.m. Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon or request notification if the Commission should order a hearing. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

20549 and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application that he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 86-25270 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Order 86-11-7; Dockets 38040, 38073,38955, 39074, 40302, and 40649]**

### Global International Airways Corp.; Proposed Revocation Certificates

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Global International Airways Corporation, issued under sections 401 and 418 of the Federal Aviation Act.

**DATE:** Persons wishing to file objections should do so no later than November 25, 1986.

**ADDRESSES:** Responses should be filed in Dockets 38040, 38073, 38955, 39074, 40302, and 40649 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Davis, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 4, 1986.

**Matthew V. Soocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 86-25275 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

**[Order 86-11-6]**

### Monarch Aviation, Inc., d.b.a. Monarch Airlines; Fitness Determination

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination, order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find that Monarch Aviation, Inc. d/b/a/ Monarch Airlines, is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P-47, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 25, 1986.

**FOR FURTHER INFORMATION CONTACT:** Michael Lane, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366-2341.

Dated: November 4, 1986.

**Matthew W. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 86-25276 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

**[Docket 44380]**

### Seattle/Portland—Japan Service Review Case; Postponement of Prehearing Conference

Served: October 30, 1986.

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on November 10, 1986 is postponed until November 17, 1986, at 10:00 a.m. (local time) in Room 5332, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

**John M. Vittone,**

*Administrative Law Judge.*

[FR Doc. 86-25189 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

**[Summary Notice No. PE-86-19]**

### Petition for Exemption; Summary of Petitions Received; American Trans Air and Chalk International Airlines

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. The comment period for these petitions for exemption has been shortened in order to allow the agency to consider public comments and act on these petitions prior to the approaching compliance date established by the Federal Aviation Regulations. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 14, 1986.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 5, 1986.

**John H. Cassady,**

*Assistant Chief Counsel, Regulations and Enforcement Division.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25098 | American Trans Air | 14 CFR 121.310 | To allow petitioner a 1-month extension from the compliance date of November 26 for meeting emergency exit lighting requirements. |
| 25082 | Chalk International Airlines | 14 CFR 121.310 | To allow petitioner a 6-month, one-time extension from the compliance date of November 26 for meeting emergency exit lighting requirements. |

[FR Doc. 86-25360 Filed 11-5-86; 3:00 am]
BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: November 3, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

**Office of the Secretary**

*OMB Number:* 1505-0058
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Confidential Information for the Secretary of the Treasury
Clearance Officer: Douglas J. Colley (202) 566-6671, Office of the Secretary, Room 7221, ICC Building, 1201 Constitution Avenue, NW., Washington, DC 20220
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Douglas J. Colley,**
*Departmental Reports, Management Office.*
[FR Doc. 86-25277 Filed 11-6-86; 8:45 am]
BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: October 31, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: New
*Form Number*: IRS Form 8587
*Type of Review*: New
*Title*: Election by Qualified Retailer Under section 4041(n)

*OMB Number*: 1545-0409
*Form Number*: IRS Form 211
*Type of Review*: Extension
*Title*: Application for Reward for Original Information

*OMB Number*: 1545-0796
*Form Number*: IRS Form 6524
*Type of Review*: Extension
*Title*: Office of Chief Counsel Application

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Douglas J. Colley,**
*Departmental Reports, Management Office.*
[FR Doc. 86-25278 Filed 11-6-86; 8:45 am]
BILLING CODE 4810-25-M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Goya Paintings in Spanish Private Collections and the National Gallery of Art" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about November 15, 1986, to, on or about January 4, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: November 5, 1986.

**Joseph A. Blundon,**
*Acting Deputy General Counsel.*

[FR Doc. 86-25460 Filed 11-6-86; 11:08 am]
BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

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

**COMMISSION ON CIVIL RIGHTS**

November 5, 1986.

**PLACE:** 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

**DATE AND TIME:** Thursday, November 13, 1986, 9:00 a.m.–5:00 p.m.

**STATUS OF MEETING:** Open to the public.

**MATTERS TO BE CONSIDERED:**

I. Approval of Agenda
II. Approval of Minutes for September 26 and October 24, 1986 Meetings
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. New Directions for Civil Rights—(Vice Chairman Friedman's discussion memo)
V. Report on Indian Hearing
VI. Civil Rights Developments in the Western States Region

**PERSON TO CONTACT FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications Division (202) 376–8312.

**William H. Gillers,**

*Solicitor, 376–8339.*

[FR Doc. 86–25395 Filed 11–7–86; 3:57 pm]

BILLING CODE 6335–01–M

### 2

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 10:00 a.m. (eastern time) Tuesday, November 18, 1986.

**PLACE:** Suite 900, Skyline II Building, 5203 Leesburg Pike, Falls Church, Virginia 22041.

**STATUS:** Closed to the public.

**MATTERS TO BE CONSIDERED:**

*Closed*

Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued and dated November 5, 1986.

**Cynthia C. Matthews,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 86–25373 Filed 11–5–86; 3:27 pm]

BILLING CODE 6750–06–M

### 3

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday November 12, 1986.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS OF BE CONSIDERED:**

*Summary Agenda*

Because of its routine, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed exemption from Regulation AA (Unfair or Deceptive Acts or Practices) for the state of Wisconsin. (Proposed earlier for public comment; Docket No. R–0570)

*Discussion Agenda*

2. Proposed amendment to Regulation Z (Truth in Lending) regarding disclosures for adjustable rate mortgages.

3. Proposals regarding structured format for wire transfer of funds. (Proposed earlier for public comment; Docket No. R–0575)

4. Proposals regarding a two-tiered pricing structure for check collection services. (Proposed earlier for public comment; Docket No. R–0532)

5. (A) Proposals regarding consolidation of priced service activities across District lines (proposed earlier for public comment; Docket No. R–0555); and (B) publication for comment of proposed factors for evaluating future inter-District consolidations.

6. Any items carried forward from a previously announced meeting.

**Note.** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 5, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86–25352 Filed 11–5–86; 8:45 am]

BILLING CODE 6210–01–M

### 4

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 12:00 noon, Wednesday, November 12, 1986, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: Novevember 5, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86–25353 Filed 11–5–86; 1:42 pm]

BILLING CODE 6210–01–M

### 5

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

**CHANGE IN MEETING DATE:** Due to the lack of a quorum, the Board of Directors meeting scheduled for November 13, 1986 has been postponed until December 18, 1986 at 10:00 a.m. The agenda and all other information about the meeting published in the **Federal Register** on

October 31, 1986 remain the same. However, if any new items are added to the agenda in the interim, appropriate notification will be sent to the Federal Register for publication prior to the meeting.

**CONTACT PERSON FOR INFORMATION:**
Information with regard to the meeting may be obtained from the Secretary of the Corporation at (202) 457–7007.

**Mildred A. Osowski,**
*Corporate Secretary.*
November 5, 1986.

[FR Doc. 86–25394 Filed 11–5–86; 3:46 pm]
BILLING CODE 3210–01–M

Federal Register

Friday
November 7, 1986

Part II

# Environmental Protection Agency

**40 CFR Part 260 et al.**

**Hazardous Waste Management System; Land Disposal Restrictions; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271**

**[SWH-FRL 3089-5]**

## Hazardous Waste Management System; Land Disposal Restrictions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is today promulgating its approach to implementing the congressionally mandated prohibitions on the land disposal of hazardous waste. This action is responsive to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice establishes procedures for setting treatment standards for hazardous wastes, for granting nationwide variances from statutory effective dates, for granting extensions of effective dates on a case-by-case basis, for evaluating petitions for a variance from the treatment standard, and for evaluating petitions demonstrating that continued land disposal of hazardous wastes is protective of human health and the environment.

In addition, EPA is promulgating specific treatment standards and effective dates for hazardous wastes included in the first phase of the land disposal prohibitions: certain dioxin and solvent-containing hazardous wastes. EPA also is promulgating the Toxicity Characteristic Leaching Procedure (TCLP) for use in determining whether these wastes meet the applicable treatment standards. Extensions of the effective date for certain categories of these wastes are also promulgated in today's rule.

Prohibitions on underground injection of these wastes are on a different schedule and are being addressed in a different rulemaking. The treatment standards, however, will apply when the restrictions are effective.

**DATE:** This final rule is effective November 8, 1986, except for the provisions in §§ 268.30(b) and 268.31(a), which will become effective on November 8, 1988.

**ADDRESSES:** The official record for this rulemaking under Docket Number LDR-3 is located in the RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

**FOR FURTHER INFORMATION CONTACT:**

For general information about this rulemaking contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

For information on specific aspects of this rule contact: Stephen R. Weil or Jacqueline W. Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-4770.

**SUPPLEMENTARY INFORMATION:**

Preamble Outline

## I. Background

### *A. Summary of Hazardous and Solid Waste Amendments of 1984*

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste.

In particular, the amendments prohibit the continued land disposal of untreated hazardous wastes beyond specified dates, "unless the Administrator determines that the prohibition . . . is not required in order to protect human health and the environment for as long as the wastes remain hazardous . . ." (RCRA sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents in injection wells.

Wastes treated in accordance with treatment standards set by EPA under section 3004(m) of RCRA are not subject to the prohibitions and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2), 42 U.S.C. 6924(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the applicable statutory deadline. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances.

For the purposes of the land disposal restrictions program, the legislation specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k), 42 U.S.C. 6924(k)).

Congress also has prohibited the storage of any hazardous waste that is subject to a prohibition from one or more methods of land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

There also is a statutory exemption from the land disposal restrictions for the treatment of wastes in a surface impoundment, provided that the impoundments meet minimum technological requirements (with limited exceptions) and that treatment residues that do not meet the treatment standard(s) are removed within 1 year of the entry of the waste into the impoundment (RCRA section 3005(j) (11)(A)(B), 42 U.S.C. 6925(j)(11)(A)(B)).

The legislation sets forth a series of deadlines for Agency action. At certain deadlines, further land disposal of a particular group of hazardous wastes is prohibited if the Agency has not set treatment standards under section 3004(m) for such wastes or determined, based on a case-specific petition, that there will be no migration of hazardous constituents from the unit for as long as the wastes remain hazardous. Other deadlines cause conditional restrictions

on land disposal to take effect if treatment standards have not been promulgated or if a petition has not been granted. In any case, where EPA does not set a treatment standard for a waste by the statutory date, it is not precluded from later promulgating a treatment standard for that waste. Similarly, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date through rulemaking procedures. The relevant statutory deadlines are explained in detail in the following units.

1. Solvents and Dioxins

Effective November 8, 1986, the statute prohibits further land disposal (except by deep well injection) of the following wastes: dioxin-containing hazardous wastes numbered F020, F021, F022, and F023,[1] and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005. (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). These wastes are listed in 40 CFR 261.31.

If EPA fails to set treatment standards or grant petitions for solvent- and dioxin-containing wastes by the statutory deadline, such wastes are prohibited from land disposal as of that deadline (other than in injection wells, where the prohibition is effective as of August 8, 1988). If EPA has set treatment standards, wastes that meet the level or are treated by the specified method may be land disposed. Wastes subject to a successful petition may also continue to be land disposed.

2. California List

Effective July 8, 1987 (32 months from November 8, 1984), the statute prohibits disposal (except with respect to deep well injection) for the following wastes, listed or identified under RCRA section 3001: [2]

a. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

b. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(1) Arsenic and/or compounds (as As) 500 mg/l;

(2) Cadmium and/or compounds (as Cd) 100 mg/l;

(3) Chromium (VI) and/or compounds (as Cr VI) 500 mg/l;

(4) Lead and/or compounds (as Pb) 500 mg/l;

(5) Mercury and/or compounds (as Hg) 20 mg/l;

(6) Nickel and/or compounds (as Ni) 134 mg/l;

(7) Selenium and/or compounds (as Se) 100 mg/l;

(8) Thallium and/or compounds (as Tl) 130 mg/l.

c. Liquid hazardous wastes having a pH less than or equal to 2.0.

d. Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

e. Hazardous wastes containing halogenated organic compounds in total concentrations greater than or equal to 1,000 mg/kg. (RCRA sections 3004(d) (1) and (2), 42 U.S.C. 6924(d) (1) and (2)).

If EPA fails to set treatment standards or grant petitions by July 8, 1987, for wastes appearing on the California List, these wastes will be prohibited from land disposal (other than in injection wells, where the applicable statutory deadline is August 8, 1988).

EPA will propose treatment standards for California List wastes in a future Federal Register notice.

During the period ending November 8, 1988 (48 months from November 8, 1984), disposal of contaminated soil or debris resulting from a response action taken under sections 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Superfund), or a corrective action required under Subtitle C of RCRA, is not subject to any land disposal prohibition or treatment standard for F001–F005 solvent wastes, dioxin-containing wastes, and wastes covered by the California List. (RCRA sections 3004 (d)(3), (e)(3), 42 U.S.C. 6924 (d)(3), (e)(3)).

3. Scheduled Wastes

Section 3004(g) of RCRA (42 U.S.C. 6924(g)) requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed as of November 8, 1984, under RCRA section 3001. This list excludes solvent and dioxin wastes prohibited under section 3004(c) and California List wastes prohibited under section 3004(d). EPA submitted this schedule to Congress on May 28, 1986 (51 FR 19300).

RCRA section 3004(g)(6) (42 U.S.C 6924(g)(6)) provides that if EPA fails to set treatment standards or grant petitions by the statutory deadline for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only in facilities in compliance with the minimum technological requirements set forth in RCRA section 3004(o), 42 U.S.C. 6924(o)).[3] If EPA fails to set treatment standards or grant a petition for any of the scheduled listed wastes by May 8, 1990, all such wastes will be prohibited from land disposal.

4. Newly Listed Wastes

The land disposal prohibitions apply to all hazardous wastes under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

*B. Summary of the Proposed Rule*

On January 14, 1986, EPA proposed to establish a framework by which treatment standards for hazardous wastes restricted from land disposal would be established. EPA also proposed treatment standards and effective dates (dates by which wastes must be treated or be prohibited from land disposal unless subject to a successful petition) for the first class of hazardous wastes—solvents and dioxins—to be evaluated under the proposed framework (51 FR 1602).

1. Determination of Section 3004(m) Treatment Standards

In developing treatment standards under RCRA section 3004(m), the Agency proposed an approach using technology-based levels in conjunction with risk-based standards (screening levels). The technology-based levels were derived from the performance of the best demonstrated available technologies (BDAT). Performance of treatment processes was evaluated based upon the leachability of the residuals of such treatment in the land

[1] The final dioxin rulemaking (50 FR 1978, January 14, 1985) contains three waste codes, F026, F027, and F028, not specified in the statute. The additional waste codes are a result of reorganization and do not represent a substantive departure from the waste codes enumerated in section 3004(e)(1).

[2] This list is based on regulations developed by the California Department of Health Services for hazardous waste land disposal restrictions in the State of California. Thus, it has become known as the "California List."

[3] In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See Vol. 130, *Cong. Rec.* S9192 (daily ed., July 25, 1984).

disposal environment. The screening levels specified maximum concentration levels of individual hazardous constituents in extracts of hazardous wastes. The Agency also noted that air emissions contamination was not addressed in the proposed framework. However, when work was completed on the air model, more stringent screening levels would be set, if necessary, to protect this media.

To ensure that the total risks to human health and the environment were not increased as a result of implementing the land disposal restrictions, the Agency proposed to compare the risks of managing wastes in land disposal units with the risks of managing wastes in alternative treatment technologies. Treatment technologies found to pose greater risks than those posed by land disposal of the waste would be considered unavailable for purposes of establishing RCRA section 3004(m) treatment standards.

The proposed rule set treatment standards in the following way. If application of BDAT treatment resulted in concentration levels equal to or lower than the screening levels, the Agency proposed to issue the screening level as the treatment standard, capping off required BDAT treatment at these protective levels. If application of BDAT treatment resulted in levels less stringent than the screening levels, but BDAT realized substantial reductions in toxicity or mobility and did not pose greater risks than land disposal, then the technology-based level would become the treatment standard and the screening level would remain as a goal that could be reached as new technologies emerged.

The Agency proposed to apply this framework to the waste codes specified in section 3004(e) (i.e., F020–F023, F026 and F027 [4] for dioxin-containing wastes, and F001–F005 and the corresponding constituents listed in 40 CFR 261.33 (e) and (f) for solvent-containing wastes [5]).

[4] The Agency omitted F028 from the proposed rule because it is the residue from the thermal treatment of soils contaminated with other dioxin-containing wastes. This was an error, as this waste also is required to meet the treatment standard. F028 is included in today's final rule.

[5] The solvent wastes are listed as P022, U002, U031, U037, U052, U057, U070, U080, U112, U117, U121, U140, U151, U158, U161, U169, U196, U210, U211, U220, U226, U228 and U239.

The screening levels for dioxin-containing wastes were below established detection limits achievable using standard EPA analytical methods, thus, the Agency proposed treatment standards based on the detection limits. The proposed treatment standards for solvents were derived from screening levels and the potential effects of solvents on synthetic and clay liners.

The Agency requested comments on an alternative approach, that of establishing treatment standards under RCRA section 3004(m) based solely on the performance of the best demonstrated available technology (BDAT).

2. Variance Based on Lack of National Capacity

Because no incinerator or thermal treatment facility has been approved by EPA to treat dioxin-containing wastes, the Agency proposed to grant a 2-year national variance for all dioxin-containing wastes subject to the restrictions. The Agency also proposed to grant a 2-year nationwide variance for F001–F005 solvent wastes containing less than 1 percent (by weight) total organic constituents, and solvent-contaminated soils, because of capacity limitations on alternative treatment, recovery, and disposal technologies.

3. Petition Process

The Administrator is authorized to find that land disposal of a particular waste will be protective of human health and the environment if an interested person demonstrates, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the land disposal unit or injection zone for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), and (g)(5), 42 U.S.C. (d)(1), (e)(1), and (g)(5)). Under the proposed rule, this demonstration was to be made in the form of a petition to the EPA Regional Administrator or authorized State program director. The applicant would have been required to prove that a specified waste could be contained safely in a particular type of disposal unit. The Agency proposed that the "no migration . . . for as long as the wastes remain hazardous" standard could be met if the petitioner demonstrated that, by the time the constituent reached a point of potential human exposure, or a sensitive environment, it would be at a concentration level that did not threaten human health and the environment.

4. Storage of Prohibited Wastes

Section 3004(j) of RCRA specifies that any waste that is prohibited from one or more methods of land disposal also is prohibited from storage unless the storage is solely to accumulate sufficient quantities of the waste to allow for proper recovery, treatment, or disposal. The Agency interprets the statute to provide that the storage prohibition does not apply to wastes that have been treated in accordance with treatment standards or that have been subject to a successful petition demonstration. EPA proposed that generators and treatment, storage, and disposal facilities be allowed to accumulate prohibited wastes on-site for up to 90 days.

## II. Summary of Today's Final Rule

### *A. Regulatory Framework*

The Agency is finalizing the regulatory framework for implementing the land disposal restrictions and promulgating treatment standards and associated effective dates for certain solvent- and dioxin-containing wastes.

By each statutory deadline, the Agency will promulgate the applicable treatment standards under Part 268 Subpart D for each hazardous waste. After the standards are effective, wastes may be disposed of in a Subtitle C facility if they meet the applicable treatment standard.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued placement in land disposal units unless a petition has been granted by the Administrator under § 268.6 demonstrating that continued management of specific hazardous wastes in land disposal units is protective of human health and the environment for as long as the waste remains hazardous. EPA may provide an extension of the statutory effective date under § 268.5.

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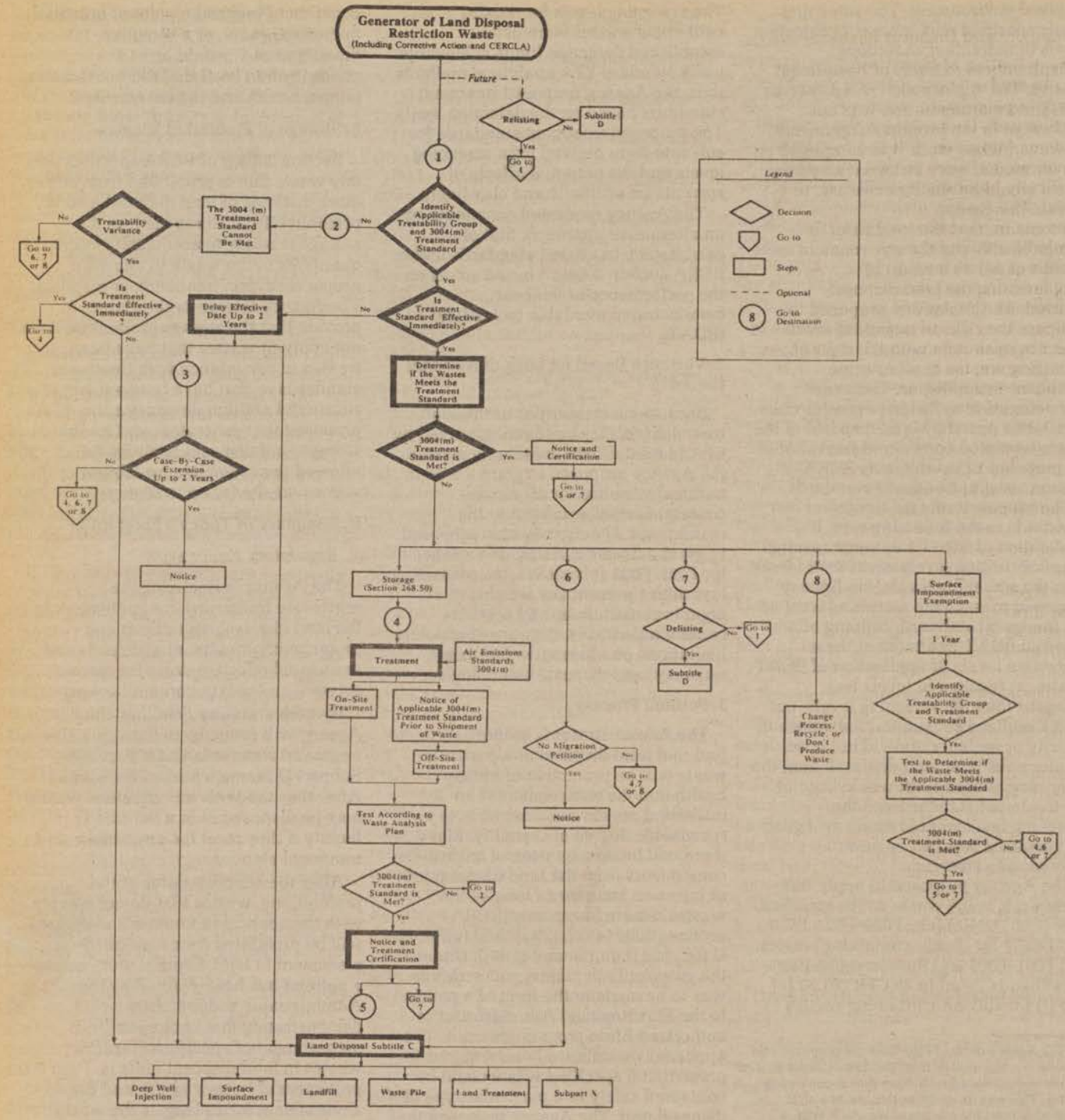


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*B. Applicability*

1. Scope of Land Disposal Restrictions

The definition of land disposal is not being limited to placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave as specifically identified in RCRA section 3004(k). The Agency also considers placement in concrete vaults or bunkers intended for disposal purposes as methods of waste management subject to the land disposal restrictions, as proposed. The Agency, however, is departing from the proposed rule with respect to open detonation. For purposes of clarification, the final rule notes that the Agency interprets any reference to open detonation to include open burning (see Unit III.A.). The Agency has concluded that these methods do not constitute land disposal, except in cases where the residuals from open detonation and open burning of explosives continue to exhibit one or more of the characteristics of hazardous waste.

The Agency interprets the land disposal restriction adopted in today's final rule as applying prospectively to the affected hazardous wastes. In other words, hazardous wastes placed into land disposal units after the effective date are subject to the prohibitions, but wastes land disposed prior to the applicable effective date do not have to be removed or exhumed for treatment. Similarly, the Agency interprets the restrictions on storage of prohibited wastes to apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to land disposal restrictions are removed from either a storage or land disposal unit after the effective date, subsequent placement of such wastes in or on the land would be subject to the restrictions and treatment provisions.

The provisions of today's final rule also apply to wastes produced by generators of 100 to 1000 kilograms of hazardous waste in a calendar month.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions, regardless of existing permit conditions, because the provisions of RCRA require compliance by all facilities even though the requirements are not specifically referenced in the permit conditions. The land disposal restrictions supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C.

2. CERCLA Response Action and RCRA Corrective Action Wastes

Under section 3004(e)(3) Congress provided a 48-month exemption (until November 1988) from the land disposal restriction provisions for disposal of contaminated soil and debris from CERCLA 104 and 106 response actions and RCRA corrective actions. Because of this statutory exemption, today's final rule is not applicable to these wastes. The exemption covers the disposal of any soil and debris wastes under section 3004 (d) and (e). All other CERCLA response action wastes and RCRA corrective actions wastes are subject to this rule.

CERCLA response actions and RCRA corrective actions often address waste matrices different than those associated with industrial waste processes on which this rule is primarily based. These waste matrices are different in terms of chemical/physical composition, concentrations, and media within and among sites. The Agency anticipates that treatability variances may be needed for some soils, debris, and other similar wastes. Therefore, before November 8, 1988, the Agency plans to perform additional characterization of soils and debris and other similar wastes and, where necessary, amend the treatment standards by adding additional standards specifically for these wastes.

Today's final rule provides a 2-year national variance for wastes from CERCLA response actions and RCRA corrective actions that are not soil and debris. These wastes must be disposed of in facilities that are in compliance with the requirements of section 3004(o).

CERCLA and RCRA soil and debris wastes include but are not limited to soils, dirt, and rock as well as materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers, and liners. In many cases soils and debris will be mixed with liquids or sludges. The Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris.

3. Air Emissions

The framework for restricting wastes from land disposal focuses primarily on the relationship between the land disposal of hazardous waste and ground water quality. However, the Agency also is concerned with air emissions from land disposal of these wastes. The Agency plans to address the issue of releases to the air in a broad context in response to various provisions in RCRA including section 3001 (characterization of waste as hazardous) and section 3004 (restriction of waste from land disposal and standards for air emissions from land disposal).

Historically, the Agency has developed and promulgated rules under section 3001 of RCRA classifying wastes as hazardous based on the potential of these wastes to cause harm to human health and the environment if managed improperly. These determinations have included the potential for harm as a result of reactivity, ignitability, corrosivity, and toxicity via the ground water or surface water pathway. While the Agency has consistently maintained that exposure from air emissions is a potential problem for wastes that are treated and disposed improperly, work to develop a characteristic based on potential for air contamination has not as yet been completed. The Agency plans, however, to propose an air toxicity characteristic in the future to provide a more complete definition of hazardous waste, including a list of hazardous constituents that are of concern based on their potential for air contamination.

In conjunction with the development of an air toxicity characteristic, the Agency also plans to propose criteria and performance standards for air emissions in its development of treatment standards for wastes in accordance with section 3004(m). The development of these criteria is tied to the characterization of wastes as hazardous and that portion of the land disposal restrictions framework related to the risks posed by air emissions from best treatment technologies.

Both the air toxicity characteristic and the criteria for treatment standards based on air emissions are related to both the development of air emission standards under section 3004(n) and the petition demonstration for continued land disposal under section 3004(d). With respect to the former, section 3004(n) requires the Administrator to promulgate standards for the control and monitoring of air emissions from treatment, storage and disposal facilities. These standards are currently under development.

In establishing a framework for dealing with air emissions under the RCRA statute, the Agency must also develop criteria under section 3004 (d), (e), and (g) for determining when the statutory standard of "no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous" has been met. As with other portions of the statute dealing with air emissions, the standards and criteria to be applied to the petition demonstration are closely

related to the factors and criteria to be used to determine when a waste should be managed as hazardous under section 3001 of RCRA. EPA expects that the technical analysis of air emissions that will provide a basis for future rulemaking under sections 3001 and 3004(n) will also be used as a guide in making decisions on petitions addressing air emissions concerns.

Implementation of two portions of the regulatory program, nevertheless, must proceed as the air strategy is being developed. These include the issuance of permits to treatment, storage and disposal facilities and the establishment of corrective action requirements as a part of those permits. In these cases, it is expected that air contamination from operating and closed facilities will be addressed on a case-by-case basis as part of the permit process.

*C. Section 3004(m) Treatment Standards*

As discussed earlier, the Agency proposed two major approaches to setting treatment standards under section 3004(m). The first approach involved development of treatment standards based on either technology- or risk-based screening levels. The second approach was based entirely on technology-based standards expressed as BDAT. The Agency is promulgating the second approach as the framework under which disposal of solvents, dioxins, and the scheduled wastes will be evaluated.

The risk-based methodology proposed by the Agency considered the degree of hazard posed by wastes land disposed in Subtitle C facilities. This led to the development of "maximum acceptable contaminant concentrations" (or screening levels), which were based on the recognition that the potential for harm to human health and the environment will differ depending on the toxicity, mobility, and persistence of the waste stream. This approach also recognized that in some cases, any single technology-based level may provide more protection than is necessary, while in other cases, may provide insufficient safeguards for human health and the environment. Moreover, under the proposed approach, relatively "low hazard" wastes could be considered suitable for land disposal without any treatment at all.

Although a number of comments on the proposed rule favored the first approach; that is, the use of screening levels to "cap" treatment that can be achieved under BDAT, several commenters, including eleven members of Congress, argued strongly that this approach did not fulfill the intent of the law. They asserted that because of the scientific uncertainty inherent in risk-based decisions, Congress expressly directed the Agency to set treatment standards based on the capabilities of existing technology.

The Agency believes that the technology-based approach adopted in today's final rule, although not the only approach allowable under the law, best responds to the above-stated comments. Accordingly, the final rule establishes treatment standards under RCRA section 3004(m) based exclusively on levels achievable by BDAT. The Agency believes that the treatment standards will generally be protective of human health and the environment. Levels less stringent than BDAT may also be protective.

The plain language of the statute does not compel the Agency to set treatment standards based exclusively on the capabilities of existing technology. RCRA section 3004(m) requires EPA to "promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (42 U.S.C. 6924(m)). By calling for standards that minimize threats to human health and the environment, the statute clearly allows for the kind of risk-based standard originally proposed by the Agency. However, the plain language of the statute does not preclude a technology-based approach. This is made clear by the legislative history accompanying the introduction of the final section 3004(m) language. The legislative history provides that "[T]he requisite levels of [sic] methods of treatment established by the Agency should be the best that has been demonstrated to be achievable" and that "[T]he intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment" (Vol. 130, *Cong. Rec.* 9178, (daily ed., July 25, 1984)). Thus, EPA is acting within the authority vested by the statute in selecting to promulgate a final regulation using its proposed alternative approach of setting treatment standards based on BDAT.

The Agency believes that its major purpose in adopting the risk-based approach of the proposal (i.e., to allow different standards for relatively low-risk, low-hazard wastes) may be better addressed through changes in other aspects of its regulatory program. For example, EPA is considering the use of its risk-based methodologies to characterize wastes as hazardous pursuant to section 3001.

*D. Petition Procedures for Demonstrating Land Disposal To Be Protective of Human Health and the Environment ("No-migration" Petitions)*

In carrying out the directives of RCRA sections 3004 (d)(1), (e)(1), and (g)(5), the Agency proposed to consider petitions to allow land disposal of restricted wastes, provided that petitioners demonstrated that any migration from the disposal site would be at concentrations that did not pose a threat to human health and the environment.

Today's final rule adopts the statutory language requiring petitioners to demonstrate "to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." The Agency will allow continued land disposal of hazardous wastes without further treatment only where it can be demonstrated, to a reasonable degree of certainty, that the statutory standard will be met.

Since the Agency expects that there will be relatively few cases in which this demonstration can be made, and, therefore, that relatively few petitions might be submitted for review, the Agency is requiring that petitions be submitted to the Administrator rather than to permit writers in authorized States or Regional EPA offices as originally proposed. As noted in the proposed rule, a petition may be submitted at any time prior to or after the effective date of the ban (see Unit IV.G.). However, submission of a petition will not stay the effective date of the prohibitions.

*E. Variance From the Treatment Standard*

The Agency recognizes that there may exist unique wastes that cannot be treated to the levels specified as the treatment standard (or, in some cases, by the method specified). In such cases, generators or owners/operators may submit a petition to the Administrator requesting a variance from the treatment standard. Today's final rule includes procedures for obtaining such a variance (see Unit IV.H.). Following a restriction effective date and while the Agency is reviewing the request for a variance, the generator may not land dispose the waste. Alternatively, continued land disposal in surface impoundments meeting the standards of § 268.4(a)(3) may be feasible for some wastes.

*F. National Variance From the Effective Date*

The Agency has the authority to grant national variances to the effective date based upon a lack of capacity to treat the wastes. The new effective date of the prohibition is to be established based on the earliest date on which treatment capacity that is protective of human health and the environment will be available. In no case can this extension be longer than 2 years. During the period of such a variance, the waste is not subject to the land disposal restrictions or any requirements relating to such restrictions. However, during the period of such an extension, the wastes must be managed in facilities that are in compliance with the requirements of section 3004(o) (42 U.S.C. 6924(o)).

*G. Case-by-Case Extensions*

The Agency will consider granting up to a 1-year extension (renewable once) of a ban effective date if the applicant demonstrates that a binding contract has been entered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond the applicant's control. The Agency is departing from the procedures outlined in the proposed rule by deleting the proposed cancellation penalty clause for contracts to construct or provide capacity. The final rule makes it clear that in demonstrating that capacity cannot reasonably be available the applicant may show that it is not feasible to provide such capacity (see Unit IV.F.). During the period that the extension is in place, the waste is not subject to the land disposal restrictions; thus, the successful applicant also is exempt from the prohibition on storage under § 268.50. However, during the period of the extension, the wastes must be disposed of in facilities meeting the requirements of RCRA section 3004(o) (42 U.S.C. 6924(o)).

*H. Storage of Prohibited Wastes*

The Agency proposed a 90-day storage limit to allow the generator and owner/operator of a hazardous waste treatment, storage, or disposal facility time to accumulate sufficient quantities of wastes to allow for proper recovery, treatment, and disposal. Commenters to the rule stated that 90 days was insufficient and more time should be allowed for storage. In today's final rule the Agency is removing the 90-day storage limit for owners/operators. Owners/operators may store restricted wastes as needed to accumulate sufficient quantities to allow for proper recovery, treatment, and disposal. However, where storage occurs beyond one year, the owner/operator bears the burden of proving that such storage is solely for the purpose of accumulating sufficient quantities to allow for proper recovery, treatment, or disposal. Generators who need to store restricted wastes for periods in excess of the accumulation time limits in 40 CFR 262.34 must obtain interim status and eventually a permit. The Agency is maintaining the proposed 10-day storage limit for restricted waste at transfer facilities. The prohibition on storage applies to restricted wastes, and does not apply to wastes that meet the treatment standard or are the subject of a successful petition under § 268.6 or extension under § 268.5.

*I. Treatment Standards and Effective Dates for Solvents*

The Agency proposed to establish treatment standards for F001, F002, F003, F004, and F005 solvent wastes and their corresponding P and U wastes (40 CFR 261.3 (e) and (f)) using screening levels and a liner protection threshold. Today's rule, however, addresses only the F001 through F005 solvent wastes (including solvent mixtures). The Agency will evaluate the P and U solvent wastes in accordance with the schedule for listed wastes. In today's rule, the Agency is promulgating technology-based treatment standards for the F001–F005 solvents. The Agency also is promulgating the effective dates for F001–F005 solvent wastes essentially as proposed, with modifications to the range of applicable wastes. The land disposal restrictions become effective on November 8, 1986, for all F001–F005 solvent wastes, with the exception of the following wastes which will receive a 2-year variance that extends the effective date for the land disposal restrictions to November 8, 1988:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under sections 104 or 106 of CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The solvent waste is a solvent-water mixture, a solvent-containing sludge, or a solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41.

*J. Treatment Standards and Effective Dates for Dioxins*

The proposed rule set treatment standards for dioxin-containing wastes (F020, F021, F022, F023, F026, F027) below the current detection limit of 1 ppb for each of the chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) (i.e., all isomers of tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans, respectively), and the applicable detection limits for the specified chlorophenols.[6] The proposed standards required that these constituents be below the 1 ppb limit in the waste extract before being land disposed. Wastes having concentrations that meet or exceed the 1 ppb limit may be treated in accordance with the criteria established for incineration (40 CFR 264.343 and 265.352), and thermal treatment (40 CFR 264. 383) for dioxins. The Agency is promulgating the dioxin treatment standards as proposed (see Unit VI). The Agency also is setting treatment standards for F028, which was not included in the proposed rule.

As proposed, the Agency is establishing a 2-year national variance from the effective date for all dioxin-containing wastes covered under today's final rule. Accordingly, treatment standards for dioxin-containing wastes will not take effect until November 8, 1988.

*K. Rationale for Immediate Effective Dates*

Today's rule provides for an effective date of November 8, 1986. It is clear from the statute that today's rule must go into effect no later than the effective date of the prohibition on solvents and dioxins in section 3004(e). Absent any regulations, the prohibition on solvents and dioxins in section 3004(e) takes effect automatically on November 8, 1986. Therefore, November 8, 1986 is the latest date for EPA to promulgate regulations that will prevent the "hammer" in section 3004(e) from falling. Section 3004(h) of RCRA provides that a prohibition in regulations under section 3004 (d), (e), (f), or (g) takes effect immediately upon promulgation. For section 3004(e), that date is November 8, 1988. Moreover, section 3004(m) provides that regulations setting treatment standards

[6] In addition to CDDs and CDFs, the constituents of concern for the dioxin-containing wastes also include 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, 2,3,4,6-tetrachlorophenol, and pentachlorophenol (see Appendix VII to Part 261). The treatment standards for these constituents are 50, 50, 100, and 10 ppb, respectively.

must have the same effective date as the applicable regulation promulgated under subsection (d), (e), (f), and (g). Therefore, since the statute clearly provides that the regulations implementing section 3004(e) go into effect on November 8, 1986, EPA finds that good cause exists under section 3010(b)(3) of RCRA to provide for an effective date of November 8, 1986. For the same reason, EPA finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 553(d)(3), to waive the requirement that regulations be published at least 30 days before they become effective.

## III. Agency Response to Major Comments on Proposed Rule

EPA received approximately 200 comments responding to the proposed rule. Comments were submitted by treatment, storage, and disposal (TSDF) facilities, environmental organizations, trade associations, companies, State and Federal regulatory agencies, and private citizens.

The Agency received considerable comment on all aspects of the proposed rule. In today's final rule, major comments on applicability, treatment alternatives (BDAT), capacity, petitions, storage, CERCLA interface, solvents, and dioxins are addressed. Responses to comments not addressed in today's rule are available in the background document to this rulemaking (see Comment Response Background Document For the Land Disposal Restrictions Volume I, November 7, 1986), available in the RCRA docket.

The Agency received numerous comments on the ground water back calculation model used in developing health-based screening levels. However, because the approach promulgated in today's rule does not employ screening levels, the Agency is not addressing these comments in the final rule. The Agency does anticipate using similar models in future regulatory actions. We will address the issues raised by the applicable comments in these future rulemaking activities.

### *A. Applicability*

#### 1. Open Burning and Open Detonation

The majority of the commenters were opposed to the inclusion of open detonation and open burning as forms of land disposal. It was argued that these two methods of waste management are treatment rather than disposal, as supported by the standards in 40 CFR 265.382 for owners and operators who thermally treat explosive wastes using open detonation or open burning. The commenters stated that most wastes handled in this manner are hazardous because they exhibit the characteristic of reactivity (i.e., they are explosive), and when these wastes are open burned or detonated they are rendered nonreactive. The commenters also indicated that no other available technologies provide a safer alternative to handling these wastes.

Although the Agency did not specifically address open burning in the proposed rule, current EPA regulations classify both open detonation and open burning as types of thermal treatment under Subpart D of Part 265. Because open detonation and open burning are similar waste management methods for treatment of explosive wastes, the same regulatory requirements apply to both methods under 40 CFR 265.382. Therefore, we believe that considering open burning in conjunction with open detonation for purposes of this final rule is reasonable and consistent with the current regulatory structure.

Upon reevaluation, the Agency agrees that open burning and open detonation of explosive wastes does not constitute land disposal. EPA does not believe that Congress intended to prohibit these activities because open burning and open detonation are not included in the definition of land disposal in section 3004(k). They are primarily treatment processes that typically result in by-products which are no longer reactive and, therefore, are not considered hazardous. The Agency also agrees with commenters that open detonation and open burning may be the only safe waste management method for handling explosive wastes.

In view of these considerations, the Agency has concluded that the land disposal restrictions program is not applicable to open detonation and open burning.

#### 2. Wastes Produced by Small Quantity Generators

While EPA is authorized to vary standards for small generators under RCRA section 3001(d), this authority is circumscribed by the need to protect human health and the environment. The Agency has carefully considered the risks posed by land disposal of small generator wastes and has weighed these against the impacts of the land disposal restrictions on these generators. Given the smaller aggregate amounts of hazardous waste produced by small generators, it is arguable that the relative risks of land disposal to human health and the environment are lower. However, the major concern with land disposal is the toxicity of the waste rather than the quantity. As EPA explained in a recent rulemaking imposing certain RCRA regulatory requirements on generators of 100 to 1000 kg of hazardous waste per month, data from EPA's National Small Quantity Hazardous Waste Generator Survey indicate that both small and large quantity generators produce many of the same types of waste and use many of the same waste management practices. 50 FR 31285 (Aug. 1, 1985). Therefore, it is appropriate to include wastes produced by small quantity generators in the land disposal prohibitions.

### *B. Treatment Alternatives (BDAT)*

#### 1. BDAT Expressed as a Performance Standard

Generally, commenters supported the Agency's interpretation of section 3004(m) regarding the criteria for the selection of BDAT. The statute specifies that BDAT may be expressed as either a performance standard or a method of treatment. Wherever possible, the Agency prefers to establish BDAT treatment standards as performance standards rather than adopting an approach that would require the use of specific treatment methods. To date, all treatment technologies considered as BDAT can result in a wide range of performance values depending on the operation of the technology. EPA believes performance standards ensure that the technology is properly operated. Additionally, the Agency believes concentration-based performance standards offer the regulated community greater flexibility to develop and implement compliance strategies as well as incentive to develop innovative treatment technologies.

#### 2. Process Variability

One commenter asserted that normal process variability has not been accounted for in the Agency's calculation of treatment standards. The commenter urged the Agency to calculate variability factors which account for variations in influent composition, system performance, sampling and analytical test methods, and site specific conditions. The commenter further stated that the variability factors should be used to develop BDAT treatment standards on a daily maximum basis.

The Agency agrees with the comments that treatment standards need to incorporate a variability analysis. Since variability in performance occurs even at facilities that are well designed and well operated, EPA believes it is appropriate to include such an analysis in the development of BDAT treatment

standards. This analysis is not intended to account for performance differences which occur as a result of treating a waste that is significantly different in composition or for differences which occur from improper or poor treatment of the same waste. Instead, incorporation of a variability factor into the development of a BDAT standard is intended to account for variations which arise from mechanical limitations in the equipment used to maintain treatment parameters at the proper setting, small variations in the waste, and variations in analytical test methods.

The variability factor, as outlined in the Notice of Availability of Data (see 51 FR 31783, September 5, 1986), is the ratio of the calculated 99th percentile concentration, $C_{99}$, to the mean treatment concentration. A detailed discussion of the statistical calculation used to account for process variability is provided in Unit IV.A.

3. Criteria for Well-Designed and Operated Treatment Systems

One commenter asserted that the Agency should document in the record its rationale for evaluating and editing data based on the performance of the treatment system. The commenter stated that the Agency should not simply presume that well designed and operated treatment systems are those that achieve the lowest performance values but should instead consider the effects of the characteristics of the waste on treatment performance. The Agency is aware that the level of treatment achievable is dependent upon the physical and chemical characteristics of the waste. Accordingly, it is necessary for the Agency to assess design and operating parameters in determining whether a system is performing well, in addition to its consideration of the performance value achieved. Because the parameters that comprise a well-designed and operated system will vary for each technology, it is difficult for EPA to generalize the specific parameters that need to be examined. Whenever the Agency has little or no data on the design and operation of the system, the Agency will evaluate the constituent concentrations in the waste before and after treatment and use engineering judgment to determine whether the system is performing well. The Agency also will use a statistical outlier analysis to confirm engineering judgment. The statistical analysis to be used was published in the **Federal Register** on September 5, 1986 (51 FR 31783). The rationale the Agency used for editing performance data can be found in the technical support documents.

*C. Capacity*

1. Capacity for Waste-as-Fuel

Several commenters argued that EPA did not consider waste-as-fuel as a treatment alternative in estimating capacity. As one commenter pointed out, this is a potentially large treatment option that cannot be ignored. EPA did not consider this alternative because the data were not available. Since the November 14, 1986, proposed rule the Agency has received waste-as-fuel data from the "Telephone Verification Survey of Commercial Facilities that Manage Solvents" (August 1986). Data from this survey were noticed for public comment on September 5, 1986 (51 FR 31788) and have been included in capacity estimates for today's final rule.

2. Commercial vs. Private Capacity

Several commenters stated that EPA should not consider private capacity as available alternative treatment capacity. They explained that private facilities may not be willing to accept off-site wastes because liability could be considerable, permit conditions may prohibit accepting off-site waste, or on-site capacity may be fully committed to nonhazardous wastes.

EPA recognizes the issues raised by commenters and agrees that private capacity should not automatically be considered as available alternative treatment capacity. However, when there is insufficient available commercial treatment capacity, EPA plans to consider the potential for private facilities to become commercial facilities. EPA will include private capacity if there is sufficient evidence that the private facilities plan to accept off-site wastes. Because limited information exists on the planned public availability of current private capacity, EPA has no basis for including private capacity in total capacity estimates for solvents and dioxins subject to today's final rule.

3. Permitted Facility vs. Interim Status Facility Capacity

Several commenters stated that only existing permitted treatment facilities should be considered in estimating available capacity. They argued that interim status facilities may not receive final permits and consequently may not provide available capacity.

In calculating available capacity for solvents and dioxins, EPA included capacity that is currently available from some interim status facilities and all permitted facilities. The interim status facilities included did not notify the Agency of an intent to close and, therefore, can be expected to provide capacity for the November 8, 1986, effective date. In future capacity determinations, EPA will assess, on a case-by-case basis, the number of interim status facilities expected to accept wastes.

4. Existing Facility vs. Planned Facility Capacity

Several commenters stated that only existing, permitted facilities should be considered in estimating available capacity, because it is uncertain whether "planned" facilities will be on-line by the effective date of the restrictions with approval to operate from Federal, State, and local agencies. EPA will include planned capacity only when there is sufficient evidence that the planned facilities will be fully operational by the effective date of the prohibitions. In the case of solvents and dioxins, such evidence does not exist; therefore, planned facilities have not been included in the capacity estimates for today's rule.

5. National vs. Regional Capacity

Several commenters stated that EPA should determine available capacity under section 3004(h)(2) on a regional basis rather than on a national basis, and variances should be regionalized based on the availability of treatment. These commenters stated that it is realistic to assume that economic and transportation problems affect the availability of alternative capacity for a particular generator. They pointed out that national capacity for some treatment technologies is based on a few high-volume treatment facilities, and emphasized the need for Federal, State, and local efforts to construct more waste treatment facilities.

EPA recognizes these problems. However, the legislative history (S. Rep. No. 284, 98th Cong., 1st Sess. 19.(1983)), clearly states that "the available capacity determination is to be done on a national basis" in order to prevent a situation in which regions obtaining variances would become the "dumping ground" for wastes generated in regions implementing the land disposal restrictions. Accordingly, EPA believes that national capacity determinations under section 3004(h)(2) are more in accord with the statutory intent.

*D. Petitions Demonstrating Land Disposal of Untreated Waste is Protective*

1. Generic Petitions for Sites With Similar Hydrogeologic Properties

Several commenters suggested that the Agency accept generic petitions that address similar management techniques

for the same or similar wastes in hydrogeologic settings with similar characteristics. Commenters felt that a generic petition, once approved, would allow all such sites where the same or similar wastes were managed with a similar technique to automatically receive approval for land disposal without individual petition demonstrations.

RCRA sections 3004 (d)(1), (e)(1), and (g)(5) do not preclude the submission of generic petitions. However, as a practical matter, the usefulness of the generic petition is limited, since a petition demonstration must include site- and waste-specific data (see § 268.6 (a) and (b)). Accordingly, petitioners must demonstrate that each scenario covered under the generic petition is similar. For example, a demonstration that the hydrogeological characterization of sites is similar would require a detailed assessment of each site addressed in the petition. As a result, the Agency expects few, if any, generic petitions.

2. Conditional Petition Approval Based on Prima Facie Evidence

Several commenters expressed concern over the possibility that land disposal restrictions would become effective prior to Agency rulings on petitions, causing disruption in waste disposal activities. To prevent this situation, the commenters suggested that approval of a petition be granted on the basis of superficial evidence of compliance with the statutory standard. The Agency would perform a brief review of the petition for completeness, and would then grant conditional approval until such time that a full technical review could be completed. Other commenters argued that the statute requires a demonstration that the statutory standard is met, not merely an application for petition approval. It would not be possible, according to these commenters, for the Agency to grant approval for such a demonstration without a full technical review.

Other commenters suggested that the statute provides the Agency with the flexibility of granting a 2-year extension of the effective date, pursuant to section 3004(h)(2) upon receipt of prima facie evidence that the "no migration" standard has been met. Commenters argued that this superficial showing of evidence would satisfy the requirements of the extension to identify the adequate alternative disposal capacity that protects human health and the environment.

The Agency agrees with those commenters who stated that the statute calls for a positive demonstration that the statutory standard is met, which implies that a full review of the petition has been made. Thus, the Agency will not grant a conditional variance for disposal of untreated restricted waste in a Subtitle C unit based on a superficial review of the evidence. The Agency will only make the decision regarding the granting of a variance after an in-depth review of a fully developed no migration demonstration submitted by the petitioner.

Under section 3004(h), the Agency is allowed to set different effective dates for the restrictions based on lack of available capacity for treatment, recovery, or disposal. The Agency does not believe that submission of a petition request is relevant to such a finding.

3. Eligibility for Petitions

The Agency requested comment on an approach limiting eligibility for petitions to those wastes for which no alternative treatment is available. Several commenters objected to this approach, stating that the statute and the legislative history do not limit eligibility for petitions.

Other commenters agreed with this approach for several reasons. They argued that the statute clearly reflects congressional intentions that restricted wastes be treated prior to land disposal. They also argued that rendering ineligible those wastes that can be treated to meet a BDAT standard fulfills the spirit of the law and gives a clear signal to industry to plan for expanded treatment capacity. Additionally, they noted that this approach would reduce the burden on the Agency and the States for petition review, so that resources could be devoted to petitions for untreatable wastes.

The Agency continues to believe that the better reading of the law allows no basis for limiting eligibility for the petition process in the manner discussed. RCRA sections 3004 (d), (e) and (g) set up the petition process as a clear albeit limited alternative treatment prior to land disposal of hazardous wastes. Accordingly, the final regulations do not limit eligibility for petitioners.

*E. Storage of Prohibited Wastes*

A number of commenters argued that because transporters, recyclers, or treatment facilities often give priority to larger volumes of waste or even refuse to take small quantities, more than 90 days are needed to accumulate sufficient quantities.

All of the comments received regarding the proposed storage limit for waste treatment, storage, and disposal stated that 90 days is inadequate. Some commenters stated that additional time is needed because some waste streams are accumulated more slowly than others. More specifically, one commenter presented the case of a plant that generates a very small amount of spent solvents (e.g., one drum every three months), but is not a small quantity generator due to other nonrestricted waste streams. Because of the small amounts generated, the turnaround time during which waste is accumulated to an amount sufficient for a transporter to pick up consistently takes longer than the 90-day period. Additionally, another commenter stated that because halogenated solvents are often blended with other materials before incineration, the 90-day period will be insufficient due to the evaluations and trial burns that will be required for these new blends of wastes. Other commenters cited the frequent back-ups and delays at treatment facilities that may require storage for more than 90 days; however, these factors are not directly relevant to the statute, which allows storage only for the purpose of accumulating sufficient quantities necessary to facilitate proper recovery, treatment, or disposal.

The alternatives suggested by commenters ranged from setting a storage limit of 180 days to not limiting the storage period. The majority of commenters suggested that the Agency establish a 1-year storage limit. Several of these commenters stated that the provision should be similar to the existing speculative accumulation provision in 40 CFR 261.1(b)(8). This provision allows for a material to be accumulated for recycling provided that during the calendar year (commencing January 1) at least 75 percent of the material accumulated at the beginning of the time period is recycled or is transferred to a different site for recycling.

In the proposed rule, the Agency allowed treatment, storage, and disposal facilities the same time periods for accumulating restricted wastes in tanks and containers as specified under 40 CFR 262.34 for large quantity generators accumulating hazardous waste prior to shipment off-site for treatment or disposal. Effective September 22, 1986, generators of 100–1000 kg/mo can store hazardous waste for 180 or 270 days depending on transportation distances. (See 51 FR 10175 (March 24, 1986).) For hazardous waste storage facilities operating under interim status or a RCRA permit, the Agency proposed a 90-day limit for the storage of restricted wastes.

After considering the length of an appropriate storage limit, the Agency agrees with the commenters that 90 days may not be sufficient time to accumulate quantities necessary to facilitate proper recovery, treatment and disposal of restricted wastes. However, the Agency does not believe that the storage time permissible at a waste management facility should be indefinite but, rather, must have some limit because the legislative history indicates that Congress' concern in enacting this provision was to foreclose the possibility of using long-term storage as a means of avoiding a land disposal prohibition. (S. Rep. No. 284, 98th Cong., 1st Sess. 18 (1983).)

The Agency disagrees with the commenters who felt that a system similar to the speculative accumulation provision (40 CFR 261.1(b)(8)) should be implemented for the storage of restricted wastes. The speculative accumulation provision is designed to determine when a material becomes a waste and relies on assumptions that the materials will be continuously removed from storage. The Agency does not believe that this provision is applicable to the storage of restricted wastes.

The Agency believes that a storage limit of up to one year should generally provide sufficient time for an owner/operator to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal of restricted hazardous wastes while meeting the intent of Congress to prohibit long-term storage as a means of avoiding the land disposal restrictions. The burden is on the Agency to demonstrate that storage of restricted wastes for periods less than or equal to one year is not in compliance with the storage provisions. The Agency also recognizes that there may be instances where one year does not provide sufficient time to accumulate such quantities. Therefore, the Agency will allow an owner/operator to store restricted wastes beyond one year. Although the owner/operator is not required to submit any data or application to EPA, in the event of an enforcement action, the burden of proving compliance with § 268.50(b) is on the owner/operator. The Agency believes that this is reasonable because the record for this rulemaking indicates that less than one year should be sufficient. This provision does not apply to situations where back-ups at treatment or recovery facilities, operational difficulties, and repairs and maintenance result in additional delays.

Comments received on the proposed 90-day limit on the length of storage of restricted wastes also indicate that a substantial number of generators without permits or interim status will need to accumulate restricted wastes for more than 90 days to comply with Part 268.

Section 3005(e) allows generators to apply for facility interim status if their accumulation will exceed the time limits of 40 CFR 262.34, as long as the storage is necessary to comply with the land disposal restrictions. 40 CFR 270.70(a) codifies that provision. This section provides that facilities "in existence on the effective date of statutory or regulatory changes . . . that render the facility subject to the requirement to have a permit" may qualify for interim status if they make the appropriate application. A generator who is accumulating hazardous wastes in tanks or containers before the effective date of today's rule, is "in existence" and may qualify for interim status provided that the above stated requirements are met. Section 3005(e)(1) allows interim status only where new regulatory requirements subject an existing facility to permitting requirements. It is not intended to provide an opportunity for a facility to newly engage in hazardous waste management.

Generators who need to obtain interim status should submit a Part A application to the Agency as provided in Part 270. In the Part A application, the generator must demonstrate that the additional accumulation time is necessary as a result of the land disposal restrictions of Part 268.

The Part A must be submitted to the Agency by the deadline specified in § 270.10(e). Note that the § 270.10(e) deadline is the earlier of the following two alternative dates: (1) Six months after publication of regulations which first require the facility to comply with Part 265, or (2) thirty days after the date they first become subject to the standards in Part 265. It is expected that the deadline for most, if not all, of the large quantity generators will be established by the second alternative. By operation of 40 CFR 270.10(e)(ii), the generator becomes first subject to the permitting requirements when he exceeds the generator accumulation time limit. For example, the generator would be required to submit the Part A within 30 days after the 90-day accumulation period ends. Therefore, it is critical that any generator who will be newly subject to the interim status requirements becomes familiar with the Part 270 requirements and submit a Part A application on time.

The Agency believes that generators will ship restricted wastes off-site in accordance with the 90-day provision in 40 CFR 262.34 whenever possible in order to remain subject only to the generator standards. Generators applying for interim status must comply with the applicable requirements of Part 265. Furthermore, if requested by the Administrator, the facility will be required to submit to Part B permit application.

The Agency received only one comment addressing the proposed 10-day storage limit for transporters of restricted wastes. The commenter stated that 10 days would be insufficient because it does not allow for unexpected back-ups and delays. Although such situations may occur, the Agency does not have data indicating that such delays occur frequently so as to create a serious problem. Therefore, the rule being promulgated today maintains the 10-day limit for the storage of restricted waste at a transfer facility to allow for activities incidental to normal transporter practices.

To implement the storage provision, the Agency is requiring owners/operators to comply with the same requirements for dating containers as set forth for generators under 40 CFR 262.34(a)(2). The Agency believes that the restrictions on the storage of wastes under § 268.50 are consistent with the intent of Congress to preclude the possibility of using long-term storage as a means of avoiding a land disposal prohibition and are sensitive to the time constraints of the regulated community expressed by the commenters.

*F. CERCLA Interface*

1. 48-Month Exemption for CERCLA Wastes That Are Soil or Debris

Several commenters requested clarification of § 268.1(c)(3), namely the scope of the 48-month exemption for certain CERCLA wastes (soil or debris) from the solvents and dioxins land disposal restrictions. It was suggested that this exemption should be defined to include all CERCLA bulk wastes. In addition, it was questioned whether State-ordered, State-funded, or private party-funded response action wastes are granted the same exemption.

The Agency does not believe the 48-month exemption can be interpreted to include CERCLA bulk wastes that are clearly not contaminated soil or debris. CERCLA soil and debris have been defined to include, but not be limited to, soil, dirt, and rock as well as natural and manufactured materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers, and liners. In many cases, soil or debris will be mixed with liquids

or sludges. The Agency considers liquid- or sludge-containing wastes, including bulk wastes that are not contaminated soil or debris, generated by a CERCLA response action, to be subject to the land disposal restriction requirements. However, a variance from the land disposal restriction requirements, based on insufficient treatment capacity, was granted for these restricted wastes until November 1988. The Agency is preparing guidance that will further define CERCLA soil and debris wastes in order to assist the regulated community in determining which wastes are covered under the exemption. In addition, before November 8, 1988, the Agency will further analyze the solvent and dioxin treatment standards to determine if these standards are applicable to contaminated soil or debris.

Only those wastes that result from CERCLA Fund-financed actions (section 104) and the exercise of CERCLA's enforcement authority (section 106) are included in the exemption. Response action wastes that result from State-ordered, State-funded, or private party-funded responses taken under the authority of CERCLA or exclusive of this authority are not included in the exemption. Relevant sections of the National Contingency Plan (NCP, 50 FR 47912, November 20, 1985) that address these distinctions include Subpart F, § 300.62 (State participation) and § 300.71 (other party responses). Wastes not included in the exemption and prohibited from land disposal are subject to the schedule imposed by the land disposal restriction requirements. Responses generating these wastes may be preauthorized under section 111 of CERCLA (see § 300.25 of the NCP) and, if so, are eligible for the recovery of certain costs under CERCLA section 107. Other party responses under NCP § 300.71(a)(4) are required to comply with all legally applicable or relevant, and appropriate requirements. RCRA clearly states that the exemption applies to all CERCLA soil and debris land disposed before November 8, 1988. After this date, these wastes will be managed in accordance with the requirements of the land disposal restrictions applicable to CERCLA wastes.

2. Capacity Shortfall Due to CERCLA Wastes

Several commenters stated that the Agency had not adequately evaluated the effect on treatment capacity of CERCLA wastes. As indicated in Unit V, CERCLA capacity estimates have been revised to incorporate the results of a recently completed EPA analysis of future volumes of wastes resulting from CERCLA responses. A variance has been granted for CERCLA wastes, that are not soil or debris, until November 8, 1988. The Agency acknowledges that CERCLA demand for treatment capacity may compete with generator demand for the same treatment capacity. However, the Agency's "Off-Site Policy" for disposing CERCLA waste contains stringent criteria that could render some existing capacity unavailable for the management of CERCLA wastes.

*G. Solvents*

1. Definition of Solvent Wastes

A number of commenters stated that the scope of the land disposal restrictions for solvent-containing wastes extends beyond congressional intent. In particular, the commenters stated that the land disposal restrictions rule should address only F001–F005 hazardous wastes (regulated as of July 1, 1983) specified in section 3004(e). Another specific concern raised by the commenters was that the impacts of including the P and U hazardous wastes as listed in 40 CFR 261.33 (e) and (f), respectively, have not been adequately assessed; therefore, these wastes should not be included in the first class of solvent-containing wastes (i.e., F001–F005) subject to the land disposal restrictions.

In proposing treatment standards for solvent-containing wastes, the Agency included the corresponding commercial chemical products and off-specification species (P and U hazardous wastes) as listed in 40 CFR 261.33 (e) and (f), respectively, and solvent mixtures containing 10 percent or more of the listed solvents (pursuant to the solvent mixtures rule, 50 FR 53315, December 31, 1985). The Agency proposed to exercise its statutory authority under section 3004(g) [7] and include the corresponding P and U wastes with decisions on the F001–F005 wastes because the data indicate that these wastes may pose hazards similar to the spent solvents when disposed in Subtitle C facilities.

However, we are continuing to gather data to better define and characterize the P and U wastes and to assess treatment and recycling capacity for these wastes. Because the Agency agrees with the commenters that we do not have sufficient data to promulgate treatment standards for these wastes by the November 8, 1986, deadline, we will postpone decisions on the P and U wastes until we address the lists of scheduled wastes.

With respect to solvent mixtures, the provisions under section 3004(g)(4) require the Agency to make a determination within six months whether to subject newly identified or listed hazardous wastes to the land disposal restrictions (the statute does not impose an automatic prohibition if the Agency misses the deadline). Because six months have already elapsed since the Agency promulgated the final rule to bring certain spent solvent mixtures into the hazardous waste system,[8] the Agency is including solvent mixtures in today's rule.

2. Impacts on Small-Quantity Generators and Small-Volume Wastes

Several comments were received concerning the impacts of the land disposal restrictions on small-quantity generators and small-volume waste types. One commenter was concerned that the economic impacts on small-quantity generators of solvents have not been adequately assessed.

An assessment of the economic impacts on small-quantity generators from land disposal restrictions affecting solvent-containing wastes is included in the "Regulatory Analysis of Proposed Restrictions on Land Disposal of Certain Solvent Wastes." Total small-quantity generator costs attributed to the land disposal restrictions were found to be significant, but the costs and associated economic impacts for individual facilities were found to be small. Overall, based on economic ratios that were determined for small-quantity generators that dispose of solvent-containing wastes, the land disposal restrictions appeared not to impose significant economic burdens on these generators.

3. Disposal of Lab Packs Containing Solvents

Several commenters addressed disposal of small quantities of solvent-containing wastes in lab packs.

Commenters requested that solvent-containing lab packs be exempt from the land disposal restrictions. They stated that such an exemption would be consistent with existing exemptions under 40 CFR 264.316 and would allow the disposal of only small quantities of solvent wastes.

Another commenter questioned whether the entire lab pack is banned from land disposal if all the packaged wastes are not solvents. Alternatively, the commenter proposed to remove

[7] Section 3004(g) requires that the Administrator shall, "not later than the date specified in the schedule . . . promulgate final regulations prohibiting one or more methods of land disposal."

[8] The Agency promulgated the solvent mixtures final rule on December 31, 1985. The rule became effective on January 30, 1986 (see 50 FR 53315).

restricted solvents before land disposal of the lab pack.

Neither the legislative history nor the statute indicates that lab packs can be excluded from the land disposal restrictions if they contain solvents designated as F001–F005 or other restricted wastes. Under the approach promulgated in today's rule, listed solvents are subject to the land disposal restrictions. If a lab pack contains these restricted wastes, the entire lab pack is subject to the land disposal restrictions. As a practical matter this means that the lab pack may not be land disposed unless the solvents or other restricted wastes are removed before land disposal, the solvents in the lab pack meet the treatment standard, or a successful petition demonstration has been made under § 268.6.

*H. Dioxins*

1. Quantity of Dioxin-Containing Wastes Generated

Several commenters argued that the Agency underestimated the actual quantity of dioxin-contaminated soil subject to the proposed rule. Specifically, one commenter argued that EPA did not take into consideration the dioxin-contaminated sites in the States of Arkansas, New Jersey, and New York in developing the estimate for the quantity of dioxin-contaminated soil in the U.S.

In the proposed rule, EPA acknowledges that the estimated quantity of dioxin-contaminated soil present in the U.S. was derived by assessing estimates for such contaminated soil from the State of Missouri. At this time, the Agency does not have data to determine more accurately the total quantity of dioxin-contaminated soil from sites in the U.S. other than the State of Missouri. Thus, EPA decided to estimate the quantity of dioxin-contaminated soil nationwide based solely on the data provided for the State of Missouri. In making this determination, the Agency should have noted that the estimated quantity of 1.1 billion pounds for dioxin-contaminated soil was accurate within a range of ±20 percent. If this quantity is understated, then the Agency acknowledges that the national estimate is also underestimated. However, such an underestimation would have no effect on the decisions made in today's rule regarding capacity because there is inadequate disposal or treatment capacity even for substantially lower quantities of dioxin-containing wastes.

2. Treatment Standard for Dioxin-Containing Wastes

One commenter argued that as the analytical methodology improves, increasing amounts of materials which might contain insignificant levels of dioxins would be prohibited from land disposal.

The treatment standard for the listed dioxin-containing wastes is based on the current limits of technology available to treat dioxin-containing wastes. The treatment standard for these wastes was proposed at the detection limit afforded by test method 8280 for the CDDs and CDFs in waste extracts because current analytical techniques are not capable of detecting dioxin-containing wastes at the levels achievable by incineration. Research analytical methods indicate that incineration to six 9s destruction removal efficiency (DRE) can achieve reduction in the treatment residuals five to seven orders of magnitude from those concentrations in the starting material. The treatment standard of 1.0 ppb however, represents the routinely achievable detection limit for the CDDs and CDFs using test method 8280. (See 51 FR 19862.)

If additional data become available which demonstrate a lower detection limit for these dioxin wastes, the treatment standard may be revised as necessary.

Lowering the detection limit and changing the subsequent treatment standard will not prohibit significantly increased amounts of materials containing low concentrations of dioxins from land disposal. The prescribed toxicity characteristic leaching procedure (TCLP) is designed to determine the leachability of both organic and inorganic contaminants present in liquid, solid, and multiphase wastes. The constituents of concern in the listed dioxin-containing wastes are not mobile, and are generally in low concentrations. The treatment standard would have to be significantly lower than 1 ppb in order to significantly increase the amount of material that does not meet the treatment standard (before any treatment). In addition, to the extent that incineration achieves 99.999 percent (six 9s) destruction removal efficiency (DRE) (as required under the dioxins listing rule), a lowering of the detection limit will only verify that treatment is achieving levels far below the standard method detection limit. As the detection limit approaches the actual treatment level, the Agency will lower the treatment standard to that level.

3. Land Disposal Restrictions Effective Date

Several commenters addressed EPA's proposal to delay the effective date for the land disposal restrictions for dioxin-containing wastes. All commenters agreed that the 2-year variance to the effective date was necessary because of a lack of available treatment capacity. The commenters also argued that unless treatment capacity is available by the effective date, they will be confronted with an unavoidable noncompliance situation due to the limitations on storage of resticted wastes.

The Agency, in today's rule, is granting the maximum 2-year variance allowed under section 3004(h)(2) for the listed dioxin-containing wastes. At the present time, there is no data to show that treatment capacity for dioxin-containing wastes will not be available after the effective date, or after the additional two 1-year extensions which are available to generators on a case-by-case basis.

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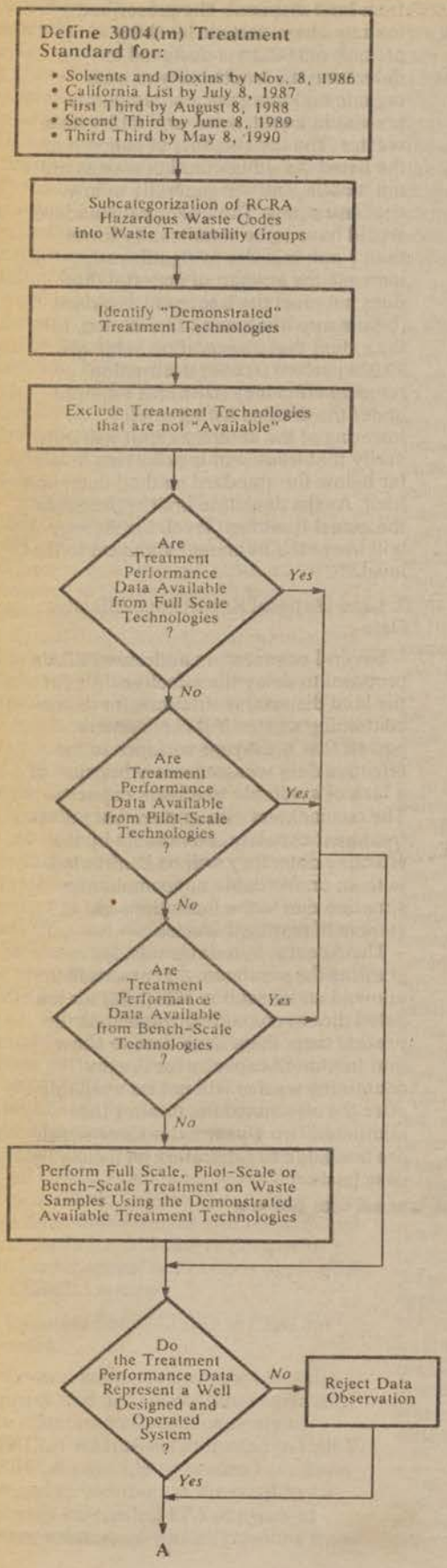
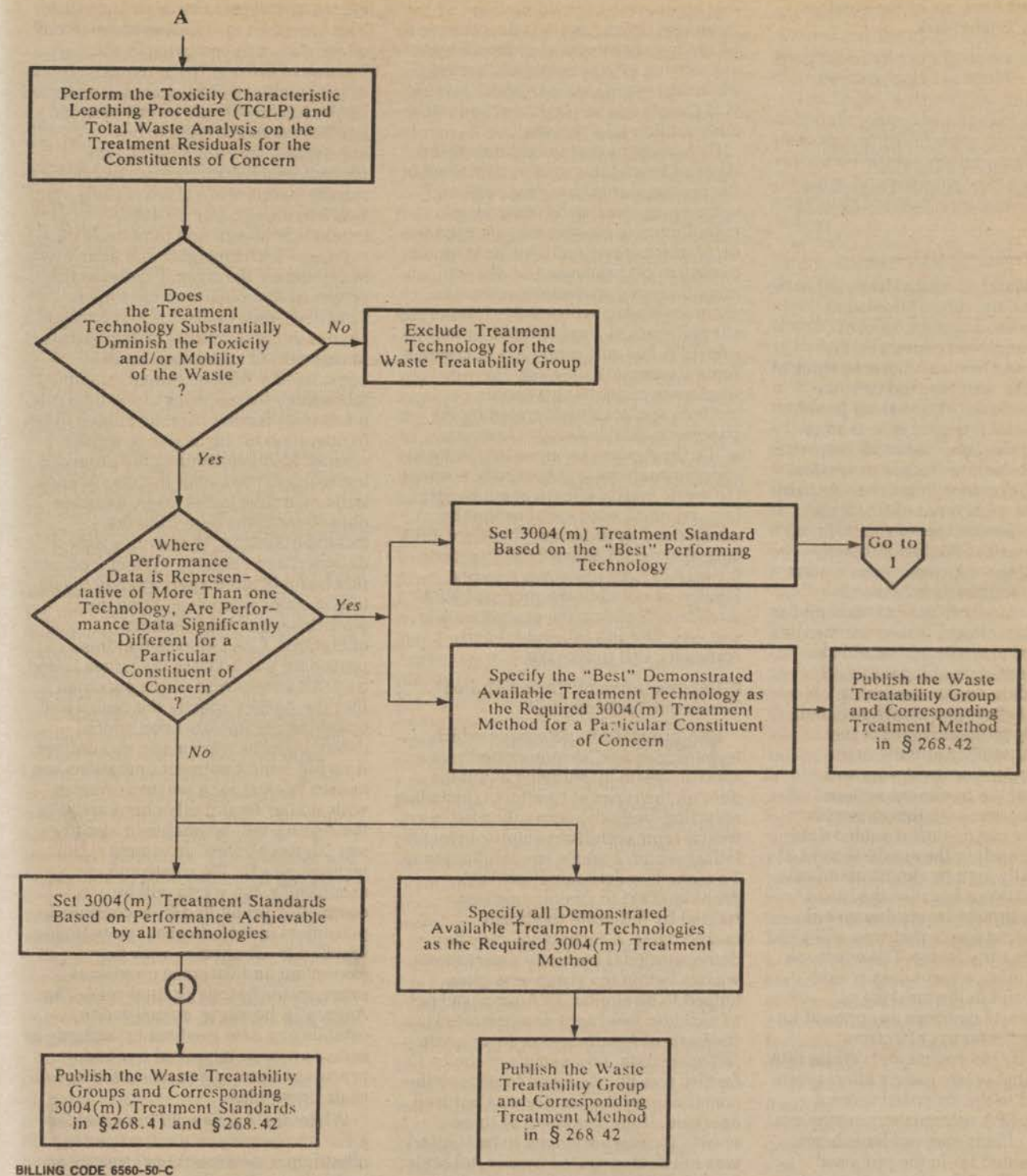

Define 3004(m) Treatment Standard for:
• Solvents and Dioxins by Nov. 8, 1986
• California List by July 8, 1987
• First Third by August 8, 1988
• Second Third by June 8, 1989
• Third Third by May 8, 1990
Subcategorization of RCRA Hazardous Waste Codes into Waste Treatability Groups
Identify "Demonstrated" Treatment Technologies
Exclude Treatment Technologies that are not "Available"
Are Treatment Performance Data Available from Full Scale Technologies ?
Yes
No
Are Treatment Performance Data Available from Pilot-Scale Technologies ?
Yes
No
Are Treatment Performance Data Available from Bench-Scale Technologies ?
Yes
No
Perform Full Scale, Pilot-Scale or Bench-Scale Treatment on Waste Samples Using the Demonstrated Available Treatment Technologies
Do the Treatment Performance Data Represent a Well Designed and Operated System ?
No
Reject Data Observation
Yes
A

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## IV. Detailed Analysis of the Final Regulatory Framework

### *A. Determination of Best Demonstrated Available Treatment Technologies (BDAT)*

This section establishes the framework under which treatment standards based on the Best Demonstrated Available Technology will be developed in accordance with 3004(m).

#### 1. Waste Treatability Groups

Fundamental to waste treatment is the concept that the type of treatment technology used and the level of treatment achieved depend on the physical and chemical characteristics of the waste. In the proposed rule, the Agency discussed establishing broad "waste treatability groups" based on similar physical and chemical properties (e.g., metal-bearing sludges or wastes containing cyanides in order to account for differences in types of treatment used and effectiveness of treatment on different wastes. While not directly addressing this approach, commenters stated that the proposed solvent treatment standards did not account for waste matrix effects. These commenters suggested that waste matrix effects could be considered by pooling all available data on the applicable constituents from the plants sampled, presumably without regard to the varying treatability of the specific wastes sampled or the design and operation of the treatment system.

EPA disagrees with this approach because the use of such a pooled data set would result in the establishment of an artificially high treatment standard. This would occur because the broad range of treatment levels associated with numerous waste matrices will yield a high variability factor. The approach of pooling all treatment data would actually result in the masking of different waste matrices as opposed to accounting for matrix effects as suggested by the commenter. While EPA believed, that waste matrix effects were considered in the proposed solvent standards, EPA recognizes, nonetheless, that these effects may not have been fully accounted for in the proposed standards. The Agency anticipates that in future rulemakings, treatment groups could require further subdivision to more fully account for waste matrix effects subject to the availability of sufficient resources. In any event, EPA remains convinced that waste matrix effects are best accounted for by establishing treatability groups and subgroups wherever possible. The legislative history of 3004(m) supports this approach by providing that treatment determinations do not have to be made only by waste code and by authorizing EPA to establish "generic" treatment standards for similar wastes (130 Congressional Record section 9179, daily edition July 25, 1984).

EPA believes that in addition to the types of treatability groups described in the proposed rule, grouping and subgrouping wastes by industry or manufacturing process may be used to account for waste matrix effects on treatment performance (i.e. similar manufacturing operations appear to generate wastes with similar treatability characteristics). For example, in today's rule, EPA has sufficient data to create a separate treatability group for wastewaters containing spent methylene chloride generated by the pharmaceutical industry. However, while the Agency believes that industry-specific analyses will generally account for waste matrix effects, some wastes (*e.g.*, contaminated soils) cannot be categorized by industry. Therefore, EPA may also establish treatability groups for wastes from unknown sources. Finally, as noted in the proposal, EPA intends to focus on the constituents in sections 3004 (d), (e), and (g) and Appendix VIII to Part 261.

#### 2. Determination of "Demonstrated" Treatment Technologies

EPA proposed to determine which technologies are "demonstrated" for a specific waste by studying available data on the types of treatment (including recycling methods) currently used to treat a representative sample of wastes falling within a waste treatability group. To make this determination, EPA proposed first to examine wastes treated by full-scale treatment technologies. A technology may be demonstrated if currently used to treat wastes within the group or wastes judged to be similar. EPA proposed not to consider treatment demonstrated on the basis of insufficient or inadequate full-scale data, for example, if the facility was not designed to remove the constituent or the facility was not well operated. If the treatment of these wastes (or wastes judged to be similar) was not demonstrated by any full scale facility, EPA proposed to study data from pilot-scale and bench-scale treatment operations to determine if a technology was demonstrated. Some commenters were concerned, however, with the use of pilot-scale and bench-scale operations as the basis for determining whether a technology was demonstrated. The Agency agrees with the commenters position that its determinations should not be based on emerging and innovative technologies. This would be in violation of the intent of the statute as indicated in the legislative history; "[t]he requisite levels of [sic] methods of treatment established by the Agency should be the best that has been demonstrated to be achievable" and not a "BAT-type process which contemplates technology-forcing standards." (Vol. 130 Cong. Rec. S9178 (daily ed., July 25, 1984). To the extent that bench- and pilot-scale data represent such emerging and innovative technologies, the Agency believes the proposed approach was too broad. Therefore, today's final rule represents a change in the definition of demonstrated in response to comments. To be considered a "demonstrated" treatment technology for purposes of the final rule, a full scale facility must be known to be in operation for the waste or similar wastes. EPA is amending the proposed approach to the extent that the Agency will not, at this initial stage, examine data to see if the data from the treatment facility represents a well-designed and operated system, because this factor is more appropriately taken into account when evaluating the performance of the treatment operations. EPA believes that this procedure will address the issues raised by commenters who were concerned that the Agency specify the design and operating parameters upon which determinations were made. Accordingly, if no full scale treatment operations are known to exist for a waste or wastes with similar treatability characteristics, the Agency will be unable to identify any "demonstrated" treatment technologies for the waste and, accordingly, the waste will be completely prohibited from continued placement in land disposal units (unless handled in accordance with the exemption and variance provisions promulgated in today's final rule). The Agency is, however, committed to establishing new treatment standards as soon as new or improved treatment processes become demonstrated as full-scale operations.

While, the Agency did not consider pilot- and bench-scale operations in identifying "demonstrated" treatment technologies for solvents and dioxins, in certain circumstances, data from these operations may continue to be used by the Agency in evaluating the performance of demonstrated full scale treatment operations for certain wastes. A more detailed discussion of the circumstances that would prompt the use of data from pilot- or bench-scale operations in assessing treatment performance, as well as the manner in

which such data will be used, is presented below.

3. Determination of "Available" Treatment Technologies

EPA proposed the following criteria for "available" treatment technologies: (1) The technology does not present a greater total risk than land disposal; (2) if the technology is a proprietary or patented process it can be purchased from the proprietor; and (3) the technology provides substantial treatment. Today's final rule includes an additional criteria in the determination of "available" treatment technologies. Treatment technologies that are prohibited under section 3004(n) because of air emissions will be excluded as "available" technologies for purposes of establishing treatment standards.

EPA will not set treatment standards based on a technology that does not meet the above criteria. Thus, the decision to classify a technology as "unavailable" may have a direct impact on the treatment standard. If the best technology is unavailable, the treatment standard would have to be based upon the next best treatment technology that was determined to be available. To the extent that the resulting treatment standards are less stringent, greater concentrations of hazardous constituents in the treatment residuals could be placed in land disposal units.

There may also be circumstances where EPA concludes that for a given waste none of the demonstrated treatment technologies are "available" for purposes of establishing the treatment standards. These wastes will be prohibited from continued placement in or on the land unless managed in accordance with the exemption and variance provisions promulgated in today's final rule. The Agency, however, is committed to establishing new treatment standards as soon as new or improved treatment processes become "available".

a. *Treatment technologies that present greater total risks than land disposal methods.* As explained in the proposed rule, EPA will evaluate the risks associated with treatment technologies and land disposal methods. Based on a comparative risk assessment, those technologies that are found to present greater total risks than land disposal of the untreated waste will be excluded (i.e., considered "unavailable") as a basis for establishing treatment standards.

If all demonstrated treatment technologies are determined to present greater risks than land disposal for the waste treatability group, the Agency will not be able to identify any "available" treatment technologies and, accordingly, will not set a treatment standard for that group. As a result of such a determination, the waste will be prohibited from land disposal unless managed in accordance with the exemptions and variance provisions in today's final rule or a new or improved technology emerges that is determined not to pose greater total risks than direct land disposal. Treatment technologies identified as riskier than land disposal and, therefore, classified as unavailable for purposes of establishing standards may still be used by facilities in complying with treatment standards expressed as performance levels. EPA is committed to developing sufficient regulatory controls or prohibitions over the design and operation of these technologies to ensure that their use in complying with the treatment standards do not result in increased risks to human health and the environment.

b. *Proprietary or patented processes.* If the demonstrated treatment technology is a proprietary or patented process that is not generally available, EPA will not consider the technology in its determination of the treatment standards. In the proposed rule, EPA explained that proprietary or patented processes will be considered available if the Agency determines that the treatment method can be purchased from the proprietor or is commercially available treatment. The services of the commercial facility offering this technology can often be purchased, although the technology itself cannot. In these cases, the Agency proposed that the technology should be considered "available" to treat wastes generated by those other than the owner of the proprietary process.

EPA received some comments supporting and others disagreeing with this approach. The comments objecting to this approach stated that EPA should use the best demonstrated treatment regardless of its commercial availability and thereby, provide strong financial incentives for development of new technologies on the grounds that excluding such technologies from the analysis may result in less stringent treatment standards. The Agency believes, however, that its proposal represents a reasonable compromise that is intended to exclude only those technologies that would not be made available even with strong regulatory and economic incentives. Therefore, EPA intends to retain the position expressed in the proposed regulation that proprietary technology that cannot be purchased or is not commercially available treatment cannot be the basis for the treatment standard. The Agency will review the availability of proprietary or patented processes on a case-by-case basis.

Treatment technologies classified as proprietary are unavailable for the purposes of establishing the treatment standards but may still be used by facilities in complying with treatment standards expressed as performance levels.

c. *Substantial treatment.* In order to be considered "available", a demonstrated treatment technology must "substantially diminish the toxicity" of the waste or "substantially reduce the likelihood of migration of hazardous constituents" from the waste in accordance with section 3004(m). By requiring that substantial treatment be achieved in order to set a treatment standard, the statute ensures that all wastes are adequately treated before being placed in or on the land, and that the Agency does not require a treatment method that provides little or no environmental benefit. As part of the proposed regulation, the Agency stated that treatment will always be deemed substantial if it results in nondetectable levels of the hazardous constituents of concern in the TCLP extract or if the technology can achieve the protective screening concentration levels. Although the screening level approach has been eliminated in today's rule, EPA still intends to evaluate whether or not a treatment technology provides substantial treatment on a case-by-case basis when the treatment technology does not achieve nondetectable constituent concentrations in the residual. This approach is necessary due to the difficulty in establishing a meaningful guideline that can be applied broadly to the many wastes and technologies that will be considered. As stated in the proposed regulation, EPA will consider the following factors in an effort to evaluate whether or not a technology is substantial on a case-by-case basis:

(i) Number and types of constituents treated;

(ii) Performance (concentration of the constituents in the treatment residuals); and

(iii) Percent of constituents removed.

Several commenters objected to this approach. These commenters believed that EPA should have a standard by which to judge whether a technology is simply "treatment for treatment's sake." Although EPA is sympathetic to this concern, no workable suggestions for a standard were provided. The Agency believes that there will be ample opportunity for comment on EPA's

individual BDAT decisions as they are developed. Futhermore, available EPA data show that few, if any, demonstrated technologies will not achieve a high percentage of removal, destruction, or immobilization in the wastes for which they are demonstrated. As a result, the Agency finds no alternative to the approach as proposed (omitting, of course, consideration of the no-longer used screening levels).

If none of the demonstrated treatment technologies achieve substantial treatment of a waste, the Agency cannot establish treatment standards for the constituents of concern in that waste.

4. Collection and Analysis of Performance Data

a. *Collection of performance data.* Once the demonstrated available treatment technologies have been determined for a waste treatability group, the Agency will collect data representing treatment performance and information on the design and operation of the treatment system. In developing technology-based standards for today's final rule, treatment performance is evaluated using the TCLP. The Agency, in future land disposal restrictions rulemakings, may consider using a total waste analysis as the basis for determining treatment standards.

Wherever possible, the Agency will evaluate treatment technologies using full-scale systems. If performance data from properly designed and operated full-scale treatment methods for a particular waste or waste judged to be similar are not available, EPA will use data from pilot-scale operations. Similarly, where pilot-scale data cannot be obtained, EPA will use data from bench-scale treatment operations. Whenever bench- and pilot-scale data are used, EPA may explain the use of such data in the preamble or background documents and will request comments on the use of such data. When data on treatment performance for a particular waste or similar wastes are judged by EPA to be insufficient, EPA will generate data and information through sampling and analysis regarding the operational parameters and performance of the demonstrated available treatment technologies.

The Agency realizes that in some instances all wastes represented by a particular waste code may not be included in the analysis, therefore, the possibility exists that some unique waste matrices may not be considered in establishing the treatment standard. EPA is providing the opportunity for interested parties to petition the Agency for variances to the treatment standards based on a demonstration that the treatment standards for a particular waste cannot be attained (see Unit IV.H.). The variance process allows the applicant to present information which, if properly considered when the treatment standard was originally developed, would have required EPA to create a separate treatability subgroup for the waste (see the relevant BDAT background document for information regarding the technologies used to develop the standard).

b. *Treatment design and operation.* The Agency will not establish treatment standards using performance data that are determined not to be representative of a well-designed and operated treatment system. The effectiveness of a particular treatment technology will depend, to a significant extent, on how well the system is designed and operated. In the proposed rule, the Agency stated its intention to use only treatment data from well-designed and operated systems. Commenters criticized the Agency for not specifying the parameters on which these determinations were made. Today's rule does not represent a change from the proposed rule with regard to EPA's consideration of the design and operation of treatment in developing treatment standards. Instead, we have revised the BDAT background document to better explain EPA's rationale for data editing with regard to the design and operation of the treatment system. It is difficult for EPA to generalize on the specific parameters that will be examined because parameters that comprise a well designed and operated system will vary for each technology. EPA intends to explain the factors considered in connection with individual regulatory packages. For example, some of the critical design and operating parameters for steam stripping include the number of equilibrium stages in the column, the temperature at which the unit is designed to operate, and how well the design temperature is controlled. In evaluating performance data from a steam stripping operation, the Agency would examine the design specifications (e.g. the basis for selecting the number of stages and design temperature) for the treatment unit in order to determine the extent to which the hazardous constituents could be expected to volatilize. After the design specifications are established, the Agency would collect data (e.g., hourly readings of the column temperature) throughout the operation of the treatment process demonstrating that the unit was operating according to design specifications. If the data collected varies considerably from the design requirements, it could form the basis of a determination that the treatment was improperly operated. If the temperature data show, for example, that for significant periods of time the temperature varied considerably from the design requirements, the Agency would not use this data to determine the levels of performance achievable by BDAT.

Ideally, for all treatment data EPA will have associated design and operating data. However, because treatment performance data are limited, EPA may use treatment performance data for which there are few or no associated design and operating data. In these instances, EPA will use engineering judgement based on a comparison of constituent concentrations before and after treatment to determine whether the data reflect a well-designed and operated treatment system. The Agency will also use a statistical outlier analysis to confirm the engineering analysis. An outlier in a data set is an observation that is significantly different from the trend in the data. The measure of difference is determined by the statistical method known as the Z-score. The Z-score is calculated by dividing the difference between the data point and the average of the data set by the standard deviation. For data that are normally distributed, 95.5 percent (or two standard deviations) of the measurements will have a Z-score between −2.0 and 2.0. A data point outside this range is not considered to be representative of the population from which the data are drawn. The Agency requested comment on this analysis in its September 5, 1986 Notice of Availability (51 FR 31783). A comprehensive discussion of this statistical method can be found in many statistics texts (see, for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY). The Agency believes this approach is reasonable in view of statutory time constraints.

5. Identification of "Best" Demonstrated Available Treatment Technologies and Determination of Treatment Standards

In the proposed regulation, EPA based the calculation of the treatment standards on the mean of all data points after rejection of outliers by inspection. Commenters criticized the proposed method to setting treatment standards stating that: (1) EPA did not account for process variability; (2) the Agency did not explain how it would assess whether a treatment system was well designed and operated; and (3) the Agency did not explain how it would

determine treatment standards where more than one technology applied to a waste. In response to these comments, EPA revised its methodology for establishing treatment standards. The revised approach incorporates several statistical methods that were presented in EPA's Notice of Availability, September 5, 1986 (51 FR 31783).

a. *Analysis of variance.* EPA is using the statistical method known as analysis of variance in the determination of the level of performance that represents BDAT. This method provides a measure of the differences between data sets. If the differences are not statistically different, the data sets are said to be homogeneous.

This method may be used in two cases. The first case is where more than one technology can be used to treat a waste. In this case, the analysis of variance method would be used to determine whether BDAT would represent a level of performance achieved by only one technology or represent a level of performance achievable by more than one or all of the technologies.

If the Agency found that the levels of performance for one or more technologies are not statistically different (i.e., the data sets are homogeneous), EPA would average the long term performance values achieved by each technology and then multiply this value by the largest variability factor associated with any of the acceptable technologies. If EPA found that one technology performs significantly better (i.e., the data sets are not homogeneous), BDAT would be the level of performance achieved by the best technology multiplied by its variability factor.

The second case where the analysis of variance may be used is where different wastes with common constituents are treated with the same technology. The Agency could use this statistical method to determine whether separate BDAT values should be established for each waste or whether the levels of performance are homogeneous and, therefore, amenable to a single concentration level for a given constituent.

To determine whether any or all of the treatment performance data sets are homogeneous using the analysis of variance method, it is necessary to compare a calculated "F value" to what is known as a "critical value". These critical values are available in most statistics texts (see for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

Where the F value is less than the critical value, all treatment data sets are homogeneous. If the F value exceeds the critical value, it is necessary to perform a "pair wise F" test to determine if any of the sets are homogeneous. The "pair wise F" test would be done for all of the various combinations of data sets using the same method and equation as the general F test.

The F value is calculated as follows:

(i) All data need to be logtransformed.

(ii) The sum of the data points for each data set are computed (Ti).

(iii) The statistical parameter known as the sum of the squares between data sets (SSB) is computed:

$$SSB = \sum_{i=i}^{k} \frac{Ti^2}{n_i} - \frac{Ti^2}{N}$$

where:

k=number of treatment technologies
$n_i$=number of data points for technology i
N=number of data points for all technologies
T=sum of data points for all technologies

(iv) The sum of the squares within data sets (SSW) is computed:

$$SSW = \sum_{i=1}^{k} \sum_{j=1}^{ni} x^2_{i,j} - \sum_{i=1}^{k} \frac{Ti^2}{ni}$$

where:

$x_{ij}$=the observations (j) for treatment technology (i)

(v) The degrees of freedom corresponding to SSB and SSW are calculated. For SSB, the degrees of freedom is given by k–1. For SSW, the degrees of freedom is given by N–k.

(vi) Using the above parameters, the F value is calculated as follows:

$$F = \frac{MSB}{MSW}$$

where:

MSB=SSB/(k–1) and
MSW=SSW/(N–k).

A computational table summarizing the above parameters is shown below.

COMPUTATIONAL TABLE FOR THE F VALUE

| Source | Sum of squares | Degrees of freedom | Mean square | F |
|---|---|---|---|---|
| Between | SSB | k–1 | MSB=SSB/k–1 | MSB/MSW |
| Within | SSW | N–k | MSW=SSW/N–k | |

b. *Process variability.* Since variability in performance principally arises from inherent mechanical limitations in maintaining control parameters at the optimum setting, calculation of the treatment standard now incorporates a process variability factor. An example of process variability would be an automatic pH control system used to maintain the proper pH range for precipitation of a toxic metal. In this system, a pH sensing device provides a signal to the controller that the pH is not at the set point (i.e., the optimum design point). The controller then changes (either pneumatically or electrically) the position of the valve that supplies the reagent(s) used to adjust pH. The Agency would consider such a system to be well-operated provided that it is properly designed, calibrated, and maintained. Nevertheless, this system cannot be operated without any variation in the level of performance. Control valves are not manufactured in such a way that they can precisely add the exact amount of reagent needed to be at the set point; either too much or too little reagent will be added. Also, there is a lag time between the time when the sensing device detects a problem and the time that the controller adjusts the valve to the correct position. Additionally, there can be process upsets that require greater changes to the system corresponding to greater variations in performance. Another source of variability will occur during the analysis of the treatment samples. Finally, it is acknowledged that EPA approved methods will exhibit some degree of variability in test results for identical samples. All of the above variations can be expected to occur at well designed and operated treatment facilities. Therefore, setting treatment standards utilizing a variability factor should be viewed not as "relaxing" 3004(m) requirements, but rather as a function of the normal variability of the treatment processes. A plant will have to be designed to meet the mean achievable treatment performance level in order to be assured that the performance levels remain within the limits of the treatment standard. The Agency will calculate a variability factor for each constituent of concern

COMPUTATIONAL TABLE FOR THE F VALUE—Continued

| Source | Sum of squares | Degrees of freedom | Mean square | F |
|---|---|---|---|---|
| Within | SSW | N–k | MSW=SSW/N–k | |

within a waste treatability group using the statistical calculation presented in the Notice of Availability. The equation for calculating the variability factor, as shown below, is the same as has been used by EPA for the development of numerous regulations in the Effluent Guidelines Program under the Clean Water Act.

$$VF = \frac{C_{99}}{MEAN}$$

where:

VF = Estimate of daily maximum variability factor determined from a sample population of daily data

$C_{99}$ = Estimate of performance values for which 99 percent of the daily observations will be below. $C_{99}$ is calculated using the following equation: $C_{99} = Exp(y + 2.33Sy)$ where y and Sy are the mean and standard deviation, respectively, of the logtransformed data.

mean = average of the individual performance values.

EPA is establishing this figure as a daily maximum because the Agency believes that on a day-to-day basis the waste should meet the applicable treatment standards. In addition, establishing this requirement makes it easier to check compliance on a single day. The 99th percentile is appropriate because it accounts for almost all process variability.

6. Dilution Prohibition

In the proposed rule, EPA recognized that successful implementation of the land disposal restrictions program required that dilution be prohibited as a partial or complete substitute for adequate treatment of restricted wastes. The legislative history indicates that such a prohibition "is particularly important where regulations are based on concentrations of hazardous constituents." (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 38 (1983)).

The commenters unanimously support a prohibition on dilution. Their comments indicate a concern with dilution after the waste is generated but before the applicable treatment standard and effective date have been determined, and after the treatment standard has been determined but before the residuals are land disposed. It should be noted that this prohibition does not affect provisions in other EPA regulations which may allow dilution for other purposes.

a. *Dilution before determination of the applicable treatment standard and effective date.* One commenter urged EPA to prohibit dilution to avoid an effective date. Today's rule does not include this provision. EPA's proposed prohibition was limited to dilution for the purpose of substituting for adequate treatment under section 3004(m). A prohibition on dilution for the purpose of avoiding an effective date is outside the scope of this proposal and, therefore, would have to be the subject of a separate proposal. However, as noted in the waste analysis section to today's rule, the applicable treatment standards are to be determined by generators in accordance with § 268.7.

b. *Dilution to meet the treatment standards.* One commenter suggested that EPA reiterate that dilution with non-aqueous agents (e.g., flyash, sawdust, or other materials) is also prohibited. The Agency agrees and intends that the addition of any other material, either liquids or non-liquids, is prohibited as a substitute for treatment under section 3004(m).

Several commenters expressed concern that some treatment processes (e.g., equalization ponds), which require the addition of other materials to physically or chemically treat the wastes, would be prohibited. As stated in the preamble to the proposed rule (51 FR 1680), the Agency recognizes that many treatment methods require the addition of reagents. These reagents, however, produce physical or chemical changes and do not merely dilute the hazardous constituents into a larger volume of waste so as to lower the constituent concentration. In establishing BDAT, EPA considered dilution which is a normal part of the production process or a necessary part of the process to treat a waste. The legislative history indicates that this is consistent with congressional intent (see S. Rep. No. 284, 98th Cong., 1st Sess. 17 (1983)). In prohibiting dilution as a substitute for adequate treatment, the Agency does not intend to prevent the regulated community from adding materials that are necessary to facilitate proper treatment in meeting treatment standards (e.g., adding lime to neutralize or precipitate a waste prior to further treatment). In addition, EPA does not intend to disrupt or alter the normal and customary practices of properly operated treatment facilities. For example, treatment facilities could mix compatible wastes in order to treat (e.g., incinerate) at capacity levels rather than treating wastes in small batches.

c. *Dilution of residuals.* One commenter recommended that the language of the prohibition should be modified to reflect that the prohibition on dilution also applies after treatment. In particular, wastes meeting Subpart D treatment standards must not be mixed with wastes that do not meet such standards in order to achieve the treatment standard for the mixture. EPA agrees with the commenter and intends that this type of dilution after treatment or at any other time is prohibited under § 268.3. The Agency believes that the language in § 268.3 prohibiting dilution "as a substitute for adequate treatment to achieve compliance with Subpart D" is sufficiently broad enough to cover this scenario.

EPA is adopting the proposed prohibition with the following modifications. First, the prohibition extends to transporters and handlers which were inadvertently excluded from the proposed prohibition. Since the proposal cited legislative history which included the transportation and handling stages within the prohibition as the basis for § 268.3, the Agency believes that the favorable comments indicate support for such a modification which conforms more closely to congressional intent. In addition, support for the prohibition was very broad and did not indicate any intent to treat transporters or handlers differently. EPA believes that this modification is reasonable and necessary in order to implement this provision.

Second, the prohibition extends only to the act of dilution itself. The Agency's proposed language would have prohibited "attempted dilution" but not dilution itself. This is clearly not what was intended by EPA. Overall, the commenters who supported the prohibition expressed concern with the act of dilution.

*B. Comparative Risk Assessment and Available Treatment Alternatives*

1. Proposed Use of Comparative Risk Assessment

EPA proposed the use of comparative risk analyses as part of its evaluation of treatment technologies in conjunction with establishing treatment standards. As described in the proposed rule, a number of criteria affect the determination of "available" treatment technologies for the purpose of setting treatment standards. Among the criteria considered is whether application of a treatment technology (including land disposal of treatment residuals) poses greater risks to human health and the environment than those posed by direct land disposal of the waste. Comparative risk analyses were proposed to prevent situations in which regulations restricting hazardous wastes from land disposal would encourage treatment technologies posing greater risks to

human health and the environment than risks posed by direct land disposal.

2. Agency Response to Comments

The majority of the comments supported the concept of conducting comparative risk assessments. However, several comments strongly opposed this concept. Both sets of commenters had specific criticisms and suggestions.

The commenters who objected to the use of comparative risk assessment stated that EPA does not have the authority under RCRA to conduct such analyses. The Agency disagrees with the commenters. The Agency interprets the provisions in section 3004(m) to direct EPA to set treatment standards which minimize threats to the "environment" as applying to all media (i.e., air, land, and water). Because there is no language indicating that this term does not include all media, accordingly, EPA does not believe that the section 3004(m) standard can be read to preclude comparative risk analyses. Therefore, EPA believes that Congress did not intend that risks to human health and the environment be increased as a result of implementation of the land disposal prohibitions. The national policy provision in section 1003 supports this approach in stating that hazardous wastes should be treated in order to minimize the present and future threat to human health and the environment. Moreover, this provision, as well as the legislative history (e.g., H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 32 (1983)), does not focus merely on the risks of land disposal, but instead demonstrates a concern for the toxicity and mobility of hazardous wastes in all media. EPA believes that it is desirable, reasonable, and consistent with the intent of Congress to include comparative risk assessments in the determination of available technologies for purposes of setting technology-based treatment standards.

One commenter felt that the use of comparative risk assessments are reasonable, but questioned whether it is appropriate to use worst case scenarios in assessing the relative risks. The suggested approach is to utilize a "middle-of-the-road" scenario in evaluating risks at both land disposal and alternative treatment facilities. In response to the comment, the Agency is not using best or worst case scenarios. Instead, EPA has chosen to analyze several land disposal and treatment facilities which represent high, medium, and low exposure sites. High risk, low risk, and representative waste streams were modeled through each of these facilities in order to capture the entire range of waste site scenarios.

Several commenters were critical of EPA's proposal to evaluate population risk in assessing comparative risks. The Agency believes it useful to consider population in comparative risk analyses because it can identify sources of increased risks where a comparison with the Maximum Exposed Individual (MEI) risks may not do so. For example, the MEI risks of incinerating certain wastes may be low in comparison to the MEI risks of land disposal. This could be due to few people living in the immediate path of an incinerator plume. The Agency does, however, want to consider cases where there may be a larger population affected by incinerator emissions.

One commenter was concerned that the treatment methods for a given waste may be riskier in absolute terms than the treatment method for another waste. Their concern was that the riskier technology could be used to define the treatment standard as long as the process poses comparatively less risk than land disposal. In the context of ensuring that the land disposal restrictions do not shift higher risks to other media, the Agency maintains that comparative risk analyses are not the proper vehicle for making absolute risk determinations. The analyses are aimed at assessing whether the land disposal of a given waste or waste stream will pose relatively greater risks than alternative treatment technologies. As stated above, if the alternative treatment method is determined to be less risky than land disposal it will be used in the determination of BDAT. The Agency does, however, have the authority to impose additional controls on the technology if it later determines that the actual risks are unacceptable. Such a determination could lead to either a modification of the BDAT standard or the imposition of additional standards on treatment facilities.

3. Use of Comparative Risk Assessment in the Final Framework

Results of the comparative risk analysis will not be used to allow continued land disposal of untreated hazardous waste. As discussed in section A of this unit, treatment technologies that are determined to pose greater risks than direct land disposal of a waste will be considered "unavailable" as a basis for establishing the treatment standard for the waste.

*C. Application of Standards*

1. Leaching Procedure

a. *Final decision.* The Agency proposed to use the Toxicity Characteristic Leaching Procedure (TCLP) to determine whether applicable treatment standards have been met. Although EPA is changing its overall approach in today's final rule (i.e., from risk-based decisions to technology-based decisions), the Agency will continue to require the use of the TCLP to determine whether a waste requires treatment or when a treated waste meets the applicable treatment standards. Today the Agency is promulgating the TCLP with improvements and modifications based on the comments received on the proposed rule, as well as applicable comments received on the Toxicity Characteristic (TC) proposed rule (51 FR 21648, June 13, 1986). The Agency is promulgating the TCLP in today's final rule specifically for evaluation of the solvent and dioxin-containing wastes. The revised TCLP is promulgated as Appendix I to Part 268.

Because the Agency is continuing to investigate other means of defining BDAT (e.g., a definition based on the concentration of hazardous constituents in the waste, at least in the case where treatment is based on destruction), EPA will make decisions regarding the applicability of the TCLP to other restricted wastes according to the final schedule for land disposal restrictions which was promulgated on May 28, 1986. In addition, the Extraction Procedure (EP) will continue to be used in determining which nonlisted wastes are hazardous in accordance with the EP toxicity characteristic (40 CFR 261.24). The Agency expects to promulgate the TC by early 1988.

b. *Response to comments.* The general comments EPA received on the leaching test as it applies to its use in this rulemaking, and EPA's response to these comments are summarized below. Technical and procedural comments on the TCLP, and related issues are summarized and addressed in a background document supporting the use of the TCLP in today's final rule (Ref. 3). The background document also summarizes modifications to the TCLP based on further evaluation of the procedure.

(1) Use of the TCLP is premature. Many of the commenters argued that use of the TCLP was premature. Reasons that were given include: (i) An inadequate amount of time was given to evaluate the method and its impact on current waste management practices, due to the unavailability of test equipment; (ii) the institution of a new test would impose unreasonable delays on treatment facilities who need to test the wastes prior to disposal; and (iii) the test had not been properly validated.

EPA does not believe that these concerns are sufficient reasons to prevent the use of the TCLP in today's regulation. In view of the statutory deadlines, EPA was aware that the time available for public review of the leaching test would be relatively short. As a result, during the course of developing and evaluating the TCLP, public presentations were held to familiarize interested parties with the test procedure, in order to facilitate their evaluation of the test.

In addition, most of the equipment needed to conduct the TCLP is the same as that used for the existing EP. The only "new" equipment is the Zero-Headspace Extractor (ZHE) and ancillary equipment (e.g., TEDLAR bags and gas-tight syringes) needed for evaluation of volatile organic compounds.

In addition to the data and information made available to the public in the January 14, 1986 proposal, information on the development and evaluation of the TCLP was provided in the toxicity characteristic proposed rule. Further supporting information on the leaching test was also provided through notices of availability of reports on July 9, 1986 (51 FR 24856) and September 19, 1986 (51 FR 33297). EPA received over 150 comments on the TCLP in response to these proposals and notices. These comments were considered in issuing today's final rule. EPA, therefore, does not agree with the commenter's claim that they have not had adequate opportunity to evaluate the method. The Agency believes that adequate data has been developed and noticed for public comment to allow generators to adequately evaluate the procedure.

Another general concern expressed by commenters related to the belief that the institution of a new test would present unreasonable delays on treatment facilities. Although there may be some delay, EPA does not believe that this would be caused by the introduction of a new testing protocol or a protocol requiring new equipment. Some form of waste analysis is required in order to implement the land disposal restrictions rule. EPA anticipates that the institution of a new protocol will not cause delays beyond those required to perform any waste characterization. The procedures used in conducting the TCLP are very similar to the existing EP. Therefore, the Agency expects that laboratories familiar with the EP protocol should have little problem conducting the TCLP.

Commenters also expressed concern that the TCLP was not ready for application because the method had not been properly tested or validated. The TCLP has been the subject of an extensive evaluation. EPA has completed both intra- and inter-laboratory (collaborative) studies of method reproducibility using a variety of wastes. Industry groups and commercial laboratories participated in EPA's TCLP collaborative evaluation. In addition, the Electric Power Research Institute (EPRI) also evaluated the TCLP in a collaborative study. Finally, six industry associations submitted data to the Agency from a collaborative study of the TCLP. (The results of these studies are detailed in the TCLP Background Document supporting today's rule (Ref. 3)). Based on all these efforts, EPA believes that the test has been sufficiently evaluated.

(2) The TCLP is inappropriate for use in the land disposal restriction's rule. Approximately one third of all commenters addressing the leaching test argued that it is inappropriate for such use. Specifically, these commenters argued that the method would be inappropriate as a means to evaluate Subtitle C hazardous wastes because it was developed based on a municipal/industrial waste codisposal scenario.

They specifically pointed out that hazardous waste landfills do not contain municipal wastes and, therefore, that the leaching medium within these landfills was unlikely to contain acetate or acetic acid, common degradation products of decomposing refuse. These commenters further suggested that a water leaching medium would be more representative of a Subtitle C disposal facility.

Several commenters also disagreed with application of the TCLP because of other differences between Subtitle C and Subtitle D land disposal facilities. They asserted that Subtitle C facilities differ in design from municipal facilities in several respects, including minimization of surface and ground water intrusion and containment of accumulated fluids through the 30-year post-closure period beyond the operating life of the facility. They pointed out that well-engineered hazardous waste land disposal units provide a physical-chemical environment that is significantly different from the municipal landfill.

EPA recognizes that RCRA Subtitle C and Subtitle D facilities differ in many respects. However, commenters generally addressed only the fairly narrow example of a well engineered Subtitle C landfill that accepts treated wastes or that is dedicated to a particular waste. Subtitle C facilities include not only these types of landfills but also existing facilities which may be unlined or which may contain a variety of untreated wastes. The current regulations do not prohibit the landfilling of mildly acidic wastes, nor is it uncommon to put liquid acidic wastes in surface impoundments. Thus, a significant number of facilities may not conform to the model suggested by the commenters. In view of these differences, EPA does not believe the commenters have shown that it is unreasonable to assume that wastes in a Subtitle C environment may be subject to mildly acidic conditions. In view of these factors, and considering the time constraints imposed on the Agency's issuance of land disposal regulations, EPA believes it is justified in using the TCLP for the wastes covered by today's rule.

In this regard, it is important to note that the leaching of the organics covered by today's rule is not significantly effected by minor changes to the predominantly aqueous leaching media used in the TCLP (Ref. 24). Thus, the Agency believes it is being prudent in not introducing yet another leaching test for regulatory application.

(3) Effect of the TCLP on constituents other than solvents and dioxins. Because today's final rule addresses only solvents and dioxins, EPA is not responding to those comments dealing with inorganics at this time. EPA has received substantial comment regarding the TCLP's use of a "stronger" leaching fluid for wastes of moderate to high alkalinity, and the need for particle size reduction of all wastes, including monolithic materials. A detailed discussion is available in the TCLP background document.

(4) Potential laboratory capacity shortfall. Several commenters, anticipating that the TCLP may eventually be required as a result of both the land disposal restrictions program and the toxicity characteristic, were concerned over a potential laboratory capacity shortfall. They indicated that commercial laboratories are currently backlogged with work, and that TCLP requirements under both rules would make the situation critical.

We disagree with these commnenters. Many commercial laboratories are presently performing TCLP analyses. For example, over 20 laboratories were involved in EPA's TCLP collaborative effort. In addition, EPA is aware that laboratories have been in the process of gearing-up to perform TCLP analyses, primarily in anticipation that the TCLP will be required as part of both the land disposal restrictions rule and the toxicity characteristic. In addition, due to the phased approach for the restrictions rule, and the fact that the toxicity characteristic will not be

promulgated until early 1988, EPA believes that the laboratory capacity problem will not be as severe as commenters suggest. By the time the toxicity characteristic becomes effective, EPA believes that sufficient laboratory capacity should exist to conduct the required analyses. Several commenters agreed with EPA, indicating that there are (or would be) a sufficient number of laboratories that will be able to perform the TCLP.

(5) TCLP reproducibility. EPA also received substantial comments regarding the precision or reproducibility of the TCLP, most of which were critical of the method's precision. While specific comments regarding method precision are addressed in the TCLP background document, the outcome of EPA's general evaluation of these comments is presented below.

The relevant question with respect to method precision is; "is the method sufficiently precise for its intended application?" In other words, given a particular waste, can the same conclusions derived from results of running the TCLP in one laboratory (i.e., are treatment levels exceeded) be reached in other laboratories. EPA believes that the TCLP is sufficiently precise in this application, as indicated below.

A total of three separate multi-laboratory collaborative evaluations of the precision of the TCLP were conducted (Ref. 3). One of these evaluations was sponsored by the Electric Power Research Institute (EPRI), and was limited to investigating the precision of the method for inorganic parameters and dealt specifically with utility industry wastes. This study is unique in that it attempted to determine the relative contribution to total variability due to the three major components of variability; sampling variability, analytical variability, and variability due to the TCLP itself. EPRI also conducted side by side comparisons of the EP to the TCLP. This study was similar to a study EPRI did on the EP in 1979 (Ref. 3).

EPRI's evaluation concluded in general, that the TCLP's reproducibility was equal to or greater than that of the EP (Ref. 3). More significantly, EPRI found that the most frequently encountered source of variability in the TCLP extracts was the analytical variability associated with analysis of duplicate extracts by different laboratories. EPRI, however, also indicated that the interpretation of results may depend on the statistical approach used to analyze the data. Nevertheless, it appears that regardless of how data are interpreted, analytical variability can account for a major source of variability in results.

EPA's collaborative study addressed the conventional bottle extraction (i.e., for metals, semi-volatile organics, and pesticides and herbicides) and the Zero-Headspace Extractor (ZHE) used for volatile organics. The results of this study, noticed in the September 21, 1986 **Federal Register**, presented the full results of the evaluation for the conventional extraction, and a summary of the results for the ZHE extraction. This report has since been finalized. The general conclusion reached in this study was that "the TCLP could be applied consistently by a diverse group of organizations."

The third collaborative effort was sponsored by six industry trade associations, and dealt with both the conventional bottle extraction and the ZHE. This study also compared the precision of the EP to the TCLP, and, like the EPRI study, concluded that the precision of the TCLP was approximately the same as, or slightly better than, that of the EP. This study further concluded, however, that the TCLP procedure was not a precise test, but attributed the major source of variability to the "lack of homogeneity of wastes and the resulting difficulty in obtaining representative samples . . ." One comment received, however (from one of the participating trade associations), concluded that the association's study seemed to be consistent with the EPA effort in that the data for metals and non-volatile organics showed adequate reproducibility, and that the "*preliminary*" data for volatile organics also indicated adequate reproducibility.

EPA believes that these three efforts adequately demonstrate the precision of the TCLP, and also support EPA's contention that precision over the existing EP has been improved. Specifically, these studies show that considering the variability contributed by both sampling and analytical variability, the TCLP can be applied consistently among laboratories with reasonable precision.

Nevertheless, EPA agrees with the conclusion in the industry association study that sampling variability is likely to be the most significant contribution to total variability. (EPA is also concerned, to a lesser extent, with the contribution of analytical variability.) Further, EPA believes that sampling variability may actually be more of a problem than indicated in these studies. Whereas extra efforts are usually made in collaborative studies to minimize variability due to the samples, such efforts are not always entirely successful. When sampling for waste analyses or characterizations, it is likely that sample representativeness will not receive the same close attention that it receives during collaborative efforts.

EPA believes that the best way to deal with the variability problem is to take multiple "representative" samples of wastes following a well-developed sampling plan, and to subject these samples to the intended analyses. Following fairly simple and fundamental statistical concepts, the results can then be subjected to a statistical evaluation designed to determine whether applicable regulatory levels are exceeded with a certain degree of confidence (e.g., the upper limit of the 90 percent confidence interval). This approach is detailed in Chapter 9 of EPA's 3rd edition of its solid waste testing manual (Test Methods For Evaluating Solid Waste—SW–846), which is complete with several easy ways to follow example (Ref. 3).

(6) Applicability of the TCLP to multi-phasic (oily) wastes. EPA has also received substantial comment on the applicability of the TCLP to oily wastes. Commenters were both concerned that the TCLP would not distinguish "liquid" oils from solid materials, resulting in little or no filtration of oil through the TCLP's glass fiber filter (GFF), and that the TCLP's GFF would treat these oils as liquids, resulting in too much oil passing through the filter. These commenters further criticized the TCLP because it treated aqueous liquids and non-aqueous (oily) liquids in an identical manner, when these commenters perceived these liquids to behave differently in the environment.

Materials which filter through the GFF are defined as liquids and are analyzed directly, whereas the "solid" portion of the waste (i.e., that portion which does not pass through the GFF) is extracted with an amount of extraction fluid equal to twenty times its weight. This differentiation is especially critical for oily wastes (which are known to pose filtration problems, especially with the EP's membrane filter), as exceedance of the treatment level can depend very heavily on whether the "liquid oil" within the waste is defined as a liquid (passes through the GFF and is analyzed directly), or is defined as a solid (does not filter and is extracted with twenty times its weight of extraction fluid).

EPA agrees that this is a difficult issue and believes that it is important that the TCLP be capable of indicating the movement of oily material, as these materials have been known to migrate from wastes.

Data is available which suggests that the TCLP's GFF more readily passes oily material than does the EP's membrane filter. In developing the TCLP, EPA investigated eleven wastes in its lysimeter evaluations, three of which were oily wastes (Ref. 24). During this phase of the research, it was demonstrated that oil is capable of migrating from the "solid" matrix of the waste as droplets.

While the GFF was selected mainly for operational reasons, the research also indicated that it was consistently more efficient at detecting contamination due to movement of the oil than was the EP's membrane filter. The GFF is therefore expected to provide a more reasonable differentiation between liquids and solids.

While the GFF then, is an improvement upon the EP's membrane filter, in terms of its ability to pass oils, EPA is continuing to investigate if the TCLP's filtration regime should be altered to better predict movement of the oily phase of a waste. Upon completion of these evaluations, EPA may propose modifications to the TCLP specifically for wastes containing oily or other non-aqueous liquids. In the meantime, given the GFF's ability to better indicate the movement of oil, EPA believes that the TCLP's filtration regime will be sufficiently capable of indicating whether oily wastes meet the treatment levels.

(7) Complexity of TCLP. Several commenters were also concerned that the TCLP is too complex and too dependent on the use of skilled personnel and specialized equipment like the ZHE. Many of these commenters suggested changes to the ZHE protocol. Commenters further asserted that the procedure was overly burdensome, especially for wastes containing solids and multiple liquid phases.

As indicated previously, the TCLP involves two separate procedures with differing equipment. The conventional bottle extraction conducted for "non-volatile" constituents is much simplified over the EP protocol. In fact, one of the conclusions of the EPRI collaborative TCLP study was that "the main advantage of the TCLP appears to be in the ease of use." The TCLP extraction for volatiles, involving the ZHE, is agreeably more complicated than the conventional extraction. The two protocols, however, are very similar, and EPA believes that analysts familiar with the EP method will have little problem, successfully conducting the TCLP. As with any new procedure, there will be some learning involved, especially with regard to the ZHE device. Familiarization with the device should be fairly rapid, however.

EPA has also taken steps to simplify the procedure, both on our own further evaluation of the method, and in response to the comments received on the method. EPA is also considering further simplification of the ZHE protocol, as indicated in the background document. Finally, while EPA believes that the protocol can be successfully run by technicians and analysts, as with any waste characterization (including the EP), the oversight of skilled chemists is always essential.

(8) Operational difficulty of the TCLP with some waste types. EPA has received many comments addressing the operational difficulties perceived in performing the TCLP on some waste types. For example, EPA is aware that the TCLP will be more difficult to perform on wastes containing immiscible liquid phases, and on wastes which contain low percent solids (e.g., <5 percent solids). EPA is also aware that the ZHE device may be difficult to clean after extraction of a particularly contaminated waste.

To help generators in dealing with these problems in a consistent manner, EPA is in the process of preparing a guidance section for the TCLP, that will offer suggestions on the best way to deal with these problems. In addition, this guidance will offer suggested reporting forms for recording results, and will also contain helpful suggestions in dealing with minor problems. This guidance section will accompany the method when it is published in SW-846. The background document supporting the TCLP provides more detail regarding the content of the guidance section, along with responses to comments addressing technical and procedural issues (Ref. 3).

(9) Specific wastes and compounds. Many commenters also expressed their concern that application of the TCLP would be inappropriate for their specific wastes. These commenters, however were most concerned with inorganic constituents and the effect of the acetic acid (used in the TCLP) on these constituents. These commenters asserted that their wastes were not managed in municipal landfills (which the acetic acid is designed to simulate) and thus, that the use of acetic acid would be inappropriate. As mentioned earlier, since today's rule applies only to solvents and dioxins, and since the TCLP is only used in the rule as a monitoring technique, EPA is not responding to these comments at this time.

Similar comments were received which assert that reproducibility testing performed on the TCLP should have been done with "their wastes." EPA would like to reemphasize that these were two outside evaluations of the TCLP (Ref. 3). Nonetheless, EPA believes that it would be unnecessary to conduct precision studies on all wastes that may be subject to the TCLP. This would be a waste of resources. Rather, in precision studies, it is more important to test a range of wastes, in terms of physical and chemical characteristics. Between all the investigations conducted on the TCLP, a wide variety of wastes have been tested, including those that would sufficiently challenge the procedure, such as oily (multi-phasic) wastes. This is important, as many of these commenters were specifically referring to oily wastes. EPA believes that the TCLP has been sufficiently tested on a variety of wastes.

Other commenters were concerned that the TCLP would be inefficient at extracting chlorinated (volatile) compounds, as they observed that during the research EPA conducted to develop the TCLP, chlorinated compounds were extracted in the laboratory procedure at levels significantly less than the levels expected (Ref. 24). EPA acknowledged the poor extraction of volatile compounds in general during this research. These results led EPA to the conclusion that volatiles were being lost to the headspace within the conventional (bottle) extraction and as a result of the air pressure filtration. Consequently, the Agency determined that a device which precludes headspace and enables the use of piston pressure for liquid/solid separation was necessary, and the Zero-Headspace Extractor was developed to minimize the loss of volatiles.

2. Testing and Recordkeeping

Under the framework being finalized today, determination of whether a hazardous waste treatment residue requires further treatment prior to land disposal generally depends on whether the concentration of constituents in an extract from the waste (using the TCLP) exceeds the applicable treatment standards. Because this determination is critical to the scheme, EPA is imposing certain waste testing/analysis requirements.

In the proposed rule, the Agency solicited comments on the issue of who should bear responsibility for testing restricted wastes and certifying that the wastes meet the applicable treatment standards. The commenters were equally divided on these issues. Some commenters believed that the generator

should be responsible for testing, certification, and recordkeeping. Others agreed with the proposed approach requiring the disposal facility to certify that the wastes meet the treatment standards.

Because the approach promulgated today does not cap BDAT with screening levels, more wastes will require treatment to meet the specified treatment standards. The Agency believes that the shift towards treatment of restricted wastes will place an increased responsibility on treatment facilities to ensure that treated wastes meet the specified treatment standard. Although the provisions in section 3004(m)(2) place the ultimate responsibility on the disposal facility to ensure that only wastes which meet the treatment standards are land disposed, the Agency believes that testing and certification by the treatment facility is critical to implemention of the regulatory program. Thus, the Agency is requiring that the treatment facility provide waste analysis data showing that a waste meets the applicable treatment standard to ensure that only wastes which meet the standards will be transported to disposal facilities. In cases where the generator is shipping a waste directly to the disposal facility (i.e., the waste naturally meets the treatment standard, or has been treated on-site), the generator is responsible for testing and recordkeeping. However, the disposal facility has the ultimate responsibility to ensure that all restricted wastes meet applicable treatment standards before being land disposed. The disposer also is required to maintain all records.

The rules promulgated today are not intended to shift responsibility for improper disposal to the generator. Of course, nothing in these rules prevents the generator and disposer from entering into a private agreement to allocate liability in the event that prohibited wastes are land disposed.

a. *Generator requirements.* For today's final rule, the generator of a restricted waste must notify the treatment facility in writing of the appropriate treatment standard for the waste. The generator may make this determination based on waste analysis data, knowledge of the waste, or both. Where this determination is based solely on the generator's knowledge of the waste, the Agency is requiring that the generator maintain in the facility operating record all supporting data used to make this certification. A waste analysis must be conducted if there is reason to believe that the composition of the waste has changed or if the treatment process has changed. The notification must specify the EPA Hazardous Waste Number, the applicable treatment standard, the manifest number associated with the shipment of waste, and the waste analysis data (if available). The notice must be placed in the operating record of the treatment facility along with a copy of the manifest. Generators who are also treatment, storage, and disposal facilities must place the same information in the operating record, although a formal notification and manifest is not required.

According to the provisions in § 268.7, a generator who determines that a waste can be land disposed without treatment must submit to the disposal facility a certification statement and a notice which contains the EPA Hazardous Waste Number, the manifest number, the applicable treatment standard(s), and the waste analysis data (if available) or cross references to relevant data submitted at an earlier time. The certification is required only in cases where the generator is representing that the waste meets the treatment standard. Generators who dispose on-site must put the same information in the operating record (except for the manifest number).

b. *Treatment facility requirements.* The treatment facility is responsible for treating the restricted waste to the level specified in the applicable treatment standard. An off-site treatment facility must obtain the required data from the generator prior to treatment and place that data in the operating record.

Treatment residues must be tested prior to land disposal according to the requirements of the treatment facility's waste analysis plan to determine if treatment has achieved the required levels.

For instance, if the waste analysis plan calls for testing of each batch of waste from an incineration process, these data must be submitted to the land disposal facility along with the certification statement. If a particular generator's waste does not vary and is consistently treated by the same treatment facility using the same treatment process, the treatment facility's waste analysis plan may require less frequent testing of the treatment residue. It should be emphasized that a waste analysis must be conducted if there is any reason to believe that the composition of the waste has changed or if the treatment process has changed.

Each waste shipment must be accompanied by a certification statement including cross references to any relevant data submitted at an earlier time, and a notice which includes the EPA Hazardous Waste Number, the manifest number, the applicable treatment standard(s), and waste analysis data (if available). The disposal facility must place the certification notice and accompanying data in the operating record. A treatment facility that disposes on-site must put the same information in the operating record (except for the manifest number).

c. *Land disposal facility requirements.* The disposal facility, which is ultimately responsible for verifying that only wastes meeting the treatment standards are land disposed, must maintain all documentation that the waste has been treated in accordance with the standards. If generation, treatment, and disposal all occur at the same site, all testing records must be placed in the operating record. The Agency believes that this approach will produce the desired result—an assurance that wastes placed in land disposal units have met the applicable treatment standards.

The testing and recordkeeping requirements promulgated in today's rule do not relieve the generator of his responsibility under 40 CFR 262.20 to designate a facility on the manifest which is permitted to accept the waste for off-site management.

d. *Implementation of final rule.* To implement the additional waste testing/analysis standards, the Agency has included a reference to the requirements of 40 CFR Part 268 in the general waste analysis requirements of 40 CFR 264.13 (a)(1) and (b)(6) for permitted facilities, and in 40 CFR 265.13 (a)(1) and (b)(6) for interim status facilities. Consistent with the current approach to waste analysis requirements in Parts 264 and 265, the Agency has added these specific waste analysis requirements in today's final rule that must be incorporated into the general waste analysis as a separate section in Part 268. The Agency has also revised the operating record requirements in 40 CFR 264.73 and 40 CFR 265.73 to indicate that waste analyses conducted pursuant to such requirements must be recorded and maintained in the land disposal facility's operating record.

e. *Waste analysis.* Wastes must be tested in accordance with a facilities waste analysis plan. Where treatment standards are expressed as a concentration in a waste extract, EPA is requiring that the TCLP be used to determine whether the waste meets the treatment standard (see Appendix I to Part 268). Guidance on methods for waste sampling and analysis is provided

in *Test Methods for Evaluating Solid Wastes*, 2nd Edition, EPA Document SW-846, 1982, as amended. In addition, guidance on the preparation of waste analysis plans is provided in *Waste Analysis Plans, A Guidance Manual*, September 1984. A revised edition of this waste analysis plan (WAP) guidance is forthcoming.

The current WAP guidance describes four basic components of the waste analysis plan. It discusses how the owner or operator of a treatment, storage, or disposal facility should describe:

(1) Specific wastes that will be managed;

(2) Waste-associated properties that are of concern in ensuring safe and effective management;

(3) Specific waste parameters that must be quantified before waste is accepted for treatment, storage and/or disposal;

(4) Methods and frequency of sampling and analysis required to obtain the data on waste characterization and the attendant quality control/quality assurance procedures.

For the purposes of compliance with the land disposal restrictions rule, a waste analysis plan for an off-site disposal facility must address the procedures for screening incoming shipments of waste to ensure that wastes received conform to the certification made by the generator or treatment facility. That is, the waste analysis plan must address the procedures necessary for determining whether an extract of the waste or treated waste meets the treatment standards.

These testing requirements for treatment residuals apply to generators who treat, store, and dispose onsite. Less frequent testing may be appropriate when there are fewer and less variable waste streams at combined facilities, but waste must be tested if the composition or treatment method changes. In developing these waste analysis plans, the Agency recommends that the land disposal facilities follow the general guidelines in the WAP guidance.

For each waste stream, the waste constituents regulated under the land disposal restrictions rule must be comprehensively analyzed. Although the frequency of testing will depend to some extent upon the variability of the waste stream, the Agency recommends that a comprehensive analysis of each waste stream be performed at least annually by the generator or treater. When the comprehensive analysis is performed, however, it must contain data on all the applicable constituents in Subpart D so that the owner/operator will be able to determine whether the waste meets all applicable treatment standards. If the owner/operator of the land disposal facility does not receive this information in writing from the generator or treatment facility, he must perform the analysis to determine whether the waste meets the treatment standards according to the waste analysis plan. The test results of this comprehensive analysis must be placed in the land disposal facility's operating record.

The Agency believes that this approach is consistent with existing industry practice. Off-site land disposal facilities already require extensive waste analysis information from the generator or treatment facility before they initially accept hazardous wastes for disposal.

Finally, by requiring that all waste analyses be placed in the operating record, the owners/operators will be able to demonstrate compliance with the waste analysis requirements in § 268.7.

Where the treatment standard for the applicable waste is a specified method of treatment, the last facility to treat the waste must send a certification to the land disposal facility that the waste has been treated using the specified technology. The certification, which is to be placed in the land disposal facility's operating record, must include the statement required under § 268.7(b)(1).

3. RCRA Facilities Operating Under a Permit or Interim Status

These regulations, when they become effective, will place an increased demand on existing hazardous waste treatment facilities. EPA believes that it is important for these facilities to have the regulatory flexibility to add restricted wastes to their treatment inventories quickly. This flexibility is necessary to permit the prompt treatment of restricted wastes.

Treatment facilities operating under interim status are generally provided with the flexibility to handle new wastes by 40 CFR 270.72, which specifies permissible changes during interim status. Under this section, interim status facilities may add new wastes, increase design capacity (if they can demonstrate a lack of available capacity), or make changes in treatment, storage, or disposal processes (if the changes are necessary to comply with Federal regulations or State or local laws). 40 CFR 270.72(e), however, limits these changes to alterations and expansions of a facility that do not exceed 50 percent of the capital cost of a comparable new facility. In cases where changes exceed 50 percent, the changes cannot be made until the facility receives a RCRA permit.

In the preamble to the proposed rule, the Agency requested comments on whether an amendment to 40 CFR 270.72 is necessary to provide interim status facilities the flexibility to manage restricted wastes. EPA received few comments recommending such a change, however, the commenters did not provide data indicating that this provision would prevent modifications needed in order to comply with today's rule. The Agency is reviewing this issue and will modify 40 CFR 270.72, if needed, by promulgating a rule at a later date. However, at this time, we believe that 40 CFR 270.72 allows sufficient flexibility for interim status facilities to readily manage restricted wastes.

Treatment facilities operating under a permit have significantly less flexibility to make changes than interim status treatment facilities. Under current regulations, these facilities may add new wastes or change treatment, storage, or disposal processes, usually through major permit modifications. Major permit modifications, which are substantially the same as permit issuance procedures, require a draft permit, public notice and comment, and opportunity for a public hearing. In many cases, these procedures can be time-consuming and may discourage facilities from changing permit conditions to treat restricted wastes, thereby limiting available treatment capacity.

To provide greater flexibility to permitted facilities, the Agency proposed to allow treatment facilities to manage restricted wastes not listed in their permit after a minor permit modification (51 FR 1692). The EPA received several comments on this issue. In general, industry supported the increased flexibility provided in the proposed rule. Environmentalists, however, argued that permit modifications which permit management of new wastes should not be granted without the opportunity for at least abbreviated public notice and comment. They stated, however, that certain restrictions should be placed on new wastes that could be added to a permit through minor modification procedures.

After reviewing these comments the EPA has decided to add a new section (40 CFR 270.42(o)) to allow permit holders greater flexibility in treating restricted wastes. Under this new provision, owners and operators of treatment facilities may treat restricted wastes not listed in their permits after Federal or State approval of a minor permit modification request. However,

in response to public comments and to ensure that changes made under this provision are in fact minor, the EPA has restricted the scope of 40 CFR 270.42(o) in several important respects.

First, new waste must be treated in accordance with the treatment standards issued under Subpart D of Part 268. This will ensure that the treatment is appropriate for the restricted waste. Second, as suggested by the commenters, minor permit modifications are not allowed under this provision if treatment of the new waste will present substantially different risks from the risks associated with wastes listed in the permit. For example, a facility not already permitted to handle acutely hazardous or reactive wastes would not be allowed to treat such wastes under this provision. Finally, under this provision, treatment of the new waste cannot involve any permit changes other than the addition of waste codes and administrative or technical changes necessary to handle the waste, such as changes in the waste analysis plan. Changes in treatment processes or the addition of new treatment processes will continue to require a major permit modification.

This amendment to the minor modification requirements should provide flexibility to permitted facilities treating restricted wastes. It should be emphasized, that the modifications allowed under this provision are significantly limited and they apply only to restricted wastes as described above. The purpose of the amendment is to allow the prompt treatment of restricted wastes in accordance with the land disposal restrictions standards and to increase available treatment capacity. Without these changes, the EPA believes that the ability of permitted facilities to treat restricted wastes promptly will be significantly reduced.

Because of the conditions limiting the applicability of this provision, any permit modifications made under it will be minor. For this reason the EPA does not believe that public notice and comment procedures are necessary, just as they are not required for other minor permit modifications. Such procedure would eliminate the flexibility provided by the minor modification procedures and could complicate or delay treatment of restricted wastes.

The EPA acknowledges that 40 CFR 270.42(o) only partially addresses the difficulties that will be faced by permitted facilities seeking to treat restricted wastes. In particular, it does not allow the modification of existing treatment processes or the addition of new treatment processes to handle restricted wastes. The Agency believes that such changes raise more complicated issues than does the addition of waste codes. However, the Agency is exploring this issue as part of an overall review of the minor permit modification regulations. The EPA is now conducting regulatory negotiations on minor modifications, announced on July 16, 1986 in the **Federal Register**, (51 FR 25739), and anticipates issuing a proposed rule revising this regulation in 1987.

### *D. Determination of Alternative Capacity And Ban Effective Dates*

RCRA section 3004(h)(2) states that the Agency may grant a nationwide variance of up to 2 years from the statutory effective date if adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment is not available. EPA will consider several factors when calculating alternative capacity and when determining the length of any variance from the effective dates of the restrictions. These factors are discussed below.

#### 1. Effective Dates

EPA will develop estimates of treatment capacity needed versus capacity available to determine if current capacity for alternative treatment, recovery, and disposal technologies is adequate to manage restricted wastes. These estimates will be developed from currently available data on capacity requirements and technology capacity.

If capacity is available, the prohibition will go into effect immediately. If capacity is not available, the Administrator may set an alternative effective date on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment becomes available. Establishment of the effective date will not be affected by the processing of petitions under section 3004 (d), (e), and (g). The relationship between the variance to the effective date and the case-by-case extension under section 3004(h)(3) is discussed later in this unit.

#### 2. Regional and National Capacity

The Agency will determine both the quantity of restricted waste generated and the capacity of alternative treatment, recovery, and disposal technologies on a nationwide basis. If there is a significant shortfall in capacity to treat all of the restricted waste, the Agency will extend the effective date of the prohibitions. If national capacity is only slightly lacking, EPA may grant case-by-case effective date extensions while allowing the nationwide prohibition to go into effect immediately. If national capacity is sufficient, the prohibition will become effective immediately, even if, for instance, the only capacity for a waste generated in California is located in Ohio.

Many commenters urged EPA to make regional instead of national estimates of required and available capacities. However, the national approach is consistent with congressional intent. The Senate legislative history provides that "the available capacity determination is to be done on a national basis" (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983)). That is, the effective date of the prohibitions for a given waste should not vary from region to region because one region has sufficient alternative capacity and another does not. If land disposal were prohibited in only a portion of the country, it is possible that waste generated in one region would be transported outside of that region and land disposed elsewhere. As the Senate report points out, those regions of the country in which land disposal is allowed might become the "dumping ground" for wastes generated in regions where land disposal is banned (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983)).

#### 3. The Nationwide Variance and the Case-By-Case Extension

In cases where EPA has not granted a nationwide variance, it is not precluded from granting case-by-case effective date extensions. It may be more desirable to grant case-by-case extensions to specific applicants who lack alternative capacity than to allow everyone, even those for whom alternatives are available, to continue to land dispose restricted wastes. This approach is consistent with congressional intent to prohibit land disposal at the earliest possible time.

EPA also may grant variances of less than 2 years, even though not all facilities under construction will be completed. Wastes requiring the capacity from uncompleted facilities also could be handled by case-by-case extensions, without allowing continued land disposal nationwide.

If the Agency proposes an immediate effective date, it will accept applications for case-by-case extensions before the final rule is promulgated so the extensions will be effective when the final rule is published in the **Federal Register**. EPA will consider information provided by case-by-case extension applicants as well as comments submitted during the public comment

period, in determining whether to grant a nationwide variance in the final rule.

The Agency will consider the possibility of granting a nationwide variance after the prohibition becomes effective if available data (including data from case-by-case extension applications) indicate that nationwide capacity is inadequate. EPA also will consider whether it should shorten the period of a nationwide variance based on new information showing that nationwide capacity is adequate. However, after EPA promulgates a nationwide effective date, this date is not likely to be amended because it is unlikely that Federal rulemaking activities could be completed in significantly less than 2 years.

4. Determination of Capacity Requirements by Waste Treatability Group

In general, EPA will develop treatment standards for waste groups derived from the physical/chemical characteristics of the restricted wastes. EPA also will determine the quantities of wastes that require specific treatment of recovery methods by waste treatability group. These treatability groups will enable EPA to compare required capacity (capacity demand) with available capacity (capacity supply). In addition, EPA will consider other increases in capacity demand generated by emergency and remedial responses, and to the extent possible, the impact of other final rulemakings that affect availability of or demand for treatment capacity. As necessary, EPA will set different effective dates for different waste groups or subdivisions of waste groups.

In some cases, the same technology will apply to several waste groups that must be regulated in the same or in sequential rulemakings. However, total capacity may not be sufficient to treat all of these groups of wastes. In such cases, the Agency will subdivide the waste groups in order to use all available treatment capacity on specific subgroups so as to implement the restrictions as quickly as possible. Under this approach, as much waste as possible would be prohibited immediately.

5. Definition of Available Capacity

In estimating available capacity, the Agency will consider current on-line facilities, which include permitted facilities and facilities operating under RCRA interim status, and planned facilities and capacity extensions that will be on-line by the effective date of a land disposal prohibition.

Current on-line facilities consist of off-site and on-site facilities, including both stationary and mobile facilities which have been approved by Federal, State, and local agencies to operate and accept certain wastes. Facilities operating under RCRA interim status meet these criteria, and therefore will be included in the capacity determination. Some commenters disagreed with this approach, suggesting that interim status facilities may not receive final permits. However, unless EPA receives notification of intent to close an interim status facility, the Agency will assume continued operation of a facility throughout the permitting process and continued available capacity on the effective date of a prohibition.

Planned facilities are facilities that are under development or under construction. Planned facilities include new off-site and on-site treatment, recovery, and disposal facilities, as well as planned capacity additions or expansions to existing facilities.

Some commenters questioned the validity of including planned facilities in estimates of available capacity. They stated that the Agency could not make accurate predictions about such capacity. The Agency will consider planned capacity only if it is reasonably certain that the facility will be on-line by the effective date of a prohibition. To predict whether a facility will be on-line in time, EPA will consider the time needed to complete the facility, including reasonable estimates of time needed to site the facility, obtain permits, construct, and test. In most cases, EPA will consider the capacity of planned facilities only when all permits required for construction have been approved and sufficient additional evidence of intent to build are available (such as contracts issued for construction). Planned capacity was not included in the estimates of available capacity for solvents and dioxins.

6. Definition of Alternative Treatment Capacity

The Agency believes that treatment technologies that will achieve the standards established under section 3004(m) can be considered available treatment capacity under the provision in section 3003(h)(2).

Section 3004(m) directs EPA to establish standards based on treatment that will minimize long- and short-term threats to human health and the environment. The Agency believes that this provision generally will be satisfied by technologies classified as BDAT. In most cases, treatment levels or methods based on BDAT are expected to fully protect human health and the environment. Accordingly, technologies that form the basis for such standards are candidates for the capacity evaluation under section 3004(h) (2) and (3).

In those cases where standards based on BDAT are not deemed to be fully protective of human health and the environment, the Agency may, as a matter of policy, exercise its discretionary authority not to extend the effective date of a prohibition in cases where the existing capacity of fully protective technologies, coupled with the existing capacity of treatment technologies that meet BDAT , is adequate to address the restricted wastes.

The Agency believes that this approach is consistent with Congressional intent. The section 3004(h) variance is intended to encourage the development of protective alternative treatment, recovery,and disposal capacity. (S. Rep. No. 284, 98th Cong., 1st Sess. 18 (1983), H.R. Rep. No. 198, 98th Cong., 1st Sess. 37 (1983)). However, in cases where BDAT is not fully protective, the regulated community will have little incentive to develop protective alternative treatment methods during the variance period in light of the fact that, at the end of any such variance, hazardous waste may be land disposed if the wastes comply with less protective technology-based standards. In such a case, the effect of the variance would simply be to delay compliance with BDAT and not, as Congress intended, to provide limited additional time for the development of protective alternative technologies.

Treatment methods that are not identified as the basis for BDAT for the waste group being considered also will be included in the capacity determination, as long as EPA judges that the method can achieve the treatment standards for the wastes in question and will pose less risk than land disposal. EPA believes that this approach is consistent with the congressional intent to ban hazardous wastes from land disposal at the earliest possible date, as discussed earlier.

7. Definition of Alternative Recovery and Disposal Capacity

In assessing available capacity, the Agency will consider the capacity of all on-line recovery and disposal facilities that are protective of human health and the environment. These include disposal facilities for which EPA has granted a site-specific petition demonstrating no migration of hazardous constituents for as long as the wastes remain hazardous (but not facilities where a petition is

pending, but not granted). Planned facilities, including expansion of existing facilities, also will be considered where appropriate.

However, alternative land disposal methods (e.g., deep well injection) will not be considered as available capacity for a restricted waste unless EPA has determined that such methods of disposal are fully protective of human health and the environment. Therefore, EPA will not consider underground injection to be available disposal capacity, until the Agency has determined whether the injection of such wastes is fully protective of human health and the environment. Although EPA is not including underground injection into deep wells in its capacity determinations this does not preclude its use for disposal of these wastes before August 1988.

8. Estimation of Capacity

EPA will estimate the annual unused or surplus capacity of alternative treatment, recovery, and disposal facilities that is available nationwide to manage wastes restricted from land disposal. The Agency will compare nationwide capacity (capacity supply) to the quantities of restricted waste generated annually nationwide (capacity demand).

Surplus capacity will be expressed as throughput capacity. Because data on unused throughput may be difficult to obtain in some instances, EPA may use other available information to calculate capacity, such as the difference between practical maximum design capacity and capacity currently utilized. As discussed earlier, when information is available, EPA will consider both current surplus capacity and planned capacity when calculating surplus capacity. However, today's final rule considers only current surplus capacity because data on planned capacity were not available.

Current surplus capacity is defined as present capacity which is not being used. Surplus capacity can be any of the following:

(i) Commercially available.

(ii) Private capacity which can be used to process additional waste produced by the facility.

(iii) Private capacity, where the owner is willing and able to accept wastes from other generators, i.e., to provide commercial services.

EPA assumes that commercial facilities are willing to accept wastes that they are capable of treating. In cases where commercial capacity is inadequate, EPA will consider the likelihood that available private capacity not needed to process additional waste produced by the facility will be converted to commercial capacity. However, due to limited information on the availability of private capacity for solvents and dioxins, EPA has considered only commercial capacity for this rulemaking.

In today's final rule, capacity estimates are based on currently available information, including the "National Survey of Hazardous Waste Generators and Treatment facilities regulated under RCRA in 1981" (OSW RIA Mail Survey, RCRA LDR–2 docket for the proposal), a 1986 EPA study on incinerator and cement kiln capacity (Ref. 15), a 1984 survey of the National Association of Solvent Recyclers (Ref. 6), and the 1986 EPA National Screening Survey of Hazardous Waste Facilities (Ref. 21). The Agency is developing a new survey of commercial and private treatment facilities which will address the concerns of commenters who pointed out the need for an updated data base. EPA intends to use data from this survey in making capacity determinations for future rulemakings.

9. Applicability of the Minimum Technological Requirements

Section 3004(h)(4) provides that during the period of a national variance under (h)(2) or a case-by-case extension under (h)(4), the waste may be disposed in a landfill or surface impoundment only if the facility is in compliance with section 3004(o).

*E. Exemption for Treatment in Surface Impoundments*

The Agency proposed to exempt treatment surface impoundments from the land disposal restrictions under the conditions specified in section 268.4. This exemption is authorized by sections 3005(j)(11)(A) and (B). EPA received few comments on the proposed interpretation of sections 3005(j)(11)(A) and (B). Most commenters criticized EPA's general approach as being too restrictive, though some commenters viewed it as too lenient. Some commenters suggested that the Agency not allow treatment of restricted wastes in surface impoundments. After careful review and consideration of the comments, EPA still believes that its proposed approach is the most defensible and logical reading of the statutory language and is consistent with congressional intent. Therefore, the Agency is promulgating exemption for treatment in surface impoundments essentially as proposed.

Under today's final rule, a waste that otherwise would be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements as long as treatment residuals that do not meet the applicable treatment standard are removed within 1 year of the entry of the waste into the impoundment.

The provision applies only to restricted wastes and not to wastes that meet the treatment standards established under section 3004(m), or that have been exempted from the effective date of the prohibition by a case-by-case extension or have been exempted from the ban through the petition process. Such wastes are not considered "prohibited" wastes and, accordingly, may be given additional treatment in a surface impoundment without complying with the restrictions imposed by section 3005(j)(11)(B). This provision also applies to both permitted and interim status surface impoundments used for the treatment of hazardous wastes. For the purpose of this rulemaking, EPA considers the term "surface impoundment" to include both single units and series of surface impoundments. The Agency believes that Congress did not intend to preclude the use of a series of impoundments.

1. Sampling and Removal of Treatment Residuals

Within 1 year after a restricted waste is placed in an impoundment, representative samples of the treatment residuals must be tested to determine whether they meet the applicable treatment standards. Sampling techniques are detailed in the *Waste Analysis Plans, A Guidance Manual*, September 1984 (ref. 8). The sampling plan must be designed such that the sludge and supernatant (liquid portion) are tested separately, rather than mixed to form a homogeneous sample. If the treatment residuals meet the applicable treatment standard, they remain subject to regulation under Subtitle C of RCRA but are no longer restricted wastes and may remain in the surface impoundment for disposal. Treatment residuals that exceed the treatment standards must be removed at least annually from the time the waste is first placed in the impoundment. These residuals may not be placed in any other surface impoundment for subsequent management.

Treatment impoundments do not necessarily have to be drained in order to remove treatment residuals. (See Vol. 130, *Cong. Rec.* S13815, (daily ed. October 5, 1984)). In the case where the treatment residual is a liquid, that residual may be removed by pumping. If the volume flowing annually through an impoundment (or series of impoundments) is greater than the

volume of the impoundment, this flow-through constitutes removal of the supernatant for purposes of this requirement. However, as stated earlier, any treatment residual that exceeds the applicable treatment standards and, therefore, must be removed annually from the impoundment or series of impoundments, may not be placed in any other surface impoundment for subsequent management.

The two general methods available for removing residuals with a lower water content, such as sludges and solids, are excavation and dredging. The technique used depends upon such variables as surface impoundment design characteristics (e.g., shape, surface area, depth, presence of liner, type of liner), waste characteristics and type, and accessibility of the impoundment.

One commenter argued that the annual removal requirements does not address the potential for damage to the liner. The Agency recognizes that there is a potential for liner damage during the removal process. However, the annual removal requirement is a statutory standard under section 3005(j)(11)(B). The Agency may issue guidance at a later date regarding removal requirements such as testing for liner damage and prohibiting certain types of removal methods.

2. Applicability of Minimum Technological Requirements

Under today's final rule, an owner/operator operating an impoundment under the treatment surface impoundment exemption must certify to the Administrator that the impoundment meets the liner, leachate collection system, and ground water monitoring requirements imposed by section 3004(o)(1), unless the impoundment qualifies for certain exemptions.[9] A surface impoundment is exempted from liner and leachate collection system requirements if the impoundment has at least one liner that is not leaking, is located more than one-quarter mile from an underground source of drinking water, and is in compliance with certain ground water monitoring requirements in section 3005(j)(2), or if it is demonstrated that there will be no migration of any hazardous constituent to ground water or surface water at any future time according to section 3005(j)(4). (See "Interim Status Surface Impoundments Retrofitting Variances Guidance Document," EPA/530-SW-86-017, July 18, 1986, for information concerning the requirements specified in RCRA sections 3005(j)(2) and (j)(4).) An owner or operator of an existing surface impoundment must apply to the Administrator prior to November 8, 1986, to be considered for waivers of the minimum technological requirements.

Several commenters suggested that EPA also should allow an owner/operator to treat restricted wastes in a surface impoundment if they are exempt from the minimum technological requirements under sections 3005(j)(3) or (13). (Paragraph (j)(3) pertains to certain wastewater treatment units; paragraph (j)(13) pertains to certain impoundments subject to corrective action requirements.) However, in specifying the requirements in section 3005(j)(11)(A) for surface impoundments that are used to treat restricted wastes, Congress specifically included only the section 3005(j)(2) and (4) exemptions to the minimum technological requirements. Therefore, only these two exemptions are included in the final rule. Accordingly, an impoundment that was granted an exemption from the minimum technological requirements under sections 3005(j)(3) or (13), nonetheless, would be prohibited from treating restricted wastes.

*F. Case-By-Case Extensions*

According to section 3004(h)(3), in cases where adequate alternative treatment, recovery, or disposal capacity cannot reasonably be made available by the effective date, any person who generates or manages a restricted hazardous waste may submit an application to the Administrator for an extension of the effective date if such alternative capacity can be provided at a later date. Pursuant to this provision, the Agency proposed to allow a case-by-case extension of the effective date if the applicant can demonstrate that he has entered into a binding contract to construct or otherwise provide such alternative treatment, recovery or disposal capacity. The applicant must also demonstrate that, due to circumstances beyond his control, such alternative capacity reasonably cannot be made available by the applicable effective date. In the event that an extension is granted, an applicant is exempted from the land disposal restrictions, including the conditional prohibition on storage under § 268.50. Any landfill or surface impoundment receiving waste during the extension must comply with the ground water monitoring, liner, and leachate collection system requirements in § 268.4(a)(3).

The majority of the commenters supported the proposed approach for case-by-case extensions. However, the Agency received comments requesting modifications to several aspects of the proposed rule. Section 268.5 of today's final rule incorporates the procedures for case-by-case extensions essentially as proposed, but with modifications based on these comments.

1. Demonstrations Included in Applications

a. *The applicant has made a good-faith effort to locate and contract with alternative technologies nationwide.* EPA proposed to require applicants to make a good-faith effort to locate available capacity before being granted a case-by-case extension. Section 3004(h)(3) requires that the applicant demonstrate a binding contractual commitment to provide capacity and show that "such" capacity (i.e., the capacity contracted for) cannot reasonably be made available by the effective date. Thus, there is no requirement on the face of the statute that the applicant be denied an extension if alternate capacity is currently available. As noted in the proposal, however, the legislative history to the original Senate bill suggests that requiring facilities to investigate available capacity is consistent with congressional intent. Thus, the good-faith showing provided in today's rule, though not statutorily required, is consistent with the legislative history and is within the Agency's authority.

The applicant may provide copies of correspondence with commercial facilities that leave rejected the waste on the basis of waste composition or capacity shortages as part of the demonstration for § 268.5(a)(1) and (a)(3).[10] EPA's "1985 Hazardous Waste Treatment Directory" (available at no charge in limited quantities from the RCRA/Superfund Hotline or available for sale through the National Technical Information Service (NTIS) as PB86 #178431/AS) lists commercial treatment and recycling facilities that are identified from the Hazardous Waste Data Management Systems (HWDMS). A more up-to-date list of commercial treatment and recycling facilities is being prepared from data gathered from the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities. The new Treatment Facility Directory

[9] EPA construes section 3005(j)(11)(A) to impose an additional condition on the treatment of hazardous wastes in surface impoundments under section 3005(j)(11)(B).

[10] In cases where a waste cannot be treated by the BDAT method or to the specified level using BDAT, the generator or owner/operator may petition the Agency for a variance from the treatment standard under § 268.44.

prepared from this screening questionnaire is expected to be available in November, 1986.

b. *Binding contractual commitment.* One commenter argued that the use of the case-by-case extension would be limited to on-site alternative capacity because of the requirement in § 268.5(a)(2) for a binding contractual commitment. EPA disagrees with the commenter. The Agency believes that the requlation is consistent with the statutory provision which requires that the applicant enter into a binding contractual commitment "to construct or *otherwise provide* alternative . . . capacity" (emphasis added). In other words, a generator may enter into a binding contractual commitment with a commercial facility to guarantee that the capacity to manage his waste will be available at the commercial facility. This demonstration requires a commercial facility to agree that alternative capacity under development at the facility is set aside for the applicant's waste. One commenter argued that, in such situations, the generator would not be a party to the contractual commitment to construct the facility. EPA agrees with the comment, but the point is not relevant since the generator would have a contract with a commercial facility which will provide the needed alternative capacity.

One commenter argued that State law defines binding contractual commitments, therefore, the Agency does not need to judge whether the penalties for cancelling the contract are adequate. EPA agrees with the commenter. Accordingly, the Agency is amending the regulatory language by deleting the stipulation for a cancellation penalty clause.

c. *Lack of capacity is beyond the applicant's control.* For technologies under construction, the applicant may document the completion schedule, including dates already passed, (e.g., date of permit application submission) to demonstrate that the technology cannot be made available by the effective date. This schedule, if available, also will be used by the Agency to identify key target dates that should be discussed in progress reports.

Several commenters stated that the legislative history allows EPA to consider economic factors in evaluating requests for case-by-case extensions. The Agency agrees that the statutory language can be construed to allow an applicant to show that if would not be feasible to use existing capacity. Although the legislation as enacted did not include House of Representatives language expressly providing a variance based on "severe economic hardship," the conference report did add language allowing for a demonstration that adequate alternative capacity cannot "reasonably" be made available by the effective date. Therefore, in making its determinations concerning the availability of such alternative capacity, EPA will consider the feasibility of providing alternative capacity during the period of the requested extension in order to determine whether capacity reasonably is available. The determination of feasibility may involve consideration of the technical and practical difficulties associated with providing alternative capacity.

d. *The capacity will be sufficient to manage all of the waste covered by the application.* One commenter stated that research and development activities generate variable amounts of waste, so it may be difficult to prove that alternative capacity will be sufficient for all the wastes covered by an extension. EPA recognizes that the amount of waste affected by the land disposal regulations may vary according to economic conditions and unforeseen changes in quantities of waste produced or in consitituents present in the waste. However, the Agency expects applicants to plan to provide adequate capacity for all wastes expected to be affected by the restriction decisions. Therefore, EPA expects applicants to make capacity determinations on the basis of the maximum volume of waste expected to be subject to the land disposal restrictions.

The Agency is requiring under § 268.5(a)(4) that the applicant provide information (e.g., waste quantities and operating capacity) to demonstrate that, after the extension, sufficient capacity will exist for the waste covered by the application for extension. EPA will not grant an extenion in cases where alternative capacity is not being provided for the entire volume of waste addressed in the application.

The Agency will grant extensions to applicants demonstrating planned changes to a process that eliminate wastes, decrease volume, or render a waste treatable. Any waste not eliminated by process changes instituted as a result of the extension must be sent to other specified capacity.

e. *Detailed schedule for providing capacity.* The completion schedule, if available, will be used to identify the dates and events that should be addressed in the progress reports. Progress reports should indicate either the existence of alternate capacity that will be available according to the time frame outlined or the circumstances causing delays in the schedule and the efforts required to compensate for the loss of time. If capacity is not available near the end of the first extension, the applicant must request a renewal of the extension, not to exceed one year. In cases where it is obvious that the schedule to provide capacity will exceed one year, the request for a second extension should be straightforward, since the second extension was foreseen from the start.

f. *Document locations with adequate capacity to manage waste during an extension.* The applicant must demonstrate that sufficient capacity will exist during the extension to store, dispose of, or otherwise manage the waste. This demonstration must include the location of all off-site waste management facilities and a short description of the porocesses that will be used for waste management during the extension (e.g., storage in on-site tanks). The identification of off-site facilities that will accept the waste during the extension should be part of the demonstration. This information will be shared with the States and will be available for inspection in the event of a public hearing on the extension decision.

g. *Any surface impoundment or landfill managing wastes during an extension must meet the requirements of § 268.5(h)(2).* During the period of a national variance under section 3004(h)(2) or a case-by-case extension under section 3004(h)(4), the waste may be managed in a landfill or a surface impoundment in compliance with section 3004(o). This section, enacted as part of the 1984 amendments to RCRA, imposes minimum technological requirements on certain new landfill and surface impoundment units, and on replacements and lateral expansions of existing units. The proposed rule would have construed section 3004(h) to require the unit to comply with the requirements set out in section 3004(o). Thus, the proposal would have required existing units to comply with section 3004(o) requirements during the period of a variance, even though the plain language of section 3004(o) exempts such units.

Upon reconsideration, however, EPA believes that the proposed interpretation is not the appropriate reading of the statutory language. On its face, the statute requires the "facility" to be in compliance with section 3004(o). The facility includes the area within the property boundary and encompasses all waste management units (both new and existing). Accordingly, a straightforward reading of the statute would provide that the facility is in compliance with section 3004(o) as long as the new units,

lateral expansions and replacements referred to in section 3004(o) are in compliance with the requirements of that section. Because existing units are excluded from section 3004(o), they would also not be required to comply with the minimum technological requirements under section 3004(h)(4). Section 3004(h)(4) thus makes clear that obtaining a variance from the effective date of the land disposal prohibitions does not relieve the owner or operator of a disposal facility of the obligation to comply with the technical requirements independently imposed by other statutory provisions.

In addition, this interpretation is reasonable in view of the fact that the alternative capacity under consideration in today's rule includes treatment in surface impoundments that meet the requirements of section 3005(j)(11). These requirements include double liners (with limited exceptions). Construing section 3004(h) to require minimum technological requirements for all units would mean that a prohibited waste that was granted a variance from the effective date due, in part, to a lack of double-lined surface impoundment capacity would nonetheless have to be disposed of in an impoundment in compliance with section 3004(o). EPA believes that the statute should not be construed to require such an illogical result. Therefore, today's rule requires that the facility be in compliance with the regulatory provisions that incorporate the requirements of section 3004(o).

2. Where To Send Extension Applications

A petitioner should submit one copy of the application for extension to the applicable land disposal restrictions effective dates to:

The Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

An additional copy marked "Extensions" should be submitted to:

Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applications containing confidential information should be sent with only the inner envelope marked "Extensions" and "Confidential Business Information" and with the contents marked in accordance with the requirements of 40 CFR Part 2 (41 FR 36902, September 1, 1976, as amended by 43 FR 40000).

3. Review of Applications for an Extension

Several commenters recommended that the Agency establish regulatory time constraints for reviewing extension applications under § 268.5(e). One commenter specifically requested deadlines similar to those for evaluation of delisting petitions pursuant to section 3001(f)(2). In particular, they stated that the Agency should impose internal processing deadlines for review of extension applications and set a limit on the period for public comment. Although EPA fully understands the need to grant extensions before the effective date of the land disposal restrictions, EPA will not commit to establishing a set response time for extension applications for several reasons.

First, EPA cannot anticipate the level of resources necessary to process applications. As of August 8, 1986, three months before the statutory restrictions on solvents become effective, EPA had received only one request for an extension, despite one comment predicting extensive use of this provision. Second, experience with the permitting and delisting processes has shown that the review process often includes several requests for clarification or additional information before an application is considered completed. Turnaround time regarding deficiencies can vary depending on the responsiveness of the applicants. Finally, time required for consultation with the affected States is difficult to predict.

While the Agency will not specifically limit its internal review period, EPA has recommended that applicants submit extension requests at least six months before an effective date (when possible) to provide a reasonable opportunity to process applications before the effective date. To further expedite the review process, the Agency will limit the public comment period to 30 days.

Under some circumstances, capacity under development will not become available until after a national variance expires. In these situations, persons requiring an extension should submit an application as soon as the capacity shortage is identified.

4. Applicability of Case-by-Case Extensions

One commenter stated that EPA shoud grant case-by-case extensions only in cases where a national capacity shortfall exists. The Agency disagrees with the commenter. The case-by-case extension process was intended to cover those rare situations when an individual applicant can demonstrate that capacity will not be reasonably available to him even if national capacity is otherwise sufficient. As stated earlier, the variance is based on the "feasibility" of providing alternative capacity.

5. Length of the Case-by-Case Extension and Renewals

As discussed in the proposed rule, case-by-case extensions cannot extend beyond 48 months from the statutory land disposal restriction dates. Therefore, extensions will not exceed the following dates:

November 8, 1990, for certain listed dioxin-containing and solvent wastes;
July 8, 1991, for wastes identified as California List wastes;
August 8, 1992, for the first third of the listed hazardous wastes;
June 8, 1993, for the second third of the listed hazardous wastes; and
May 8, 1994, for the remaining hazardous wastes, including characteristic hazardous wastes.

On the applicable effective date, a restricted waste is subject to the provisions of Part 268 until a case-by-case extension is granted. For example, if a person requests an extension on January 8, 1987, for a solvent waste restricted from land disposal on November 8, 1986, the waste is restricted from land disposal from November 8, 1986, until the extension is granted. The extension would not exceed the November 8, 1990, deadline.

The effective date for certain newly listed wastes may fall after the May 8, 1990, date for scheduled wastes. Such wastes may require extensions beyond the May 8, 1994, date. EPA expects that the short duration of the extensions (not to exceed two years) will encourage generators of hazardous waste to minimize the quantity of hazardous waste subject to the land disposal restrictions. Generators should explore changes in process substitution, materials recovery, recycling and reuse, and alternative treatment as alternative methods of complying with the land disposal restrictions. EPA has prepared a report to Congress for presentation during November 1986, on waste minimization which identifies some waste minimization practices.

6. Consultation With Affected States

All states will be notified via Federal Register announcement of tentative decisions to permit extensions for restricted wastes. States that anticipate that they may be affected by a specific extension should contact EPA. EPA then consult with appropriate agencies in the affected States as required by section 3004(h)(3). EPA expects that states most interested in extension decisions will be those in which the waste was generated, those accepting waste during the extension period, and those with capacity under development. Applicants

can expedite the review process by submitting information outlining how the wastes will be managed in each of the affected States as part of the demonstrations under § 268.5 (a)(4), (a)(6), and (a)(7).

*G. Evaluation of Petitions Demonstrating Land Disposal To Be Protective of Human Health and the Environment*

The statutory standard for evaluation of these petitions requires that the applicable land disposal method be protective of human health and the environment. The statute further specifies that a method of land disposal may not be determined to be protective unless it has been demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. (RCRA section 3004(d), 42 U.S.C. 2964(d)(1)).

In demonstrating "no migration," the petitioner must take into consideration the likely effects of long-term geologic processes and climatic phenomena, such as, but not limited to, earthquakes and floods, and any other events that can be reasonably predicted. The petitioner should not assume that any man-made barriers or engineered systems will satisfy the "no migration" standard, because artificial barriers alone cannot be relied upon to provide the long-term assurances that the statutory standard requires. However, these units may satisfy the standard when the petitioner is requesting temporary storage of restricted waste on the land.

The Agency has identified three scenarios that may satisfy the requirements of the statutory standard of "no migration". The first involves a situation where environmental parameters are such that no detectable migration of hazardous constituents would occur from the disposal unit. For example, this scenario may occur when a waste consisting of relatively immobile hazardous constituents is placed in a monofill located in an arid climate with no ground water recharge. Another example involves placement of a small volume of compatible waste in a massive and stable salt dome formation. The second would rely on an active chemical or physical process, such as the neutralization of a corrosive waste in a surface impoundment, where no hazardous waste remains in the unit. This is especially applicable to characteristic wastes. The third involves the temporary storage of hazardous waste in a land-based unit, such as an indoor waste pile, where engineered containment systems are effective over the period the waste remains in storage.

The "no migration" standard clearly would be violated in a situation where unacceptable concentrations of hazardous constituents are occurring at the waste management boundary, even though the concentration at a potential receptor site some distance from the waste management boundary is below an applicable health-based level.

The Agency, generally, will deny a petition where there is a history of continuing mismanagement of hazardous waste at the disposal unit as evidenced by State or EPA monitoring and on-site inspection reports.

1. Procedures for Submitting and Reviewing Petitions

The Agency proposed that petition review would eventually be the responsibility of either the EPA Regional offices or authorized States. Upon reevaluation, the Agency believes that there will be relatively few petitions submitted. Accordingly, the Agency is requring that applicants submit petitions to the Administrator.

The five general steps of the petition review process involve the submittal of the petition, Agency review of the petition, notice of the Agency's tentative decision in the **Federal Register**, a 30-day public comment period, and notice of the Agency's final decision in the **Federal Register**. (See § 268.6.) Two copies of the petition should be submitted (by registered mail) to the Administrator. The Agency will initially review a petition for completeness. Once a petition is considered complete, it will be reviewed on the basis of the technical information supplied. The Agency will publish in the **Federal Register** a tentative decision to grant or deny a petition. The Agency will consider public comments and any new data submitted during the comment period. The Agency will then publish its final decision in the **Federal Register**.

During the petition review period, petition applicants are required to comply with all restrictions on land disposal of the waste. The receipt of a petition by the Agency does not delay the effective date of any restrictions applicable to the waste.

*H. Treatability Variance*

1. Basis for Establishing a Treatability Variance

Several commenters recognized that there may be particular waste streams that cannot be treated to the level (or by the method) specified by the treatment standard. The Agency agrees with these commenters, and is establishing a procedure to evaluate petitions for a variance from the treatment standard.

The Agency envisions that wastes may be subject to a treatability variance in cases where the treatment standard for a particular waste cannot be met because the waste does not fit into one of the BDAT treatability groups. A particular waste may be significantly different from the wastes considered in establishing treatability groups because the waste contains a more complex matrix which makes it more difficult to treat. For example, complex mixtures may be formed when a restricted waste is mixed with other waste streams by spills or other forms of inadvertent mixing. As a result, the treatability of the restricted waste may be altered such that it cannot meet the applicable treatment standard. In such a case, generators or owners/operators may petition the Agency for an alternative treatment standard.

On September 5, 1986, the Agency published a Notice of Availability of Data in the **Federal Register** (51 FR 31783) outlining its authority under section 7004(a) to act on petitions to amend or repeal any regulation under RCRA and requesting comments on a procedure by which petitions for a variance from the treatment standard would be evaluated. Commenters on the Notice of Availability generally supported the concept of a variance from the treatment standard. Two commenters specifically supported providing variances through a rulemaking procedure, while another commenter, though recognizing EPA's authority to amend the treatment standards by rulemaking, urged the Agency to adopt a more streamlined variance procedure similar to that used in other EPA rules. Commenters also suggested specific criteria to be considered in evaluating variance petitions.

EPA agrees that the Agency has the authority to choose between a rulemaking and a variance procedure when considering the unique aspects of wastes that were not considered in developing the treatment standards. Nothing in the language or legislative history of the statute suggests that Congress intended to preclude EPA from adopting a variance procedure once the Agency has issued treatment regulations under section 3004(m).

The Agency is promulgating procedures for a variance from the treatment standard under § 268.44 of today's rule. Essentially, the new provision will allow applicants to use procedures similar to those now used for rulemaking petitions under 40 CFR

260.20. In light of the comments, however, EPA intends to issue a proposal asking for further comments on the option of using a variance procedure rather than a rulemaking. Because there was insufficient time prior to today's rule to fully consider all issues relating to the establishment of a variance procedure, EPA believes it is more appropriate to request additional comments. Similarly, EPA will consider additional comments on the appropriate criteria by which to evaluate variance requests in the context of the future rulemaking. In the meantime, this preamble outlines some criteria that EPA believes should be considered by applicants for a variance from the treatment standard.

2. Demonstrations Included in a Petition

Variance petitions must demonstrate that the treatment standard established for a given waste cannot be met. This demonstration can be made by showing that attempts to treat the waste by available technologies were not successful, or through appropriate analyses of the waste which demonstrate that the waste cannot be treated to the specified levels. Variances will not be granted based on a showing that adequate BDAT treatment capacity is unavailable. Such demonstrations can be made according to the provisions in § 268.5 for case-by-case extensions of the effective date.

The Agency will consider granting generic petitions provided that representative data are submitted to support a variance for each facility covered by the petition.

Petitioners should submit at least one copy to:

The Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

An additional copy marked "Treatability Variance" should be submitted to:

Chief, Waste Treatment Branch, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Petitions containing confidential information should be sent with only the inner envelope marked "Treatability Variance" and "Confidential Business Information," and the contents marked in accordance with the requirements of 40 CFR Part 2 (41 FR 36902, September 1, 1976, amended by 43 FR 40000).

The petition should contain the following information:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) name, address, and EPA identification number of the facility generating the waste, and the name and telephone number of the plant contact;

(4) The process(es) and feed materials generating the waste and an assessment of whether such process(es) or feed materials may produce a waste that is not covered by the demonstration;

(5) A description of the waste sufficient for comparison with the wastes considered by the Agency in developing BDAT, and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration; (Note: The petitioner should consult the appropriate BDAT background document for determining the characteristics of the wastes considered in developing treatment standards.)

(6) If the waste has been treated, provide a description of the system used for treating the waste, including the process design, operating conditions and an explanation of the reasons the treatment standards are not achievable or are based on inappropriate technology for treating the waste; (Note: The petitioner should refer to the appropriate BDAT background document as guidance for determining the design and operating parameters that the Agency used in developing treatment standards.)

(7) A description of the alternative treatment systems examined by the petitioner (if any), a description of the treatment system deemed appropriate by the petitioner for the waste in question, and, as appropriate, the concentrations in the treatment residual or extract of the treatment residual (using the TCLP) that can be achieved by applying such treatment to the waste;

(8) The dates of the sampling and testing;

(9) A description of the methodologies and equipment used to obtain representative samples;

(10) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the samples; and

(11) A description of the tests performed (including results).

After receiving a petition for a variance, the Administrator may request any additional information or waste samples which he may require to evaluate and process the petition.

Additionally, all petitioners must certify that the information provided to the Agency is accurate under § 268.4(b).

In determining whether a variance would be granted, the Agency will first look at the design and operation of the treatment system being used. If EPA determines that the technology and operation are consistent with BDAT, the Agency will evaluate the waste to determine if the waste matrix and/or physical parameters are such the BDAT properly reflects treatment of the waste.

In cases where more than one technology is applicable to a waste, the petitioner would have to demonstrate that the treatment standard cannot be met using any of the technologies, or that none of the technologies is appropriate for treatment of the waste. After the Agency has made a determination on the petition, the Agency's findings will be published in the **Federal Register**, followed by a 30-day period for public comment. After review of the public comments, EPA will publish its final determination in the **Federal Register** as an amendment to the treatment standards in Part 268 Subpart D.

## V. Treatment Standards for Solvents

*A. Introduction*

On May 19, 1980 (45 FR 33119), the Agency listed 27 commonly used organic solvents as hazardous wastes when spent or discarded. The solvents were listed as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005. The listed solvents include certain spent halogenated and non-halogenated solvents, and still bottoms from the recovery of these solvents. Due to the manner in which the F001–F005 listings were originally structured, a major regulatory loophole was created by the Agency. As written, the listings only covered the pure form or the commercial grades of these solvents. Therefore, the Agency amended the listing to include mixtures containing a total of 10 percent or more (by volume) of one or more of the listed solvents, as published in the **Federal Register**, December 31, 1985 (50 FR 53315).

In the proposed rule to the land disposal restrictions, several commenters requested that the Agency clarify the scope of the spent solvent listings. The commenters stated that confusion exists regarding specifically what wastes are covered by the solvent listings. The Agency recognizes this problem and has incuded the following discussion in today's rule to provide further clarification of the F001–F005 solvent listings.

The spent solvent listings cover only those solvents that are used for their solvent properties—that is to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring; as diluents, extractants, reaction and synthesis media; and similar

applications are covered under the listing (when "spent"). A solvent is considered spent when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

Manufacturing process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listings. The products themselves also are not covered. See the original solvent listing background document (Novermber 14, 1980) available in the RCRA docket.

Today's final rule does not include treatment standards for the commercial chemical products, manufacturing chemical intermediates and off-specification commercial chemical products (P and U wastes) that correspond to the F001–F005 spent solvent wastes. These wastes will be addressed according to the schedule promulgated on May 28, 1986 (51 FR 19300). The final rule also does not cover the four newly listed solvents in the F001–F005 listing: benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6537). The Agency currently is gathering data to fully characterize and evaluate these wastes. We expect to make decisions on these additional solvents when we address the first group of scheduled wastes.

In today's rule, the Agency is promulgating treatment standards for the following F001–F005 solvent constituents listed in Table CCWE:

tetrachloroethylene
trichloroethylene
methylene chloride
1,1,1-trichloroethane
carbon tetrachloride
chlorobenzene
1,1,2-trichloro-1,2,2-trifluoroethane
ortho-dichlorobenzene
trichlorofluoromethane
xylene
acetone
ethyl acetate
ethyl benzene
ethyl ether
methyl isobutyl ketone
n-butyl alcohol
cyclohexanone
methanol
cresols (cresylic acid)
toluene
isobutanol
carbon disulfide
nitrobenzene
pyridine
methyl ethyl ketone

Lab packs containing these solvents also are subject to the treatment standards promulgated in today's final rule.

The treatment standards become effective on November 8, 1986, for all F001 through F005 solvent wastes which do not meet any of the criteria established for a national two-year variance. Solvent wastes that meet at least one of the criteria are subject to the variance and will be restricted from land disposal effective November 8, 1988. The criteria are:

1. The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month.

2. The solvent waste is generated from any response action taken under CERCLA or any corrective action taken under RCRA, except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988.

3. The solvent waste is a solvent-water mixture, a solvent-containing sludge, or a solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41.

### *B. Treatment Standards For F001–F005 Spent Solvents*

This unit describes the industries affected by the land disposal restrictions for the F001–F005 spent solvents and the demonstrated technologies which the Agency determined to be available. The unit further describes how the Agency developed treatment standards for these wastes.

#### 1. Industries Affected

The Agency has identified a variety of industries which generate waste subject to the land disposal restrictions for F001–F005 spent solvents. Much of the F001–F005 spent solvents, as defined in 40 CFR 261.31, are generated from manufacturing operations where solvents are used as reactant carriers or for surface preparation. Such industries include pharmaceutical plants, semiconductor facilities, printing plants, and plastic and synthetic resin manufacturers. Another large group of spent solvent wastes is generated by paint and ink formulating facilities when tanks containing solvent-based materials are cleaned. Machine shops also generate significant amounts of solvents from degreasing operations. A further description of these industries and the characteristics of the wastes generated is presented in EPA's "BDAT Background Document for F001–F005 Spent Solvents" (Ref. 4).

#### 2. Demonstrated Technologies for F001–F005 Spent Solvents

As presented in the proposed rule, the demonstrated treatment technologies for F001–F005 spent solvents are:

(1) Batch distillation
(2) Thin film evaporation
(3) Fractionation
(4) Incineration
(5) Steam stripping
(6) Biological treatment
(7) Carbon adsorption
(8) Air stripping
(9) Wet air oxidation

All of these technologies are demonstrated and commercially available. EPA has determined that none have been found to be riskier than land disposal. (See Unit IV.B. for a detailed discussion.)

Below is a brief description of each of these technologies and their general applicability to treatment of spent solvents. The BDAT background document provides a detailed discussion of these technologies.

a. *Batch distillation.* Batch distillation is used to separate various organic compounds from a contaminated spent solvent mixture in order to collect and reuse the individual compounds. The separation is accomplished by the addition of heat which causes the more volatile compounds to vaporize. Batch distillation generally is used in cases where the recovered solvent has sufficient economic value to offset the costs associated with the operation of the distillation system. As a consequence, batch distillation is generally applied to spent solvent wastes that are highly concentrated and yield significant amounts of materia upon separation. This technology has been demonstrated for F001–F005 spent solvent wastes as well as those judged to be similar. EPA estimates that at least 400 facilities perform full-scale batch distillation on-site or as commercial treatment.

This technology yields a residue that contains a high amount of suspended solids, is quite viscous, and may require subsequent incineration. The level of performance achieved by this technology will depend on the temperature and duration of the distillation process.

b. *Thin film evaporation.* This technology is also a demonstrated distillation process. Thin film evaporation differs from batch distillation in that the waste stream for thin film evaporation must contain considerably less suspended solids. Use of this technology results in an overhead stream which almost always can be

reused as a solvent and a bottom stream which often is used as fuel for incinerators. Depending on the suspended solids level of the waste, treatment using thin film evaporation may result in a residue that requires land disposal. EPA has identified several full-scale facilities using thin film evaporation of waste solvents.

c. *Fractionation.* This technology also is a demonstrated distillation process. It differs from batch distillation and thin film evaporation in that it is designed to achieve a finer separation than these other treatment technologies. It would be used when there are recoverable quantities of more than one solvent in a waste. Generally, fractionation will result in multiple product streams while generating minimal amounts of residue to be land disposed. Fractionation is practiced by full scale facilities on spent solvent wastes.

d. *Incineration.* Incineration is a well demonstrated technology commonly used to treat spent solvent wastes. The Agency estimates that there are over 200 full-scale incinerators for hazardous wastes, many of which incinerate F001–F005 spent solvents. This technology destroys the organic fraction of the spent solvents by oxidation to carbon dioxide and water vapor. Chlorinated organics are converted to carbon dioxide, water vapor, and hydrochloric acid vapor.

Incineration generates one or two residual wastes that need to be land disposed depending on whether the incinerator includes air emission controls. The residual wastes are the incinerator ash and the scrubber sludges or air emission control dust. The vast majority of incinerator residue that will require land disposal is generated by rotary kiln incinerators that burn spent solvent wastes containing high concentrations of solids.

e. *Steam stripping.* While steam stripping is a distillation process, the technology is significantly different from the distillation processes previously discussed both from the standpoint of the type of wastes treated and the design and operation of the process. Steam stripping is used by a number of facilities to reduce organic concentration in dilute spent solvent wastes containing mostly water. As such, the stripped solvent is not generally recovered in commercially viable quantities. Data from the Agency's screening questionnaire for capacity showed that 17 full-scale facilities performed steam stripping of spent solvent wastes and that three facilities perform steam stripping specifically on F001–F005 spent solvents.

f. *Biological treatment.* Biological treatment is a demonstrated technology which involves the use of microorganisms to degrade spent solvent compounds. There are a number of different types of biological treatment processes. These processes include aerobic treatment such as activated sludge systems, aerated lagoons, and trickling filters, facultative degradation in waste stabilization ponds, and anaerobic digestion. In aerobic systems, organic compounds are degraded to carbon dioxide and water. Anaerobic processes convert organic wastes into methane and carbon dioxide. Facultative systems alternate between aerobic and anaerobic treatment.

Biological treatment residues include treated water and a biomass sludge. The sludge is a mixture of dead and living microorganisms containing nonbiodegradable inorganic compounds, as well as any organics that are not degraded (i.e. refractory organics) and are adsorbed by the biomass. Depending on the composition of the spent solvent wastewater, the biomass sludge may require treatment prior to land disposal. Treatment could consist of chemical fixation for metals and/or incineration for the organic compounds.

g. *Carbon adsorption.* Carbon adsorption is the use of specially prepared carbon granules (activated carbon) to remove contaminants from wastewaters. Carbon adsorption is applicable to wastewaters containing low concentrations of F001–F005 spent solvent wastes. The spent solvent wastes are removed by adsorption onto the carbon surface. The affinity that a particular spent solvent compound has for carbon will depend on the type of carbon used and the properties of the compound. The residues from carbon adsorption include spent carbon and treated wastewater. Once the quality of the treated wastewater approaches a predetermined level the spent carbon can be regenerated and reused or destroyed in an incinerator. This technology is generally used in combination with steam stripping or biological treatment. This technology is demonstrated for F001–F005 spent solvent wastewaters as well as those judged to be similar.

h. *Air stripping.* Air stripping uses forced air to remove low concentrations of volatile organic compounds, such as solvents, from wastewater. During air stripping, air and wastewater are brought into contact with each other for the purpose of transferring the volatile organic compounds from the wastewater to the air. Transfer is caused by a concentration gradient of the volatile organic compounds, which tends to move these compounds in a direction that will equalize the concentration in the air with that in the water. Air stripping has been used to treat contaminated ground water containing F001–F005 spent solvent constituents. This technology was not chosen as the basis of any BDAT treatment standards for reasons presented in the BDAT background document.

i. *Wet air oxidation.* Wet air oxidation utilizes elevated temperature and pressure to oxidize dissolved or suspended organic contaminants in wastewaters. The wastewater is fed to the wet air oxidation treatment system by a high-pressure pump. It is then mixed with compressed air and passed through a heat exchanger. The heated waste-air mixture exits the exchanger and enters a reactor where oxygen from the compressed air reacts with organic contaminants in the waste to form carbon dioxide and water vapor.

This technology has full scale applications but primarily in areas other than treatment of spent solvent wastes. The Agency is aware of one facility that treats F001–F005 spent solvent wastewater. Unlike the other technologies discussed, this technology was not considered a demonstrated technology at proposal. Subsequent to proposal, we received additional data showing this technology to be demonstrated for F001–F005 spent solvent wastes.

3. Determination of Treatment Standards (BDAT) for Spent Solvents

a. *Data base.* The majority of the data used in developing BDAT for F001–F005 solvents were from full scale treatment. The Agency included some pilot- and bench-scale data from treatment technologies which are also demonstrated on a full scale basis. Below is a description of all available treatment data by technology.

—For biological treatment, the Agency analyzed full scale treatment data from 28 plants in the organic chemicals, plastics, and synthetic fibers industries which manufacture, in total, over 200 different products. These data were from treatment of wastes containing F001–F005 constituents as a result of process contamination. While the waste are not included in EPA's definition of spent solvent wastes, the Agency believes that these wastes are similar to spent solvent wastes. The Agency has biological treatment data on carbon tetrachloride, chlorobenzene, cresols, 1,2-dichlorobenzene,

ethylbenzene, methylene chloride, nitrobenzene, tetrachloroethylene, toluene, trichloroethylene, 1,1,1-trichloroethane, and trichlorofluoromethanes.

—For steam stripping, the Agency analyzed full scale data from four plants and pilot scale data on treatment of contaminated ground water. The full scale data represented treatment of F001–F005 spent solvents at one plant; the remaining three plants were treating wastes containing F001–F005 consitituents generated as process contaminants. The Agency analyzed steam stripping data on ethylbenzene, methylene chloride, methyl isobutyl ketone, nitrobenzene, toluene, 1,1,1-trichloroethane, and trichloroethylene.

—For carbon adsorption, EPA analyzed full scale data from four plants and pilot scale data from two plants. At one of these full scale plants, carbon adsorption is used after biological treatment. The Agency obtained data on chlorobenzene, 1,2-dichlorobenzene, methylene chloride, nitrobenzene, toluene, and trichloroethylene from this facility. At another full scale plant, carbon adsorption follows steam stripping. The Agency obtained data on nitrobenzene and toluene from this facility. In the third case, EPA has full scale data from a plant in the pesticides industry which generates wastewater containing cresols. EPA has full scale data for process wastewater containing cresol at the fourth plant. Pilot scale data for trichloroethylene are available on treatment of contaminated drinking water. Pilot scale data are also available for methylene chloride, toluene, and xylene on treatment of runoff water from a waste disposal site.

—For wet air oxidation, the Agency analyzed pilot-scale data for methylene chloride, methanol, methyl ethyl ketone, tetrachloroethylene, toluene, 1,1,1-trichloroethane, and xylene. These data were submitted as part of a comment on the proposed rule.

—For air stripping, EPA analyzed pilot scale data from treatment of ground water contaminated with 1,1,1-trichloroethane, trichloroethylene, methyl isobutyl ketone, toluene, tetrachloroethylene, and ethylbenzene.

—The Agency also analyzed the extract of incinerator ash for ten incinerators at nine facilities. All incinerators were operating full scale and treating a variety of wastes including spent solvents. The F001–F005 constituents for which data were available are acetone, carbon disulfide, chlorobenzene, 1,2-dichlorobenzene, ethylbenzene, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzenes, tetrachloroethylene, toluene, 1,1,1-trichloroethane, trichloroethylene and xylene.

b. *Analysis of data and establishment of treatability group.* The Agency reviewed all available treatment data to determine if any data represented treatment from a system that was not well designed or operated. Consistent with the general framework for BDAT, such data were deleted (the BDAT background document provides a detailed analysis of the Agency's rationale for such data editing). The Agency then calculated average performance values for each specific waste treated with a particular technology. In cases where the Agency had data on treatment of the same or similar wastes using more than one technology, we performed an analysis of variance test to determine if one of the technologies performed significantly better. In cases where a particular technology performed better, the treatment standard was based on the best technology. If one of the technologies did not perform significantly better, we averaged the performance values and multiplied this value by the highest variability factor to derive the treatment standard.

In several cases, the Agency analyzed data from the treatment of different wastes containing the same constituent of concern but achieving significantly different levels of performance. The Agency established a separate treatability group in cases where the data and information on the waste were sufficient to do so. Within any treatability group, however, the Agency used the highest treatment value reflecting well designed and operated treatment to establish BDAT. EPA believes that this approach ensures that the treatment standard can be achieved by facilities managing F001–F005 solvents with a wide range of waste matrices.

As proposed, the Agency established a separate treatability group for spent solvent wastewaters. For purposes of defining applicability of the treatment standards for wastewater continuing F001–F005 spent solvents, wastewaters are defined as solvent-water mixtures containing total organic carbon of one percent or less. Within the general wastewater category, available data supported a separate treatability group for spent methylene chloride from the pharmaceutical industry. For spent solvents other than wastewaters, the Agency was not able to identify additional treatability groups.

c. *Development of the F001–F005 spent solvent treatment standards.* The Agency determined that available data support the establishment of the final treatment standards as shown for the treatability groups in Table 1. Consistent with the general framework, we believe that each treatment standard ensures substantial treatment of F001–F005 spent solvents. A discussion of our rationale for determining substantial treatment can be found in the BDAT background document.

In cases where data for F001–F005 spent solvents were not available to establish BDAT, the Agency evaluated the wastes to determine if treatment values could be transferred. EPA believes that based on chemical structure BDAT treatment values can be transferred to F001–F005 constituents, except for carbon disulfide, where data are unavailable. Chemical structure, especially as related to functional groups, is used to predict how organic compounds will react with other compounds and under various conditions. The structural groups considered by the Agency for F001–F005 spent solvents are halogenated aliphatics, halogenated alkenes, halogenated aromatics, ketones, alcohols non-halogenated aromatics, ethers, esters, phenols, and organic sulfur compounds. In the case of carbon disulfide, the Agency relied on Henry's Law constants to assess transfer of performance.

The Agency is aware that within similar structure groups compounds can exhibit a range of physical and chemical properties that affect treatability. EPA believes, however, that structure is the best method available at this time for estimating treatability. To best account for the range of physical and chemical properties that affect treatment within a structural group, the Agency will transfer treatment performance from the highest treatment value observed within the structural group.

In some instances, treatment standards were derived using analytical quantification levels that the Agency believes may not represent quantification levels over the entire range of F001–F005 spent solvents subject to today's final rule. In such instances, EPA increased the treatment standard to a level reflective of the quantification level which we believe

can be achieved for all F001–F005 spent solvents. Any changes made to the treatment standards as a result of quantification levels can be found in the BDAT development document.

The Agency proposed treatment standards for each of the F001–F005 constituents listed in Table CCWE of Subpart D in the proposed rule. During the comment period, the Agency obtained additional data which were summarized in the Notice of Availability of Data (51 FR 31783, September 5, 1986). EPA also reevaluated existing data using a number of statistical methods. These methods were also outlined in the Notice of Availability. Finally, the Agency revised the proposed data editing procedure which excluded data when the influent value less than the screening level (generally 2.0 ppm). In today's final rule all data are used provided influent concentrations are above quantification levels.

The departure from the proposed rule which most affected the final treatment standards is the incorporation of a variability factor. The BDAT background document contains all data used to develop the treatment standards and a discussion of procedures used to evaluate these data in determining BDAT for each constituent of concern within a treatability group.

TABLE 1.—TREATMENT STANDARDS (AS CONCENTRATIONS IN THE TREATMENT RESIDUAL EXTRACT)

[Note: The technologies shown are the basis of the treatment standards. They are not required to be used in meeting the treatment standards.]

| Constituents of F001–F005 spent solvent wastes | Waste treatability groups for F001–F005 spent solvent wastes (mg/l) | | | |
|---|---|---|---|---|
| | Wastewater | Technology basis [1] | Wastewater generated by pharmaceutical plants [2] | All other [3] |
| Acetone | [4] 0.05 | SS | | 0.59 |
| n-Butyl alcohol | 5.00 | SS | | [4] 5.00 |
| Carbon disulfide | 1.05 | SS | | 4.81 |
| Carbon tetrachloride | [4] 0.05 | B | | 0.96 |
| Chlorobenzene | 0.15 | B&AC | | [4] 0.05 |
| Cresols (cresylic acid) | 2.82 | AC | | 0.75 |
| Cyclohexanone | [4] 0.125 | SS | | 0.75 |
| 1,2-Dichlorobenzene | 0.65 | B&AC | | [4] 0.125 |
| Ethyl acetate | [4] 0.05 | SS | | 0.75 |
| Ethylbenzene | [4] 0.05 | B | | 0.053 |
| Ethyl ether | [4] 0.05 | SS | | 0.75 |
| Isobutanol | [4] 5.00 | SS | | [4] 5.00 |
| Methanol | [4] 0.25 | SS | | 0.75 |
| Methylene chloride | 0.20 | B | 12.7 | 0.96 |
| Methyl ethyl ketone | [4] 0.05 | SS | | 0.75 |
| Methyl isobutyl ketone | [4] 0.05 | SS | | 0.33 |
| Nitrobenzene | 0.66 | SS&AC | | [4] 0.125 |
| Pyridine | 1.12 | B&AC | | 0.33 |
| Tetrachloroethylene | 0.079 | B | | [4] 0.05 |
| Toluene | 1.12 | B&AC | | 0.33 |
| 1,1,1-Trichloroethane | 1.05 | SS | | 0.41 |
| 1,1,2-Trichloro-1,2,2,-trifluoroethane | 1.05 | SS | | 0.96 |
| Trichloroethylene | 0.062 | B&AC | | 0.091 |
| Trichlorofluoromethane | [4] 0.05 | B | | 0.96 |
| Xylene | [4] 0.05 | AC | | 0.15 |

[1] In some instances other technologies achieved somewhat lower treatment values, but waste characterization data were insufficient to identify separate treatability groups. Refer to the BDAT background document for a detailed explanation of the determination of the treatment standards.
SS=stream stripping
B=biological treatment
AC=activated carbon

[2] Wastewaters generated by pharmaceutical plants must be treated to the standards given for all other wastewaters except in the case of methylene chloride.

[3] The treatment standards in this treatability group are based on incineration.

[4] These treatment values represent the lowest level at which EPA can support analytical quantification over the range of wastes that will be subject to this rule. The treatment standards as derived from the data are somewhat lower because of the lower quantification levels associated with the treatment residuals actually tested. The data and the calculation of treatment standards not accounting for quantification limits are shown in the BDAT background document.

### *C. Comparative Risk Assessment Determinations for F001–F005 Spent Solvents*

As discussed in the preamble to the proposed rule, the initial comparative risk studies of solvent wastes using EPA's RCRA Risk-Cost Analysis (WET) Model indicated that the best demonstrated treatment technologies do not pose total risks to human health and the environment greater than those posed by the direct land disposal for most categories of solvent wastes subject to today's rulemaking (i.e., all solvent wastes except metal-bearing solvents). Results of the analysis are summarized in the preamble to the proposed rule (See 51 FR 1720). More detailed information is available in the Background Document for the Comparative Risk Assessment (Ref. 5).

Because results of the WET model analysis indicated that incineration of metal-bearing solvent wastes in some situations may lead to increased risks to human health or the environment, the Agency has conducted a detailed analysis of these risks. Results of the detailed analysis (Ref. 5) indicate that in most cases direct land disposal of metal-bearing wastes is more risky than incineration. These risks, however, are not expected to occur for thousands, and in some cases, millions of years. The detailed analysis also demonstrates that in some cases incineration of these wastes is more risky than land disposal when compared to the performance of a well-operated and engineered unit located in a geographical area that provides optimal containment (e.g., compacted clay).

The Agency stated in the proposed rule that whenever it is uncertain that a technology is riskier than land disposal, the Agency will consider the treatment "available" for determining BDAT and will develop data to support additional regulatory controls. Therefore, because the risk assessment does not indicate that incineration generally is more risky than direct land disposal, the Agency is classifying incineration as available for the purpose of establishing the treatment standard for metal-bearing solvent wastes. It is not possible for the Agency to establish additional regulatory requirements on metals emissions from incineration of metal-bearing solvent wastes within the statutory deadline for solvents waste, because the Agency lacks sufficient data on the feasibility of reducing metals emissions by waste pretreatment or incinerator controls.

However, the Agency has initiated a program under the authority of section 3004(n) (42 U.S.C. 6924(n)) to develop regulatory controls for metal emissions from incineration of hazardous wastes, including solvent wastes. EPA plans to publish a proposed rule by 1987 and a final rule by 1988. The Agency believes that development and implementation of this regulatory program will ensure that incineration of metal-bearing solvent wastes will be protective of human health and the environment.

### *D. Treatment and Recycling Capacity for Solvents*

#### 1. Quantity of Wastes Land Disposed

EPA estimates that 2,859 million gallons per year of solvent wastes are managed in units defined as land disposal under today's rule. This represents a significant increase over the 1,210 million gal/yr estimated in the proposed rule. In the proposed rule, EPA's estimate included all wastes designated as F001, F002, F003, F004, F005, the corresponding commercial

chemical products, off-specification products (P and U wastes), mixtures of these waste codes, and spent solvents from small quantity generators.

For today's rule, EPA has made several modifications to its estimate. First, as explained previously, the Agency decided not to promulgate the land disposal restrictions for those wastes designated as P and U wastes. The estimate of the total quantity of solvent wastes covered under today's rule, therefore, does not include the 11.2 million gal/yr of P and U wastes which previously were included in the proposed rule.

A second modification is more significant. The quantity estimate in the proposed rule included wastes that were mixtures of F001, F002, F003, F004, F005, and P and U wastes, but did not include those wastes that were reported as mixtures of F001–F005 with other nonsolvent waste codes. These waste quantities were not included in the proposed rule because EPA believed that a relatively small solvent portion of these mixtures could be segregated from a much larger component of the nonsolvent wastes. This assumption was based on limited descriptions of these wastes provided by some generators indicating that these wastes primarily were dilute solvent-water mixtures. In the proposal, EPA also determined that the resultant quantity of concentrated segregated solvent wastes could not be estimated properly due to the lack of concentration data for these particular solvent waste mixtures prior to segregation. Although EPA has not changed its position that the quantity of segregable solvent wastes cannot be accurately estimated, it is assuming that the entire quantity of these mixtures would require alternative treatment capacity. This is consistent with several comments indicating that EPA had grossly underestimated the quantity of wastes identified as solvent-water mixtures and generally had underestimated the other types of concentrated solvent wastes. Based on these comments, EPA believes it may have overestimated the ability of generators to separate the concentrated solvents from the nonsolvent components (primarily water) without treatment. This change results in an increase in solvent-water mixtures land disposed of 1,663 million gal/yr and an increase in quantity for all other waste types land disposed of 19 million gal/yr.

A third modification involved correction of invalid data used at proposal. The OSW RIA Mail Survey of Treatment, Storage, and Disposal Facilities regulated in 1981 was the primary source of quantity data for the proposed rule and for today's rule. Because some facilities indicated that they handled very large volumes of waste or were suspect because somewhat large quantities of recyclable organic liquids were being land disposed, EPA decided to verify whether these facilities had made an error in the data submitted. EPA performed follow-up inquiries to these facilities in order to confirm the descriptions of the physical/chemical forms of the wastes managed. These responses were the subject of a request for comment published September 5, 1986 (51 FR 31783).

Some of the facilities indicated that they no longer handled these wastes. However, EPA does not believe that these reported full or partial closures can be extrapolated accurately to the entire 1981 survey population because of the site-specific nature of these closures. Therefore, updating the survey for closures would require more extensive follow-up by EPA. EPA believes such broad modification to the survey, in order to extrapolate these closures to the universe of facilities, would unreasonably disrupt the statistical reliability of the 1981 survey.

However, EPA does believe that these telephone responses support very limited changes to the descriptions of wastes at five facilities in the data base. The responses from two facilities indicated that a 172.6 million gal/yr waste and a 28.3 million gal/yr waste that had been identified in the survey as organic liquids were actually solvent-water mixtures. Another response from a different facility indicated that a 2.6 million gal/yr waste that had been identified as an organic sludge was actually a solvent-water mixture that had been treated in an impoundment. This waste also had been double-counted as being handled in a landfill. Two additional wastes treated in impoundments also had been double-counted as being disposed in landfills. Therefore, the quantities of these wastes which were subtracted from the total quantity of waste landfilled and subtracted from the total.

A fourth change to EPA's estimate is based on EPA's determination that those wastes from the 1981 RIA Mail Survey that were not described should have been added to the total organic liquids land disposed rather than distributing the wastes to all physical/chemical forms. EPA believes that assuming the undescribed waste quantities are organic liquids is more consistent with the type of wastes identified as the basis for listing these solvent wastes as hazardous. Spent solvents and still bottoms usually are pumpable organic liquids. This modified assumption increases the estimated quantity of organic liquids by approximately 15 million gal/yr, and reduces to solvent-water estimate by an equal amount. This quantity represents a total of six wastes at two facilities.

Two final changes were made to the quantity of waste from small quantity generators and CERCLA actions. The 8.7 million gal/yr of solvent wastes from small quantity generators increased from the estimate of 7.8 million gal/yr in the proposed rule as a result of correcting a calculation error. More importantly, the proposed rule contained no quantity estimates for increases in solvent wastes anticipated to result from removal and/or remedial actions taken by the Agency under CERCLA or RCRA corrective action. For today's rule, this has been estimated to be 21.7 million gal/yr based on a recently completed EPA analysis of future land disposal. These quantities are explained in greater detail in Appendix B of the Background Document to today's rule (Ref. 2). Therefore, the overall total quantity of wastes including small quantity generator and CERCLA wastes is increased to 2,659 million gal/yr for today's rule.

2. Reanalysis of Land Disposal Practices Used

EPA has reanalyzed the 1981 data accounting for all of the changes described in the previous section. Complete analysis of the data is provided in the background document to support today's rule (Ref. 2). The following table indicates how the total quantity of wastes estimated in the previous section is distributed among the various land disposal management techniques covered under today's rule. These figures do not include wastes which were deep well injected.

| land disposal practice | Quantity (million gal/yr) |
|---|---|
| Treated in surface impoundments | 2,485.4 |
| Stored in surface impoundments | 309.2 |
| Disposed in surface impoundments | 8.00 |
| Waste piles | 0.78 |
| Land application | 0.001 |
| Landfill | 55.5 |
| Total land disposed | 2,858.881 |

3. Comments on EPA's Estimates

Several commenter objected to EPA's use of the 1981 RIA Mail Survey for estimation of the volumes of wastes land disposed, based on their belief that these data underestimate the quantity of hazardous waste which is being land

disposed annually. As explained earlier, EPA agrees that the quantity of solvent wastes identified as solvent-water mixtures was underestimated. Inclusion of the additional mixed solvent wastes has increased the total quantity of solvent-water mixtures to 2,652 million gal/yr. Nevertheless, EPA believes that the 1981 data is currently the only readily available source for estimating the quantities based on the physical/chemical characteristics that influence the selection of applicable treatment technologies.

Several commenters suggested that EPA use other data sources such as Part A applications, Part B applications, RCRA Biennial reports, and various state and regional reports. EPA agrees with the commenters that the data contained in these sources are more recent, than the 1981 data. However, none of the sources provide data that readily allow EPA to estimate national quantity of solvent wastes land disposed by individual management units and by physical/chemical forms.

One commenter also contended that EPA's 1981 data grossly underestimated the quantities of hazardous waste which were being land disposed; this statement was based on privately collected data from 725 facilities in standard industrial classification (SIC) code 2800 (Chemicals and Allied Products Manufacturers). The data indicated that this industry treated and disposed of approximately 202 million tons of hazardous waste per year. Since EPA estimated only 240 million tons per year for all hazardous waste facilities, the commenter believes that EPA underestimated the total quantity of hazardous waste. However, the same commenter acknowleged that EPA estimated that this same industry managed 66 percent of the total. These figures, when multiplied together, yield a total quantity of 158 million tons per year for this particular industry (SIC 2800). EPA does not believe that 158 million tons per year is a gross underestimation of 202 million tons per year. EPA's estimate was lower than the commenter's quantity estimate, but by only 22 percent.

However, the commenter did not indicate whether the privately collected quantity figures were for RCRA hazardous wastes or all wastes considered hazardous by state and local authorities. EPA's estimates of waste quantities specifically exclude hazardous wastewaters which are exempt from RCRA (such as those treated solely in tanks and subsequently discharged under NPDES permits). It was not clear that the commenter's estimate of 202 million tons per year of wastes treated and disposed includes or excludes these wastewaters. The same commenter provided more recent data, also based on an independent survey of this industry, that indicated the total amount of hazardous waste treated and disposed by responding plants in 1985 was 278.5 million tons per year (276.8 million tons per year of wastewater and 1.7 million tons per year of solid waste). Of the solid wastes treated and disposed, 0.57 million tons per year were landfilled, 0.52 million tons per year were incinerated, 0.46 million tons per year were disposed in surface impoundments, and 0.18 million tons per year were treated by other methods. The corresponding 1981 EPA estimates for all hazardous waste were, 3.0 million tons per year of hazardous waste landfilled, 1.7 million tons per year incinerated, 19 million tons per year disposed in surface impoundments, and 17 million tons per year treated by other means. EPA believes that these data, which represent significantly larger quantities of solid waste being land disposed, further indicate that EPA estimates of quantities of wastes being land disposed are reasonable and are not grossly underestimated.

4. Summary of Quantities Requiring Capacity

Based on the 1981 RIA Mail Survey quantity data presented in the previous section, EPA estimates that a total of 19.0 million gal/yr of pumpable organic solvent wastes will require incineration capacity, 3.4 million gal/yr will require distillation capacity, and 15.3 million gal/yr will require fuel substitution capactity.

EPA also estimates that 21.7 million gal/yr of solvent-containing sludge mixtures will require some form of high solids combustion treatment, such as rotary kiln incineration.

A total quantity of 2,481 million gal/yr of solvent wastes described as solvent-water mixtures also will require some form of wastewater treatment. The following table summarizes this information.

| Alternative treatment technology | Quantity requiring capacity (million gal/yr) |
|---|---|
| Distillation | 3.4 |
| Fuel Substitution | 15.3 |
| Incineration | 19.0 |
| Solvent-containing sludge treatment | 21.7 |
| Wastewater treatment | 2,481.0 |

These quantities do not include the 8.7 million gal/yr of solvent wastes from small quantity generators, nor do they include the 20.2 million gal/yr increase in solvent wastes anticipated to be generated from remedial and removal actions taken under CERCLA and RCRA correction action. The waste characterization data which would be necessary to assign treatment technologies for these two waste sources are very limited. Although it is possible that all small quantity generator wastes may have to go to incineration, EPA believes that a more reasonable approach is to extrapolate the waste characterization data from the 1981 survey to the total quantity by applying the ratio of quantities which were directed to each technology. Since the solvent wastes from small quantity generators are not anticipated to include solvent-water mixtures nor any solvent-inorganic sludge mixtures, the ratio developed from the distillation, fuel substitution, and incineration quantities have been applied:

| Alternative treatment technology | Capacity required (million gal/yr) |
|---|---|
| Distillation | 0.8 |
| Fuel Substitution | 3.5 |
| Incineration | 4.4 |

All 16.1 million gal/yr of increased capacity needed for RCRA corrective action and the 4.1 million gal/yr for CERCLA responses has been assigned to incineration based on studies of current projects.

5. Comments on Types of Treatment Required

Solvent wastes identified as F001, F002, F003, F004, and F005 typically are described as spent solvents or still bottoms as specifically identified in the listing for these waste codes. However, these waste code designations are used to identify wastes which are regulated as F001–F005 wastes as a result of the mixture rule (in 40 CFR 261.3), i.e., a spill residue or combination of solvent wastes with other wastes or materials, such as wastewater, soil, organic or inorganic sludges.

In the preamble to the proposed rule, EPA made clear its assumption that those wastes that are solvent-water mixtures are indeed F001–F005 wastes that are derived from the mixture rule in 40 CFR 261.3. The Agency also assumed that these wastes contain less than 1.0 percent total organic carbon and approximately 99 percent water. This is consistent with EPA's guidance in defining wastewater as a waste with primarily water and a small amount of contaminants. In addition, several of the large volume, solvent-water mixtures

identified in the TSDF mail survey specifically described their wastes as containing 99 percent water.

Several commenters suggested that defining solvent-water mixtures as those wastes containing less than 1.0 percent total organics would exclude many nonhazardous wastewaters which they indicate typically can contain greater than 1.0 percent total organics. One commenter suggested that the level be raised to 4.0 percent total organics. However, none of these commenters submitted any data substantiating these comments.

Another commenter stated that EPA had overestimated the concentrations of solvents in wastes identified as wastewaters. The commenter supplied data on wastes containing part per million levels of individual solvent constituents. EPA believes that the commenter had misinterpreted EPA's intended use of these data. EPA recognizes that there are many wastewaters that contain only parts per million or even parts per billion levels of individual solvent constitutents. However, EPA used a summation of the individual solvent concentrations to arrive at the estimations of total solvent concentrations in wastewaters classified as F001–F005. EPA has established a definition of solvent-water mixtures based on this maximum solvent concentration that it believes is representative of this type of waste. As explained in the proposed rule, the Agency believes this assumption is corroborated by data that indicate that the majority of wastewaters from the organic chemicals manufacturing industry being treated in surface impoundments contains less than 1.0 percent total solvents.

In the proposed rule, the Agency selected the analysis of total organic carbon (TOC) as a surrogate analysis for the total solvent concentration. Several commenters objected to the use of the TOC test because it measures both hazardous and nonhazardous organics, and is not appropriate for nonliquids. While the Agency recognizes that there is no standard method which specifically defines a total solvent concentration in wastewater, there do exist several standard methods for the individual solvent constitutents for which the F001–F005 solvent wastes are listed (40 CFR 261 Appendix VII). These individual solvent concentrations then can be summed to yield a total solvent concentration for a particular waste. The Agency never intended to include nonhazardous wastes or wastewaters in this rule, and the Agency agrees with the commenters that there may exist nonhazardous wastes and wastewaters with greater than 1.0 percent total organic carbon. Therefore, the Agency has reevaluated its position on the method for determining that an F001, F002, F003, F004, and F005 waste is considered a solvent-water mixture (wastewater). For the purposes of today's rule, the Agency is defining an aqueous solvent waste as any F001, F002, F003, F004, and F005 solvent waste that is primarily water and contains either (1) less than 1.0 percent total organic carbon or (2) less than 1.0 percent total solvents (defined as the arithmetic summation of the individual solvent concentrations for those constituents for which all of these waste codes are listed in 40 CFR 261 Appendix VII, as determined by GC or GC/MS methods in accordance with the appropirate standard methods for those constitutents and waste type). The Agency still believes that the total organic carbon analysis provides an inexpensive screening technique for identifying some F001 through F005 wastes as solvent-water mixtures. However, those facilities that have wastes that exceed a total organic carbon content of 1.0 percent can elect to utilize the more rigorous measurement of less than 1.0 percent total solvent concentration. This choice of methods is intended for use as a screening procedure only to identify those F001, F002, F003, F004, and F005 solvent wastes that are to be designated as a solvent-water mixture. For the purposes of today's rule, the Agency does not intend this definition to be used to classify a wastewater as a hazardous solvent waste. However, this does not preclude the Agency from modifying or clarifying this definition in the future.

In a similar manner, the Agency believes that the 1.0 percent total solvent concentration can be extended to define the solvent wastes that are primarily inorganic sludges or soils. The Agency recognizes that there is no standard method for the analysis of total organic carbon in inorganic solids and thus, is establishing the use of the analysis for the individual solvent constituents in inorganic sludges and soils for the determination of 1.0 percent total solvents. For the purposes of today's rule, the Agency therefore, is defining solvent-inorganic sludge mixtures and solvent-contaminated soil as any F001, F002, F003, F004, and/or F005 solvent waste which is primarily inorganic and contains no greater than 1.0 percent total organic carbon or no greater than 1.0 percent total solvents (defined as the arithmetic summation of the individual solvent concentrations for those constituents for which all of these waste codes are listed in 40 CFR 261 Appendix VII, as determined by GC or GC/MS methods in accordance with the appropriate standard methods for those constituents and waste type). The Agency believes that this is consistent with congressional intent to ban high concentration wastes, whenever capacity shortfalls are demonstrated to exist.

All other F001, F002, F003, F004, and/or F005 solvent wastes by nature of these definitions exceed either 1.0 percent total solvent concentration or exceed 1.0 percent total organic carbon and are, therefore, not considered to be solvent-water mixtures, solvent-inorganic sludges mixtures, or solvent-contaminated soils.

*E. Unused Capacity of Solvent Treatment and Recycling Facilities*

EPA estimated that solvent wastes restricted from land disposal as a result of today's final rule will be directed to incineration and wastewater treatment methods that can achieve the treatment standards. Some solvent wastes will also be directed to recycling methods, including distillation and blending as fuel. In this unit, EPA estimates the unused capacity that is currently available to treat or recycle solvent wastes.

As explained in Unit V., private treatment, recycling, and disposal capacity will be considered in two circumstances: (1) If a private owner or operator plans to accept restricted waste commercially on or before the effective date of the restrictions; or (2) when a private owner or operator has excess capacity. At this time, EPA does not have complete information on the extent to which these circumstances will occur. The Agency plans to conduct a treatment, storage, and disposal facility (TSDF) survey in the near future which it hopes will provide comprehensive data on the availability of private capacity to manage hazardous wastes that are prohibited from land disposal. However, for the purposes of this rulemaking, the determinations of the capacity to treat and recycle solvent wastes will be based on unused capacity at facilities that are or will be offering commercial services by November 1986.

1. Capacity for Wastewater Treatment

BDAT wastewater treatment methods for solvent-water mixtures are biological degradation, steam stripping, and carbon adsorption. In addition, other technologies, such as resin adsorption,

although not BDAT, may be capable of meeting the treatment standards for some wastes. All of the treatment methods are referred to as tank treatment under the RCRA TSDF regulations.

For the proposed rule, the OSW RIA Mail Survey was EPA's only source of information concerning the unused capacity at tank treatment facilities. However, the RIA Mail Survey was not designed to evaluate capacity of specific tank treatment systems. It requested information on total tank treatment capacity, but did not request information for specific tank treatment systems. Thus, within the time constraints for the proposed rule, the Agency was unable to determine available capacity for each treatment system. Accordingly, to prepare the proposed rule, the Agency estimated the total unused treatment tank capacity at commercial facilities that managed solvents. This unused capacity was estimated to be 112 million gallons. In the proposed rule, EPA stated that these commercial facilities managed other hazardous wastes, and that the Agency could not determine the portion of the 112 million gallons of unused treatment capacity that was available to treat solvent wastes.

EPA, however, recently has completed a comprehensive analysis of additional data from the RIA data base for these commercial facilities and has identified the specific types of tank treatment. This new analysis of the RIA Mail Survey data indicates that very little of the tank system capacity at the survey facilities was designed for treatment of solvent wastes. Because of the very limited data on treatment capacity for solvents in the RIA Mail Survey data base, EPA decided to use the 1986 National Screening Survey, which contains data on all facilities, to identify facilities that manage solvents. These facilities were contacted in the August 1986 "Telephone Verification Survey of Commercial Facilities That Manage Solvents" (51 FR 31786). This new data base reveals that there is one extremely large commercial facility that offers biological treatment for solvents, at an available capacity of about 2 billion gallons/yr. In addition, one commercial facility that offers steam stripping for solvents, and two commercial facilities offer carbon adsorption for solvents. These four facilities represent the entire capacity available for wastewater treatment for solvents.

2. Capacity for Incineration

For the proposed rule, EPA estimated that unused commercial incineration capacity is less than 25.6 million gallons per year. This calculation was based on the maximum design capacity of operational commercial incinerators and a utilization rate of 80 percent (Ref. 2). Some commenters stated that incineration capacity was limited to a very few commercial facilities, and that available capacity would not be adequate for the restricted solvent wastes. In response to these concerns, EPA used the results of the 1986 National Screening Survey to verify the commercial status of incinerator facilities and reevaluate the capacity at commercial facilities. Of the 14 commercial incinerators included in the incinerator capacity analysis for the proposed rule, three no longer offer commercial incinerator services. However, one other facility now offers commercial incinerator services. In addition, four of these facilities plan to have a new commercial incinerator operating in 1987, and another company plans to complete a large new incinerator facility in 1987. None of the facilities indicated that they planned to close in 1987. Based on the new data, EPA concludes that there are currently 12 commercial incinerator facilities, and that the number of commercial incinerator facilities will remain fairly constant or increase over the next two years. Even if an existing commercial incinerator facility closes, EPA believes, based on the pattern of construction indicated by the data, that it is reasonable to assume that another facility will begin operation of a new incinerator.

In addition to verifying the status of the commercial incinerator facilities, EPA obtained some additional data on design capacity and utilization. Using the available data for each facility, EPA estimates that the available incineration capacity at these facilities is approximately 28 million gallons per year. This estimate is slightly more than the estimate used for the proposed rule. When information was not available on the utilization rate, the calculation was based on a utilization rate of 80%.

Because there will be an increased demand for incineration capacity for CERCLA wastes that are not covered by this rule (i.e., wastes other than F001–F005), not all of this 28 million gallons per year capacity will be available for the restricted solvent wastes. Data from site analyses conducted by EPA show that the increased demand for off-site commercial incineration of non-solvent CERCLA wastes that will require capacity is 5.4 million gallons per year. Therefore, the available incineration capacity for the restricted solvent wastes is 22.6 million gallons per year.

3. Capacity for Fuel Substitution

Commenters expressed concern that in the proposal rule, EPA did not include capacity estimates for fuel substitution. A commenter stated that fuel substitution is a potentially very large source of alternative capacity and should be included in the capacity estimates for the final rule. EPA recognizes the importance of fuel substitution but did not have a sufficient data base to develop estimates for the proposed rule. Since the proposal, EPA has developed a new data base from the 1986 National Screening Survey. This information was included in the Notice of Availability on September 5, 1986. The new data base shows that at least 20 hazardous waste management facilities use hazardous waste as fuel. The available capacity for fuel substitution at these facilities is approximately 24 million gallons. Because many facilities that are not regulated hazardous waste management facilities recycle hazardous waste as fuel, the available capacity for fuel substitution is greater than 24 million gallons.

4. Capacity for Distillation

In the proposed rule, EPA estimated that the unused capacity for distillation is 225 million gallons per year. Several commenters questioned the applicability of some distillation systems to the restricted solvent wates. EPA recognizes that not all waste may be acceptable for all systems. However, the additional distillation capacity needed for the restricted solvent wastes is only 4 percent of the available capacity. Therefore, EPA assumes that it is reasonable to expect that there is adequate distillation capacity for the restricted solvents.

*F. Determination of the Effective Date*

Comparison of the data developed in Sections D and E above results in the demand and capacity estimates in the following table:

ESTIMATES OF DEMAND AND AVAILABLE CAPACITY

| Treatment or Recovery Technology | Unused Capacity (Millions of Gallons Per Year) | Capacity Needed (Total) |
|---|---|---|
| Wastewater | 2,103.0 | 2481.0 |
| Incineration | 22.6 | 65.3 |
| Fuel Substitution | 24.0 | 18.8 |
| Distillation | 225.0 | 4.2 |

Analysis of the demand and capacity shows that available wastewater treatment and incineration capacity for solvent wastes will be exhausted by this

regulation but capacity for fuel substitution and distillation will remain. As explained previously, the capacity required for small quantity generator wastes cannot be determined precisely, therefore, the Agency has distributed the capacity demand for these wastes between incineration, distillation and fuel substitution based on the relative demand projected for those technologies. EPA has assigned the entire capacity demand for CERCLA response action and RCRA corrective action wastes to incineration because this technology is currently projected to be the alternative technology used during the next year for the majority of these wastes. As a result of this analysis, EPA has clearly identified the basis for extension of the effective date for at least some wastes requiring incineration and wastewater treatment.

In order to address the shortage of incineration capacity, EPA is granting a two year national variance to CERCLA response action and RCRA corrective action wastes (20.2 million gal/year), solvent-containing sludges and solids (21.7 million gal/year) and small quantity generator wastes (4.4 million gal/year) requiring incineration. This combination of variances should provide full utilization of available incineration capacity. The demand for wastewater treatment capacity cannot be similarly segregated because of EPA's limited data base. Therefore, EPA will grant a variance to all solvent wastewaters because of the significant capacity deficiency identified.

## VI. Treatment Standards for Dioxin-Containing Wastes

### *A. Introduction*

Today's final rule for dioxins adopts most of the provisions of the proposed rule and outlines EPA's response to major comments received on the proposal.

Under today's rule, wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028 must be treated to a level below 1 ppb in the waste extract for each of the following specific categories of CDDs and CDFs [11]:

HxCDD—hexachlorodibenzo-p-dioxins
HxCDF—hexachlorodibenzofurans
PeCDD—pentachlorodibenzo-p-dioxins
PeCDF—pentachlorodibenzofurans
TCDD—tetrachlorodibenzeno-p-dioxins
TCDF—tetrachlorodibenzofurans

One ppb is the routinely achievable detection limit using method 8280 of SW-846 [12] (40 CFR 261 Appendix X).

These listed wastes also must be treated below the detection limits for 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, 2,3,4,6-tetrachlorophenol, and pentachlorophenol. The detection limits for these constituents are 50, 50, 100, and 10 ppb, respectively in the waste extracts using method 3510/8270 identified in the SW-846.

Wastes that meet the applicable treatment standards may be disposed in a RCRA Subtitle C land disposal facility which has been fully permitted and has an approved waste management plan, in accordance with the dioxin-listing rule (50 FR 1978). Dioxin-containing wastes at or exceeding the detection limit for these constituents of concern in the waste extracts using the TCLP must be treated in accordance with the requirements specified in the dioxin-listing rule, specifically incineration (40 CFR 264.343 and 40 CFR 265.352) or thermal treatment (40 CFR 265.383) to six 9s destruction and removal efficiency (DRE), or tank treatment (40 CFR 264.200) (if such treatment can achieve concentrations of CDDs, CDFs and certain chlorophenols to below detection in the extracts from the treatment residuals).

EPA is also granting the maximum two-year variance to the effective date of the land disposal restrictions for dioxin-containing wastes because of a finding that there is a lack of capacity to treat and dispose of these wastes. Thus, the effective date of this final rule is November 8, 1988. These wastes are subject to all special management requirements specified in the dioxin-listing rule and the minimum technological requirements of section 3004(o).

In the proposed rule, the Agency did not set treatment standards for EPA Hazardous Waste No. F028 (residuals resulting from incineration or thermal treatment of soil contaminated with F020, F021, F022, F023, F026, and F027). It was stated in the proposal that F028 is a treatment residual from incineration or thermal treatment of dioxin-containing soil to six 9s DRE. Because incineration is the best technology identified to treat dioxin-containing wastes, the Agency concluded, that in most cases, the F028 waste would meet the treatment standard. The Agency recognizes that there may be instances in which this is not the case. Accordingly, EPA now believes that it erred in concluding that all F028 wastes would meet the designated treatment standard of no detection. Instead, it is appropriate to require that F028 wastes, like other dioxin-containing wastes, be tested to determine whether detectable levels of specific categories of CDDs and CDFs and certain chlorophenols are present in the extracts from the waste or treatment residuals. The final rule has been modified to reflect this change.

### *B. Summary of Regulations Affecting Land Disposal of Dioxin-Containing Wastes*

In the dioxin-listing rule, EPA also specified additional management standards relating to land disposal of these wastes. Specifically, the Agency prohibited the management of the listed dioxin-containing wastes at interim status land disposal facilities. There are exceptions for interim status surface impoundments holding wastewater treatment sludges that are created in the impoundments as part of the plant's wastewater treatment system and interim status waste piles that meet the requirements of 40 CFR 264.250(c)).

The dioxin-listing rule also establishes special management standards for dioxin-containing wastes in permitted land disposal facilities intending to manage these wastes. These facilities are required to submit a waste management plan to address the additional design and operating measures over and above those in Part 264 which the facility intends to adopt to prevent migration of the waste. The plan is to be submitted by the owner or operator of the disposal facility as part of the Part 264 permit application (see 50 FR 1979 for additional information).

The Agency believes that such a waste management plan will help provide assurance that these wastes are properly managed in a land disposal situation. It should be noted, however, that under today's rule, these requirements apply only to the land disposal of dioxin-containing wastes that meet the treatment standard. Also, these standards do not supersede the minimum technology requirements

[11] The following acronyms and definitions are used: PCDDs—all isomers of all chlorinated dibenzo-p-dioxins. PCDFs—all isomers of all chlorinated dibenzofurans. CDDs—and CDFs—isomers of tetra-, penta-, and hexachlorodibenzo-p-dioxins and -dibenzofurans, respectively. TCDDs and TCDFs—all isomers of the tetrachlorodibenzo-p-dioxins and -dibenzofurans, respectively. TCDD and TCDF—the respective 2,3,7,8-isomers. The prefixes Tr, T, Pe, and Hx denote the tri-, tetra-, penta-, and hexachlorodioxin and -dibenzofuran congeners, respectively.

[12] In test method 8280, the proposed quantification level for dioxin in water is 10 ppt. However, due to the interferences inherent in leachate samples and the variability of waste matrices, the Agency considers that, generally, dioxin wastes subject to today's rule will have a detection limit of 1 ppb. It should be noted that because the treatment standard for dioxins is set at "no detection" it is important to calibrate to the levels specified in 8280.

imposed by section 3004(o). All the prohibitions established under the dioxin-listing rule remain in effect even if the wastes meet the treatment standard.

*C. Analysis of Treatment Technologies for Dioxin-Containing Wastes and Determination of BDAT*

1. Applicable Treatment Technologies

The dioxin-listing rule establishes standards for incineration and certain thermal treatment. It states that incinerators burning the listed CDD/CDF-containing wastes must achieve a destruction and removal efficiency of six 9s, in addition to the other standards contained in 40 CFR 264.343 and 265.352.

In the dioxin-listing rule, the Agency acknowledged that there are presently a number of emerging thermal treatment technologies that may be applicable for the treatment of dioxin-containing wastes in order to render them nonhazardous (or at least, less hazardous). However, in the absence of performance standards, such treatment units would not be allowed, and this would stifle and discourage the development of new treatment alternatives for these very toxic wastes. Accordingly, the Agency revised the dioxin-listing rule to allow for interim status thermal treatment units to treat the dioxin-containing wastes if it has been certified that the units meet the applicable performance standards in 40 CFR 264.383 (including six 9s DRE for principal organic hazardous constituents (POHCs)).

The dioxin-listing rule also requires special management practices for the treatment and storage of dioxin-containing wastes in tanks. Secondary containment will be required as a permit condition for all tanks that treat or store CDD- and CDF-containing wastes. Specifically, the dioxin-listing rule requires the owners/operators of tank facilities storing or treating CDD- and CDF-containing wastes to provide EPA with the following information in its permit application specifying: the precise design of the secondary containment system and its accompanying leak detection method; the choice of construction material and specifications; and whether additional run-on or precipitation controls are needed to preserve the system's integrity. These technical requirements are specified in 40 CFR 270.16(g) and must be addressed by each individual facility in its RCRA permit application. This information will be evaluated by the EPA before a permit is issued.

As was stated in the proposal, the Agency is aware of much research currently being conducted to develop and evaluate treatment technologies applicable to dioxin-containing wastes. In the proposal, the Agency presented a list of treatment technologies that were in one of three stages of development or consideration. Recently available information and data have allowed the Agency to revise this list. Additional information on the technologies under evaluation for the treatment of these wastes is available in the background docket for today's rule.

The Agency will continue to gather data and information on these and other emerging technologies in order to evaluate their future potential as applicable technologies for the treatment of dioxin-containing wastes. As stated in today's rule however, any technology for the treatment of dioxin-containing waste must be done in accordance with the dioxin-listing rule. Many of the technologies being analyzed are thermal treatments, or can be conducted in tanks, including infrared heating and chemical detoxification.

2. Comparative Risk Assessment Determinations for Dioxin-Containing Waste

In support of today's rule, the Agency conducted a more detailed comparative risk analysis on soils contaminated with 2, 3, 7, 8-TCDD, still bottoms contaminated with dioxins and toluene, and unused formulations of pentachlorophenol contaminated with dioxins. A detailed characterization of each waste stream is available in the regulatory impact analysis for dioxin-containing waste (Ref. 9).

The analysis of the comparative risks of land disposal and incineration to six 9s DRE indicates that both technologies potentially result in insignificant risks to human health. Land disposal presents very low risks provided that run-off or wind dispersal of contaminated particles is prevented, and dioxin-containing wastes are not co-disposed with other materials that may mobilize the dioxins (e.g., solvents). Regulations previously established (50 FR 1979) governing the management of dioxin-containing wastes are likely to prevent such releases. Similarly, incineration to six 9s DRE is likely to destroy all of the constitutents of concern in these wastes and is also not predicted to present significant risks.

It is possible that, in some cases, incineration may result in greater risks than land disposal. This could occur if incinerator scrubber waters containing undetectable levels of dioxins were discharged untreated to surface waters. However, EPA believes this is unlikely because facilities incinerating dioxin-containing wastes will likely be required under the Clean Water Act to treat the scrubber water prior to discharge, and because treatment of scrubber water by carbon absorption should be effective in preventing releases of dioxin contaminants.

Provided that the discharge of untreated scrubber water is prohibited, restricting land disposal of contaminated soils will likely result in increases in total population risks and decreases in risk to the most exposed individuals (MEI). Under the same conditions (i.e., incineration to six 9s DRE and prohibitions on untreated scrubber water discharge), restricting the land disposal of still bottoms may result in an increase in total population risks, but would significantly reduce the maximum MEI risk. For unused formulations of pentachlorophenol, both the total population and health risk would be significantly reduced by incineration at six 9s DRE.

It should be noted that the greatest risks to human health resulting from the land disposal restriction are likely to be caused by changes in the extent of transportation and handling of dioxin-containing wastes. The comparative risk analysis shows that risks from transportation and handling of dioxin-containing wastes are typically much greater than the risk posed from land disposal or incineration. The Agency however, is not able to predict whether transportation distances and the extent of handling will increase or decrease as a result of this rule.

Because the risk assessment does not indicate that incineration is clearly more risky than direct land disposal, the Agency is classifying incineration at six 9s DRE as available for the purpose of establishing the treatment standard for dioxin-containing waste.

3. Demonstrated Technologies and Determination of BDAT

The only sufficiently demonstrated technology for the treatment of dioxin-containing wastes is incineration. Data from the field demonstration of EPA's Mobile Incineration System (MIS) on F020, F022, F023, F026, and F027 wastes at the Denney Farm site in McDowell, Missouri indicate that an incineration unit operating at six 9s DRE is capable of treating dioxin-containing wastes and the constituents of concern subject to this rule to non-detectable levels.

Although the field demonstration at Denney Farm did not include the burning of F021 wastes, the Agency believes that the existing data from the MIS field demonstration and other

available data show that similar non-detectable levels of CDDs, CDFs and pentachlorophenol would occur as the result of incineration at six 9s DRE. As stated in the proposed rule, six 9s DRE for dioxin-containing waste is determined using a POHC with a lower heat of combustion than the CDDs and CDFs contained in the waste. The more difficult a waste is to incinerate, the lower its heat of combustion. Conversely, a constituent with a high heat of combustion is easier to incinerate. In the case of the F021 waste, the Agency believes that six 9s DRE can be achieved for the CDDs and CDFs in these wastes, since F021 wastes and CDDs and CDFs have similar degrees of incinerability (heats of combustion).

The Agency has also determined that incinerators operating in accordance with the performance standards specified in 40 CFR 761.70 for PCB wastes, namely six 9s destruction, also meet the demonstrated component of the BDAT standard. For more information on this determination, the reader is referred to the preamble discussion in the proposed rule (51 FR 1730–1735).

Incineration to six 9s DRE achieves lower concentrations of CDDS, CDFs and certain chlorophenols in the treatment residuals than incineration to four 9s DRE (current standard for all RCRA hazardous waste except dioxin-containing wastes). The efficiency of incineration has been demonstrated by the successful dioxin burn at six 9s DRE in the EPA MIS at the Denney Farm Site in McDowell, Missouri and the incineration of PCB wastes at six 9s destruction at a number of facilities. Data indicate that residuals resulting from the incineration of CDDs and CDFs at six 9s DRE contain these toxicants at concentrations about five to seven orders of magnitude less than those in the starting material. For example, solid residues resulting from the incineration at six 9s DRE of dioxin wastes containing 10 ppm TCDD may be expected to contain less than .1 ppb TCDD. Additional data from the incineration of dioxin-containing wastes at six 9s DRE show no detectable levels of CDDs/CDFs or the chlorophenols in the residuals. Most of the analysis was conducted in accordance with the methods specified in SW–846 (method 8280). (40 CFR 261, Appendix X)

Additional data indicate that incinerators operating as six 9s DRE achieved extremely low concentrations of CDDs, CDFs, and PCBs in the treatment residuals, in most cases, far below those levels measured with standard analytical techniques. Detailed information on the determination of BDAT is available in the preamble discussion in the proposed rule.

*D. Determination of Alternative Capacity and Effective Dates*

1. Required Alternative Treatment Capacity for Dioxin-Containing Wastes

Approximately 14.7 million pounds (6,650 metric tons) of dioxin-containing wastes are presently covered by the dioxin-listing rule. (Ref. 9). These wastes are primarily associated with the past production and manufacturing use of tri- and tetrachlorophenol and current manufacturing uses of pentachlorophenol. The Agency believes that the quantity of dioxin-containing wastes currently generated and subject to today's land disposal restriction rule amounts to 3 million pounds annually (1,350 metric tons). For the purposes of this rulemaking, the Agency estimates that approximately 1 billion pounds (500,000 metric tons) is dioxin-contaminated soil. This assessment is taken from an estimate that 1.1 billion pounds of dioxin-contaminated soil exist in the State of Missouri. See the background docket for additional information. The Agency is continuing to evaluate the universe of these wastes. As better information becomes available, the Agency will revise its estimates accordingly. Additional information on the quantity estimates of dioxin-containing wastes subject to the land disposal restriction can be found in the regulatory impact analysis for this rule.

2. Treatment, Disposal, and Recovery Capacity Currently Available

Under the dioxin-listing rule, facilities which intend to treat or dispose of dioxin-containing waste must do so in accordance with the special management standard specified in the rule (50 FR 1978). Currently, Agency information on the activities of generators and treatment, storage, and disposal facilities indicate that there is no available disposal or recovery capacity for dioxin-containing wastes. In addition, there are no Agency approved incinerators or other thermal treatment units to treat dioxin-containing wastes. Although several petitions have been received by the Agency, no incineration or thermal treatment units have been certified/permitted as required in the dioxin-listing rule.

Owners/operators of incinerators approved to burn PCB's pursuant to the provisions of the Toxic Substances Control Act, may wish to apply for certification. As pointed out earlier, PCB incinerators are a logical choice to burn these wastes because they are required to meet the same performance standard (six 9s DRE) required under the dioxin-listing rule. There are currently three commercial incinerators approved under TSCA to burn PCBs. In addition to these units, several other incinerators under development may be available (contingent on certification) for treating CDD- and dioxin-containing wastes. However, the Agency has no indication whether or when any of these or any other facility will be able to treat dioxin-containing wastes.

The Agency has full confidence in the safeguards provided by the required management standards. EPA is committed to move rapidly to assure that approved capacity is available to properly manage the listed dioxin-containing wastes. Agency efforts in this area include identifying facilities that can properly manage dioxin-containing wastes, and encouraging owners and operators to apply for the necessary Federal, State, and local permits. The EPA Regional offices will work closely with these facilities to expedite their permit applications.

## VII. State Authority

*A. Applicability of Rules in Authorized States*

Under section 3006, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Before the November 8, 1984, RCRA amendments, a State with final authorization administered its hazardous waste program 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 that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged 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 section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed under RCRA take effect in authorized States at the same time that they take effect in

nonauthorized States. EPA is directed to carry out these 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 the newly enacted RCRA provisions as State law to retain final authorization, these provisions are effective in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924). Therefore, it is being added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the newly enacted RCRA provisions and take effect in all States, regardless of their authorization status. States may apply for either interim of final authorization for the provisions in Table 1, as discussed in the following section. Table 2 in 40 CFR 271.1(j) is being modified also to indicate that this rule is a self-implementing provision of the RCRA amendments.

*B. Effect on State Authorizations*

As noted above, EPA will implement today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to the RCRA amendments, a State submitting a program modification 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 modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that the interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modification to EPA for approval. The deadline for State program modifications for today's final rule is July 1, 1989, if regulatory changes are necessary, or July 1, 1990, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see 40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

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 promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is 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 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 the effective date of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

*C. State Implementation*

There are three unique aspects of today's rule which affect State implementation and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is promulating land disposal restrictions for all generators and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA may grant a national variance from the effective date of land disposal prohibitions for up to 2 years if it is found that there is insufficient alternative capacity to land disposal. Under § 268.5, case-by-case extensions of up to 1 year (renewable for an additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective date because these determinations must be made on a national basis. In addition, it is clear that section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. EPA may grant petitions of specific duration to allow land disposal of certain hazardous waste where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose prohibitions may be authorized under section 3006 to grant petitions for exemptions from bans. Decisions on site-specific petitions do not require the national perspective required to prohibit waste or grant extensions. In accordance with section 3004(i), EPA will publish notice of the State's final decision on petitions in the **Federal Register**.

One commenter argued that EPA should publish all petitions submitted by authorized States, as well as publish final decisions. EPA does not believe that section 3004(i) mandates this result. In order to be authorized to administer the petition process, a State will have to adopt notice and comment requirements equivalent to those in today's rules. Publication of the final decision in the **Federal Register** will satisfy the need to inform the general public by informing the public of which facilities are allowed to receive prohibited waste, and by informing other applicants as to the types of petitions that have been accepted.

States are free to impose their own disposal prohibitions if such actions are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose bans which contravene an EPA action, such as granting a case-by-case extension or petition, the more stringent State prohibitions governs and EPA's action is without meaning in the State.

## VIII. Effects of the Land Disposal Restrictions Program on Other Environmental Programs

*A. Discharges Regulated Under the Clean Water Act*

Compliance with land disposal restriction requirements does not relieve facility owners of the obligation to comply with all other Federal, State, and local environmental requirements, including the requirements of the Clean Water Act. Under the Clean Water Act, facility owners must comply with all applicable pretreatment requirements (for discharges to a publicly owned treatment works) and all requirements of an NPDES permit (for discharges to surface water).

The Agency recognizes that generators and treaters of hazardous wastes may choose to dispose of restricted wastes using non-RCRA disposal options.

Two disposal options regulated under the Clean Water Act are direct discharge to surface waters and indirect

discharge to publicly owned sewage treatment works (POTWs). Decisions to discharge restricted solvent wastes using these options will depend upon a number of factors including the physical form of the waste, the degree of pretreatment required prior to discharge, State and local regulations, and the cost of disposal. The Agency conducted an analysis to determine the impact of the land disposal restrictions on these alternative disposal methods (Ref. 10). The analysis focused primarily on the discharge of solvent wastes to POTWs because the Agency lacked data to analyze the impacts from spent solvent wastes discharged directly to receiving waters. However, inadequate data on these above mentioned factors precluded the Agency from conducting a quantitative assessment of the potential effect of the land disposal restrictions on increased demand for disposal to POTW's.

The results of the analysis indicated that the quantity of F001–F005 solvents discharged to POTWs could potentially increase as much as five times, although it is likely that the actual increase will be much less. The analysis also demonstrated that the discharge of solvent constitutents to POTWs will probably result in some exposure to humans. However, the risks to public health and the environment from these discharges could not be determined.

*B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act*

Two options regulated under the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 et seq.) are ocean dumping and ocean-based incineration. EPA is in the process of revising the MPRSA regulations. If the Agency were to relax the current regulations, there could be increased demand for ocean-based waste management due to the impact of the land disposal restrictions. If, for example, the regulations were revised to allow the issuance of permits to applicants whose wastes fail to comply with one or more of the MPRSA environmental criteria but who successfully demonstrate a need for the permit, the demand for ocean disposal could increase substantially.

The Agency conducted an analysis of the potential shift in demand for ocean disposal (ocean dumping or ocean-based incineration) resulting from the restrictions on land disposal of solvent, dioxin, and California list wastes. The results are described in "Assessment of Impacts of Land Disposal Restrictions on Ocean Dumping and Ocean Incineration of Solvents, Dioxins, and California List Wastes" (Ref. 12). This assessment is based on a methodology to score and rank waste streams for relative acceptability for ocean disposal, supplemented with an analysis of cost factors and capacity constraints.

The scoring/ranking methodology is based on technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence of the waste) associated with ocean disposal of hazardous waste. The capacity analysis assumes that those wastes least acceptable for ocean disposal will be treated or disposed of by land-based methods. The cost analysis assumes that additional land-based treatment capacity would be built to treat waste streams for which the costs of land-based treatment would be less than the costs of ocean disposal (including on land transportation to a port located on the East Coast).

The results of the cost/capacity analysis indicates that, as a result of the land disposal restrictions, approximately 9.2 million gallons per year of solvent wastes and 1.2 million gallons per year of dioxin wastes potentially could create demand for ocean dumping and ocean-based incineration. Such demands result from capacity short-falls of land-based incineration and the relatively lower cost of ocean dumping and ocean-based incineration, taking into account the costs of transportation on land. These results estimate the demand that may be created if the ocean dumping regulations are revised to allow the issuance of permits for wastes that do not comply with MPRSA environmental criteria, because the analysis did not take into account technical requirements or environmental criteria.

The Agency expanded the cost/capacity analysis to eliminate those wastes that do not meet technical requirements or MPRSA criteria. The results of that analysis indicated that none of the solvent and dioxin waste streams identified as likely to create potential demand for ocean disposal in the cost/capacity analysis would be acceptable for ocean dumping, based on existing ocean dumping regulations. Conversely, all the waste streams identified by the cost/capacity analysis would be acceptable for ocean-based incineration, based on technical requirements and the proposed ocean incineration regulations.

*C. Air Emissions Regulated Under the Clean Water Act*

Many of the technologies capable of achieving the treatment standard for a restricted waste may result in cross-media transfer of hazardous constituents into the air. Examples would be air-stripping of volatile organics from wastewater and incineration of metal-bearing spent solvents. Unless air controls are added, these technologies may result in transfer of organics and metals, respectively, to the atmosphere.

The Agency has undertaken several efforts to address the potential problem, as discussed in the comparative risk assessment section. The Agency has initiated a program to address metal emissions from incinerators. EPA also has initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address leaks from equipment, such as pumps, valves, and vents from units processing concentrated organics waste streams. Several units identified as BDAT in this rulemaking, batch distillation, thin film evaporation, fractionation, and incineration, would process waste streams with greater than ten percent organics and would be covered by this rulemaking. The Agency expects to propose these standards in November 1986. The second program under section 3004(n) will address all remaining sources of air emissions, such as residual air emissions from land disposal units and non-land disposal sources (e.g., tanks and waste transfer and handling). These standards are scheduled to be proposed in November 1987, and promulgated in November 1988.

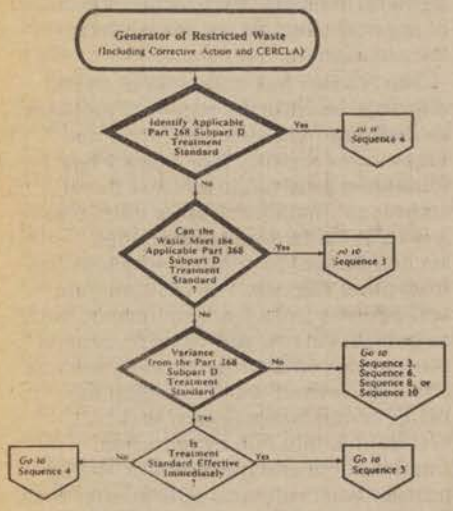
## IX. Implementation of the Part 268 Land Disposal Restrictions Program

As a result of the regulations being promulgated today under Part 268, several options will be available to the generator or owner/operator of a treatment, storage, and disposal facility for the management of restricted hazardous wastes. In order to provide direction to those who manage restricted hazardous wastes, the following decision-making sequences are offered for determining appropriate waste management procedures. This unit provides references to applicable 40 CFR Parts 264 and 265 requirements as well as Part 268 requirements for implementation of the various waste management options. The Agency expects to produce an expanded version of this section as guidance to the regulated community.

All of the sequences in the generator's decision-making process must commence with a determination as to whether the hazardous waste is listed in Part 268 Subpart C. If the hazardous

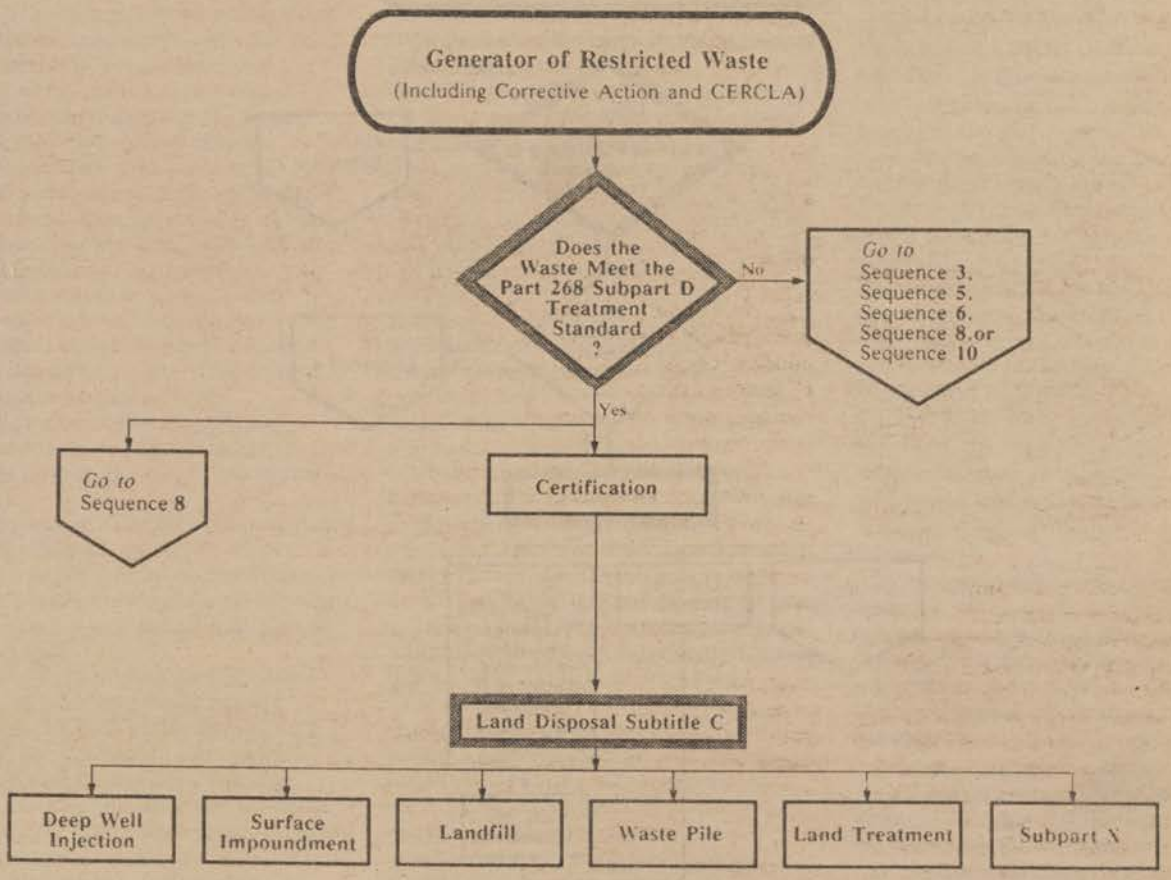
waste is not a restricted waste, it is not subject to land disposal restrictions under Part 268. It must, nevertheless, be managed in accordance Parts 264 and 265.

**Sequence 1: Waste Characterization**




Sequence 1 in the generator's decision-making process commences with a determination of the appropriate treatability group and corresponding Part 268 Subpart D treatment standard (§§ 268.41, 268.42, or 268.43). The Agency is requiring that applicable Part 268 Subpart D treatment standards for a restricted waste be determined at the point of generation. To require otherwise would allow the generator to dilute waste in order to circumvent an effective date or otherwise alter the applicable treatment standard. The Part 268 Subpart D treatment standards are expressed either as performance standards in the waste extract in § 268.41, as required treatment methods in § 268.42, or as concentrations in the waste in § 268.43. After the generator establishes the applicable Part 268 Subpart D treatment standard, the next step in the sequence is to determine the effective date of the applicable treatment standard. EPA has the discretionary authority to delay the effective dates of the Part 268 treatment standards on the basis of available national treatment capacity. Determinations as to the adequacy of treatment capacity for restricted wastes are based on the quantity of restricted wastes generated and the available capacity of alternative treatment, recovery, and disposal technologies. For those wastes where EPA determines that alternative capacity is adequate, the treatment standards will take effect immediately upon promulgation. When the Part 268 Subpart D treatment standards are expressed as concentrations in the waste extract (§ 268.41), the need for treatment depends upon the nature and concentration of the hazardous constituents. This will be determined either through analysis of constituents in the waste extract specified in § 268.7, using the Toxicity Characteristic Leaching Procedure (Appendix I to Part 268) or through knowledge of the hazardous constituents in the waste extract based on the materials and the manufacturing processes generating the waste. Where the Part 268 Subpart D treatment standards are specified as a required method (§ 268.42), it is not necessary for the generator to determine the concentration of the hazardous constituents in the waste or waste extract. When the Part 268 Subpart D treatment standards are expressed as concentrations in the waste (§ 268.43), the need for treatment is determined either through analysis of the hazardous constituents in the waste, as specified in § 268.7 or through knowledge of the hazardous constituents in the waste based on the materials and the manufacturing processes generating the waste.

**Sequence 2: Wastes That Naturally Meet Part 268 Subpart D Treatment Standard**




Sequence 2 in the generator's decision-making process commences with the determination that the concentration of hazardous constituents in the waste is lower than the applicable Part 268 Subpart D treatment standard. Therefore, the waste is exempt from the statutory prohibition on land disposal.

The generator must submit a notice (§ 268.7(a)(2)(i)) and include: (1) EPA Hazardous Waste Number; (2) the applicable treatment standard; (3) the manifest number associated with the shipment of waste; and (4) waste analysis data, where available. The generator must also submit a certification statement to the land disposal facility as required under § 268.7(a)(2)(ii). The land disposal facility must verify the records submitted by the generator in accordance with the facility's waste analysis plan. A generator that also operates an on-site land disposal facility must put the same information (except for the manifest number) as would be in the notice (§ 268.7(a)(2)(i)) in the operating record of the land disposal facility.

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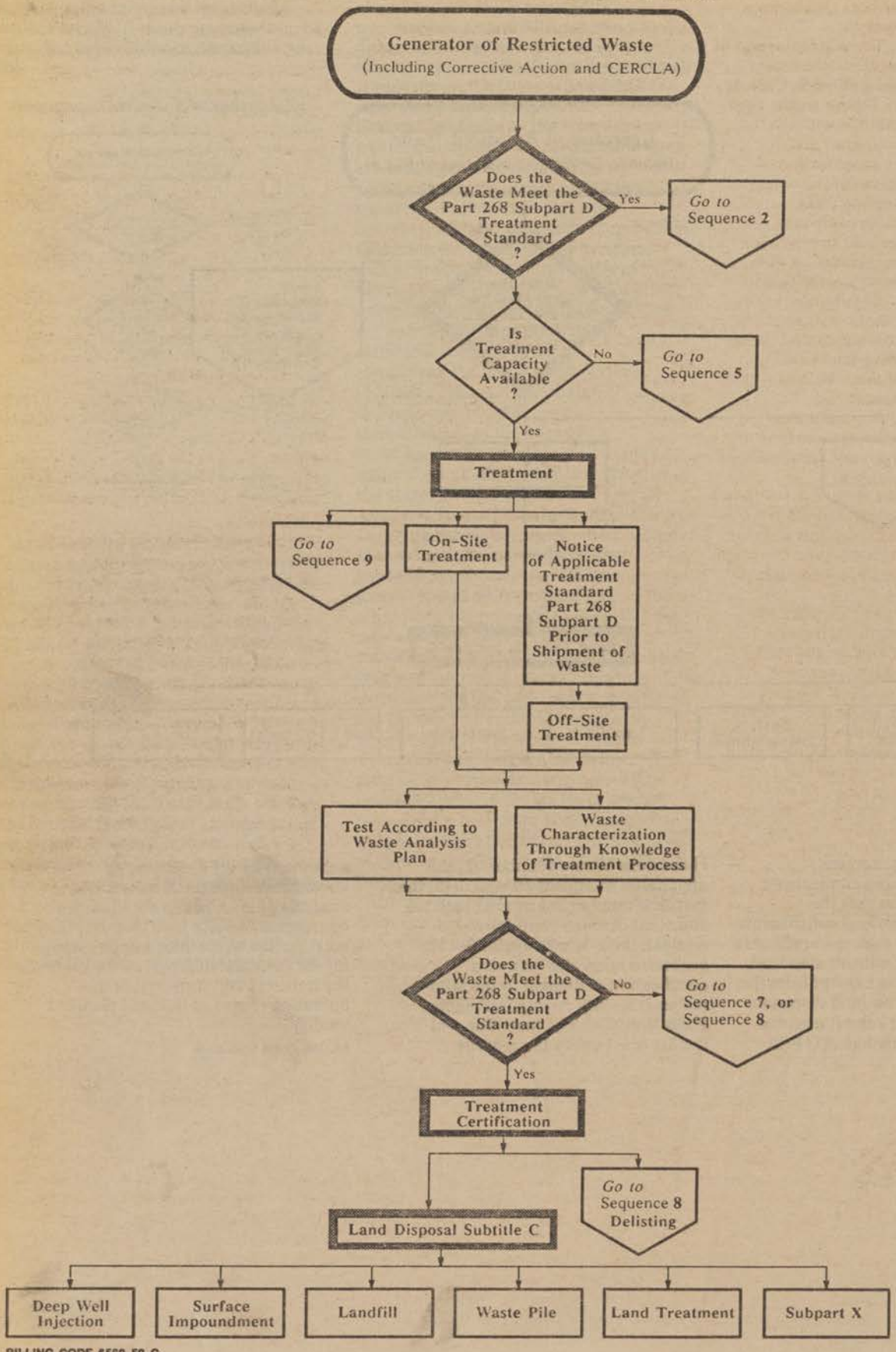
**Sequence 3: Treatment of Restricted Wastes**

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Sequence 3 in the generator's decision-making process commences with one of the following determinations: (1) The concentration of hazardous constituents in the waste extract exceeds the applicable § 268.41 treatment standard; (2) the waste must be treated in accordance with the treatment method required under § 268.42; or (3) the concentration of hazardous constituents in the waste exceeds the applicable § 268.43 treatment standard. In each case, continued placement of the restricted waste in land disposal units as of the applicable effective date specified in Part 268 Subpart C is prohibited.

Generators may store restricted wastes on site in containers and tanks according to the provisions in section 268.50 prior to treatment. This storage is solely for the purpose of the accumulation of such quantities of hazardous waste as is necessary to facilitate proper, recovery, treatment, or disposal.

The generator must treat the restricted waste in either an on-site or off-site treatment facility with interim status or a RCRA permit that is allowed to accept the restricted waste (as specified in 40 CFR Part 270).

An off-site treatment facility must obtain a notice from the generator specifying the EPA Hazardous Waste Number, the applicable treatment standard, and the manifest number associated with the shipment of waste § 268.7(a)(1)). This notice must be placed in the operating record of the treatment facility along with a copy of the manifest. Generators who are also treatment, storage, or disposal facilities must place the same information in the operating record of the facility, although a formal notice and manifest are not required. The testing and recordkeeping requirements promulgated in today's rule do not relieve the generator of his responsibilities under 40 CFR 262.20 to designate a facility on the manifest which is permitted to accept the waste for off-site management.

The determination that the treatment residue meets the applicable § 268.41 treatment standard can be made through knowledge of the hazardous constituents in the waste extract based on the processes used in the treatment of the waste or by analyzing the treatment residuals according to the waste analysis plan using the Toxicity Characteristic Leaching Procedure (Part 268, Appendix I). The determination that the treatment residue meets the applicable § 268.43 performance standard can be made through knowledge of the hazardous constituents in the waste based on the processes used in the treatment of the water or by analyzing the treatment residuals according to the waste analysis plan. In either case, if the concentration of hazardous constituents in the treatment residual extract exceeds § 268.41 treatment performance standards, or the concentration of hazardous constituents in the residual exceeds § 268.43 treatment standards, additional treatment must be performed before land disposal is permitted. Generators, transporters, handlers, storage facilities, or treatment facilities may not dilute restricted wastes as a substitute for adequate treatment to meet §§ 268.41 or 268.43 treatment standards. Such actions will be considered a violation of the dilution prohibition. In particular, wastes meeting Part 268 Subpart D treatment standards must not be mixed with wastes that do not meet such standards in order to achieve the treatment standard for the mixture (§ 268.3). EPA does not intend to disrupt or alter the normal and customary practices of properly operated treatment facilities. Treatment facilities can mix compatible wastes in order to treat at capacity levels. However, the concentration of a hazardous constituent in the treatment residual must not exceed the concentration of the most stringent applicable §§ 268.41 or 268.43 treatment standard for any given constituent.

When shipping the treatment residue to an interim status or RCRA permitted land disposal facility, the treatment facility must certify (as specified in § 268.7(b)(2)) that the treatment residue meets the applicable treatment standards in §§ 268.41, or 268.43, or has been treated using the required method in § 268.42 and, therefore, is no longer a restricted waste. The treater must also send a notice to the land disposal facility and include the EPA Hazardous Waste Number, the applicable treatment standard, the manifest number associated with the shipment of waste, and waste analysis data from treatment residues where available as specified in § 268.7(b)(1).

If the treatment residuals meet the delisting criteria, the generator or treatment facility may petition the Agency for a site-specific delisting pursuant to the provisions in 40 CFR 260.22. Delisted residuals can be managed in subtitle D facilities.

In some cases, the generator or treatment facility may conclude that it is technically infeasible to meet the §§ 268.41 or 268.43 treatment performance standards established for the waste. If a waste cannot meet the applicable treatment standards, the generator may petition EPA for a treatability variance under § 268.44 (See Sequence 7: Variance From a Treatment Standard, for a detailed discussion.

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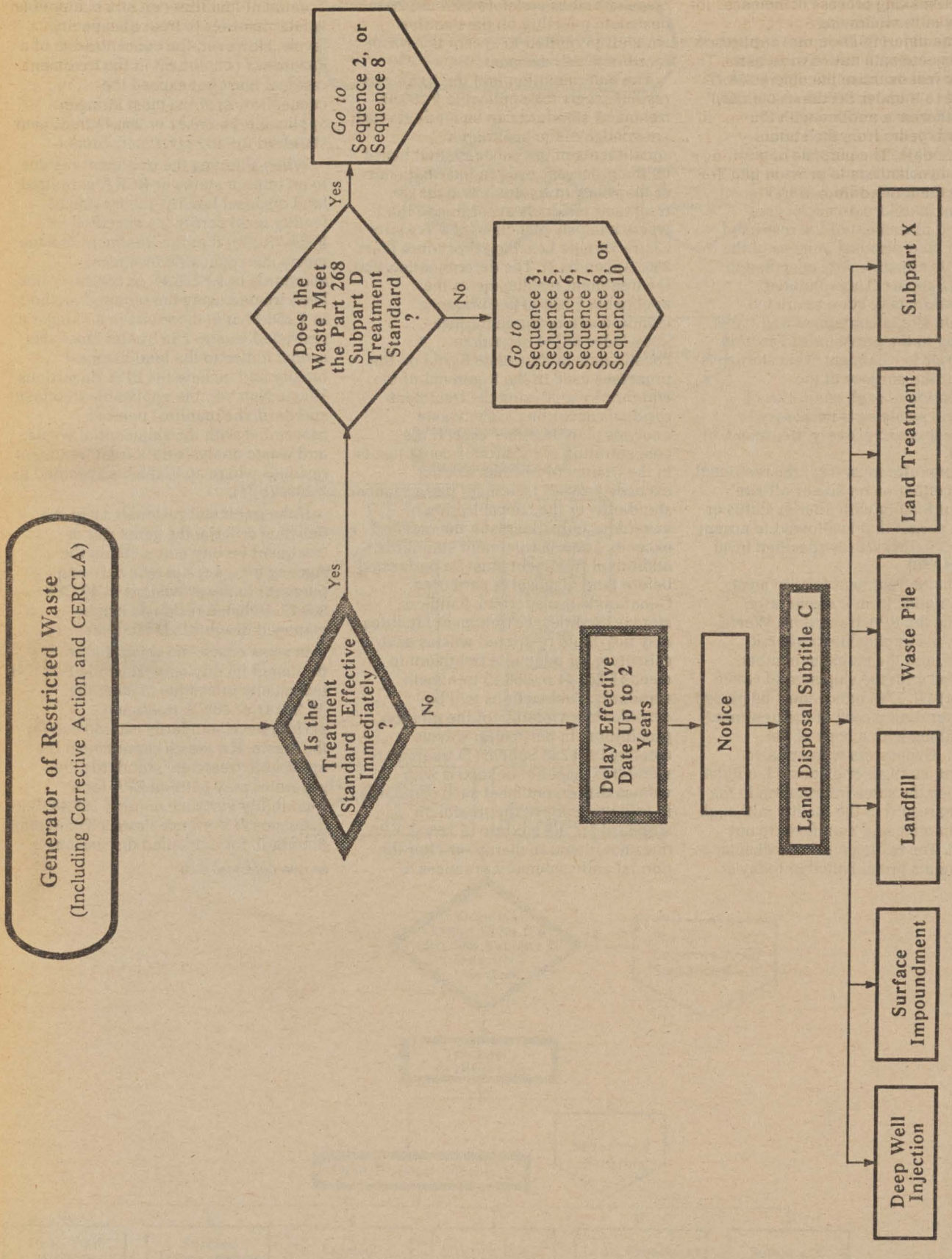
**Sequence 4: National Capacity Variance**

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Sequence 4 in the generator's decision-making process commences for those wastes where the Agency has made the determination that capacity is not adequate on a nationwide basis. The Agency will exercise the discretion granted to it under Section 3004(h)(2) and authorize a nationwide variance of up to two years from the statutory effective date. The purpose of granting a national variance is to provide time for development of additional treatment, recovery or disposal capacity. Those wastes that EPA determines are eligible for nationwide variances are specified in Part 268 Subpart C.

During the national variance, the generator must send a notice (as specified in § 268.7(a)(3)) to the land disposal facility indicating that EPA has granted an extension of time in which to comply with the applicable Part 268 Subpart D treatment standard. At the end of the national variance, the Part 268 Subpart D treatment standards takes effect and the generator must follow any of the following sequences: Sequence 3: Treatment of a Restricted Waste, Sequence 5: Case-by-Case Extensions, Sequence 6: No Migration Petition, Sequence 8: Delisting, or Sequence 10: Change Production Process, Recycle or Don't Produce Waste.

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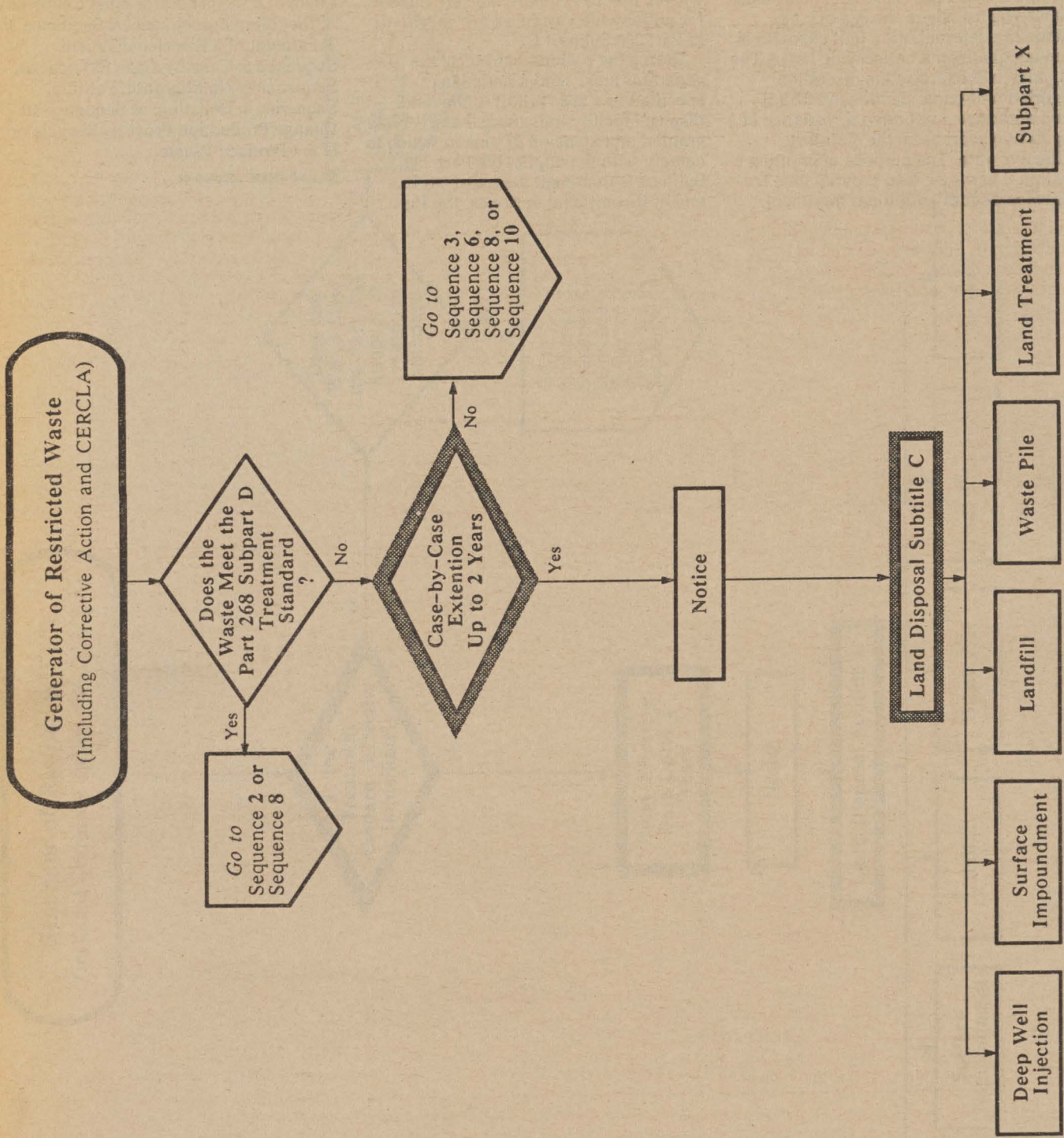
**Sequence 5: Case-by-Case Extensions**

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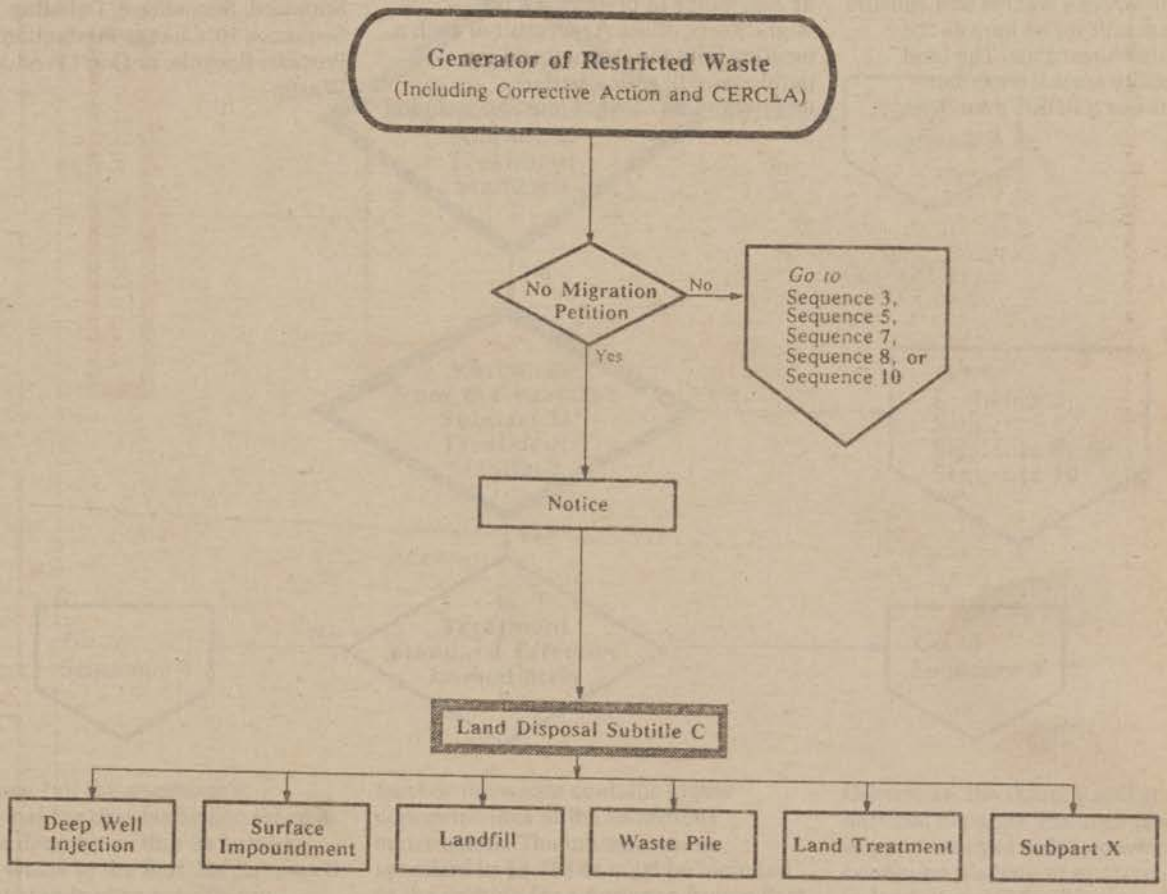
Sequence 5 in the generator's decision-making process commences with a determination that the restricted waste does not comply with the applicable §§ 268.41 or 268.43 treatment standards or that the waste must be treated in accordance with the treatment method required under § 268.42. Continued placement of the restricted waste in land disposal units as of the applicable effective date, as specified in Part 268 Subpart C, is prohibited. The generator may submit an application to EPA, as specified in § 268.5, for an extension of time in which to comply with the Part 268 Subpart D treatment standards by demonstrating binding contractual commitments to construct or otherwise obtain access to alternative treatment, recovery or disposal capacity and that such capacity is not available by the date that the Subpart D treatment standards take effect due to circumstances beyond his control. Case-by-case extensions may be granted by EPA for two 1-year periods. The extension does not become effective until the notice of approval appears in the **Federal Register** as specified in § 268.5(e). The generator must forward a notice, as specified in § 268.7(a)(3), stating that the waste is exempt from the land disposal restrictions to the Subtitle C land disposal facility receiving the restricted waste.

If the generator is denied a case-by-case extension, the next step in this sequence is the consideration of the following waste management options: the generator must successfully find available treatment capacity (Sequence 3), submit a no migration petition (Sequence 6), submit a delisting petition (Sequence 8), change his production processes, or recycle so that restricted wastes are no longer generated (Sequence 10).

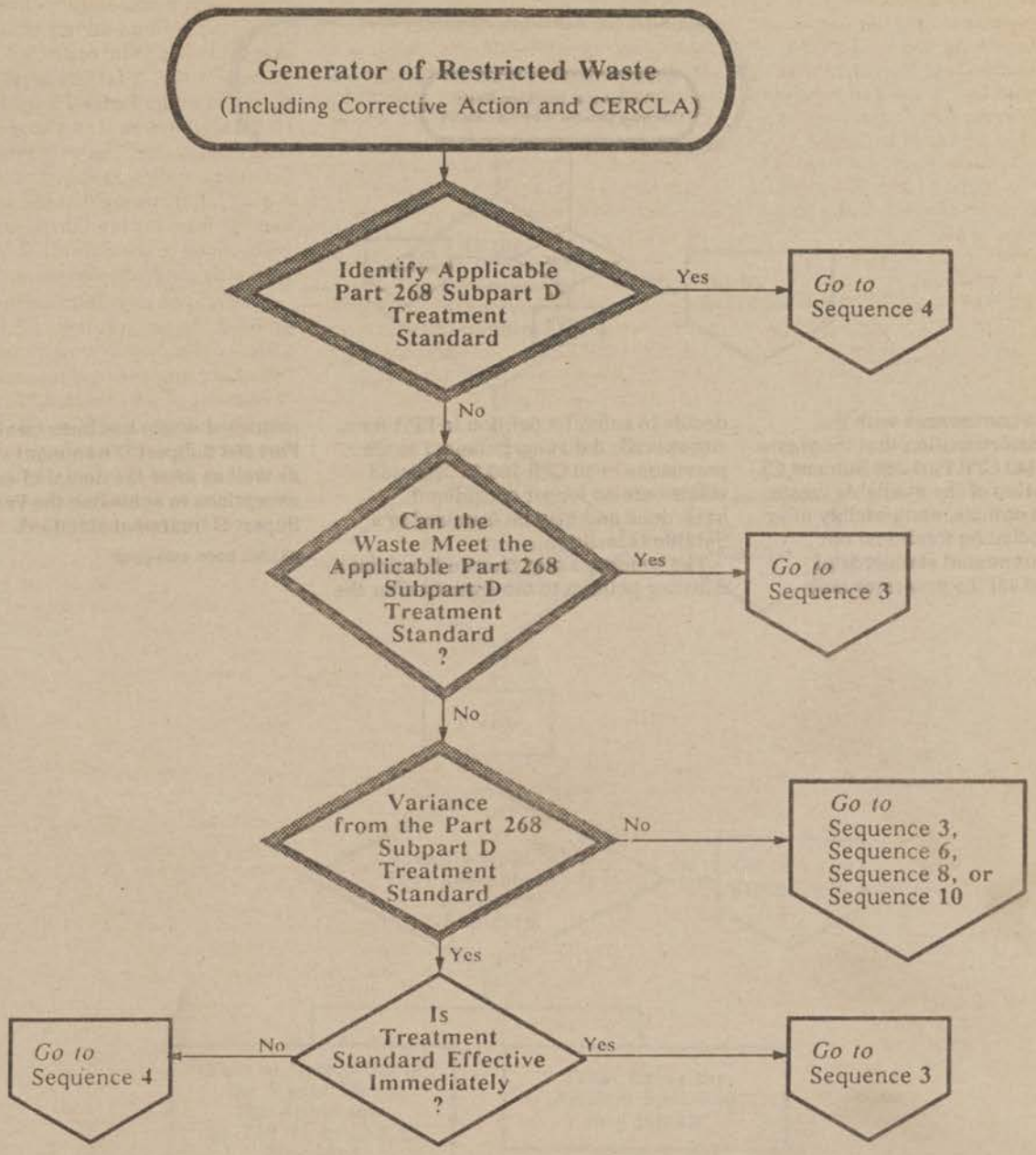
**Sequence 6: No Migration Petition**



Sequence 6 of the generator's decision-making process commences with a determination that the waste does not meet the §§ 268.41 of 268.43 treatment standards or that the waste must be treated by the method required in § 268.42 Wastes that do not comply with applicable §§ 268.41 or 268.43 treatment standards or are not treated by the method required in § 268.42 will be prohibited from continued placement in land disposal units as of the applicable effective date, unless the generator in conjunction with a Treatment, Storage, and Disposal Facility (TSDF) or a TSDF submits a no migration petition. The petition as specified in § 268.6 must demonstrate that there will be no migration of hazardous constituents from the continued land disposal of particular restricted hazardous wastes at a specific land disposal unit for as long as the waste remains hazardous. The land disposal facility must have either interim status or a RCRA permit, as required in 40 CFR Part 270, to manage the waste. The no migration petition will be a difficult demonstration, but the Agency has identified the following three scenarios that may satisfy the requirements of the statutory standard of "no migration": (1) A situation where environmental parameters are such that no detectable migration of hazardous constituents would occur from the disposal unit; (2) a situation where an active process is taking place rendering the waste non-hazardous; or (3) a situation where hazardous waste is being stored temporarily in a waste pile where engineered controls are sufficient to prevent migration in the short term. Although the Agency is not providing guidance on the no migration petition at this time, it is, however, offering the opportunity for preapplication meetings as assistance in preparing a no migration petition. As a result of such a meeting both the Agency and the petitioner will gain a better understanding of what must be included in the petition and the probability of developing a successful petition. An approved petition allows the land disposal of specific restricted wastes at a specific site. A facility must observe approval in the **Federal Register** (§ 268.6(g)) before it can land dispose a restricted waste. The generator must forward a notice as specified in § 268.7(a)(3) staring that the waste is exempt from the land disposal restrictions to the Subtitle C facility receiving the restricted waste.

Where a no migration petition is not granted, the generator may follow courses of action in accordance with the following sequences; Sequence 3: Treatment of a Restricted Waste, Sequence 5: Case-By-Case Extensions, Sequence 7: Variance From a Treatment Standard, Sequence 8: Delisting, or Sequence 10: Change Production Process, Recycle, or Don't Produce the Waste.

**Sequence 7: Variance From a Treatment Standard**

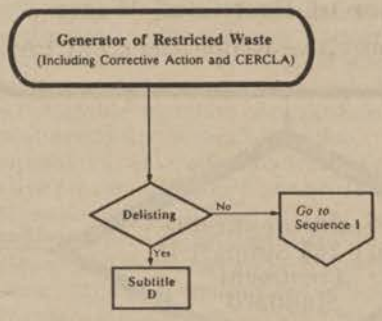



Sequence 7 of the generator's decision-making process begins when a generator determines that he cannot treat the waste to the Part 268 Subpart D treatment standard as specified in §§ 268.41, 268.42, or 268.48. The generator may submit a petition for a variance from the treatment standard as specified under § 268.44. The Agency envisions that wastes may be subject to a treatability variance in cases where a waste is not treatable to the level or by the method specified in the treatment standard. This may occur when a waste is significantly different from the wastes considered in establishing the treatment standard either because the waste matrix is complex and more difficult to treat or the waste contains higher concentrations of the hazardous constituents. The information as specified in §§ 268.44 must be included in the petition for a variance from a Part 268 Subpart D treatment standard.

When the Agency grants a variance from a treatment standard, it must subsequently make a national capacity determination regarding the availability of appropriate treatment capacity for that waste. For those wastes where EPA determines that capacity for the appropriate treatment technology is adequate, the performance standard set as a result of the variance from the treatment standard will take effect immediately upon promulgation. Otherwise, the Agency will grant a national capacity variance (Sequence 4) of up to two years during which time the continued placement of untreated waste in land disposal facilities regulated under Subtitle C of RCRA will be allowed.

Where a variance from a treatment standard is not granted, the waste may be managed in accordance with Sequence 3: Treatment of Restricted Wastes, Sequence 5: Case-By-Case Extension, Sequence 6: No Migration Petition, Sequence 8: Delisting, and Sequence 10: Change Production Process, Recycle, or Don't Produce the Waste.

**Sequence 8: Delisting**




Sequence 8 commences with the generator's determination that the waste is restricted (40 CFR Part 268 Subpart C). Upon evaluation of the available waste management options, and possibly after treatment (including treatment not meeting the treatment standards of §§ 268.41–268.43) the generator may decide to submit a petition to EPA for a site-specific delisting, pursuant to the provisions in 40 CFR 260.22. Delisted wastes are no longer considered hazardous and may be disposed in a Subtitle D facility.

The generator may choose to submit a delisting petition to the Agency after the restricted waste has been treated to the Part 268 Subpart D treatment standard as well as after the denial of any of the exceptions to achieving the Part 268 Supart D treatment standard.

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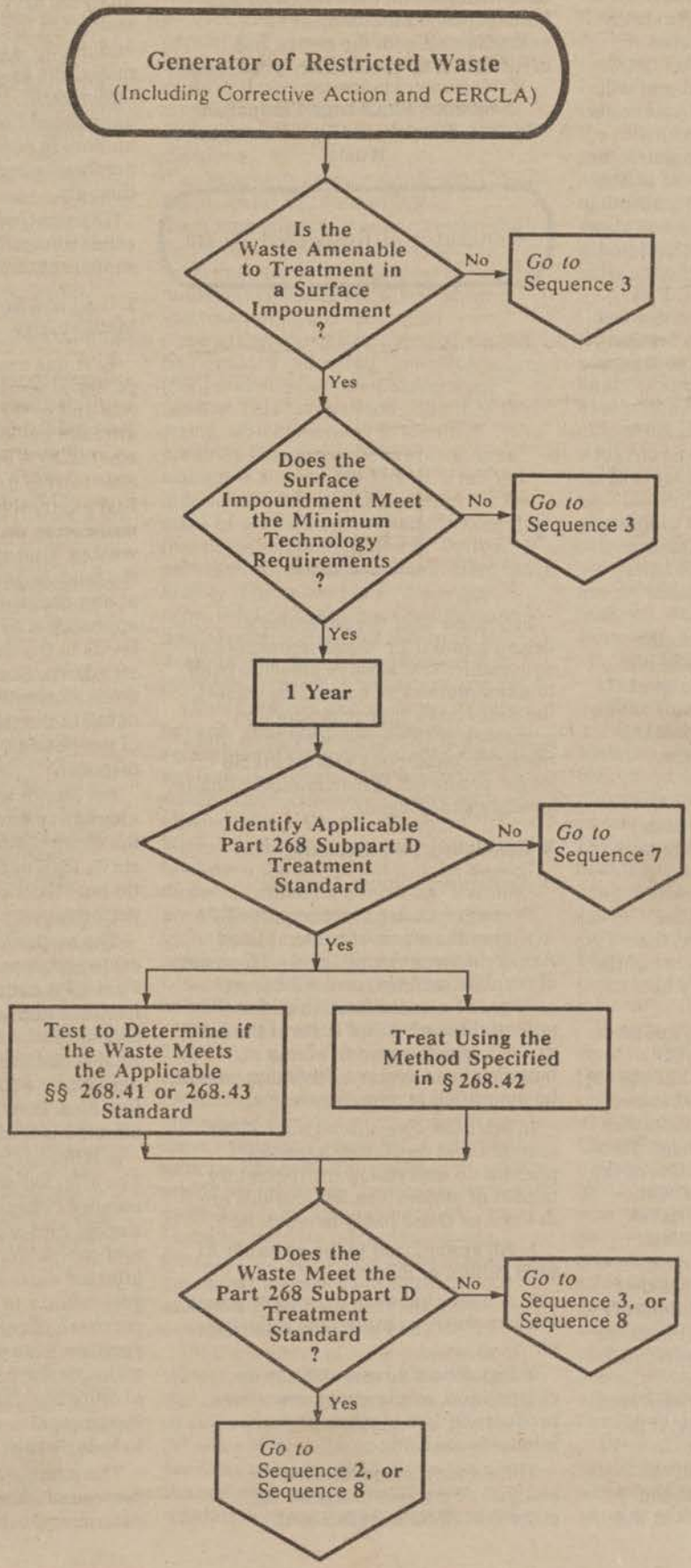
**Sequence 9: Surface Impoundment Exemption**

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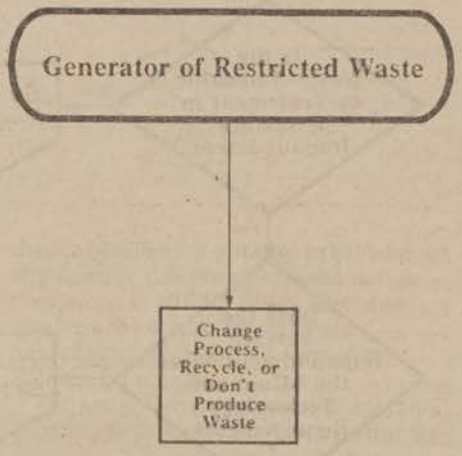
Sequence 9 in the generator's decision-making process commences with a determination by the generator that the restricted waste does not comply with the applicable Part 268 Subpart D treatment standard and will be prohibited from continued placement in land disposal units as of the applicable effective date. The generator may treat in an interim status or RCRA permitted surface impoundment meeting the minimum technology requirements in accordance with 40 CFR 264.221(c) and 265.221(a) and that is in compliance with 40 CFR Part 264 or 265 Subpart F as applicable (*i.e.*, it has been constructed with two or more liners, and a leachate collection system, and is in compliance with ground water monitoring requirements). On an annual basis, the facility must identify the treatability group and Part 268 Subpart D treatment standard applicable to the contents of the surface impoundment. If the applicable Part 268 Subpart D treatment standard is specified in § 268.42, the contents of the surface impoundment must be treated using the required method.

A request for a variance from the treatment standards, (as specified in § 268.44), set under Part 268 Subpart D may be submitted if in the identification of an applicable Part 268 Subpart D treatability group the response is negative.

The need for treatment depends on the concentration of the hazardous constituents in the waste extract as specified in § 268.41 or on the concentration of the hazardous constituents in the waste itself as specified in § 268.43. Therefore, the facility must analyze the contents of the surface impoundment annually in accordance with § 268.4(a)(2). Impoundment residues that do not meet the applicable Part 268 Subpart D treatment standards (§§ 268.41 or 268.43) must be removed and managed as a restricted waste, and cannot be further treated in a surface impoundment. The options available for management of the restricted waste are as discussed in Sequence 3: Treatment of Restricted Wastes, Sequence 6: No Migration Petition, and Sequence 8: Delisting.

Surface impoundment residues that meet the applicable Part 268 Subpart D treatment standard are exempt from the statutory prohibitions on land disposal. The residue may remain in the impoundment or may be otherwise land disposed in a Subtitle C facility. If the residue remains in the surface impoundment, certification that the hazardous waste complies with the treatment standard must be put in the operating record of the land disposal unit. Residues that are removed and land disposed off-site must be accompanied with the notice and certification as specified in § 268.7(a)(2).

**Sequence 10: Change Production Process, Recycle or Don't Produce the Waste**




Sequence 10 of the generator's decision-making process represents an opportunity that always presents itself to any generator of hazardous wastes; the decision to change production processes or to recycle wastes so that restricted hazardous wastes are no longer produced. Waste minimization is strongly encouraged.

## X. Regulatory Requirements

### *A. Regulatory Impact Analysis*

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms.

In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The Agency has performed an analysis of the rule to assess the economic effect of associated compliance costs. Based on this analysis, EPA has determined that restricting the land disposal of solvent and dioxin wastes will constitute a major rule as defined by Executive Order 12291, because the total annualized cost of this rule is $152.4 million. In consequence, EPA has prepared a regulatory impact analysis of this rule.

The remainder of Unit X describes the economic analysis performed by EPA in support of today's final rule.

#### 1. Cost and Economic Impact Methodology

EPA has assessed the cost and potential economic effects of today's rule and of the major regulatory alternatives. For its analysis of solvent wastes, EPA has examined two alternatives to today's final rule. The first alternative is to codify the statutory prohibition on land disposal of affected wastes. This approach would prohibit the land disposal of all solvent wastes at any concentration. The second approach is to use risk-based screening levels in the development of treatment standards. Costs and benefits of both these alternatives are described in more detail in the regulatory impact analysis of restricting solvents from land disposal.

For dioxin wastes, no less stringent alternative could be examined, because the dioxin listing requires incineration to six 9s DRE or the application of a thermal technology of equivalent performance.

The methodology for establishing total costs and impacts involves three steps. First, EPA estimates the population of facilities and waste management practices which will be affected. Next, total social costs of the regulation are derived by adding costs for individual facilities. Finally, economic impacts on affected facilities are assessed.

*a. Affected population and practices.* The affected population is the total number of hazardous waste treatment, storage and disposal facilities (TSDFs) and generators land disposing of affected wastes either directly at the generation site or indirectly through the purchase of commercial land disposal services. This group's waste management practices are assessed to identify costs of managing wastes and incremental cost increases attributable to today's rule.

The number of facilities that land dispose of affected wastes was determined using the EPA's 1981 RIA

Mail Survey.[13] Waste quantities and management practices for facilities responding to the Mail Survey are scaled up to represent the national population by means of weighting factors developed for the Survey. EPA estimates that 74 facilities comprise the total national population of commercial and noncommercial facilities land disposing of affected wastes on-site.

EPA estimates that generators sending more than 1,000 kilograms per month of waste off-site for management add an additional 5,511 plants. Generators of less than 1,000 kilograms per month were not included in the 1981 Survey because they were considered exempt at that time.

Because the 1984 RCRA amendments direct EPA to lower the exemption for small quantity generators (SQGs) from 1,000 to 100 kilograms per month by March 31, 1986, SQGs generating between 100 and 1,000 kilograms of waste per month for off-site disposal are also included in the affected population. The Agency estimates that SQGs add 14,400 plants to the affected population. Plant and waste specific data on this group are derived from EPA's Small Quantity Generator Survey.

Current management practices for these groups include the cost of compliance with regulations which have taken effect since 1981. In particular, EPA adjusted waste management practices as reported in 1981 to reflect compliance with the provisions of 40 CFR Part 264 of RCRA. In making this adjustment, the Agency assumes facilities elect the least costly legal methods of compliance.

*b. Development of costs.* Once waste quantity, type and method of treatment are known for the affected population, EPA estimates costs of compliance for individual facilities. The Agency developed facility-specific costs in two components, which are weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance (O&M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost, which is an initial outlay incurred for construction and depreciable assets. Capital costs are restated as annual values using a capital recovery factor based on a real cost of capital of 7 percent. These annualized costs are then added to yearly O&M costs to derive an annual equivalent cost. This is EPA's estimate of the impact of the regulation on annual firm cashflow.

*c. Economic Impact Analysis.* (1) Non-Commercial TSDFs and SQGs. Economic impacts on non-commercial facilities and SQGs are assessed in several steps. First, a general screening analysis compares facility-specific incremental costs to financial information about firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. This comparison generates two ratios, which are used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a "coverage" ratio, relating cash from operations to cost of compliance. For this ratio, a value of less than 20 is considered to represent a significant adverse impact.

Once facilities experiencing adverse impacts are identified using the two screening ratios, more detailed financial analysis is performed to verify the results and focus more closely on affected firms. For this subset of facilities, the coverage ratio is adjusted to allow a portion of costs to be passed through. Economic effects on facilities are examined assuming product price increases of one and five percent are possible. Those facilities for which the coverage ratio is less than two are considered likely to close.

(2) Commercial TSDFs. Commercial TSDFs are defined here as those facilities which accept fees in exchange for managing wastes generated elsewhere. For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which we might use as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal wastes. Consequently, our analysis of economic effects on commercial facilities is qualitative.

(3) Generators of large quantities of wastes. EPA's analysis of the effects of this rule on generating plants disposing of large quantities of affected wastes off-site assumes that commercial facilities can entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the Mail Survey, EPA has not developed plant-specific waste characterization, treatment methods, and compliance costs for generators, as it has for TSDFs. Our analysis of the economic effects of the rule on this group uses Survey data to develop model plants generating average, maximum and minimum waste quantities. This allows EPA to assess the range of possible effects on generating plants.

2. Costs and Economic Impacts

*a. Total costs and economic impacts for solvent wastes.* Total annualized compliance costs for facilities currently land disposing of solvent wastes are $147 million. Commercial TSDFs account for 62 percent of this total, while non-commercial TSDFs account for the balance. Although SQGs constitute 72 percent of the total population of TSDFs and generators of solvent waste, they account for only 12 percent of the total costs. These costs are not adjusted for the effect of taxation, which is merely a transfer from one sector of the economy to another. Costs are stated in 1985 dollars.

Economic effects have been assessed for both non-commercial and commercial facilities. Non-commercial facilities are those which do not accept fees in exchange for management and disposal of wastes generated by other plants. Among the 48 non-commercial facilities, twelve appear likely to be significantly affected because of compliance costs imposed by this rule. Based on further analysis, three of these twelve facilities seem likely to close. Employment effects associated with these potential closures amount to 224 jobs lost.

Among commercial facilities (i.e., those which manage the wastes of other firms for a fee) direct effects were impossible to assess due to the lack of any appropriate Standard Industrial Classification code (SIC) from which to draw Census financial data. Therefore, EPA's analysis has assumed that commercial facilities will be able to pass the increased costs of regulatory compliance on to their customers in the form of higher prices. The cost of compliance with today's rule is thus assumed to fall on consumers of commercial hazardous waste management services, and a qualitative assessment of economic effects on commercial facilities is performed.

We estimate that 26 commercial facilities will incur incremental costs as a result of today's final rule. Forty percent of these commercial facilities

[13] EPA conducted the RIA Mail Survey of hazardous waste generators and TSDFs to determine waste management practices in 1981. The survey included both generators of hazardous wastes and facilities treating, storing, or disposing of wastes. Facilities that handled less than 1000 kilograms of waste per month were not regulated in 1981 and thus, are not included in the data. For more information see the "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981," (April 1984).

offer a range of hazardous waste management services, including land-based disposal, storage and treatment. For these facilities, the increased demand this rule will create for more highly-price treatment services may actually increase firm financial viability. For the 27 percent of commercial facilities which offer solely land-based management of restricted wastes, on the other hand, the increased emphasis on treatment prior to land disposal may reduce demand for these services. It was not possible to characterize the remaining 33 percent of commercial facilities based on services offered.

Based on RIA Mail Survey data, the five industrial sectors which send the majority of the solvent waste to each commercial facility have been identified. Actual plants generating these wastes cannot be identified using Mail Survey data. Therefore, EPA examines economic effects on generating plants using model plants generating minimum, maximum and average quantities for each sector identified in the RIA Mail Survey. Ratios of the compliance costs to costs of production, and gross margin to compliance costs are examined for each of the five sectors which sends affected waste to each of these 26 facilities. This procedure is intended to bound the range of economic effects likely to occur among generating plants. Economic effects presented in this unit are based on average waste quantities.

This analysis identifies 98 industrial sectors, representing 5,511 plants, generating solvent waste for off-site commercial management. Of these 5,511 plants, 1,004 may experience significant economic impacts. Among the most adversely affected plants are manufacturers of fabricated metals products (SIC 34). This sector includes 718 significantly affected facilities. Other affected sectors include SIC 33, primary metals products, in which 167 plants may close, and SIC 28, the chemical industry, in which 42 plants may close. Based on further analysis, 79 of these facilities appear likely to close. Job loss associated with these closures amounts to 5,240 jobs in the plating and polishing industry and 187 in the industrial inorganic chemicals industry. Total annualized costs for the 14,400 small quantity generators of solvent wastes are $18 million. Based on the estimated cost for off-site incineration, maximum incremental compliance charges for any individual SQG will not exceed $13,200 annually. Economic ratios were examined for all SQGs in each sector identified in the EPA survey as generating solvent wastes. Based on this examination, EPA identified 975 facilities which may be significantly affected by compliance costs of this rule. On closer examination, no SQGs appeared likely to close as a result of costs imposed by this rule.

*b. Total costs and economic impacts for dioxin wastes.* Total annualized compliance costs for the approximately 47 non-soil sources of dioxin wastes are $3.2 million. Costs for managing that portion of the estimated 1.1 billion pounds of existing dioxin-contaminated soil for which this regulation will require BDAT treatment are $2.2 million. A preliminary study of dioxin-contaminated soils suggests that only 5 percent of the total quantity will require incineration, and the costs reflect this finding. Ninety-five percent of these soils, EPA estimates, will not be subject to restrictions on land disposal because they will meet the treatment standard.

Economic effects appear most significant for plants in SIC 2869 as a result of the restriction of dioxin wastes. This sector manufactures industrial organic chemicals, with major products such as solvents, noncyclic organics, and polyhydric alcohols. One plant may close as a result of restrictions in this group. Other affected SIC sectors include 2879, in which one plant may close. SIC 2879 includes plants manufacturing pesticides and agricultural chemicals for household and farm use.

3. Benefits and Cost-Effectiveness of the Restrictions Rule

*a. Benefits and cost-effectiveness of restricting land disposal of solvent-containing wastes.* The Agency performed a benefits analysis that assessed the incremental reductions in human health effects taking into account net changes in risk resulting from the use of alternative solvent waste management practices. Based on this analysis of relative risks, it was determined that substantial reductions in both average and maximum health risks are possible when alternative technologies to land disposing solvent wastes are used. Incineration and distillation of halogenated (F001 and F002) solvent wastes result in substantial reductions in human health risk when compared to disposal of such wastes in land disposal units. Incineration reduces average risks by a minimum of four orders of magnitude from the levels for landfills, a factor that is similarly reflected by the reductions in risk to the most exposed individual (MEI). Risk reductions for halogenated solvent wastes disposed in surface impoundments are also substantial. For the non-halogenated wastes, although risk levels were substantially reduced, the reduction in human health risk were less significant, since initial levels were often below the Acceptable Daily Intake (ADI).

Benefits attributable to the restrictions on solvent wastes have also been assessed by the Agency in another regulatory impact analysis prepared in support of the overall land disposal restrictions program (see "Draft Regulatory Analysis of Proposal Restrictions on Land Disposal of Hazardous Wastes" in the RCRA docket entitled LDR–2). Relevant data on the restricted F001–F005 wastes provided in this analysis may be summed to obtain a total incremental benefit (number of cases of cancer or cancer-equivalence avoided) of 116 cases avoided or annualized benefits for solvents equal to 1.66 cases avoided. Division of the total annualized cost of the solvents land disposal restrictions, $147 million, by the annualized cases avoided, 1.66, determines that the cost of the regulation is $88.7 million per cancer case avoided.

The benefits in both RIA documents discussed above may be underestimated in this analysis because the estimates are based solely on the adverse human health effects resulting from exposure to the solvent constituents in these wastes. Other benefit considerations, specifically environmental benefits, risks from minimization of liner degradation, and risks attributable to mobilization of other toxic constituents land disposed with solvents, were not evaluated. Since the benefits analysis is based only on the toxicity of the solvents themselves, the benefits of the land disposal restrictions for spent solvent wastes may be significantly underestimated.

*b. Benefits and cost-effectiveness of restricting land disposal of dioxin-containing wastes.* The assessment of risk associated with today's rule depends to a significant degree on assumptions regarding baseline disposal practices and on the population exposed to releases from land disposal. These assumptions and their effect on the benefit estimates are discussed in detail in the supporting RIA (Ref. 9).

Based on the assumptions regarding incineration performances and baseline practices that effectively minimize risks, it appears that reductions in expected health effects would be insignificant for many of the affected dioxin wastes. Baseline MEI risks for some dioxin wastes were high and would be reduced significantly by incineration. The benefits of the rule depend strongly on whether discharge of untreated scrubber water (with undetectable levels of

dioxin) from incinerators are likely to occur and whether spills and run-off from landfill or incineration facilities are likely to result in contamination of surface waters. Such surface water contamination, however, is not expected to occur. Although the rule may not reduce expected levels of health effects for many types of dioxin wastes, it may reduce the uncertainty about potential risks associated with the current regulatory status for dioxins.

Quantification of the incremental benefits for restricting land disposal of dioxin wastes results in a calculated annualized dioxin benefit value of zero cases avoided, though as noted above, this risk estimate is very dependent on assumptions about population exposed and treatment of scrubber waters from incinerators (of which there are currently none), and may significantly underestimate actual risk reductions.

**B. Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effect on small business as required by the Regulatory Flexibility Act, and has concluded that this regulation will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis in support of this rule. The following discussion summarizes the methodology used in the small business analysis and the findings on which the conclusions above are based. More detailed information is available in the documents assembled in the record prepared in support of this rulemaking.

1. Economic Impact on Small Businesses

EPA evaluated the economic effect of today's rule on small businesses, which are defined as those facilities employing fewer than 50 persons. Because of data limitations, this small business analysis excludes generators of large quantities of affected wastes. The universe of small businesses that were examined in the analysis here includes two groups: all TSDFs employing fewer than 50 people, and all SQGs which are also small businesses. Eleven TSDFs are small businesses. None of these exceed threshold values on the cost of production ratio. Twenty-five percent (twelve out of 48) of all non-commercial facilities are expected to experience adverse economic effects.

Of the total of 14,400 small quantity generators examined in this analysis, the vast majority (10,395 or 72 percent) are also small businesses. A total of 58 SQGs (or .6 percent of small businesses SQGs) exceeded threshold values on the cost of production ratio. For the population of small businesses as a whole, less than one percent are likely to be affected.

The small business analysis performed for sources of dioxin wastes revealed that no plants employing fewer than 50 persons experience significant economic effects as a result of costs imposed by this regulation.

2. Certification of Finding That No Regulatory Flexibility Analysis Is Required

This rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291. EPA performed an analysis, described above, to determine whether this rule would impose significant costs on small entities (see U.S. EPA, 1985). Results of the analysis indicate that this rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. Therefore, this regulation does not require a Regulatory Flexibility Analysis.

*C. Review of Supporting Documents and Response to Public Comment*

1. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by restrictions on solvent waste is EPA's 1981 National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities (referred to in this preamble as the "RIA Mail Survey"). Waste stream characterization data and engineering costs of waste management are based on the Mail Survey and on reports by the Mitre Corporation "Composition of Hazardous Waste Streams Currently Incinerated," (April 1983), and U.S. EPA "The RCRA Risk-Cost Analysis Model," (March 1984). The survey of Small Quantity Generators has been the major source of data on this group. EPA's Office of Research and Development developed estimates of the type and quantity of wastes containing dioxins and meeting the listing definitions for these wastes.

For financial and value of shipment information for the general screening analysis, 1982 Census data was used, adjusted by 1983 Annual Census of Manufactures data. Producer price indices were also used to restate 1983 dollars in 1985 terms.

2. Response to Comments

Several commenters contend that EPA has grossly understated the total costs of this rule because the Agency failed to consider product substitution. In particular, commenters were concerned that some producers of certain inputs to other end products may suffer as downstream manufacturers switch to inputs which generate less hazardous waste.

EPA disagrees with the commenters' statement that the total cost of the rule is understated. In fact, because EPA's analysis does not allow for longer term market adjustments such as product substitution, it overstates total costs. The switch to products and inputs which generate less hazardous waste will undoubtedly cause short-term dislocation and economic hardship, both to the suppliers of highly polluting inputs and to the manufacturers forced by higher waste treatment costs to switch to higher cost inputs.

Other commenters argue that the Agency has not sufficiently balanced cost and risk in designing regulations restricting land disposal. EPA believes that its consideration of costs and benefits has been comprehensive and consistent with Executive Order 12291.

One commenter stated the EPA's assessment that land disposal restrictions on solvent wastes did not constitute a major rule was incorrect. EPA agrees with the commenter. Based on the Agency's reassessment of treatment costs, EPA now considers this final rule to be major by the criteria given in Executive Order 12291.

Another commenter expressed concern that restricted wastes will compete with non-restrictive wastes for alternative capacity. Given the cost differential between direct land disposal, which EPA is prescribing for regulated waste, and treatment through incineration or other treatment technology, it is likely that restricted wastes will use what limited incineration capacity exists.

The commenter correctly points out that the increased demand for waste treatment services may have the effect of driving up the price of these services, thus making it uneconomic for non-

restricted wastes to be treated in BDAT treatments. EPA also believes it likely that alternative capacity will be rationed through the medium of price, and that producers of non-restricted wastes may find the new price prohibitive. This effect of establishing treatment priorities is expected to prevent the use of limited incineration capacity on non-restricted wastes which do not present the environmental dangers associated with restricted wastes.

Finally, some commenters objected that EPA did not consider economic achievability in setting treatment standards. Economic achievability is not a consideration for rulemaking under RCRA.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., requires that the information collection requirements of proposed and final rules be submitted to the Office of Management and Budget (OMB) for approval. OMB has approved the information collection requirements contained in this rule and assigned the OMB Control Number 2050–0062

This rule modifies another information collection requirement that has been approved by OMB under the Paperwork Reduction Act and given the number 2050–0012. The appropriate changes to these requirements have been approved by OMB.

XI. References

*Background Documents*

(1) U.S. EPA. "Background Document for Solvents, to Support Land Disposal Restrictions, Vol. I." U.S. EPA, OSW, Washington, DC, 1986.

(2) U.S. EPA. "Background Document for Solvents, to Support Land Disposal Restrictions, Vol. II." U.S. EPA, OSW, Washington, DC, 1986.

(3) U.S. EPA. "Background Document for Toxicity Characteristic Leaching Procedure: Final TCLP Response to Technical and Procedural Comments Pursuant to the Final Land Disposal Restrictions Rule for Solvents and Dioxins." U.S. EPA, OSW, Washington, DC, 1986.

(4) U.S. EPA. "BDAT Background Document for F001–F005 Spent Solvents." U.S. EPA, OSW, Washington, DC, 1986.

(5) U.S. EPA. "Comparative Risk Case Study for Metal-Bearing Solvent Wastes." U.S. EPA, OSW, Washington, DC, 1986.

(6) U.S. EPA. "Thermal Treatment Background Information, to Support Land Disposal Restrictions." U.S. EPA, OSW, Washington, DC, 1986.

*Guidance Documents*

(7) U.S. EPA. "Interim Status Surface Impoundments Retrofitting Variances Guidance Document." U.S. EPA, OSW, Washington, DC, EPA/530–SW–86–017, 1986.

(8) U.S. EPA. "Waste Analysis Plans, A Guidance Manual." U.S. EPA, OSW, Washington, DC, 1984.

*Regulatory Impact Analysis*

(9) U.S. EPA. "Regulatory Analysis of Restrictions on Land Disposal of Certain Dioxin-Containing Wastes." U.S. EPA, OSW, Washington, DC, 1986.

(10) U.S. EPA. "Regulatory Analysis of Restrictions on Land Disposal of Certain Solvent Wastes." U.S. EPA, OSW, Washington, DC, 1986.

*Other References*

(11) Acurex Corp. "Characterization of Hazardous Waste Incineration Residuals." U.S. EPA, Contract No. 68–03–3241, 1986.

(12) ICF, Inc. "Assessment of Impacts of LDR on Ocean Disposal of Solvents, Dioxins, and California List Wastes." U.S. EPA, OSW, EPA Contract No. 68–01–7259, 1986.

(13) ICF, Inc. "Scoping Analysis for RCRA Section 3005(j)(11)." U.S. EPA, OSW, EPA Contract No. 68–01–6621, 1985.

(14) Industrial Economics. "Regulatory Analysis of Waste-As-Fuel Technical Standards." Prepared for U.S. EPA, OSW, Washington, DC, 1986.

(15) Mitre Corp. "Incineration and Cement Kiln Capacity for Hazardous Waste Treatment." U.S. EPA, OSW, Washington, DC, 1986.

(16) NATO Committee. "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes." Annex V., NATO Committee on the Challenges of Modern Society, Brussels, Belgium, 1981.

(17) Radian Corp. "Follow-Up Survey of Selected Facilities." U.S. EPA, Washington, DC, 1986.

(18) Reed, R.J. *North American Combustion Handbook, 1978.*

(19) U.S. EPA. "Analysis of the Quantity of Waste from CERCLA Actions." Raw Data. U.S. EPA, OERR, Washington, DC, 1986.

(20) U.S. EPA. "Development Document for Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category." U.S. EPA, OW, Washington, DC, EPA/440–1–83/084, pp. 120–130, 1983.

(21) U.S. EPA. "Telephone Verification Survey of Commercial Facilities That Manage Solvents." Compiled by Pope-Reid Assoc. and Radian Corp., U.S. EPA, OSW, Washington, DC, 1986.

(22) U.S. EPA. "RCRA Method 8280 for the Analysis of Polychlorinated Dibenzo-*P*-Dioxins and Polychlorinated Dibenzofurans." U.S. EPA, OSW, Washington, DC, September 15, 1986.

(23) Friedman, Paul (U.S. EPA, Office of Solid Waste), Memorandum entitled "Detection Limit of 8280 in TCLP Leachate." September 26, 1986.

(24) U.S. EPA. "Background Document for Proposed Toxicity Characteristic Leaching Procedure." U.S. EPA, OSW, Washington, DC, March 10, 1986.

**List of Subjects in 40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271**

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

**Lee M. Thomas,**

*Administrator.*

For reasons set out in the preamble, Chapter I of Title 40 is amended as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In Part 260:

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, and 3019, 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, and 6939).

**§§ 260.1, 260.2, 260.3, 260.10, 260.20 [Amended]**

2. By inserting in the first sentence "and 268" after the phrase "Parts 260 through 265" in the following places:

a. 40 CFR 260.1 (a) and (b)(1) through (4).

b. 40 CFR 260.2(a).

c. 40 CFR 260.3 introductory text.

d. 40 CFR 260.10 introductory text.

e. 40 CFR 260.20(a).

**§ 260.2 [Amended]**

3. In § 260.2, paragraph (b) is amended by inserting "and 268" after the phrase "Parts 260 through 266".

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In Part 261:

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).

**§§ 261.1, 261.4, 261.20, 261.30 [Amended]**

2. By adding the Part number "268," after the phrase "Parts 262 through 265" in the following places:

a. 40 CFR 261.1(a) introductory text;

b. 40 CFR 261.4(c);

c. 40 CFR 261.20(b); and

d. 40 CFR 261.30(c).

**§ 261.1 [Amended]**

3. In § 261.1, paragraph (a)(1) is amended by inserting ", 268" after the phrase "Parts 262 through 266".

**§ 261.4 [Amended]**

4. By removing from paragraph (d)(1) introductory text of § 261.4 the Part number "267" and inserting the Part number "268" in its place.

**§ 261.5 [Amended]**

5. In § 261.5 paragraphs (b), (c), (e) introductory text, and (f)(2) are amended by inserting ", 268," after the phrase "Parts 262 through 266".

6. In § 261.5 paragraph (g)(2) is amended by inserting ", 268," after the phrase "Parts 263 through 266".

**§ 261.6 [Amended]**

7. In § 261.6 paragraph (a)(3) introductory text is amended by inserting Part number "268," after the phrase "Part 262 through 266 or Parts".

8. By revising paragraph (c)(1) of § 261.6 to read as follows:

**§ 261.6 Requirements for recyclable materials.**

* * * * *

(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 under Parts 124, 266, 268, and 270 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.)

* * * * *

**§ 261.7 [Amended]**

9. In § 261.7 paragraphs (a) (1)(ii) and (2)(ii) are amended by adding the Part number "268," after the phrase "Parts 261 through 265, or Part".

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

III. In Part 262:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3001, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922 through 6925, and 6937).

### Subpart A—General

2. In § 262.11, paragraph (d) is added to read as follows:

**§ 262.11 Hazardous waste determination.**

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to Parts 264, 265, 268 of this chapter for possible exclusions or restrictions pertaining to management of his specific waste.

## PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

IV. In Part 263:

1. The authority citation for Part 263 is revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912a, 6922, 6923, 6924, 6925).

### Subpart A—General

**§ 263.12 [Amended]**

2. By inserting ", 268" after the phrase "Parts 270, 264, and 265".

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

V. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, and 6925).

### Subpart B—General Facility Standards

2. In § 264.13, by revising paragraphs (a)(1) and (b)(6) and adding paragraph (b)(7) to read as follows:

**§ 264.13 General waste analysis.**

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this part of Part 268 of this chapter or with the conditions of a permit issued under Part 270 and Part 124 of this chapter.

* * * * *

(b) * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314, 264.341 and 268.7 of this chapter.

(7) For surface impoundments exempted from land disposal restrictions under § 268.4(a), the procedures and schedules for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residue which does not meet the standards of Part 268 Subpart D of this chapter.

* * * * *

### Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 264.73, by revising paragraph (b)(3) and adding paragraphs (b)(10) through (b)(14) to read as follows:

**§ 264.73 Operating record.**

* * * * *

(b) * * *

(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, 264.314, 264.341, 268.4(a), and 268.7 of this chapter.

* * * * *

(10) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 or a petition pursuant to § 268.6, and the notice required by a generator under § 268.7(a)(3);

(11) For an off-site treatment facility, a copy of the notice required by a generator under § 268.7(a)(1);

(12) For an on-site treatment facility, the information contained in the notice required by a generator under § 268.7(a)(1), except for the manifest number;

(13) For an off-site land disposal facility, a copy of the notice and certification required by the owner or operator of a treatment facility under § 268.7(b) (1) and (2), or a copy of the notice and certification required by the generator under § 268.7(a)(2), whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required undeer § 268.7(a)(2), except for the manifest number, or the information contained in the notice required by a treater under § 268.7(b)(1), except for the manifest number, whichever is applicable.

(Approved by Office of Management and Budget under control number 2050-0012)

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT STORAGE AND DISPOSAL FACILITIES

VI. In Part 265:

1. The authority citation for Part 265 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3004, 3005 and 3015 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, 6925, and 6935).

### Subpart B—General Facility Standards

2. In § 265.13, paragraphs (a)(1) and (b)(6) are revised and paragraph (b)(7) is added to read as follows:

**§ 265.13 General waste analysis.**

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this part and Part 268 of this chapter.

* * * * *

(b) * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402 and 268.7 of this chapter.

(7) For surface impoundments exempted from land disposal restrictions under § 268.4(a) of this chapter, the procedures and schedule for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residue which does not meet the standards of Part 268 Subpart D of this chapter.

### Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 265.73, by revising paragraph (b)(3) and adding paragraphs (b)(8) through (b)(12) to read as follows:

**§ 265.73 Operating record.**

* * * * *

(b) * * *

(3) Records and results of waste analysis and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 268.4(a) and 268.7 of this chapter.

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, or a petition pursuant to § 268.6 and the notice required by a generator under § 268.7(a)(3).

(9) For an off-site treatment facility, the notice required by a generator under § 268.7(a)(1);

(10) For an on-site treatment facility the information contained in the notice required by a generator under § 268.7(a)(1), except for the manifest number.

(11) For an off-site land disposal facility, the notice and certification required by the owner or operator of a treatment facility under § 268.7(b) or the certification required by the generator under § 268.7(a)(2), whichever is applicable;

(12) For an on-site land disposal facility, the information contained in the notice required by a generator under § 268.7(a)(2), except for the manifest number, or the information contained in the notice required by the treatment facility under § 268.7(b)(2), except for the manifest number, whichever is applicable.

(Approved by Office of Management and Budget under control number 2050–0012)

## PART 268—LAND DISPOSAL RESTRICTIONS

VII. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

2. By adding Subparts A, C, D, and E to Part 268 to read as follows:

### Subpart A—General



### Subpart C—Prohibitions on Land Disposal



### Subpart D—Treatment Standards



### Subpart E—Prohibitions on Storage



### Subpart A—General

**§ 268.1 Purpose, scope and applicability.**

(a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in this part or Part 261 of this chapter, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Prohibited wastes may continue to be land disposed as follows:

(1) Persons have been granted an extension from the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Until November 8, 1988, land disposal of contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

(4) Small quantity generators of less than 100 kilograms of hazardous waste per month, as defined in § 261.5 of this chapter.

**§ 268.2 Definitions applicable to this part.**

(a) When used in this part the following terms have the meanings given below:

"Hazardous constituent or constituents" means those constituents listed in Appendix VIII to Part 261 of this chapter.

"Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility,

salt dome formation, salt bed formation, underground mine or cave, concrete vault or bunker intended for disposal purposes, and placement in or on the land by means of open detonation and open burning where the residues continue to exhibit one or more of the characteristics of hazardous waste. The term "land disposal" does not encompass ocean disposal.

(b) All other terms have the meanings given under §§ 260.10, 261.2, 261.3, or 270.2 of this chapter.

**§ 268.3 Dilution prohibited as a substitute for treatment.**

No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with Subpart D of this part.

**§ 268.4 Treatment surface impoundment exemption.**

(a) The requirements of this part do not apply to persons treating hazardous wastes in a surface impoundment or series of impoundments provided that:

(1) Treatment of such wastes occurs in the impoundment;

(2) The residues of the treatment are analyzed, as specified in § 268.7, to determine if they meet the applicable treatment standards in § 268.41. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under Subpart D of this part, or are not delisted under § 260.22 of this chapter, must be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not meet the Subpart D treatment standards must be specified in the facility's waste analysis plan as required under §§ 264.13 or 265.13 of this chapter;

(3) The impoundment must meet the design requirements of § 264.221(c) or § 265.221(a) of this chapter, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of Subpart F of Part 264 or Part 264 of this chapter unless:

(i) Exempted pursuant to § 264.221 (d) or (e) of this chapter, or to § 265.221 (c) or (d) of this chapter; or,

(ii) Upon application by the owner or operator, the Administrator has granted a waiver of the requirements on the basis that the surface impoundment:

(A) Has at least one liner, for which there is no evidence that such liner is leaking;

(B) Is located more than one-quarter mile from an underground source of drinking water; and

(C) Is in compliance with generally applicable ground water monitoring requirements for facilities with permits; or,

(iii) Upon application by the owner or operator, the Administrator has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(4) The owner or operator must submit to the Regional Administrator a written certification that the requirements of § 268.4(a)(3) have been met and submits a copy of the waste analysis plan required under § 268.4(a)(2). The following certification is required:

I certify under penalty of law that the requirements of 40 CFR 268.4(a)(3) have been met for all surface impoundments being used to treat restricted wastes. 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.

**§ 268.5 Procedures for case-by-case extensions to an effective date.**

(a) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Administrator for an extension to the effective date of any applicable restriction established under Subpart C of this Part. The applicant must demonstrate the following:

(1) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under Subpart C of this Part;

(2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in Subpart D;

(3) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date;

(4) The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application;

(5) He provides a detailed schedule for obtaining required operating and construction permits on an outline of how and when alternative capacity will be available;

(6) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and

(7) Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of this section.

(b) An authorized representative signing an application described under paragraph (a) of this section shall make the following certification:

I certify under penalty of law that I have personally examined and that I am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(c) After receiving an application for an extension, the Administrator may request any additional information which he deems as necessary to evaluate the application.

(d) An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.

(e) On the basis of the information referred to in paragraph (a) of this section, after notice and opportunity for comment, and after consultation with appropriate State agencies in all affected States, the Administrator may grant an extension of up to 1 year from

the effective date. The Administrator may review this extension for up to 1 additional year upon the request of the applicant if the demonstration required in paragraph (a) of this section can still be made. In no event will an extension extend beyond 24 months from the applicable effective date specified in Subpart C of Part 268. The length of any extension authorized will be determined by the Administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in paragraph (a)(5) of this section. The Administrator will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the **Federal Register.**

(f) Any person granted an extension under this section must immediately notify the Administrator as soon as he has knowledge of any change in the conditions certified to in the application.

(g) Any person granted an extension under this section shall submit written progress reports at intervals designated by the Administrator. Such reports must describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; must identify any event which may cause or has caused a delay in the development of the capacity; and must summarize the steps taken to mitigate the delay. The Administrator can revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the Agency denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.

(h) Whenever the Administrator establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(1) The storage restrictions under § 268.50(a)(1) do not apply; and

(2) Such hazardous waste may be disposed of at a facility only if each new landfill or surface impoundment unit, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit at the facility is in compliance with the following requirements:

(i) The landfill, if the interim status, is in compliance with the requirements of Subpart F of Part 265 and § 265.301 (a), (c), and (d) of this chapter; or,

(ii) The landfill, if permitted, is compliance with the requirements of Subpart F of Part 264 and § 264.301 (c), (d) and (e) of this chapter;

(iii) The surface impoundment, if in interim status, is in compliance with the requirements of Subpart F of Part 265 and § 265.221 (a), (c), and (d) of this chapter regardless that the unit is not new, expanded or a replacement; or,

(iv) The surface impoundment, if permitted, is in compliance with the requirements of Subpart F of Part 264 and § 264.221 (c), (d) and (e) of this chapter.

(j) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

(Approved by the Office of Management and Budget under control number 2050–0062)

**§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.**

(a) Any person seeking an exemption from a prohibition under Subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:

(1) An identification of the specific waste and the specific unit for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;

(3) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality.

(b) The demonstration referred to in paragraph (a) of this section must meet the following criteria:

(1) All waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state-of-the-art techniques allow;

(2) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the Administrator;

(3) Simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(4) A quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the Administrator; and,

(5) An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(c) Each petition must be submitted to the Administrator.

(d) Each petition must include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and an familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that 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.

(e) After receiving a petition, the Administrator may request any additional information that reasonably may be required to evaluate the demonstration.

(f) If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(g) The Administrator will give public notice in the **Federal Register** of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the **Federal Register.**

(h) The term of a petition granted under this section shall be no longer than the term of the RCRA permit if the disposal unit is operating under a RCRA permit, or up to a maximum of 10 years from the date of approval provided under paragraph (g) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a RCRA permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(i) Prior the Administrator's decision, the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

(j) The petition granted by the Administrator does not reliveve the petitioner of his responsibilities in the management of hazardous waste under 40 CFR Part 260 through Part 271.

(Approved by the Office of Management and Budget under control number 2050–0062)

**§ 268.7 Waste analysis.**

(a) The generator must test his waste or an extract developed using the test method described in Appendix I of this part, or using knowledge of the waste to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste requires treatment prior to land disposal, for each shipment of waste the generator must notify the treatment facility in writing of the appropriate treatment standard set forth in Subpart D of this part. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard;

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, for each shipment of waste he must submit, to the land disposal facility, a notice and a certification stating that the waste meets applicable treatment standards.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The corresponding treatment standard;

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D. I beleive that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to a case-by-case extension under § 268.5, a petition under § 268.6, or a nationwide variance under Subpart C, he must forward a notice to the land disposal facility receiving his waste, stating that the waste is exempt from the land disposal restrictions.

(b) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues according to the waste analysis plan under §§ 264.13 or 265.13, or an extract development using the test method described in Appendix I of this part to assure that the treatment residues extract meet the applicable treatment standards.

(10) A notice must be sent to the land disposal facility which includes the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard:

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(2) The treatment facility must submit a certification for each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated to the performance standards specificed in Subpart D.

(i) For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (§§ 268.41 or 268.43), the certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to achieve the performance levels specified in 40 CFR Part 268 Subpart D without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(ii) For wastes with treatment standards expressed as technologies (§ 268.42), the certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.42. I am aware that there are signficant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(c) The owner or operator of any land disposal facility accepting any waste subject to restrictions under this part must have records of the notice and certification specified in either pargraph (a) or (b) of this section and obtain waste analysis data through testing of the waste to determine that the wastes are in compliance with the applicable treatment standards in § 268.41.

(Approved by the Office of Management and Budget under control number 2050–0062)

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## Subpart C—Prohibitions on Land Disposal

**§ 268.30 Waste specific prohibitions—Solvent wastes.**

(a) Effective November 8, 1986, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The solvent waste is a solvent-water mixture, solvent-containing sludge, or solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41 of this part.

(b) Effective November 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a) (1), (2), and (3) of this section are prohibited from land disposal. Between November 8, 1986, and November 8, 1988, wastes included in paragraphs (a) (1), (2), and (3) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in § 268.5(h)(2).

(c) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5.

**§ 268.31 Waste specific prohibitions—Dioxin—containing wastes.**

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F023, F026, F027, and F028, are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or,

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5.

(c) Between November 8, 1986, and November 8, 1988, wastes included in paragraph (a) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in § 268.5(h)(2).

## Subpart D—Treatment Standards

**§ 268.40 Applicability of treatment standards.**

A restricted waste identified in this subpart may be land disposed without further treatment only if an extract of the waste or of the treatment residual of the waste developed using the test method of Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste. A restricted waste for which a treatment technology is specified under § 268.42(a) may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

**§ 268.41 Treatment Standards expressed as concentrations in waste extract.**

(a) Table CCWE identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of a waste treatment residual developed using the test method in Appendix I of this part for the allowable land disposal of such waste. (Appendix II of this part provides Agency guidance on treatment methods that have been shown to achieve the Table CCWE levels for the respective wastes. Appendix II is not a regulatory requirement but is provided to assist generators and owners/operators in their selection of appropriate treatment methods.)

TABLE CCWE—CONSTITUENT IN WASTE EXTRACT

| F001—F005 spent solvents | Concentration (in mg/l) | |
|---|---|---|
| | Wastewaters containing spent solvents | All other spent solvent wastes |
| Acetone | 0.05 | 0.59 |
| n-Butyl alcohol | 5.0 | 5.0 |
| Carbon disulfide | 1.05 | 4.81 |
| Carbon tetrachloride | .05 | .96 |
| Chlorobenzene | .15 | .05 |
| Cresols (and cresylic acid) | 2.82 | .75 |
| Cyclohexanone | .125 | .75 |
| 1,2-dichlorobenzene | .65 | .125 |
| Ethyl acetate | .05 | .75 |
| Ethyle benzene | .05 | .053 |
| Ethyl ether | .05 | .75 |
| Isobutanol | 5.0 | 5.0 |
| Methanol | .25 | .75 |
| Methylene chloride | .20 | .96 |
| Methylene chloride (from the pharmaceutical industry | 12.7 | .96 |
| Methyl ethyl ketone | 0.05 | 0.75 |
| Methyl isobutyl ketone | 0.05 | 0.33 |
| Nitrobenzene | 0.66 | 0.125 |
| Pyridine | 1.12 | 0.33 |
| Tetrachloroethylene | 0.079 | 0.05 |
| Toluene | 1.12 | 0.33 |
| 1,1,1-Trichloroethane | 1.05 | 0.41 |
| 1,2,2-Trchloro-1,2,2-trifluroethane | 1.05 | 0.96 |
| Trichloroethylene | 0.062 | 0.091 |
| Trichlorofluoromethane | 0.05 | 0.96 |
| Xylene | 0.05 | 0.15 |

| F020-F023 and F026-F028 dioxin containing wastes | Concentration |
|---|---|
| HxCDD—All Hexachlorodibenzo-p-dioxins | < 1 ppb |
| HxCDF—All Hexachlorodibenzofurans | < 1 ppb |
| PeCDD—All Pentachlorodibenzo-p-dioxins | < 1 ppb |
| PeCDF—All Pentachlorodibenzofurans | < 1 ppb |
| TCDD—All Tetrachlorodibenzo-p-dioxins | < 1 ppb |
| TCDF—All Tetrachlorodibenzofurans | < 1 ppb |
| 2,4,5-Trichlorophenol | < 0.05 ppm |
| 2,4,6-Trichlorophenol | < 0.05 ppm |
| 2,3,4,6-Tetrachlorophenol | < 0.10 ppm |
| Pentachlorophenol | < 0.01 ppm |

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

**§ 268.42 Treatment standards expressed as specified technologies.**

(a) The following wastes must be treated using the identified technology or technologies, or an equivalent method approved by the Administrator.

(1) [Reserved]

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a level of performance equivalent to that achieved by methods specified in paragraph (a) of this section. The applicant must submit information demonstrating that his treatment method will not present an unreasonable risk to human health or the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a level of performance equivalent to that achieved by methods specified in paragraph (a) of this section. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such certification is issued must comply with all limitations contained in such determination.

**§ 268.43 Treatment standards expressed as waste concentrations. [Reserved]**

**§ 268.44 Variance from a treatment standard.**

(a) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(b) Each petition must be submitted in accordance with the procedures in § 260.20.

(c) After receiving a petition for variance from a treatment standard, the Administrator may request any additional information or samples which he may require to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.

(e) The Administrator will give public notice in the **Federal Register** of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a variance from a treatment standard will be published in the **Federal Register.**

(f) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards must comply with the waste analysis requirements for restricted wastes found under § 268.7.

(g) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

## Subpart E—Prohibitions on Storage

**§ 268.50 Prohibitions on storage of restricted wastes.**

(a) Except as provided for in paragraph (b) of this section, the storage

of hazardous wastes restricted from land disposal under Subpart C of this Part is prohibited, unless the following conditions are met:

(1) A generator stores such wastes on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in § 262.34 of this chapter. (A generator who is in existence on the effective date of a regulation under this part and who must store hazardous wastes for longer than 90 days due to the regulations under this Part becomes an owner/operator of a storage facility and must obtain a RCRA permit. Such a facility may qualify for interim status upon compliance with the regulations governing interim status under 40 CFR 270.70).

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal provided that each container or tank is clearly marked to identify its contents and the date it entered storage.

(3) A transporter may store manifested shipments of such wastes at a transfer facility for 10 days or less.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Agency can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) A owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) The prohibition in paragraph (a) of this section does not apply to the wastes which are the subject of an approved petition under § 268.6 or an approved case-by-case extension under § 268.5.

(e) The prohibition in paragraph (a) of this section does not apply to hazardous wastes that meet the treatment standards specified under §§ 268.41, 268.42 and 268.43 or the treatment standards specified under the variance in § 268.44.

## Appendix I to Part 268—Toxicity Characteristic Leaching Procedure (TCLP)

1.0 SCOPE AND APPLICATION

1.1 The TCLP is designed to determine the mobility of both organic and inorganic contaminants present in liquid, solid, and multiphasic wastes.

1.2 If a total analysis of the waste demonstrates that individual contaminants are not present in the waste, or that they are present but at such low concentrations that the appropriate regulatory thresholds could not possibly be exceeded, the TCLP need not be run.

2.0 SUMMARY OF METHOD (see Figure 1)

2.1 For liquid wastes (i.e., those containing insignificant solid material), the waste, after filtration through a 0.6- to 0.8-um glass fiber filter, is defined as the TCLP extract.

2.2 For wastes comprised of solids or for wastes containing significant amounts of solid material, the particle-size of the waste is reduced (if necessary), the liquid phase, if any, is separated from the solid phase and stored for later analysis. The solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The extraction fluid employed is a function of the alkalinity of the solid phase of the waste. A special extractor vessel is used when testing for volatiles (See Table 1). Following extraction, the liquid extract is separated from the solid phase by 0.6- to 0.8-um glass fiber filter filtration.

2.3 If compatible (i.e., multiple phases will not form on combination), the initial liquid phase of the waste is added to the liquid extract, and these liquids are analyzed together. If incompatible, the liquids are analyzed separately and the results are mathematically combined to yield a volume-weighted average concentration.

3.0 INTERFERENCES

3.1. Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 APPARATUS AND MATERIALS

4.1 *Agitation apparatus:* An acceptable agitation apparatus is one which is capable of rotating the extraction vessel in an end-over-end fashion (See Figure 2) at 30 ± 2 rpm. Suitable devices known to EPA are identified in Table 2.

4.2 *Extraction Vessel:*

4.2.1 Zero-Headspace Extraction Vessel (ZHE). This device is for use *only* when the waste is being tested for the mobility of volatile constituents (see Table 1). The ZHE is an extraction vessel that allows for liquid/solid separation within the device, and which effectively precludes headspace (as depicted in Figure 3). This type of vessel allows for initial liquid/solid separation, extraction, and final extract filtration without having to open the vessel (see Step 4.3.1). These vessels shall have an internal volume of 500 to 600 mL and be equipped to accommodate a 90-mm filter. Suitable ZHE devices known to EPA are identified in Table 3. These devices contain viton O-rings which should be replaced frequently.

For the ZHE to be acceptable for use, the piston within the ZHE should be able to be moved with approximately 15 psi or less. If it takes more pressure to move the piston, the O-rings in the device should be replaced. If this does not solve the problem, the ZHE is unacceptable for TCLP analyses and the manufacturer should be contacted.

The ZHE should be checked after every extraction. If the device contains a built-in pressure gauge, pressurize the device to 50 psi, allow it to stand unattended for 1 hour, and recheck the pressure. If the device does not have a built-in pressure gauge, pressurize the device to 50 psi, submerge it in water, and check for the presence of air bubbles escaping from any of the fittings. If pressure is lost, check all fittings and inspect and replace O-rings, if necessary. Retest the device. If leakage problems cannot be solved, the manufacturer should be contacted.

4.2.2 When the waste is being evaluated for other than volatile contaminants, an extraction vessel that does not preclude headspace (e.g., a 2-liter bottle) is used. Suitable extraction vessels include bottles made from various materials, depending on the contaminants to be analyzed and the nature of the waste (see Step 4.3.3). It is recommended that borosilicate glass bottles be used over other types of glass, especially when inorganics are of concern. Plastic bottles may be used only if inorganics are to be investigated. Bottles are available from a number of laboratory suppliers. When this type of extraction vessel is used, the filtration device discussed in Step 4.3.2 is used for initial liquid/solid separation and final extract filtration.

4.2.3 Some ZHEs use gas pressure to actuate the ZHE piston, while others use mechanical pressure (see Table 3). Whereas the volatiles procedure (see Section 9.0) refers to pounds-per-square inch (psi), for the mechanically actuated piston, the pressure applied is measured in torque-inch-pounds. Refer to the manufacturer's instructions as to the proper conversion.

4.3 *Filtration Devices:* It is recommended that all filtrations be performed in a hood.

4.3.1 Zero-Headspace Extractor Vessel (see Figure 3): When the waste is being evaluated for volatiles, the zero-headspace extraction vessel is used for filtration. The device shall be capable of supporting and keeping in place the glass fiber filter, and be able to withstand the pressure needed to accomplish separation (50 psi).

**Note.**—When it is suspected that the glass fiber filter has been ruptured, an in-line glass fiber filter may be used to filter the material within the ZHE.

4.3.2 Filter Holder: When the waste is being evaluated for other than volatile compounds, a filter holder capable of supporting a glass fiber filter and able to withstand the pressure needed to accomplish separation is used. Suitable filter holders range from simple vacuum units to relatively complex systems capable of exerting pressures of up to 50 psi or more. The type of filter holder used depends on the properties of the material to be filtered (see Step 4.3.3).

These devices shall have a minimum internal volume of 300 mL and be equipped to accommodate a minimum filter size of 47 mm (Filter holders having an internal capacity of 1.5 L or greater and equipped to accommodate a 142 mm diameter filter are recommended). Vaccum filtration is only recommended for wastes with low solids content (<10%) and for highly granular (liquid-containing) wastes. All other types of wastes should be filtered using positive pressure filtration. Filter holders known to EPA to be suitable for use are shown in Table 4.

4.3.3 Materials of Construction: Extraction vessels and filtration devices shall be made of inert materials which will not leach or absorb waste components. Glass, polytetrafluoroethylene (PTFE), or type 316 stainless steel equipment may be used when evaluating the mobility of both organic and inorganic components. Devices made of high-density polyethylene (HDPE), polypropylene, or polyvinyl chloride may be used only when evaluating the mobility of metals. Borosilicate glass bottles are recommended for use over other types of glass bottles, especially when inorganics are constituents of concern.

4.4 *Filters:* Filters shall be made of borosilicate glass fiber, shall contain no binder materials, and shall have an effective pore size of 0.6– to 0.8–um, or equivalent. Filters known to EPA to meet these specifications are identified in Table 5. Pre-filters must not be used. When evaluating the mobility of metals, filters shall be acid-washed prior to use by rinsing with 1.0 N nitric acid followed by three consecutive rinses with deionized distilled water (a minimum of 1–L per rinse is recommended). Glass fiber filters are fragile and should be handled with care.

4.5 *pH meters:* Any of the commonly available pH meters are acceptable.

4.6 *ZHE extract collection devices:* TEDLAR® bags or glass, stainless steel or PTFE gas tight syringes are used to collect the initial liquid phase and the final extract of the waste when using the ZHE device. The devices listed are recommended for use under the following conditions.

4.6.1 If a waste contains an aqueous liquid phase or if a waste does not contain a significant amount of non-aqueous liquid (i.e., <1% of total waste), the TEDLAR® bag should be used to collect and combine the initial liquid and solid extract. The syringe is not recommended in these cases.

4.6.2 If a waste contains a significant amount of non-aqueous initial liquid phase (i.e., >1% of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

4.6.3 If the waste contains no initial liquid phase (is 100% solid) or has no significant solid phase (is 100% liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL of liquid expressed from the device. The remaining aliquots are used for analysis.

4.7 *ZHE extraction fluid transfer devices:* Any device capable of transferring the extraction fluid into the ZHE without changing the nature of the extraction fluid is acceptable (e.g., a constant displacement pump, a gas tight syringe, pressure filtration unit (See Step 4.3.2), or another ZHE device).

4.8 *Laboratory balance:* Any laboratory balance accurate to within ±0.01 grams may be used (all weight measurements are to be within ±0.1 grams).

5.0 REAGENTS

5.1 *Reagent water:* Reagent water is defined as water in which an interferent is not observed at or above the method detection limit of the analyte(s) of interest. For non-volatile extractions, ASTM Type II water, or equivalent meets the definition of reagent water. For volatile extractions, it is recommended that reagent water be generated by any of the following methods. Reagent water should be monitored periodically for impurities.

5.1.1 Reagent water for volatile extractions may be generated by passing tap water through a carbon filter bed containing about 500 grams of activated carbon (Calgon Corp., Filtrasorb-300 or equivalent).

5.1.2 A water purification system (Millipore Super-Q or equivalent) may also be used to generate reagent water for volatile extractions.

5.1.3 Reagent water for volatile extractions may also be prepared by boiling water for 15 minutes. Subsequently, while maintaining the water temperature at 90± 5°C, bubble a contaminant-free inert gas (e.g., nitrogen) through the water for 1 hour. While still hot, transfer the water to a narrow-mouth screw-cap bottle under zero-headspace and seal with a Teflon-lined septum and cap.

5.2 1.0 N Hydrochloric acid (HCl) made from ACS reagent grade.

5.3 1.0 N Nitric acid ($HNO_3$) made from ACS reagent grade.

5.4 1.0 N Sodium hydroxide (NaOH) made from ACS reagent grade.

5.5 Glacial acetic acid (HOAc) ACS reagent grade.

5.6 *Extraction fluid:*

5.6.1 Extraction fluid #1: This fluid is made by adding 5.7 mL glacial HOAc to 500 mL of the appropriate water (see Step 5.1), adding 64.3 mL of 1.0 N NaOH, and diluting to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 4.93 ± 0.05.

5.6.2 Extraction fluid #2: This fluid is made by diluting 5.7 mL glacial HOAc with ASTM Type II water (see Step 5.1) to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 2.88 ± 0.05.

Note.—It is suggested that these extraction fluids be monitored frequently for impurities. The pH should be checked prior to use to ensure that these fluids are made up accurately.

5.7 Analytical standards shall be prepared according to the appropriate analytical method.

6.0 SAMPLE COLLECTION, PRESERVATION, AND HANDLING

6.1 All samples shall be collected using an appropriate sampling plan.

6.2 At least two separate representative samples of a waste should be collected. If volatile organics are of concern, a third sample should be collected. The first sample is used in several preliminary TCLP evaluations (e.g., to determine the percent solids of the waste; to determine if the waste contains insignificant solids (i.e., the waste is its own extract after filtration); to determine if the solid portion of the waste requires particle-size reduction; and to determine which of the two extraction fluids are to be used for the non-volatile TCLP extraction of the waste). These preliminary evaluations are identified in Section 7.0. The second and, if required, third samples are extracted using the TCLP non-volatile procedure (Section 8.0) and volatile procedure (Section 9.0), respectively.

6.3 Preservatives shall not be added to samples.

6.4 Samples can be refrigerated unless refrigeration results in irreversible physical change to the waste (e.g., precipitation).

6.5 When the waste is to be evaluated for volatile contaminants, care should be taken to minimize the loss of volatiles. Samples shall be taken and stored in a manner to prevent the loss of volatile contaminants. If possible, it is recommended that any necessary particle-size reduction should be conducted as the sample is being taken (See Step 8.5).

6.6 TCLP extracts should be prepared for analysis and analyzed as soon as possible following extraction. If they need to be stored, even for a short period of time, storage shall be a 4° C, and samples for volatiles analysis shall not be allowed to come into contact with the atmosphere (i.e., no headspace). See Section 10.0 (QA requirements) for acceptable sample and extract holding times.

7.0 PRELIMINARY TCLP EVALUATIONS

The preliminary TCLP evaluations are performed on a minimum 100 gram representative sample of waste that will not actually undergo TCLP extraction (designated as the first sample in Step 6.2). These evaluations include preliminary determination of the percent solids of the waste; determination of whether the waste contains insignificant solids, and is therefore, its own extract after filtration; determination of whether the solid portion of the waste requires particle-size reduction; and determination of which of the two extraction fluids are to be used for the non-volatile TCLP extraction of the waste.

7.1 *Preliminary determination of percent solids:* Percent solids is defined as that fraction of a waste sample (as a percentage of the total sample) from which no liquid may be forced out by an applied pressure, as described below.

7.1.1 If the waste will obviously yield no free liquid when subjected to pressure filtration (i.e., is 100% solids) proceed to Step 7.4.

7.1.2 If the sample is liquid or multiphasic, liquid/solid separation to make a preliminary determination of percent solids is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 7.1.3 through 7.1.9.

7.1.3 Pre-weigh the filter and the container that will receive the filtrate.

7.1.4 Assemble the filter holder and filter following the manufacturer's instructions.

Place the filter on the support screen and secure.

7.1.5 Weigh out a representative subsample of the waste (100 gram minimum) and record the weight.

7.1.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

7.1.7 Quantitatively transfer the waste sample to the filter holder (liquid and solid phases). If filtration of the waste at 4° C reduces the amount of expressed liquid over what would be expressed at room temperature then allow the sample to warm up to room temperature in the device before filtering.

**Note.**—If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 7.1.5 to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10-psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within any 2-minute period), filtration is stopped.

**Note.**—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.1.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

**Note.**—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying vacuum or pressure filtration, as outlined in Step 7.1.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid. The original filter is *not* to be replaced with a fresh filter under any circumstances. Only one filter is used.

7.1.9 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (See Step 7.1.3) from the total weight of the filtrate-filled container. The weight of the solid phase of the waste sample is determined by subtracting the weight of the liquid phase from the weight of the total waste sample, as determined in Step 7.1.5 or 7.1.7. Record the weight of the liquid and solid phases. Calculate the percent solids as follows:

$$\text{Percent solids} = \frac{\text{Weight of solid (Step 7.1.9)}}{\text{Total weight of waste (Step 7.1.5 or 7.1.7)}} \times 100$$

7.2 *Determination of whether waste is liquid or has insignificant amounts of solid material:* If the sample obviously has a significant amount of solid material, the solid phase must be subjected to extraction; proceed to Step 7.3 to determine if the waste requires particle-size reduction (and to reduce particle-size, if necessary). Determine whether the waste is liquid or has insignificant amounts of solid material (which need not undergo extraction) as follows:

7.2.1 Remove the solid phase and filter from the filtration apparatus.

7.2.2 Dry the filter and solid phase at 100±20° C until two successive weighings yield the same value within ±1%. Record final weight.

**Note.**—Caution should be taken to insure that the subject solid will not flash upon heating. It is recommended that the drying oven be vented to a hood or appropriate device.

7.2.3 Calculate the percent dry solids as follows:

$$\text{Percent: dry solids} = \frac{\text{Weight of dry waste and filter} - \text{tared weight of filter}}{\text{Initial weight of waste (Step 7.1.5 or 7.1.1)}} \times 100$$

7.2.4 If the percent dry solids is less than 0.5%, consult Step 6.2 and proceed to Section 8.0 if non-volatiles in the waste are of concern, and to Section 9.0 if volatiles are of interest. In this case, the waste, after filtration is defined as the TCLP extract. If the percent dry solids is greater than or equal to 0.5%, and if the non-volatile TCLP is to be performed, return to the beginning of this Section (7.0) with a new representative waste sample, so that it can be determined if particle-size reduction is necessary (Step 7.3), and so that the appropriate extraction fluid may be determined (Step 7.4) on a fresh portion of the solid phase of the waste. If only the volatile TCLP is to be performed, see the Note in Step 7.4.

7.3 *Determination of whether the wastes requires particle-size reduction (particle-size is reduced during this Step):* Using the solid portion of the waste, evaluate the solid for particle-size. If the solid has a surface area per gram of material equal to or greater than 3.1 cm $^2$, or is smaller than 1 cm in its narrowest dimension (e.g., is capable of passing through a 9.5-mm (0.375-inch) standard sieve), particle-size reduction is not required (proceed to Step 7.4). If the surface area is smaller or the particle-size larger than described above, the solid portion of the waste is prepared for extraction by crushing, cutting, or grinding the waste to a surface area or particle-size as described above.

**Note.**—Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not required; nor is it recommended.

7.4 *Determination of appropriate extraction fluid:* If the solid content is greater than or equal to 0.5% of the waste and if TCLP extraction for non-volatile constituents will take place (Section 8.0), determination of the appropriate fluid (Step 5.6) to use for the non-volatiles extraction is performed as follows.

**Note.**—TCLP extraction for volatile constituents entails using only extraction fluid #1 (Step 5.6.1). Therefore, if TCLP extraction for non-volatiles extraction is not required, proceed to section 9.0.

7.4.1 Weigh out a small subsample of the solid phase of the waste, reduce the solid (if necessary) to a particle-size of approximately 1mm in diameter or less, and transfer 5.0 grams of the solid phase of the waste to a 500-mL beaker of Erlenmeyer flask.

7.4.2 Add 96.5 mL of reagent water (ASTM Type II) to the beaker, cover with a watchglass, and stir vigorously for 5 minutes using a magnetic stirrer. Measure and record the pH. If the pH is ≤5.0, extraction fluid #1 is used. Proceed to Section 8.0.

7.4.3 If the pH from Step 7.4.2 is >5.0, add 3.5 mL 1.0 N HCl, slurry briefly, cover with a watchglass, heat to 50 °C, and hold at 50 °C for 10 minutes.

7.4.4 Let the solution cool to room temperature and record the pH. If the pH is ≤5.0, use extraction fluid #1. If the pH is >5.0, use extraction fluid #2. Proceed to Section 8.0.

7.5 The sample of waste used for performance of this Section shall *not* be used any further. Other samples of the waste (see Step 6.2) should be employed for the Section 8.0 and 9.0 extractions.

## 8.0 PROCEDURE WHEN VOLATILES ARE NOT INVOLVED

Although a minimum sample size of 100 grams (solid and liquid phases) is required, a larger sample size may be more appropriate, depending on the solids content of the waste sample (percent solids, see Step 7.1), whether the initial liquid phase of the waste will be miscible with the aqueous extract of the solid, and whether inorganics, semivolatile organics, pesticides, and herbicides are all analytes of concern. Enough solids should be generated for extraction such that the volume

of TCLP extract will be sufficient to support all of the analyses required. If the amount of extract generated by the performance of a single TCLP extraction will not be sufficient to perform all of the analyses to be conducted, it is recommended that more than one extraction be performed and that the extracts from each extraction be combined and then aliquoted for analysis.

8.1 If the waste will obviously yield no liquid when subjected to pressure filtration (i.e., is 100% solid, see Step 7.1), weigh out a representative subsample of the waste (100 gram minimum) and proceed to Step 8.9.

8.2 If the sample is liquid or multiphasic, liquid/solid separation is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 8.3 to 8.8.

8.3 Pre-weigh the container that will receive the filtrate.

8.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure. Acid wash the filter if evaluating the mobility of metals (See Step 4.4).

**Note.**—Acid washed filters may be used for all non-volatile extractions even when metals are not of concern.

8.5 Weigh out a representative subsample of the waste (110 gram minimum) and record the weight. If the waste was shown to contain <0.5% dry solids (Step 7.2), the waste, after filtration is defined as the TCLP extract. Therefore, enough of the sample should be filtered so that the amount of filtered liquid will support all of the analyses required of the TCLP extract. For wastes containing >0.5% dry solids (Steps 7.1 or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size (100 gram minimum) for filtration. Enough solids should be generated after filtration to support the analyses to be performed on the TCLP extract.

8.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

8.7 Quantitatively transfer the waste sample (liquid and solid phases) to the filter holder (see Step 4.3.2). If filtration of the waste at 4° C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering.

**Note.**—If waste material (>1% of the original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 8.5, to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when the liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within a 2-minute period), filtration is stopped.

**Note.**—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

8.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase. Weigh the filtrate. The liquid phase may now be either analyzed (see Step 8.13) or stored at 4 °C until time of analysis.

**Note.**—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying vacuum or pressure filtration, as outlined in Step 8.7, this material may not filter. If this is the case, the material within the filtration device defined as a solid and is carried through the extraction as a solid. The original filter is *not* to be replaced with a fresh filter under any circumstances. Only one the filter is used.

8.9 If the waste contains <0.5% dry solids (see Step 7.2), proceed to Step 8.13. If the waste contains >0.5% dry solids (see Step 7.1 or 7.2), and if particle-size reduction of the solid was needed in Step 7.3, proceed to Step 8.10. If particle-size reduction was not required in Step 7.3, quantitatively transfer the solid material into the extractor vessel, including the filter used to separate the initial liquid from the solid phase. Proceed to Step 8.11.

8.10 The solid portion of the waste is prepared for extraction by crushing, cutting, or grinding the waste to a surface area of particle-size as described in Step 7.3. When the surface area of particle-size has been appropriately altered, quantitatively transfer the solid material into the extractor vessel, including the filter used to separate the initial liquid from the solid phase.

**Note.**—Sieving of the waste through a sieve that is not Teflon coated should not be done due to avoid possible contamination of the sample. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

8.11 Determine the amount of extraction fluid to add to the extractor vessel as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \%\ \text{solids (Step 7.1)} \times \text{weight of waste filtered (Step 8.5 or 8.7)}}{100}$$

Slowly add this amount of appropriate extraction fluid (see Step 7.4) to the extractor vessel. Close the extractor bottle tightly (it is recommended that Teflon tape be used to ensure a tight seal), secure in rotary extractor device, and rotate at 30±2 rpm for 18±2 hours. Ambient temperature (i.e., temperature of room in which extraction is to take place) shall be maintained at 22±3 °C during the extraction period.

**Note.**—As agitation continues, pressure may build up within the extractor bottle for some types of wastes (e.g., limed or calcium carbonate containing waste may evolve gases such as carbon dioxide). To relieve excess pressure, the extractor bottle may be periodically opened (e.g., after 15 minutes, 30 minutes, and 1 hour) and vented into a hood.

8.12 Following the 18±2 hour extraction, the material in the extractor vessel is separated into its component liquid and solid phases by filtering through a new glass fiber filter, as outlined in Step 8.7. For final filtration of the TCLP extract, the glass fiber filter may be changed, if necessary, to facilitate filtration. Filter(s) shall be acid-washed (see Step 4.4) if evaluating the mobility of metals.

8.13 The TCLP extract is now prepared as follows:

8.13.1 If the waste contained no initial liquid phase, the filtered liquid material obtained from Step 8.12 is defined as the TCLP extract. Proceed to Step 8.14.

8.13.2 If compatible (e.g., multiple phases will not result on combination), the filtered liquid resulting from Step 8.12 is combined with the initial liquid phase of the waste as obtained in Step 8.7. This combined liquid is defined as the TCLP extract. Proceed to Step 8.14.

8.13.3 If the initial liquid phase of the waste, as obtained from Step 8.7, is not or may not be compatible with the filtered liquid resulting from Step 8.12, these liquids are not combined. These liquids, collectively defined as the TCLP extract, are analyzed separately, and the results are combined mathematically. Proceed to Step 8.14.

8.14 Following collection of the TCLP extract, it is recommended that the pH of the extract be recorded. The extract should be immediately aliquoted for analysis and properly preserved (metals aliquots must be acidified with nitric acid to pH <2; all other aliquots must be stored under refrigeration (4 °C) until analyzed). The TCLP extract shall be prepared and analyzed according to appropriate analytical methods. TCLP extracts to be analyzed for metals, other than mercury, shall be acid digested. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to ±0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analyte Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:
$V_1$ = The volume of the first phase (L).
$C_1$ = The concentration of the contaminant of concern in the first phase (mg/L).
$V_2$ = The volume of the second phase (L).
$C_2$ = The concentration of the contaminant of concern in the second phase (mg/L).

8.15 The contaminant concentrations in the TCLP extract are compared with the thresholds identified in the appropriate regulations. Refer to Section 10.0 for quality assurance requirements.

9.0 PROCEDURE WHEN VOLATILES ARE INVOLVED

The ZHE device is used to obtain TCLP extracts for volatile analysis only. Extract resulting from the use of the ZHE shall not be used to evaluate the mobility of non-volatile analytes (e.g., metals, pesticides, etc.).

The ZHE device has approximately a 500-mL internal capacity. Although a minimum sample size of 100 grams was required in the Section 8.0 procedure, the ZHE can only accommodate a *maximum* of 25 grams of solid (defined as that fraction of a sample from which no liquid (additional) may be forced out by an applied pressure of 50 psi), due to the need to add an amount of extraction fluid equal to 20 times the weight of the solid phase.

The ZHE is charged with sample only once and the device is not opened until the final extract (of the solid) has been collected. Repeated filling of the ZHE of obtain 25 grams of solid is not permitted. The initial filtrate should be weighed and then stored at 4 °C until either analyzed or recombined with the final extract of the solid.

Although the following procedure allows for particle-size reduction during the conduct of the procedure, this could result in the loss of volatile compounds. If possible (e.g., particle-size may be reduced easily by crumbling), particle-size reduction (See Step 9.2) should be conducted on the sample as it is being taken. If necessary, particle-size reduction may be conducted during the procedure.

In carrying out the following steps, do not allow the waste, the initial liquid phase, or the extract to be exposed to the atmosphere for any more time than is absolutely necessary. Any manipulation of these materials should be done when cold (4° C) to minimize loss of volatiles.

9.1 Pre-weigh the (evacuated) container which will receive the filtrate (See Step 4.6), and set aside. If using a TEDLAR® bag, all liquid must be expressed from the device, whether it be for the initial or final liquid/solid separation, and an aliquot taken from the liquid in the bag, for analysis. The containers listed in Step 4.6 are recommended for use under the following conditions.

9.1.1 If a waste contains an aqueous liquid phase or if the waste does not contain a significant amount of non-aqueous liquid (i.e., <1% of total waste), the TEDLAR® bag should be used to collect and combine the initial liquid and solid extract. The syringe is not recommended in these cases.

9.1.2 If a waste contains a significant amount of non-aqueous initial liquid phase (i.e., >1% of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

9.1.3 If the waste contains no initial liquid phase (is 100% solid) or has no significant solid phase (is 100% liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL liquid expressed from the device. The remaining aliquots are used for analysis.

9.2 Place the ZHE piston within the body of the ZHE (it may be helpful first to moisten the piston O-rings slightly with estraction fluid). Adjust the piston within the ZHE body to a height that will minimize the distance the piston will have to move once the ZHE is charged with sample (based upon sample size requirements determined from Section 9.0, Step 7.1 and/or 7.2). Secure the gas inlet/outlet flange (bottom flange) onto the ZHE body in accordance with the manufacturer's instructions. Secure the glass fiber filter between the support screens and set aside. Set liquid inlet/outlet flange (top flange) aside.

9.3 If the waste is 100% solid (see Step 7.1), weigh out a representative subsample (25 gram maximum) of the waste, record weight, and proceed to Step 9.5.

9.4 If the waste was shown to contain <0.5% dry solids (Step 7.2), the waste, after filtration is defined as the TCLP extract. Enough of the sample should be filtered so that the amount of filtered liquid will support all of the volatile analyses required. For wastes containing ≥0.5% dry solids (Steps 7.1 and/or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size to charge into the ZHE. The appropriate sample size recommended is as follows:

9.4.1 For wastes containing ≤5% solids (see Step 7.1), weigh out a representative 500 gram sample or waste and record the weight.

9.4.2 For wastes containing >5% solids (see Step 7.1), the amount of waste to charge into the ZHE is determined as follows:

$$\text{Weight of waste to charge ZHE} = \frac{25}{\text{\% solids (Step 7.1)}} \times 100$$

Weigh out a representative subsample of the waste of the appropriate size and record the weight.

9.5 If particle-size reduction of the solid portion of the waste was required in Step 7.3, proceed to Step 9.6. If particle-size reduction was not required in Step 7.3, proceed to Step 9.7.

9.6 The waste is prepared for extraction by crushing, cutting, or grinding the solid portion of the waste to a surface area or particle-size as described in Step 7.3. Wastes and appropriate reduction equipment should be refrigerated, if possible, to 4 °C prior to particle-size reduction. The means used to effect particle-size reduction must not generate heat in and of itself. If reduction of the solid phase of the waste is necessary, exposure of the waste to the atmosphere should be avoided to the extent possible.

**Note.**—Sieving of the waste is not recommended due to the possibility that volatiles may be lost. The use of an appropriately graduated ruler is recommended as an acceptable alternative. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

When the surface area or particle-size has been appropriately altered, proceed to Step 9.7.

9.7 Waste slurries need not be allowed to stand to permit the solid phase to settle. Wastes that settle slowly shall not be centrifuged prior to filtration.

9.8 Quantitatively transfer the entire sample (liquid and solid phases) quickly to the ZHE. Secure the filter and support screens into the top flange of the device and secure the top flange to the ZHE body in accordance with the manufacturer's instructions. Tighten all ZHE fittings and place the device in the vertical position (gas inlet/outlet flange on the bottom). *Do not* attach the extraction collection device to the top plate.

**Note.**—If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the ZHE, determine the weight of this residue and subtract it from the sample weight determined in Step 9.4, to determine the weight of the waste sample that will be filtered.

Attach a gas line to the gas inlet/outlet valve (bottom flange) and, with the liquid inlet/outlet valve (top flange) open, begin applying gentle pressure of 1–10 psi (or more if necessary) to force all headspace (into a hood) slowly out of the ZHE device. At the first appearance of liquid from the liquid inlet/outlet valve, quickly close the valve and discontinue pressure. If filtration of the waste at 4°C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering. If the waste is 100% solid (see Step 7.1), slowly increase the pressure to a maximum of 50 psi to force most of the headspace out of the device and proceed to Step 9.12.

9.9 Attach the evacuated pre-weighed filtrate collection container to the liquid inlet/outlet valve and open the valve. Begin applying gentle pressure of 1–10 psi to force the liquid phase into the filtrate collection container. If no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When liquid flow has ceased such that continued pressure filtration at 50 psi does not result in any additional filtrate within any 2-minute period, filtration is stopped. Close the liquid inlet/outlet valve, discontinue pressure to the piston, and disconnect the filtrate collection container.

**Note.**—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

9.10 The material in the ZHE is defined as the solid phase of the waste and the filtrate is defined as the liquid phase.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying pressure filtration, this material will not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the TCLP extraction as a solid.

If the original waste contained <0.5% dry solids (see Step 7.2), this filtrate is defined as the TCLP extract and is analyzed directly. Proceed to Step 9.15.

9.11 The liquid phase may now be either analyzed immediately (see Steps 9.13 through 9.15) or stored at 4 °C under minimal headspace conditions until time of analysis. The weight of extraction fluid #1 to add to the ZHE is determined as follows:

$$\text{Weight of extraction fluid} = \frac{\text{20\% solids (Step 7.1)} \times \text{weight of waste filtered (Step 9.4 or 9.8)}}{100}$$

9.12 The following steps detail how to add the appropriate amount of extraction fluid to the solid material within the ZHE and agitation of the ZHE vessel. Extraction fluid #1 is used in all cases (see Step 5.6).

9.12.1 With the ZHE in the vertical position, attach a line from the extraction fluid reservior to the liquid inlet/outlet valve. The line used shall contain fresh extraction fluid and should be preflushed with fluid to eliminate any air pockets in the line. Release gas pressure on the ZHE piston (from the gas inlet/outlet valve), open the liquid inlet/outlet valve, and begin transferring extraction fluid (by pumping or similar means) into the ZHE. Continue pumping extraction fluid into the ZHE until the appropriate amount of fluid has been introduced into the device.

9.12.2 After the extraction fluid has been added, immediately close the liquid inlet/outlet valve and disconnect the extraction fluid line. Check the ZHE to ensure that all valves are in their closed positions. Physically rotate the device in an end-over-end fashion 2 or 3 times. Reposition the ZHE in the vertical position with the liquid inlet/outlet valve on top. Put 5–10 psi behind the piston (if necessary) and slowly open the liquid inlet/outlet valve to bleed out any headspace (into a hood) that may have been introduced due to the addition of extraction fluid. This bleeding shall be done quickly and shall be stopped at the first appearance of liquid from the valve. Re-pressurize the ZHE with 5–10 psi and check all ZHE fittings to ensure that they are closed.

9.12.3 Place the ZHE in the rotary extractor apparatus (if it is not already there) and rotate the ZHE at 30±2 rpm for 18±2 hours. Ambient temperature (i.e., temperature of room in which extraction is to occur) shall be maintained at 22±3 °C during agitation.

9.13 Following the 18±2 hour agitation period, check the pressure behind the ZHE piston by quickly opening and closing the gas inlet/outlet valve and noting the escape of gas. If the pressure has not been maintained (i.e., no gas release observed), the device is leaking. Check the ZHE for leaking as specified in Step 4.2.1, and redo the extraction with a new sample of waste. If the pressure within the device has been maintained, the material in the extractor vessel is once again separated into its component liquid and solid phases. If the waste contained an initial liquid phase, the liquid may be filtered directly into the same filtrate collection container (i.e., TEDLAR® bag) holding the initial liquid phase of the waste, unless doing so would create multiple phases, or unless there is not enough volume left within the filtrate collection container. A separate filtrate collection container must be used in these cases. Filter through the glass fiber filter, using the ZHE device as discussed in Step 9.9. All extract shall be filtered and collected in the TEDLAR® bag is used, if the extract is multiphasic, or if the waste contained an initial liquid phase (see Steps 4.6 and 9.1).

Note.—An in-line glass fiber filter may be used to filter the material within the ZHE when it is suspected that the glass fiber filter has been ruptured.

9.14 If the original waste contained no initial liquid phase, the filtered liquid material obtained from Step 9.13 is defined as the TCLP extract. If the waste contained in initial liquid phase, the filtered liquid material obtained from Step 9.13 and the initial liquid phase (Step 9.9) are collectively defined as the TCLP extract.

9.15 Following collection of the TCLP extract, the extract should be immediately aliquoted for analysis and stored with minimal headspace at 4 °C until analyzed. The TCLP extract will be prepared and analyzed according to the appropriate analytical methods. If the individual phases are to be analyzed separately (i.e., are not miscible), determine the volume of the individual phases (to ±0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analyte Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

$V_1$ = The volume of the first phases (L).

$C_1$ = The concentration of the contaminant of concern in the first phase (mg/L).

$V_2$ = The volume of the second phase (L).

$C_2$ = The concentration of the contaminant of concern in the second phase (mg/L).

9.16 The contaminant concentrations in the TCLP extract are compared with the thresholds identified in the appropriate regulations. Refer to Section 10.0 for qualify assurance requirements.

10.0 QUALITY ASSURANCE REQUIREMENTS

10.1 All data, including quality assurance data, should be maintained and available for reference or inspection.

10.2 A minimum of one blank (extraction fluid #1) for every 10 extractions that have been conducted in an extraction vessel shall be employed as a check to determine if any memory effects from the extraction equipment are occurring.

10.3 For each analytical batch (up to twenty samples), it is recommended that a matrix spike be performed. Addition of matrix spikes should occur once the TCLP extract has been generated (i.e., should not occur prior to performance of the TCLP procedure). The purpose of the matrix spike is to monitor the adequacy of the analytical methods used on the TCLP extract and for determining if matrix interferences exist in analyte detection.

10.4 All quality control measures described in the appropriate analytical methods shall be followed.

10.5 The method of standard addition shall be employed for each analyte if: 1) recovery of the compound from the TCLP extract is not between 50 and 150%, or 2) if the concentration of the constituent measured in the extract is within 20% of the appropriate regulatory threshold. If more than one extraction is being run on samples of the same waste (up to twenty samples), the method of standard addition need be applied only once and the percent recoveries applied to the remainder of the extractions.

10.6 Samples must undergo TCLP extraction within the following time period after sample receipt: Volatiles, 14 days; Semi-Volatiles, 40 days; Mercury, 28 days; and other Metals, 180 days. Extraction of the solid portion of the waste should be initiated as soon as possible following initial solid/liquid separation. TCLP extracts shall be analyzed after generation and preservation within the following periods: Volatiles, 14 days; Semi-Volatiles, 40 days; Mercury, 28 days; and other Metals, 180 days.

TABLE 1.—VOLATILE CONTAMINANTS [1]

| Compound | CAS No. |
|---|---|
| Acetone | 67-64-1 |
| n-Butyl alcohol | 71-36-6 |
| Carbon disulfide | 75-15-0 |
| Carbon tetrachloride | 56-23-5 |
| Chlorobenzene | 108-90-7 |
| Methylene chloride | 75-09-2 |
| Methyl ethyl ketone | 78-93-3 |
| Methyl isobutyl ketone | 108-10-1 |
| Tetrachloroethylene | 127-18-4 |
| Toluene | 108-88-3 |
| 1,1,1-Trichloroethane | 71-55-6 |
| Trichloroethylene | 79-01-6 |
| Trichlorofluoromethane | 75-69-4 |
| Xylene | 1330-20-7 |

[1] Includes compounds identified in the Land Disposal Restrictions Rule. If any or all of these compounds are of concern, the zero-headspace extractor vessel shall be used. If other (non-volatile) compounds are of concern, the conventional bottle extractor shall be used.

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]

| Company | Location | Model |
|---|---|---|
| Associated Design and Manufacturing Company. | Alexandria, VA (703) 549-5999. | 4-vessel device, 6-vessel device |
| Lars Lande Manfacturing. | Whitmore Lake, MI (313) 449-4116. | 10-vessel device, 5-vessel device |
| IRA Machine Shop and Laboratory. | Santurce, PR (809) 752-4004. | 16-vessel device |
| EPRI Extractor | | 6-vessel device [2] |
| REXNORD | Milwaukee, WI (414) 643-2850. | 6-vessel device |
| Analytical Testing and Consulting Services, Inc. | Warrington, PA (215) 343-4490. | 4-vessel device |

[1] Any device that rotates the extraction vessel in an end-over-end fashion at 30 ± 2 rpm is acceptable.
[2] Although this device is suitable, it is not commercially made. It may also require retrofitting to accommodate ZHE devices.

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS

| Company | Location | Model No. |
|---|---|---|
| Associated Design & Manufacturing Co. | Alexandria, VA, (703) 549-5999 | 3740-ZHB, Gas Pressure Device. |
| Millipore Corp. | Bedford, MA, (800) 225-3384 | SD1 P581 C5, Gas Pressure Device. |
| Analytical Testing & Consulting Services, Inc. | Warrington, PA, (215) 343-4490 | CI02, Mechanical Pressure Device. |

TABLE 4.—SUITABLE FILTER HOLDERS [1]

| Company | Location | Model | Size |
|---|---|---|---|
| Nuclepore Corp. | Pleasanton, CA, (800) 882-7711 | 425910 | 142 mm. |
| | | 410400 | 47 mm. |
| Micro Filtration Systems | Dublin, CA, (415) 828-6010 | 302400 | 142 mm. |
| Millipore Corp. | Bedford, MA, (800) 225-3384 | YT30142HW | 142 mm. |
| | | XX1004700 | 47 mm. |

[1] Any device capable of separating the liquid from the solid phase of the waste is suitable, providing that it is chemically compatible with the waste and the constituents to be analyzed. Plastic devices (not listed above) may be used when only inorganic contaminants are of concern. The 142 mm size filter holder is recommended.

TABLE 5.—SUITABLE FILTER MEDIA

| Company | Location | Model | Pore size [1] |
|---|---|---|---|
| Whatman Laboratory Products, Inc. | Clifton, NJ, (201) 773-5800 | GFF | 0.7 |

[1] Nominal pore size.

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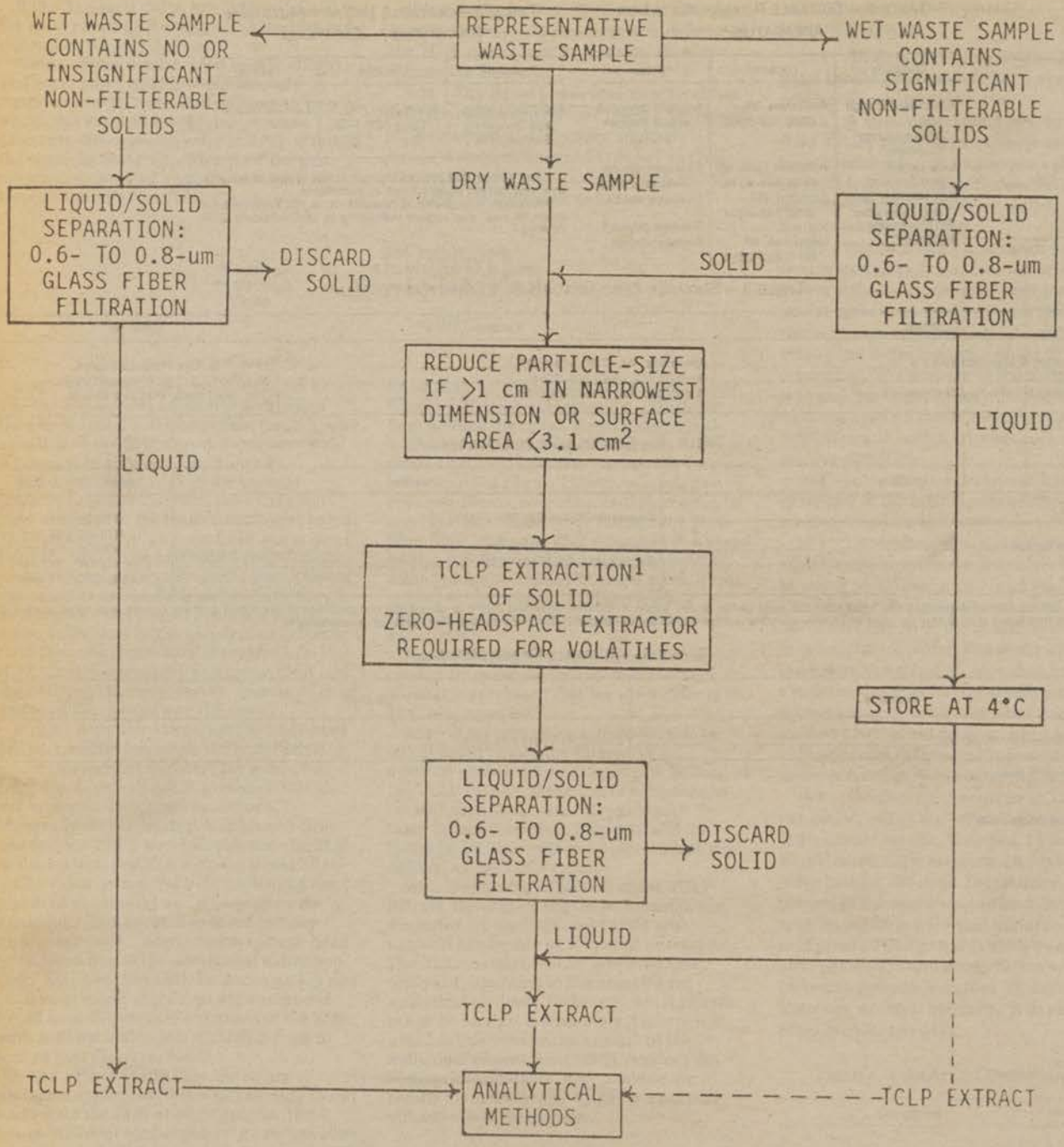


[1]The extraction fluid employed is a function of the alkalinity of the solid phase of the waste.

FIGURE 1: TCLP FLOWCHART

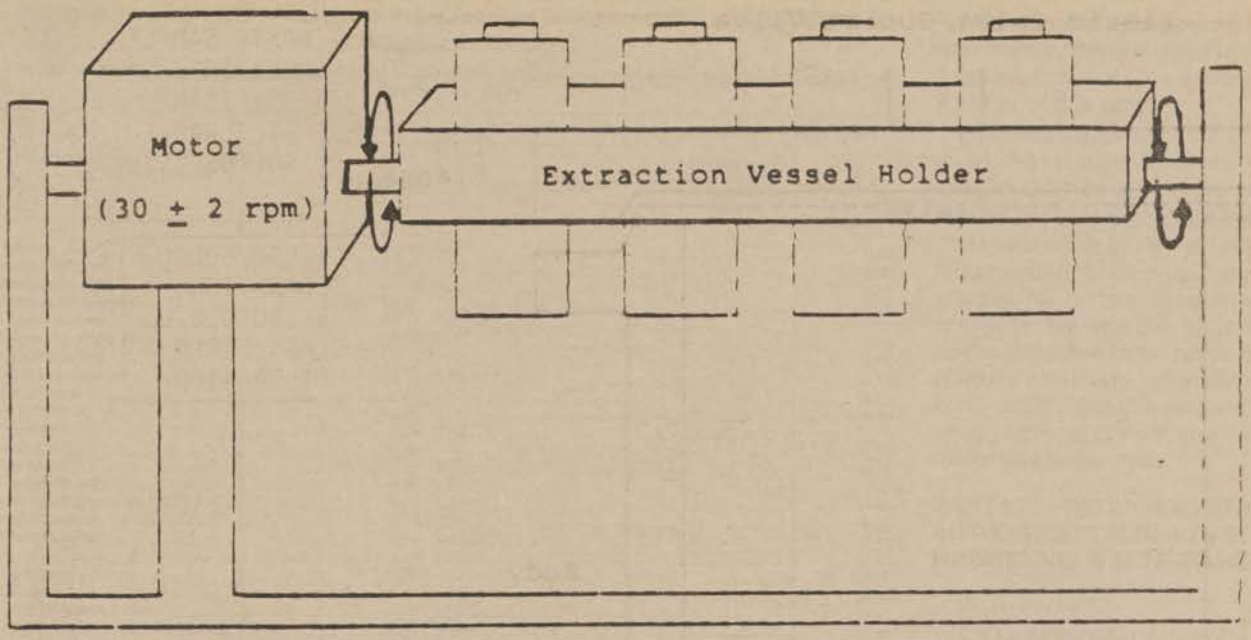


Figure 2: Rotary Agitation

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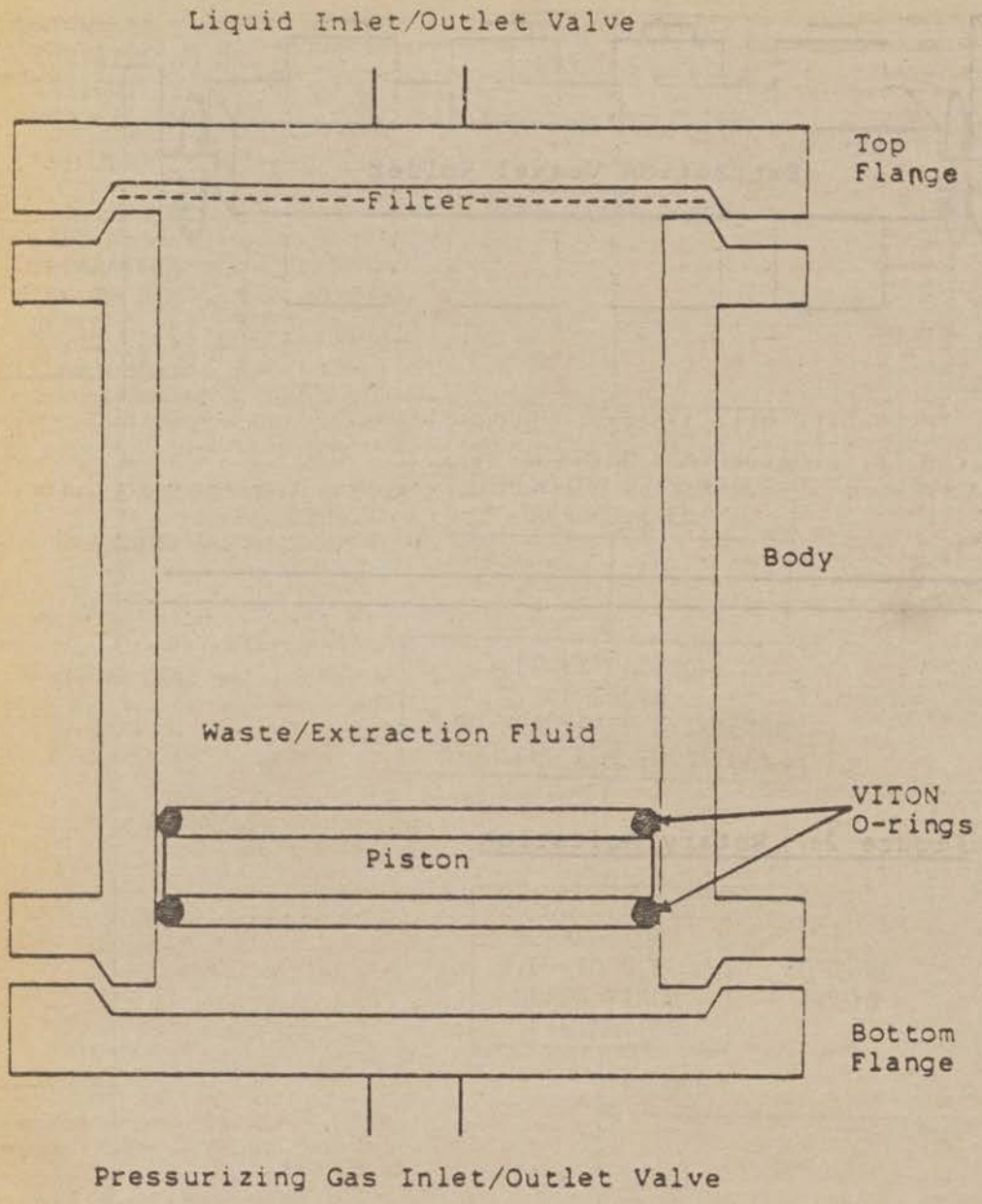


Figure 3: Zero-Headspace Extraction Vessel

APPENDIX II TO PART 268—TREATMENT STANDARDS (AS CONCENTRATIONS IN THE TREATMENT RESIDUAL EXTRACT)

[Note: The technologies shown are the basis of the treatment standards. They are not required to be used in meeting the treatment standards]

| Constitutents of FO01–FO05 Spent Solvent Wastes | Waste Treatability Groups For FO01–FO05 Spent Solvent Wastes (mg/l) | | | |
|---|---|---|---|---|
| | Wastewater | Technology Basis [1] | Wastewater Generated by Pharmaceutical Plant [2] | All Other [3] |
| Acetone | 0.05 | SS | | 0.59 |
| n-Butyl Alcohol | 5.00 | SS | | 5.00 |
| Carbon disulfide | 1.05 | SS | | 4.81 |
| Carbon tetrachloride | 0.05 | B | | 0.96 |
| Chlorobenzene | 0.15 | B&AC | | 0.05 |
| Cresols (cresylic acid) | 2.82 | AC | | 0.75 |
| Cyclohexanone | 0.125 | SS | | 0.75 |
| 1,2-Dichlorobenzene | 0.65 | B&AC | | 0.125 |
| Ethyl acetate | 0.05 | SS | | 0.75 |
| Ethylbenzene | 0.05 | B | | 0.053 |
| Ethyl ether | 0.05 | SS | | 0.75 |
| Isobutanol | 5.00 | SS | | 5.00 |
| Methanol | 0.25 | SS | | 0.75 |
| Methylene chloride | 0.20 | B | 12.7 | 0.96 |
| Methyl ethyl ketone | 0.05 | SS | | 0.75 |
| Methyl isobutyl ketone | 0.05 | SS | | 0.33 |
| Nitrobenzene | 0.66 | SS&AC | | 0.125 |
| Pyridine | 1.12 | B&AC | | 0.33 |
| Tetrachloroethylene | 0.079 | B | | 0.05 |
| Toluene | 1.12 | B&AC | | 0.33 |
| 1,1,1-Trichloroethane | 1.05 | SS | | 0.41 |
| 1,1,2-Trichloro-1,2,2-trifluoroethane | 1.05 | SS | | 0.96 |
| Trichloroethylene | 0.062 | B&AC | | 0.091 |
| Trichlorofluoromethane | 0.05 | B | | 0.96 |
| Xylene | 0.05 | AC | | 0.15 |

[1] In some instances other technologies achieved somewhat lower treatment values but waste characterization data were insufficient to identify separate treatability groups. Refer to the BDAT background document for a detailed explanation of the determination of the treatment standards.
SS=steam stripping
B=biological treatment
AC=activated carbon
[2] Wastewaters generated by pharmaceutical plants must be treated to the standards given for all other wastewaters except in the case of methylene chloride.
[3] The treatment standards in this treatability group are based on incineration.

## PART 270—EPA-ADMINISTERED PERMIT PROGRAMS; THE HAZARDOUS WASTE PERMIT PROGRAM

VIII. In Part 270:

1. The authority citation for Part 270 continues to read as follows:

**Authority:** Secs. 1006, 2002, 3005, 3007, 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, 6925, 6927, 6939 and 6974], unless otherwise noted.

### Subpart B—Permit Applications

2. In § 270.14, paragraph (b)(21) is added to read as follows:

**§ 270.14 Contents of Part B: General requirements.**

* * * * *

(b) * * *

(21) For land disposal facilities, if a case-by-case extension has been approved under § 268.5 or a petition has been approved under § 268.6, a copy of the notice of approval for the extension or petition is required.

* * * * *

### Subpart C—Permit Conditions

3. In § 270.32, paragraph (b)(1) is revised to read as follows:

**§ 270.32 Establishing permit conditions.**

* * * * *

(b)(1) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in Parts 264 and 266 through 268 of this chapter. In satisfying this provision, the Administrator may incorporate applicable requirements of Parts 264 and 266 through 268 of this chapter directly into the permit or establish other permit conditions that are based on these parts.

### Subpart D—Changes to Permits

4. In § 270.42, paragraph (o) is added to read as follows:

**§ 270.42 Minor modifications of permits.**

* * * * *

(o) Allow treatment of hazardous wastes not previously specified in the permit if:

(1) The hazardous waste has been prohibited from one or more methods of land disposal under Part 268 Subpart C and treatment standards have been established under Part 268 Subpart D;

(2) Treatment is in accordance with the standards established under § 268.41, or a variance established under § 268.44 of this part;

(3) Handling and treatment of the restricted waste will not present risks substantially different from those of wastes listed in the permit; and

(4) Federal or State approval of a minor permit modification request is granted. No permit changes can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes or physical equipment may not be made under this paragraph.

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

IX. In Part 271:

1. 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, as amended [42 U.S.C. 6905, 6912(a), and 6926].

### Subpart A—Requirements for Final Authorization

2. In § 271.1 paragraph (j) is amended by adding the following entry to Table 1 in chronological order by the date of publication.

**§ 271.1 Purpose and scope.**

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Date of promulgation | Title of regulation | Federal Register reference | Effective date |
|---|---|---|---|
| * | * | * | * |
| [Date of publication of the final rule in the Federal Register]. | Land Disposal Restrictions for solvents and dioxins. | 51 FR [insert Federal Register, page numbers]. | Nov. 8, 1986. |

3. In § 271.1 paragraph (j) is further amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

**§ 271.1 Purpose and scope.**

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Effective date | Self-implementing provision | RCRA citation | Federal Register reference |
|---|---|---|---|
| * | * | * | * |
| Nov. 8, 1986 | Land disposal prohibitions on dioxins and F001–F005 solvents. | 3004(e) | [*Insert date of publication*], 51 FR [*insert Federal Register page numbers*]. |
| * | * | * | * |

[FR Doc. 86–25224 Filed 11–6–86; 8:45 am]
BILLING CODE 6560–50–M

federal register

Friday
November 7, 1986

Part III

# Environmental Protection Agency

40 CFR Parts 51 and 52

Air Quality Implementation Plans; Restructuring SIP Preparation Regulations; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

**[AD-FRL-3044-2]**

## Air Quality Implementation Plans; Restructuring SIP Preparation Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rulemaking restructures and consolidates the existing regulations for the development of State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS). At present, these regulations are complex, not well organized, and contain many obsolete provisions. The EPA deletes obsolete provisions and rewrites the regulations in a new, shorter, and better organized format. States using the new regulations to prepare SIP's will find them current and easier to follow. The regulations also have a flexible structure into which future requirements can be more easily included.

**EFFECTIVE DATE:** December 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ted Creekmore or Joseph Sableski, Plans Guidelines Section, MD-15, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5697 commercial or 629-5697 FTS.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 11, 1983 (48 FR 46152), EPA proposed to restructure and consolidate regulations for the development of SIP's. These regulations are found in 40 CFR Part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans;" and 40 CFR Part 52, "Approval and Promulgation of Implementation Plans."

Since Part 51 was promulgated in 1971, many substantive revisions have been made. Almost every portion has been revised or added to. Revisions have been forced into the existing format, often making the whole regulation more confusing. As a result, users—mainly the State and local air pollution control agencies—have difficulty finding and understanding applicable requirements in the regulations.

Thus, today's action revises the regulations to:

1. Remove obsolete materials and reporting requirements,
2. Condense and clarify complicated and detailed requirements,
3. Develop a structure that would allow users to find easily applicable requirements, and
4. Provide for future requirements and changes.

To accomplish these goals, EPA deletes obsolete materials and restructures the remaining regulations in a new format (shown in Table 1 of this action). The new format provides for better organization and flexibility for adding or changing future SIP requirements. To implement the new format, EPA developed a master plan to restructure 40 CFR Part 51. As shown in Table 1, the new format expands the Part 51 structure to include more topical headings; these will act as guideposts in locating applicable requirements. This is accomplished by having more subparts than currently appear in Part 51. For instance, where now there is only one section for prevention of air pollution episodes (§ 51.16), there will be a whole subpart that contains several sections—one for classification of regions for episode plans, one for levels of significant harm, one for contingency plans, and one for reevaluation of episode plans. Furthermore, the use of section subdivisions below the third order is significantly reduced.

A more extensive discussion of the rulemaking may be found in the October 11, 1983, proposal which may be used as a reference in studying today's rulemaking.

*Restructuring Form*

This action includes two tables to help identify and explain the restructured sections as follows:

(1) Derivation Table and Master Plan (Table 1). This table shows the origin of each new section and gives the master restructuring plan.

(2) Distribution Table (Table 2). This table indicates where each original section fits into the new restructured format.

*Revisions to 40 CFR Part 52 and Other Revisions*

This action includes changes in the cross-references to separate provisions of the existing regulations in Part 52 and unrestructured portions of Part 51. The cross-references are made to the same or equivalent provisions in the restructured regulations.

*Relationship of Action to Existing SIP's and Nonattainment Requirements*

The EPA does not anticipate that this action will have any significant impact on existing SIP's. The EPA is promulgating very few substantive changes to Part 51. The majority of these changes remove material that was intended to serve as guidance to the States in preparing their plans. The EPA does not intend to require States to "clean up" their SIP's by removing or revising outdated material such as original emission inventories. States may make such revisions as their resources permit. Where SIP's refer to the former Part 51 citations, EPA will interpret those citations as referring to the new citations in Part 51 as codified pursuant to this action and as cross-referenced in Table 2. EPA also reminds States of the generally accepted interpretation that a State regulation that references a Federal regulation remains unchanged if the Federal regulation is revised subsequent to adoption of the State regulation.

The EPA also does not anticipate that this action will have any appreciable impact on SIP revisions submitted to meet the requirements of Part D, Title I of the Clean Air Act (Act). Part D contains new requirements for areas which did not attain the standards within the deadlines established by the 1970 amendments. The only regulations EPA has promulgated that incorporate Part D requirements concern new source review. The EPA is not promulgating changes to the new source review rules. For the remaining Part D requirements, EPA issued nonregulatory guidance. It is beyond the scope of the rulemaking to address the provisions of Part D of the Act, and EPA is not incorporating any of this guidance into Part 51 at this time.

### Public Comments

Comments were received from 16 sources including individuals, businesses, local governments, and environmental groups. This document provides a summary of responses to major comments. Responses to these as well as other comments may be found in Docket Number A-81-25 listed under IV-F-1.

*Definition of Reasonably Available Control Technology (RACT) [§ 51.100(o)]*

The existing Part 51 regulations contain only two provisions that use the term "RACT"—namely, §§ 51.13(b) and 51.31(c) [§§ 51.110(c) and 51.341 in the restructured proposal]. Section 51.13(b) establishes a presumption that 3 years is a reasonable time for attainment of a secondary NAAQS if RACT would bring about attainment. Section 51.31(c) allows an extension of the deadline for submission of a SIP for a secondary NAAQS but only upon a showing that more than RACT is necessary for attainment. The Part 51 regulations

separately define RACT in § 51.1(o) largely by reference to Appendix B that gives examples of RACT technology. The EPA promulgated both of these provisions and the definition of RACT simultaneously in the early 1970's.

Several years later, EPA used the term RACT in a different context as part of its effort to remedy the widespread persistence of NAAQS violations. In 1976 and then in the months following the enactment of Part D in 1977, EPA stated more elaborate and specific provisions of RACT. The EPA, however, never attempted to incorporate those provisions, nor any of the requirements of Part D relating to existing sources, into the Part 51 regulations.

The proposed definition of RACT was intended only to codify existing policy. It included provisions of RACT from guidance for nonattainment plans (Part D of the Act) because EPA believed this guidance was established and accepted. However, upon reexamination of the proposed definition, EPA has concluded it went too far by attempting to include Part D provisions. The purpose of this rulemaking is merely to streamline and recodify the existing requirements of the Part 51 regulations, not to incorporate parameters of Part D into those regulations. The definition of RACT, therefore, should reflect, as near as possible, only what EPA intended the term to mean originally for the purposes of §§ 51.13(b) and 51.31(c). Thus the definition is changed to read as follows:

"Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

There was some concern by commenters that the proposed deletion of Appendix B, "Example of Emission Limitation Attainable With Reasonably Available Technology" would affect the application of RACT to various regulatory castegories such as visible emissions. This action in no way affects the application of RACT to any regulatory, industry, or source category. As discussed in the proposed rulemaking, deleting guidance appendices which are frequently changing eliminates the need to constantly update Part 51. The EPA proposed deleting Appendix B because many of the limitations for source categories have changed, and up-to-date RACT guidance on emission limitations for specific sources is available through various guidance documents.

*Air Quality Maintenance Provisions*

The comments on our suggestions of possible revisions to the air quality maintenance provision indicated that any revisions would be the subject of much controversy. Thus, EPA intends to make no revision to the maintenance regulations of Subpart D in this action except to renumber section references therein, but will consider options for future revisions. The EPA may eventually incorporate Subpart D into Subpart G, "Control strategy." This may involve rewriting Subpart D as part of Subpart G or redesignating Subpart D as a new Subpart Ga.

*Section 51.100, Definitions*

Commenters suggested revising § 51.100(n)(7) through (9) to better reflect today's transportation plans requirements. They wanted to delete example measures such as "commuter taxes" and "gasoline rationing" since they are unlikely to be implemented. They wanted to revise the term "parking restrictions" and read "preferential parking requirements" in order to shift emphasis from restriction to incentive methods. They suggested other changes such as adding the phrase "and motor vehicle trips" to recognize the need for measures that reduce trips and the related emissions associated with the cold-start and hot-soak modes. Some of the examples of transportation control measures in paragraphs (n)(7) through (9) have largely been superseded by other measures to control emissions from transportation sources. The EPA believes it would be appropriate to replace paragraphs (n)(7) through (9) with a general reference to other transportation control measures. The reference would include those measures listed in section 108(f) of the Act as examples of transportation measures that a State may adopt. The regulations have been modified accordingly.

One commenter recommended changing the definition of transportation control measures at § 51.100(r) to include only highway or transit-related measures on the grounds that measures decreasing emissions from individual motor vehicles, referenced in the existing definition, are actions not under the jurisdiction of Federal or State transportation agencies. The commenter also recommended that the proposed definition be expressed in more general terms. Whether or not measures are under the jurisdiction of a transportation control agency is not a relevant consideration so long as the measure is enforceable by the State. Moreover, EPA believes that the existing definition, which includes "any measure. . ." that is directed toward reducing emissions of air pollutants from transportation sources,. . . ." is sufficiently general. Thus, EPA is retaining the existing definition of "transportation control measure," except that the measures listed in section 108(f) are being referenced as examples rather than including the example measures in the existing regulation.

It was suggested that § 51.100 (s) through (w) should be deleted because the transportation-related terms defined in these sections are no longer used in Appendix M, "Transportation Control Supporting Data Summary," which EPA proposed to delete. The EPA agrees with the commenter and has deleted these paragraphs.

*Section 51.104, Revisions*

Another commenter suggested EPA amend § 51.104(a) to add a requirement that plans shall be revised when necessary to "otherwise comply with any additional requirements established under the Act as amended in 1977." This language is a quote from section 110(a)(2) H of the Act. The EPA agrees with this comment and has amended section 51.104(a) to track the language of section 110(a)(2)(H). Section 51.104(a) now requires that a plan be revised to take into account a finding by the Administrator that the plan is substantially inadequate to comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

A commenter noted that we had proposed to delete § 51.4(b)(8) and stated that this would result in dropping requirements for local planning, transportation, and economic development agencies to be informed of air quality maintenance plan proposals. This section was inadvertently dropped in the proposal and is restored in this rulemaking.

*Section 51.110, Attainment and Maintenance of National Standards*

One commenter felt that the language in the proposed § 51.110(a) inappropriately presupposes that further emission reductions will be necessary in every case in order to achieve or maintain the national standards, contrary to the existing § 51.12(a), (b). It was EPA's intention to use language similar to § 51.12(a) and to require emissions reductions only to the degree necessary for attainment and

maintenance of the NAAQS. Section 51.110(a) states, "Each plan must set forth a control strategy that provides emission reduction necessary for attainment and maintenance of national air quality standards." The section further states that emission reductions must be sufficient to offset future increases in emissions. The EPA believes that these statements do not presuppose that further reductions will be necessary in every case. However, as a clarification, we have revised section 110(a) to explain that the control strategy must provide the degree of emission reduction necessary to attain and maintain the standards, and that the reductions must offset "any" increases that "are expected to" result from growth.

*Section 51.118, Additional Provisions for Lead*

One commenter stated that their agency has not been reporting data to EPA in hazardous and trace emissions systems (HATREMS) coding forms. The commenter felt that the requirement that lead emissions be submitted on HATREMS coding forms was contrary to our remarks in the proposal when we indicated that we do not need to specify the content or format of point and area source data. The EPA agrees that the regulation need not specify the format for submission of point and area data. The commenter recommended that EPA modify the requirement to at least allow States greater flexibility as to the format for submitting data. Accordingly, we have modified § 51.118(e) to specify that the data should include the information identified in the HATREMS forms, but need not be in the format of those forms.

*Subpart H, Prevention of Air Pollution Emergency Episodes*

A commenter suggested that EPA revise the propsed § 51.153, "Reevaluation of episode plans," to provide an alternate minimum schedule on which episode plans would be reevaluated. The proposal requires States to reevaluate their priority classification every 5 years to determine if changes are needed. The 5 year review would coincide with EPA's review of an ambient air quality standard or promulgation of a revised standard. If the evaluation indicates in priority classification, the proposal calls for appropriate changes in the emergency episode plan(s) within 1 year after EPA publishes its determination with regard to pollutant reassessment in the Federal Register. The commenter felt the regulation should require reassessment of the priority classification whenever a standard was tightened.

If there is no change tightening the standard after EPA review, the reevaluation should be required every 5 years or after EPA review, whichever is later. After studying this issue further, EPA believes that it is not necessary to specify minimum requirements for States to reevaluate their priority classification and episode plans. Under current legal authority, EPA may require States to revise their episode plans when necessary. Indeed, States should already be periodically reevaluating the adequacy of their episode plans. When an EPA revision to an air quality standard impacts episode planning, EPA will set forth minimal criteria for reevaluations of episode plans at that time. Such changes might include a revision to the significant harm levels or priority classification criteria. Thus, § 51.153(b) is deleted and not included in the promulgation. However, EPA is retaining § 51.153(a) which has a general requirement for periodic reevaluation of priority classification for episode plans and retaining the requirement that the episode plans be revised if the priority classification changes.

One commenter noted that in rewriting the old § 51.3 into Subpart H, the provision that "each region will be classified separately with respect to each of the pollutants considered (Sulfur dioxide . . . ozone)" was deleted. The EPA has added an introduction to clarify the intent of the regulation and has included this phrase.

*Subpart I, Review of New Sources and Modifications*

A commenter opposed the proposal to drop requirements for States to notify EPA of permitting actions for all minor sources and for all sources outside nonattainment areas [§ 51.161(d)] on the grounds that new source review is a central part of the prevention of significant deterioration (PSD) and the air quality maintenance plan process and that notification is needed for EPA oversight. The provisions governing PSD procedures, § 51.24, require States to notify EPA of permitting actions for major sources outside nonattainment areas. The deletion from § 51.161(d) did not affect those requirements, only the notification requirements for minor sources. However, EPA agrees that where State or local agency review of new or modified minor sources is required, it should be notified of permitting action for such sources. The very fact that such sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources for oversight purposes. Moreover, a large number of minor sources could have a significant cumulative effect on air quality. Thus, under the authority of sections 110 and 301 of the Act, the proposed § 51.161(d) has been modified so that it now is essentially identical to existing § 51.18(h)(4). Hence, EPA will require reporting of all State permitting actions, as required in the existing SIP regulations.

*Appendices*

In the October 11, 1983, proposed regulations, EPA proposed deleting several appendices from Part 51 (A through K, M through O, and R) for two reasons. First, EPA stated that the necessary guidance in Part 51 is available from other EPA publications. For example, guidance on emission inventories, monitoring, and diffusion modeling is routinely updated by EPA through guidelines readily available to the public. Guidance issued by EPA is listed in the "Air Programs Reports and Guidelines Index" which includes an index of current technical and guideline documents prepared by EPA over the past several years. The "Air Programs Policy and Guidance Notebook" provides additional guidance materials. Both of these guidelines are distributed to State and local agencies. Copies are available for public inspection and copying at the Public Information Reference Unit at EPA's office in Washington, DC, and at EPA Regional Offices. Secondly, many of the existing appendices are obsolete because EPA policy has changed since their original proposal. Rapid changes in SIP policy and the difficulty in promulgating timely revisions to Part 51 have led EPA to develop guidelines rather than revise the Part 51 appendices. One commenter felt that deleting these appendices will create significant uncertainties about the legally binding effects of EPA guidance. They suggested we update them and remove obsolete material, not delete them.

The EPA believes it would be unduly burdensome to update the appendices. The guidelines are constantly being updated, and some of the appendices would become obsolete in a short period of time. In addition, most of the appendices have performed their function by assisting the States when the initial SIP's were developed. The only major reason for leaving them in Part 51 would be for historical purposes. Finally, publishing guidance in appendices to the regulations would not necessarily make the guidance more legally binding. For these reasons, today's

action deletes the appendices as proposed.

*Appendix L*

A commenter pointed out that the location of a phrase in §§ 1.1(b), 1.1(c), and 1.1(d) of Appendix L is misleading. The phrase appears after "$NO_2$-," and reads as follows: "$NO_2$-24-hour average and meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours, or in the case of ozone, the situation is likely to recur within the next 24 hours unless control actions are taken." The commenter pointed out that this phrase applies to all five pollutants, not just to $NO_2$ as its location would imply. Thus, the phrase should be separated from its inclusion under the $NO_2$ subtitle. The EPA believes the commenter is correct and has made the appropriate clarification in today's action.

*Deletion of Reporting Requirements*

One commenter opposed deleting the reporting requirements of § 51.326, "Reportable revisions," and § 51.328, "Plan prescribed actions," because they felt each section required a formal report that each citizen could easily read and also provided greater assurance that the information covered by the sections would be made available. The EPA believes that the burden on the States of including in the annual report all substantive plan revisions that otherwise need not be submitted for approval is small and that such information may be useful to EPA and the public. Accordingly, § 51.326 is being retained to ensure that EPA is apprised of all substantive plan revisions as a matter of course. The EPA believes that it would be more appropriate to acquire the information covered by § 51.328 only on an as needed basis through program and grant mechanisms. The commenter has offered no reason as to why a citizen would need the information covered by § 51.328. In any event, a citizen presumably would be able to obtain such information directly from the States. Thus, this action retains § 51.326 and deletes § 51.328.

**Other Revisions to the Rulemaking**

In our review of the proposal, we determined that several minor changes were necessary to make the regulation read better and to correct inadvertent errors. These changes are listed as follows:

1. The proposal did not redesignate or restructure § 51.12(e) through (i) which refer to maintenance plans because no change in maintenance provisions was proposed. The final action redesignates § 51.12(e) through (i) as § 51.110(h) through (l). No revisions are made in these sections. This redesignation improves the organization of the regulation by including these sections in the new format.

2. The proposal did not redesignate or restructure § 51.24, Prevention of significant deterioration, because EPA intended to do this in a separate rulemaking. The final action redesignates § 51.24 as § 51.166 under the new format in the new source review subpart. No revisions are made to this section. This redesignation improves the organization of the regulation by including § 51.124 in the new format.

3. The EPA noticed a typographical error in § 51.104(b). The first sentence should read, "The State must *revise* the plan within 60 days . . . ." not "The State must *review* the plan, etc." The promulgation corrects this error.

4. The EPA decided that § 51.113(a) is a duplication of § 51.112(b)(1). There is no need for a "procedures" subdivision. Thus, EPA incorporated § 51.113(b) as § 51.112(b)(4) and deleted the proposed § 51.113.

5. The EPA noted that the last two sentences of the proposed § 51.161(d) stated "For pollutants where no designations are established, such as for lead, a copy of the notice is required for all major sources. The definition of a major source for lead is given in § 51.100(k)(2)." In these two sentences, the term "major" was incorrectly proposed and is replaced with the term "point" in this action.

6. The EPA has restructed § 51.260(a)(2) to more closely convey the meaning of existing § 51.15(a). Also, in reviewing § 51.260(a)(3), EPA noted it reads "Categories of other sources" which was inadvertently changed from the original version. Section 51.260(a)(3) should read "Categories of such sources." This revision is made in the final action.

**Ongoing Revisions**

Several commenters were concerned that we are not restructuring various portions of Part 51 because they are currently undergoing revision. They referred to amendments in § 51.18, "Review of new sources and modifications," proposed on August 25, 1983 (48 FR 38742), and revisions in the stack height provisions (§ 51.164) mandated by the court. Since this restructuring package was proposed, the following Part 51 regulations have been promulgated:

1. 49 FR 43202, October 26, 1984. Regulations adding a new paragraph in § 51.18 involving fugitive emissions of stationary sources.

2. 50 FR 27892, July 8, 1985. Regulations revising §§ 51.1, 51.12, and 51.18 involving stack height provisions.

3. 51 FR 11414, April 2, 1986. Regulations adding new sections in §§ 51.1 and 51.12 involving intermittent control systems.

These provisions have been incorporated into the restructured subparts unchanged as promulgated, except that headings, titles, and numbering have been changed to fit into the new format.

**Revisions to Part 52**

As mentioned earlier, this action includes nomenclature changes in Part 52 where cross-references to Part 51 are made. In addition, some of the Part 52 provisions are obsolete and are deleted in this action.

Sections 52.828(b) and 52.2078(b) have been rescinded since they concern primarily 1-year extensions for compliance that were allowed under section 110(f) of the Act prior to 1977 Amendments. Section 110(f) affect any authority the States of Iowa and Rhode Island may have to issue any abatement orders that are permitted under the Act as amended in 1977.

**Environmental, Economic, and Energy Impact Assessments**

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on the environment, energy, competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to the comments are available in Docket A–81–25.

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because no additional costs will be incurred. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq.

## Judicial Review

The following regulatory amendments are nationally applicable, and this action is based on determination of nationwide scope and effect. Therefore, under section 367(b)(1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petition for review must be filed on or before January 6, 1987.

TABLE 1.—DERIVATION TABLE AND MASTER PLAN TO RESTRUCTURE 40 CFR PART 51

| New designation section No. and title | Old designation section No. and title |
|---|---|
| Subpart F Procedural Requirements | |
| 51.100 Definitions | 51.1 Definitions. |
| 51.101 Stipulations | 51.2 Stipulations. |
| 51.102 Public hearings | 51.4 Public hearings. |
| 51.103 Submission of plans | 51.5 Submission of plans. |
| 51.104 Revisions | 51.6 Revisions. |
| | 51.34 Variances. |
| 51.105 Approval of plans | 51.8 Approval of plans. |
| Subpart G Control Strategy | |
| 51.110 Attainment and Maintenance of National Standards | 51.10 General requirements (portion). |
| | 51.12 Control strategy: General (portion). |
| | 51.13 Control strategy: $SO_x$ & PM (portion). |
| | 51.14 Control strategy: CO, HC, Ox & $NO_2$ (portion). |
| | 51.80 Demonstration of attainment: Pb (portion). |
| 51.111 Description of control measures | 51.14 Control strategy: CO, HC, Ox, & $NO_2$ (portion). |
| | 51.87 Measures: Pb. |
| 51.112 Demonstration of adequacy | 51.13 Control strategy: $SO_x$ & PM (portion). |
| | 51.14 Control strategy: CO, HC, Ox, & $NO_2$ (portion). |
| | 51.80 Demonstration of attainment: Pb (portion). |
| | 51.82 Air quality data (portion). |
| 51.113 Time period for demonstration of adequacy | 51.10 General requirements (portion). |
| | 51.81 Emissions data: Pb (portion). |
| 51.114 Emissions data and projections | 51.13 Control strategy: $SO_x$ & PM (portion). |
| | 51.14 Control strategy: CO, HC, Ox, & $NO_2$ (portion). |
| | 51.81 Emissions data: Pb (portion). |
| 51.115 Air quality data and projections | 51.13 Control strategy : $SO_x$ & PM (portion). |
| | 51.14 Control strategy: CO, HC, Ox, & $NO_2$ (portion). |
| | 51.82 Air quality data: Pb (portion). |
| 51.116 Data availability | 51.10 General requirements (portion). |
| | 51.88 Data availability: Pb. |
| 51.117 Additional provisions for lead | 51.80 Demonstration of attainment: Pb (portion). |
| | 51.81 Emissions data: Pb (portion). |
| | 51.82 Air quality data: Pb (portion). |
| | 51.83 Certain urbanized areas: Pb. |
| | 51.84 Areas around significant point source: Pb. |
| | 51.85 Other areas: Pb. |
| | 51.86 Data bases: Pb (portion). |
| 51.118 Stack height provisions | 51.12 Control strategy: General (portion). |
| 51.119 Intermittent control systems | 51.12 Control strategy: General (portion). |
| 51.120–51.135 Reserved for new requirements as set forth in the Act | |
| 51.136–51.140 Reserved for maintenance of PSD increment provisions | |
| Subpart H Prevention of Air Pollution Emergency Episodes (§§ 51.150 to 51.159) | 51.3 |
| | 51.16 Classification of regions. |
| | Prevention of air pollution emergency episodes. |
| Subpart I Review of New Sources and Modifications (§§ 51.160 to 51.189 | 51.18 |
| | 51.24 Review of new sources and modifications. |
| | Prevention of significant deterioration. |
| Subpart J Air Quality Surveillance (§§ 51.190 to 51.209) (Promulgated 5/10/79) | 51.17 Air quality surveillance. |
| Subpart K Source surveillance (§§ 51.210 to 51.229) | 51.19 Source surveillance. |
| Subpart L Legal Authority (§§ 51.230 to 51.239) | 51.11 Legal authority. |
| Subpart M Intergovernmental consultation (§§ 51.240 to 51.259) (Promulgated 6/18/79) | 51.21 Intergovernmental cooperation. |
| Subpart N Compliance Schedules (§§ 51.260 to 51.279) | 51.15 Compliance schedules. |
| Subpart O Miscellaneous Plan Content Requirements | |
| 51.280 Resources | 51.20 Resources. |
| 51.281 Copies of rules and regulations | 51.22 Rules and regulations. |
| 51.282 Reserved | |
| 51.283 Reserved | |
| 51.284 Public notification (Promulgated 5/10/79) | |
| Subpart P Visibility protection (§§ 51.300 through 51.319) (Promulgated 12/2/80) | |
| Subpart Q Reports (§§ 51.320 through 51.339) | 51.7 Reports. |
| Subpart R Extensions (§§ 51.340 through 51.369) | 51.30 Request for 2-year extension. |
| | 51.31 Request for 18-month extension. |
| Revoked | 51.1 Definitions (obsolete portions). |
| | 51.3 Classification of regions (as applicable to control strategies). |
| | 51.4 Public hearings (obsolete portions). |
| | 51.5 Submission of plans; preliminary review of plans (obsolete portions). |
| | 51.23 Exceptions. |
| | 51.32 Request for 1-year postponement. |
| | 51.33 Headings and appeals relating to request for one year postponement. |
| | 51.326 Reportable revisions. |
| | 51.328 Plan prescribed actions. |
| | Appendix A Air quality estimation. |
| | Appendix B Examples of emission limitations attainable with reasonably available control technology. |
| | Appendix C Major pollutant source. |
| | Appendix D Pollutant emissions inventory summary. |
| | Appendix E Point source data. |
| | Appendix F Area source data. |
| | Appendix G Emission inventory summary. |
| | Appendix H Air quality data summary. |
| | Appendix K Control agency functions. |
| | Appendix M Transportation Control Supporting Data Summary. |
| | Appendix N Emissions Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles. |
| | Appendix O [Untitled]. |
| | Appendix R Agency functions for air quality maintenance area plans. |

NA—Not applicable.

TABLE 2.—DISTRIBUTION TABLE

| Old section | New section |
|---|---|
| 51.1(a) through (nn) All paragraph designations are the same and have the same paragraph designation *except* those which are listed below. | 51.100(a-nn). |
| 51.1(a) | 51.100(a) New citations added. |
| 51.1(j) | 51.100(j). Definition of local agency deleted. 51.1 includes two definitions of "local agencies." EPA considers 51.100(g) a better definition. A new 51.100(j) is added which defines the term "plan." |
| 51.1(k)(1) | 51.100(k)(1) The term "Volatile Organic Compound" (VOC) replaces the term "Hydrocarbons." |
| 51.1(k)(1)(i,ii) | 51.1 Point source definition updated. |
| 51.1(k)(1)(iii) | Unnecessary, Appendix C is deleted in this action. |
| 51.1(1) | 51.1Reference to Appendix D removed; reference to inventory techniques updated. |
| 51.1(m) | 51.100(m) revised. |
| 51.1(o) | 51.100(o) revised. |
| 51.2 | 51.101. |
| 51.3 | 51.50, streamlined. |
| 51.4 All paragraphs are the same and are restructured with the same paragraph numbers except as noted below. | 51.102. |
| 51.4(a), (e) | 51.102(a), (e) rewritten. |
| 51.4(b)(4) | 51.102(b)(4) rewritten. |
| 51.4(b)(6) | Unnecessary, redundant. |
| 51.4(f) | Deleted, obsolete. |
| 51.5 All paragraphs are the same and restructured with the same paragraph numbers except as noted below | 51.103. |
| 51.5(a) | Rewritten; "Note" deleted. |
| 51.5(d), (e) | Deleted, redundant. |
| 51.6 | 51.104. |
| 51.6(b) through (f) | 51.104 (b) through (f) rewritten. |
| 51.8 | 51.105. |
| 51.10(a) | 51.110(g) rewritten. |
| 51.10(b) | 51.110(b), (d). |

TABLE 2.—DISTRIBUTION TABLE—Continued

| Old section | New section |
|---|---|
| 51.10(c) | 51.110(c)(1), (d). |
| 51.10(d) | 51.110(e), revised. |
| 51.10(e) | 51.116(c). |
| 51.11(a) | 51.230. |
| 51.11a(1-6) | 51.230(a) through (f). |
| 51.11(b) | Unnecessary provisions for transportation plans, obsolete. |
| 51.11(c) | 51.231(a). |
| 51.11(d)(1) | 51.231(b). |
| 51.11(d)(2) | 51.231(c). |
| 51.11(e) | 51.232(a). |
| 51.11(f) | 51.232(b). |
| 51.12(a) | 51.110(a). |
| 51.12(b) | 51.110(a), (c). |
| 51.12(c) | Deleted, redundant. |
| 51.12(d) | 51.110(f). |
| 51.12(e) | 51.110(h). |
| 51.12(f) | 51.110(i). |
| 51.12(g) | 51.110(j). |
| 51.12(h) | 51.110(k). |
| 51.12(i) | 51.110(l). |
| 51.12(j) | 51.118(a). |
| 51.12(k) | 51.118(b). |
| 51.12(l) | 51.118(c). |
| 51.12(m) | 51.119(a). |
| 51.12(n) | 51.119(b). |
| 51.13(a) | 51.110(b). |
| 51.13(b) | 51.110(c). |
| 51.13(c) | 51.115(c). |
| 51.13(d) | Deleted, example region approach. |
| 51.13(e)(1) phrase "in the example regions to which it applies." | Deleted, example region approach. |
| Rest of 51.13(e)(1) | 51.112(a). |
| 51.13(e)(2)(i,ii) | Air Programs Reports and Guidelines Index. |
| 51.13(e)(2)(iii) | 51.112(a) and (b). |
| 51.13(e)(3)(i) | 51.112(b)(4), Air Programs Reports and Guidelines Index. |
| 51.13(e)(3)(ii) | 51.114(a). |
| 51.13(e)(3)(iii) | 51.112(b)(3), rewritten. |
| 51.13(f,g) | 51.114(a), 51.115(a) Portions related to example region approach deleted. |
| 51.14(a)(1) | 51.110(a), Rewritten, reference to priority of regions deleted. |
| 51.14(a)(2) | 51.111. |
| 51.14(b) | Unnecessary. |
| 51.14(c)(1) | 51.112(a). |
| 51.14(c)(2) and (5) through (7) | Air Programs Reports and Guidelines Index. |
| 51.14(c)(5) | 51.112(a). |
| 51.14(c)(6) | 51.112(b)(4). |
| 51.14(c)(8) | 51.115(d). |
| 51.14(c)(9) | Reference to hydrocarbon standard which has been revoked, deleted. |
| 51.14(d) | 51.114(a). |
| 51.14(e) | 51.115. |
| 51.14(f) | Air Programs Reports and Guidelines Index. |
| 51.14(g) | Obsolete. |
| 51.14(h) | Air Programs Reports and Guidelines Index. |
| 51.15(a)(1) | 51.260(a), (b). |
| 51.15(b)(1) | 51.261(a). |
| 51.15(b)(2) | 51.261(b). |
| 51.15(c) | 51.262(a). |
| 51.16(a) | 51.151. |
| 51.16(b) | 51.152(a). |
| 51.16(d) | Deleted, obvious. |
| 51.16(e) | 51.152(b). |
| 51.16(f) | Obsolete. |
| 51.16(g) | 51.152(c). |
| 51.16(h) | 51.152(d). |
| 51.18(a) | 51.160(a). |
| 51.18(b) | 51.160(b). |
| 51.18(c) | 51.160(c). |
| 51.18(d) | 51.160(d). |
| 51.18(e) | 51.162. |
| 51.18(f) | 51.160(e). |
| 51.18(g) | 51.163. |
| 51.18(h) | 51.161. |

TABLE 2.—DISTRIBUTION TABLE—Continued

| Old section | New section |
|---|---|
| 51.18(i) | Obsolete, referes to Appendix O, guidance on indirect source review. |
| 51.18(j) | 51.165(a). |
| 51.18(k) | 51.165(b). |
| 51.18(l) | 51.164. |
| 51.19 (Introduction) | 51.210. |
| 51.19(a) | 51.211. |
| 51.19(b), (c) | 51.212. |
| 51.19(d) | 51.213. |
| 51.19(e) | 51.214(a). |
| 51.19(e)(1) | 51.214(b). |
| 51.19(e)(2) | 51.214(c). |
| 51.19(e)(3) | 51.214(d). |
| 51.19(e)(4) | 51.214(e). |
| 51.19(e)(5) | 51.214(f). |
| 51.19e(6) | Obsolete, deleted. |
| 51.20 | 51.280. |
| 51.22 | 51.281. |
| 51.23 | Unnecessary. |
| 51.24 | 51.166. |
| 51.30 | 51.340. |
| 51.31 | 51.341. |
| 51.32 | Deleted, no longer in Clean Air Act (CAA). |
| 51.33 | Deleted, no longer in CAA. |
| 51.34 | 51.104(g). |
| 51.80(a) | 51.110(b), 51.118(a). |
| 51.80(b) | 51.112(a). |
| 51.80(c) | 51.112(b). |
| 51.81(a) | 51.117(e). |
| 51.81(b) | 51.113(a). |
| 51.81(c) | 51.112(b)(1). |
| 51.81(d) | 51.114(c). |
| 51.82(a) | 51.115(b), 51.117(d)(1). |
| 51.82(b) | 51.117(b)(3). |
| 51.82(c) | 51.112(b)(3). |
| 51.83 | 51.117(c)(1). |
| 51.84 | 51.117(a), (c)(2). |
| 51.85 | 51.117(c)(3). |
| 51.86(a) | 51.112(b)(5). |
| 51.86(b) | 51.117(e)(2). |
| 51.86(c) | 51.117(d)(1,2). |
| 51.87 | 51.111. |
| 51.88 | 51.116(a), (b). |
| 51.326, 51.328 | Deleted, report requirement no longer needed. |

## List of Subjects

*40 CFR Part 51*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbon, Carbon monoxide.

*40 CFR Part 52*

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: October 6, 1986.

**Lee M. Thomas,**

*Administrator.*

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

EPA amends Title 40, Chapter I, Part 51, of the Code of Federal Regulations as follows:

1. The authority citation for Part 51 continues to read as follows:

**Authority:** Sec. 110, 301(a) of the Clean Air Act as amended, 42 U.S.C. 7410, 7601(a).

2. Whenever the term "hydrocarbon(s)" appears in Part 51 it is changed to read "VOC(s)".

### Subpart A (§§ 51.1-51.8)——[Removed and Reserved]

3. Subpart A (consisting of §§ 51.1 through 51.8) is removed and reserved.

### Subpart B—[Reserved]

4. In Subpart B, § 51.12 (e) through (i) are redesignated as § 51.110 (h) through (l), § 51.24 is redesignated as § 51.166 (under Subpart I), and §§ 51.10 through 51.23 are removed and reserved.

### Subpart C (§§ 51.30-51.34)—[Removed and Reserved]

5. Subpart C (consisting of §§ 51.30 through 51.34) is removed and reserved.

### Subpart E (§§ 51.80-51.88)—[Removed and Reserved]

6. Subpart E (consisting of §§ 51.80 through 51.88) is removed and reserved.

7. Subpart F (consisting of §§ 51.100 through 51.105) is added to read as follows:

### Subpart F—Procedural Requirements

Sec.



### Subpart F—Procedural Requirements

#### § 51.100 Definitions.

As used in this part, all terms not defined herein will have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 91-604, 84 Stat. 1676 Pub. L. 95-95, 91 Stat., 685 and Pub. L. 95-190, 91 Stat., 1399.)

(b) "Administrator" means the Administrator of the Environmental Protection Agency (EPA) or an authorized representative.

(c) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.

(d) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

(e) "National standard" means either a primary or secondary standard.

(f) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly result or may result in emissions of any air pollutant for which a national standard is in effect.

(g) "Local agency" means any local government agency other than the State agency, which is charged with responsibility for carrying out a portion of the plan.

(h) "Regional Office" means one of the ten (10) EPA Regional Offices.

(i) "State agency" means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

(j) "Plan" means an implementation plan approved or promulgated under section 110 of 172 of the Act.

(k) "Point source" means the following:

(1) For particulate matter, sulfur oxides, carbon monoxide, volatile organic compounds (VOC) and nitrogen dioxide—

(i) Any stationary source the actual emissions of which are in excess of 90.7 metric tons (100 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was equal to or greater than 1 million.

(ii) Any stationary source the actual emissions of which are in excess of 22.7 metric tons (25 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was less than 1 million; or

(2) For lead or lead compounds measured as elemental lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.

(l) "Area source" means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft vessels, or other transportation facilities or other miscellaneous sources identified through inventory techniques similar to those described in the "AEROS Manual series, Vol. II AEROS User's Manual," EPA–450/2–76–029 December 1976.

(m) "Region" means an area designated as an air quality control region (AQCR) under section 107(c) of the Act.

(n) "Control strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards including, but not limited to, measures such as:

(1) Emission limitations.

(2) Federal or State emission charges or taxes or other economic incentives or disincentives.

(3) Closing or relocation of residential, commercial, or industrial facilities.

(4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.

(5) Periodic inspection and testing of motor vehicle emission control systems, at such time as the Administrator determines that such programs are feasible and practicable.

(6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.

(7) Any transportation control measure including those transportation measures listed in section 108(f) of the Clean Air Act as amended.

(8) Any variation of, or alternative to any measure delineated herein.

(9) Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a national primary or seconary air quality standard and is approved by the Administrator under section 211(c)(4)(C) of the Act.

(o) "Reasonably available control technology" (RACT) means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social, environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

(r) "Transportation control measure" means any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to, those listed in section 108(f) of the Clean Air Act.

(s)–(w) [Reserved]

(x) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.

(y) "Variance" means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.

(z) "Emission limitation" and "emission standard" mean a requirement established by a State, local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(aa) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(bb) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(cc) "Nitric acid plant" means any facility producing nitric acid 30 to 70 percent in strength by either the pressure or atmospheric pressure process.

(dd) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of

preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(ee) "Fossil fuel-fired steam generator" means a furnance or bioler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(ff) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(gg) "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(hh)(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height:

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under § 51.100(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack:

(2)(i) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52.

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation:

(ii) For all other stacks,

$$H_g = H + 1.5L$$

where

$H_g$ = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L = lesser dimension, height or projected width, of nearby structure(s)

provided that the EPA, State or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in § 51.100(ii) of this part is defined for a specific structure or terrain feature and

(1) for purposes of applying the formulae provided in § 51.100(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile), and

(2) for conducting demonstrations under § 51.100(ii)(3) means not greater than 0.8 km (½ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height ($H_t$) of the feature, not to exceed 2 miles if such feature achieves a height ($H_t$) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in § 51.100(ii)(2)(ii) of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51.100(ii)(3) and means.

(1) for sources seeking credit for stack height exceeding that established under § 51.100(ii)(2) a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source

performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator.

(2) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under § 51.100(ii)(2), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in paragraph (kk)(1) of this section, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under § 51.100(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in § 51.100(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(ll)–(mm) [Reserved]

(nn) Intermittent control system (ICS) means a dispersion technique which varies the rate at which pollutants are emitted to the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission controls (i.e., used as a supplemental control system).

**§ 51.101 Stipulations.**

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

**§ 51.102 Public hearings.**

(a) Except as otherwise provided in paragraph (c) of this section, States must conduct one or more public hearings on the following prior to adoption and submission to EPA of:

(1) Any plan or revision of it required by § 51.104(a).

(2) Any individual compliance schedule under (§ 51.260).

(3) Any revision under § 51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§ 51.104 and 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(6) In the case of hearings on AQMA plans:

(i) Notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, economic development agencies, and any other affected States, and

(ii) Public notice of alternative analysis and plan development procedures approved under § 51.63.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule a certification that the hearing required by paragraph (a) of this section was held in accordance with the notice required by paragraph (d) of this section.

(g) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures for public hearings. The following criteria apply:

(1) Procedures approved under this section shall be deemed to satisfy the requirement of this part regarding public hearings.

(2) Procedures different from this part may be approved if they—

(i) Ensure public participation in matters for which hearings are required; and

(ii) Provide adequate public notification of the opportunity to participate.

(3) The Administrator may impose any conditions on approval he or she deems necessary.

**§51.103 Submission of plans, preliminary review of plans.**

(a) The State makes an official submission to the Administrator when it delivers five copies of the plan to the appropriate Regional Office and a letter to the Administrator giving notice of such action. The State must adopt the plan and the Governor or his designee, must submit it to the Administrator as follows:

(1) For any primary standard, or revision thereof, within 9 months after promulgation of such standard.

(2) For any secondary standard, or revision thereof, within 9 months after promulgation of such secondary standard or by such later date prescribed or by such later date prescribed by the Administrator under Subpart R of this part.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office and must be accompanied by five copies of the materials to be reviewed. Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

**§ 51.104 Revisions.**

(a) The plan shall be revised from time to time, as may be necessary, to take account of:

(1) Revisions of national standards,

(2) The availability of improved or more expeditious methods of attaining such standards, such as improved technology or emission charges or taxes, or

(3) A finding by the Administrator that the plan is substantially inadequate to attain or maintain the national standard which it implements, or to otherwise comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

(b) The State must revise the plan within 60 days following notification by the Administrator under paragraph (a)(3) of this section, or by such later date prescribed by the Administrator after consultation with the State.

(c) States may revise the plan from time to time consistent with the requirements applicable to implementation plans under this part.

(d) The States must submit any revision of any regulation or any compliance schedule under paragraph (c) of this section to the Administrator no later than 60 days after its adoption.

(e) The State must identify and describe revisions other than those covered by paragraphs (a) and (d) of this section.

(f) EPA will approve revisions only after applicable hearing requirements of § 51.102 have been satisfied.

(g) In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section.

**§51.105 Approval of plans.**

The Administrator will approve any plan, or portion thereof, or any revision of such plan, or portion thereof, if he or she determines that it meets the requirements of the Act. Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.

8. a. Subpart G (consisting of §§ 51.110 through 51.119) is added to read as follows:

**§ 51.12 [Amended]**

b. Paragraphs (e) through (i) of § 51.12 are redesignated as paragraphs (h) through (l) of § 51.110.

**Subpart G—Control Strategy**



## Subpart G—Control Strategy

**§ 51.110 Attainment and maintenance of national standards.**

(a) Each plan must set forth a control strategy that provides the degree of emission reductions necessary for attainment and maintenance of the national air quality standards. The emission reductions must be sufficient to offset any increases in air quality concentrations that are expected to result from emission increases due to projected growth of population, industrial activity, motor vehicle traffic, or other factors.

(b) Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable. The attainment period must not be longer than three years after the date of the Administrator's approval of the plan, unless the State obtains an extension under Subpart R of this part. Each plan must also provide for the maintenance of the standard after it has been attained.

(c)(1) Each plan must provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and must provide for the maintenance of the standard after it has been attained.

(2) "Reasonable time" is defined in two ways as follows:

(i) "Reasonable time" for attainment of a secondary standard must not be more than three years from plan submission unless the State shows that good cause exists for postponing application of the control technology. This definition applies only in a region where the degree of emission reduction necessary for attainment of the secondary standard can be achieved through the application of reasonably available control technology.

(ii) "Reasonable time" will depend on the degree of emission reduction needed for attainment of the secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment of the secondary standard. This definition applies only in a region where application of reasonably available control technology will not be sufficient for attainment of the secondary standard in three years.

(d) Each plan providing for the attainment of a primary or secondary standard must specify the projected attainment date.

(e) The plan for each Region must have adequate provisions to ensure that stationary sources from within that Region will not:

(1) Prevent attainment and maintenance of any national standard in any portion of an interstate Region or any other Region.

(2) Interfere with measures required to be included in the applicable implementation plan for any such Region to prevent significant deterioration of air quality or to protect visibility.

(f) For purposes of developing a control strategy, data derived from measurements of existing ambient levels of a pollutant may be adjusted to reflect the extent to which occasional natural

or accidental phenomena, e.g., dust storms, forest fires, industrial accidents, demonstrably affected such ambient levels during the measurement period.

(g) During developing of the plan, EPA encourages States to identify alternative control strategies, as well as the costs and benefits of each such alternative for attainment or maintenance of the national standard.

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**§ 51.111 Description of control measures.**

Each plan must set forth a control strategy which includes the following:

(a) A description of each control measure that is incorporated into the plan, and a schedule for its implementation.

(b) Copies of the enforceable laws and regulations to implement the measures adopted in the plan.

(c) A description of the administrative procedures to be used in implementing each control measure.

(d) A description of enforcement methods including, but not limited to:

(1) Procedures for monitoring compliance with each of the selected control measures,

(2) Procedures for handling violations, and

(3) A designation of agency responsibility for enforcement of implementation.

**§ 51.112 Demonstration of adequacy.**

(a) Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements. The adequacy of a control strategy shall be demonstrated by means of a proporational model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes.

(b) The demonstration must include the following:

(1) A summary of the computations, assumptions, and judgments used to determine the degree of reduction of emissions (or reductions in the growth of emissions) that will result from the implementation of the control strategy.

(2) A presentation of emission levels expected to result from implementation of each measure of the control strategy.

(3) A presentation of the air quality levels expected to result from implementation of the overall control strategy presented either in tabular form or as an isopleth map showing expected maximum pollutant concentrations.

(4) A description of the dispersion models used to project air quality and to evaluate control strategies.

(5) For interstate regions, the analysis from each constituent State must, where practicable, be based upon the same regional emission inventory and air quality baseline.

**§ 51.113 Time period for demonstration of adequacy.**

(a) The demonstration of the adequacy of the control strategy to attain a primary standard required under § 51.112 must cover the following periods:

(1) At least three years from the date by which the Administator must approve or disapprove the plan, if no extension under Subpart R is granted, or

(2) At least five years from the date by which the Administrator must approve or disapprove the plan. If an extension under Subpart R is granted.

(b) The demonstration of adequacy to attain a secondary standard required under § 51.112 must cover the period of time determined to be reasonable under § 51.110(c) for attainment of such secondary standard.

**§ 51.114 Emissions data and projections.**

(a) Except for lead, each plan must contain a detailed inventory of emissions from point and area sources. Lead requirements are specified in § 51.117. The inventory must be based upon measured emissions or, where measured emissions are not available, documented emission factors.

(b) Each plan must contain a summary of emission levels projected to result from application of the new control strategy.

(c) Each plan must identify the sources of the data used in the projection of emissions.

**§ 51.115 Air quality data and projections.**

(a) Each plan must contain a summary of data showing existing air quality.

(b) Each plan must:

(1) Contain a summary of air quality concentrations expected to result from application of the control strategy, and

(2) Identify and describe the dispersion model, other air quality model, or receptor model used.

(c) Actual measurements of air quality must be used where available if made by methods specified in Appendix C to Part 58 of this chapter. Estimated air quality using appropriate modeling techniques may be used to supplement measurements.

(d) For purposes of developing a control strategy, background concentration shall be taken into consideration with respect to particulate matter. As used in this subpart, background concentration is that portion of the measured ambient levels that cannot be reduced by controlling emissions from man-made sources.

(e) In developing an ozone control strategy for a particular area, background ozone concentrations and ozone transported into an area must be considered. States may assume that the ozone standard will be attained in upwind areas.

**§ 51.116 Data availability.**

(a) The State must retain all detailed data and calculations used in the preparation of each plan or each plan revision, and make them available for public inspection and submit them to the Administrator at his request.

(b) The detailed data and calculations used in the preparation of plan revisions are not considered a part of the plan.

(c) Each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency. Such emission data must be correlated with applicable emission limitations or other measures. As used in this paragraph, "correlated" means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures.

**§ 51.117 Additional provisions for lead.**

In addition to other requirements in §§ 51.100 through 51.116 the following requirements apply to lead. To the extent they conflict, there requirements are controlling over those of the proceeding sections.

(a) *Control strategy demonstration.* Each plan must contain a demonstration showing that the plan will attain and maintain the standard in the following areas:

(1) Areas in the vicinity of the following point sources of lead: Primary lead smelters, Secondary lead smelters, Primary copper smelters, Lead gasoline additive plants, Lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day. Any other stationary source that actually emits 25 or more tons per year of lead or lead compounds measured as elemental lead.

(2) Any other area that has lead air concentrations in excess of the national ambient air quality standard concentration for lead, measured since January 1, 1974.

(b) *Time period for demonstration of adequacy.* The demonstration of adequacy of the control strategy required under § 51.112 may cover a longer period if allowed by the

appropriate EPA Regional Administrator.

(c) *Special modeling provisions.* (1) For urbanized areas with measured lead concentrations in excess of 4.0 $\mu g/m^3$, quarterly mean measured since January 1, 1974, the plan must employ the modified rollback model for the demonstration of attainment as a minimum, but may use an atmospheric dispersion model if desired. If a proportional model is used, the air quality data should be the same year as the emissions inventory required under the paragraph e.

(2) For each point source listed in § 51.117(a), that plan must employ an atmospheric dispersion model for demonstration of attainment.

(3) For each area in the vicinity of an air quality monitor that has recorded lead concentrations in excess of the lead national standard concentration, the plan must employ the modified rollback model as a minimum, but may use an atmospheric dispersion model if desired for the demonstration of attainment.

(d) *Air quality data and projections.*

(1) Each State must submit to the appropriate EPA Regional Office with the plan, but not part of the plan, all lead air quality data measured since January 1, 1974. This requirement does not apply if the data has already been submitted.

(2) The data must be submitted in accordance with the procedures and data forms specified in Chapter 3.4.0 of the "AEROS User's Manual" concerning storage and retrieval of aerometric data (SAROAD) except where the Regional Administrator waives this requirement.

(3) If additional lead air quality data are desired to determine lead air concentrations in areas suspected of exceeding the lead national ambient air quality standard, the plan may include data from any previously collected filters from particulate matter high volume samplers. In determining the lead content of the filters for control strategy demonstration purposes, a State may use, in addition to the reference method, X-ray fluorescence or any other method approved by the Regional Administrator.

(e) *Emissions data.* (1) The point source inventory on which the summary of the baseline lead emissions inventory is based must contain all sources that emit five or more tons of lead per year.

(2) Each State must submit lead emissions data to the appropriate EPA Regional Office with the original plan. The submission must be made with the plan, but not as part of the plan, and must include emissions data and information related to point and area source emissions. The emission data and information should include the information identified in the Hazardous and Trace Emissions System (HATREMS) point source coding forms for all point sources and the area source coding forms for all sources that are not point sources, but need not necessarily be in the format of those forms.

**§ 51.118 Stack height provisions.**

(a) The plan must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). The plan must provide that before a State submits to EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availabilty of the demonstration study and must provide opportunity for a public hearing on it. This section does not require the plan to restrict, in any manner, the actual stack height of any source.

(b) The provisions of § 51.118(a) shall not apply to (1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in §§ 51.165(a)(1)(v)(A), 51.166(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or (2) coal-fired steam electric generating units subject to the provisions of section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were construced under a construction contract awarded before February 8, 1974.

**§ 51.119 Intermittent control systems.**

(a) The use of an intermittent control system (ICS) may be taken into account in establishing an emission limitation for a pollutant under a State implementation plan, provided:

(1) The ICS was implemented before December 31, 1970, according to the criteria specified in § 51.119(b).

(2) The extent to which the ICS is taken into account is limited to reflect emission levels and associated ambient pollutant concentrations that would result if the ICS was the same as it was before December 31, 1970, and was operated as specified by the operating system of the ICS before December 31, 1970.

(3) The plan allows the ICS to compensate only for emissions from a source for which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of the source before December 31, 1970. For purposes of this paragraph, a source for which the ICS was implemented is any particular structure or equipment the emissions from which were subject to the ICS operating procedures.

(4) The plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent of that system.

(5) The plan clearly defines the emission limits affected by the ICS and the manner in which the ICS is taken into account in establishing those limits.

(6) The plan contains requirements for the operation and maintenance of the qualifying ICS which, together with the emission limitations and any other necessary requirements, will assure that the national ambient air quality standards and any applicable prevention of significant deterioration increments will be attained and maintained. These requirements shall include, but not necessarily be limited to, the following:

(i) Requirements that a source owner or operator continuously operate and maintain the components of the ICS specified at § 51.119(b)(3) (ii)–(iv) in a manner which assures that the ICS is at least as effective as it was before December 31, 1970. The air quality monitors and meteorological instrumentation specified at § 51.119(b) may be operated by a local authority or other entity provided the source has ready access to the data from the monitors and instrumentation.

(ii) Requirements which specify the circumstances under which, the extent to which, and the procedures through which, emissions shall be curtailed through the activation of ICS.

(iii) Requirements for recordkeeping which require the owner or operator of the source to keep, for periods of at least 3 years, records of measured ambient air quality data, meteorological information acquired, and production data relating to those processes affected by the ICS.

(iv) Requirements for reporting which require the owner or operator of the source to notify the State and EPA within 30 days of a NAAQS violation pertaining to the pollutant affected by the ICS.

(7) Nothing in this paragraph affects the applicability of any new source review requirements or new source performance standards contained in the Clean Air Act or 40 CFR Subchapter C. Nothing in this paragraph precludes a State from taking an ICS into account in establishing emission limitations to any extent less than permitted by this paragraph.

(b) An intermittent control system (ICS) may be considered implemented for a pollutant before December 31, 1970, if the following criteria are met:

(1) The ICS must have been established and operational with respect to that pollutant prior to December 31, 1970, and reductions in emissions of that pollutant must have occurred when warranted by meteorological and ambient monitoring data.

(2) The ICS must have been designed and operated to meet an air quality objective for that pollutant such as an air quality level or standard.

(3) The ICS must, at a minimum, have included the following components prior to December 31, 1970:

(i) *Air quality monitors.* An array of sampling stations whose location and type were consistent with the air quality objective and operation of the system.

(ii) *Meteorological instrumentation.* A meteorological data acquisition network (may be limited to a single station) which provided meteorological prediction capabilities sufficient to determine the need for, and degree of, emission curtailments necessary to achieve the air quality design objective.

(iii) *Operating system.* A system of established procedures for determining the need for curtailments and for accomplishing such curtailments. Documentation of this system, as required by paragraph (n)(4), may consist of a compendium of memoranda or comparable material which define the criteria and procedures for curtailments and which identify the type and number of personnel authorized to initiate curtailments.

(iv) *Meteorologist.* A person, schooled in meteorology, capable of interpreting data obtained from the meteorological network and qualified to forecast meteorological incidents and their effect on ambient air quality. Sources may have obtained meteorological services through a consultant. Services of such a consultant could include sufficient training of source personnel for certain operational procedures, but not for design, of the ICS.

(4) Documentation sufficient to support the claim that the ICS met the criteria listed in this paragraph must be provided. Such documentation may include affidavits or other documentation.

9. Subpart H (consisting of §§ 51.150 through 51.153) is added to read as follows:

**Subpart H—Prevention of Air Pollution Emergency Episodes**



## Subpart H—Prevention of Air Pollution Emergency Episodes

### § 51.150 Classification of regions for episode plans.

(a) This section continues the classification system for episode plans. Each region is classified separately with respect to each of the following pollutants: Sulfur oxides, particulate matter, carbon monoxide, nitrogen dioxide, and ozone.

(b) "Priority I Regions" means any area with greater ambient concentrations than the following:

(1) Sulfur dioxide—100 $\mu g/m^3$ (0.04 ppm) annual arithmetic mean; 455 $\mu g/m^3$ (0.17 ppm) 24-hour maximum.

(2) Particulate matter—95 $\mu g/m^3$ annual geometric mean; 325 $\mu g/m^3$ 24-hour maximum.

(3) Carbon monoxide—55 $mg/m^3$ (48 ppm) 1-hour maximum; 14 $mg/m^3$ (12 ppm) 8-hour maximum.

(4) Nitrogen dioxide—100 $\mu g/m^3$ (0.06 ppm) annual arithmetic mean.

(5) Ozone—195 $\mu g/m^3$ (0.10 ppm) 1-hour maximum.

(c) "Priority IA Region" means any area which is Priority I primarily because of emissions from a single point source.

(d) "Priority II Region" means any area which is not a Priority I region and has ambient concentrations between the following:

(1) Sulfur Dioxides—60–100 $\mu g/m^3$ (0.02–0.04 ppm) annual arithmetic mean; 260–445 $\mu g/m^3$ (0.10–0.17 ppm) 24-hour maximum; any concentration above 1,300 $\mu g/m^3$ (0.50 ppm) three-hour average.

(2) Particulate matter—60–95 $\mu g/m^3$ annual geometric mean; 150–325 $\mu g/m^3$ 24-hour maximum.

(e) In the absence of adequate monitoring data, appropriate models must be used to classify an area under paragraph (b) of this section. Information on these models may be found through the "Air Programs Reports and Guidelines Index," EPA–150/2–82–016. With respect to carbon monoxide, ozone, and nitrogen dioxide, any area whose urban population as defined in the most recent U.S. Bureau of the Census, exceeds 200,000 will be classified Priority I.

(f) Areas which do not meet the above criteria are classified Priority III.

### § 51.151 Significant harm levels.

Each plan for a Priority I region must include a contingency plan which must, as a mimimum, provide for taking action necessary to prevent ambient pollutant concentrations at any location in such region from reaching the following levels:

*Sulfur dioxide*—2.620 $\mu g/m^3$ (1.0 ppm) 24-hour average.

*Particulate matter*—1,000 $\mu g/m^3$ (24-hour average.

*Sulfur dioxide and particulate matter combined*—product of sulfur dioxide in $ug/m^3$ 24-hour average, and particulate matter in $ug/m^3$ 24-hour average equal to $490 \times 10^3$.

*Carbon monoxide*—57.5 $mg/m^3$ (50 ppm) 8-hour average; 86.3 $mg/m^3$ (75 ppm) 4-hour average; 144 $mg/m^3$ (125 ppm) 1-hour average.

*Ozone*—1,200 $ug/m^3$ (0.6 ppm) 2-hour average.

*Nitrogen dioxide*—3.750 $ug/m^3$ (2.0 ppm) 1-hour average; 938 $ug/m^3$ (0.5 ppm) 24-hour average.

### § 51.152 Contingency plans

(a) Each contingency plan must—

(1) Specify two or more stages of episode criteria such as those set forth in Appendix L to this part, or their equivalent;

(2) Provide for public announcement whenever any episode stage has been determined to exist; and

(3) Specify adequate emission control actions to be taken at each episode stage. (Examples of emission control actions are set forth in Appendix L.)

(b) Each contingency plan for a Priority I region must provide for the following:

(1) Prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service.

(2) Inspection of sources to ascertain compliance with applicable emission control action requirements.

(3) Communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage, including procedures for contact with public officials, major emission sources, public health, safety, and emergency agencies and news media.

(c) Each plan for a Priority IA and II region must include a contingency plan that meets, as a minimum, the requirements of paragraphs (b)(1) and (b)(2) of this section. Areas classified Priority III do not need to develop episode plans.

(d) Notwithstanding the requirements of paragraphs (b) and (c) of this section,

the Administrator may, at his discretion—

(1) Exempt from the requirements of this section those portions of Priority I, IA, or II regions which have been designated as attainment or unclassifiable for national primary and secondary standards under section 107 of the Act; or

(2) Limit the requirements pertaining to emission control actions in Priority I regions to—

(i) Urbanized areas as identified in the most recent United States Census, and

(ii) Major emitting facilities, as defined by section 169(1) of the Act, outside the urbanized areas.

**§ 51.153 Reevaluation of episode plans.**

(a) States should periodically reevaluate priority classifications of all Regions or portion of Regions within their borders. The reevaluation must consider the three most recent years of air quality data. If the evaluation indicates a change to a higher priority classification, appropriate changes in the episode plan must be made as expeditiously as practicable.

10. Sections 51.160 through 51.165 are added, and § 51.166 is designated from § 51.24 to comprise Subpart I. The table fo contents for Subpart I and the newly added sections read as follows:

**Subpart I—Review of New Sources and Modifications**



## Subpart I—Review of New Sources and Modifications

**§ 51.160 Legally enforceable procedures.**

(a) Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—

(1) A violation of applicable portions of the control strategy; or

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

(1) It will result in a violation of applicable portions of the control strategy; or

(2) It will interfere with the attainment or maintenance of a national standard.

(c) The procedures must provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on—

(1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;

(2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

(d) The procedures must provide that approval of any construction or modification must not affect the responsibility to the owner or operator to comply with applicable portions of the control strategy.

(e) The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

(f) The procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.

**§ 51.161 Public availability of information.**

(a) The legally enforceable procedures in § 51.160 must also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.

(b) For purposes of paragraph (a) of this section, opportunity for public comment shall include, as a minimum—

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;

(2) A 30-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (b)(1) of this section.

(c) Where the 30-day comment period required in paragraph (b) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(d) A copy of the notice required by paragraph (b) of this section must also be sent to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this subpart. For lead, a copy of the notice is required for all point sources. The definition of point for lead is given in § 51.100(k)(2).

**§ 51.162 Identification of responsible agency.**

Each plan must identify the State or local agency which will be responsible for meeting the requirements of this subpart in each area of the State. Where such responsibility rests with an agency other than an air pollution control agency, such agency will consult with the appropriate State or local air pollution control agency in carrying out the provisions of this subpart.

**§ 51.163 Administrative procedures.**

The plan must include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of § 51.160.

**§ 51.164 Stack height procedures.**

Such procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). Such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict in any manner the actual stack height of any source.

**§ 51.165 Permit requirements.**

(a) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(ii) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0065 and 003–005–00176–0, respectively).

(iii) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv)(A) "Major stationary source" means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act, or

(*2*) Any physical change that would occur at a stationary source not qualifying under paragraph (a)(1)(iv)(A)(*1*) as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(*1*) Coal cleaning plants (with thermal dryers);

(*2*) Kraft pulp mills;

(*3*) Portland cement plants;

(*4*) Primary zinc smelters;

(*5*) Iron and steel mills;

(*6*) Primary aluminum ore reduction plants;

(*7*) Primary copper smelters;

(*8*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*9*) Hydrofluoric, sulfuric, or nitric acid plants;

(*10*) Petroleum refineries;

(*11*) Lime plants;

(*12*) Phosphate rock processing plants;

(*13*) Coke oven batteries;

(*14*) Sulfur recovery plants;

(*15*) Carbon black plants (furnace process);

(*16*) Primary lead smelters;

(*17*) Fuel conversion plants;

(*18*) Sintering plants;

(*19*) Secondary metal production plants;

(*20*) Chemical process plants;

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*22*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*23*) Taconite ore processing plants;

(*24*) Glass fiber processing plants;

(*25*) Charcoal production plants;

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v)(A) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(B) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

(*2*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*3*) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which;

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or § 51.166, or

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR 51.166.

(*7*) Any change in owenership at a stationary source.

(vi)(A) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the the Act.

(viii) "Secondary emissons" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutions, a rate of emissions that would equal or exceed any of the following rates:

*Pollutant Emissions Rate*

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(xi) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii)(A) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with paragraphs (a)(1)(xii) (B) through (D) of this section.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xiii) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR Part 51 Subpart I, or § 51.166.

(xv) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) "Necessary preconstruction approvals or permits" means those Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where;

(A) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(B) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further proivide that:

(A) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(B) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches,

(C) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD–15) Research Triangle Park, NC 27711.))

(E) All emission reductions claimed as offset credit shall be federally enforceable;

(F) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S section IV.D.

(G) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the State has not relied on it in demonstration attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or citric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(b) Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program or its equivalent shall apply to any new major stationary source or

major modification that would locate in a designated attainment or the unclassifiable area and would exceed the significant increments specified in section III.A. of the Emission Offset Interpretive Ruling Appendix S to this part.

**§ 51.166 Prevention of significant deterioration of air quality.**

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11. Subpart K (consisting of §§ 51.210 through 51.214), Subpart L (consisting of §§ 51.230 through 51.232), and subpart N (consisting of §§ 51.260 through 51.262) are added to read as follows:

**Subpart K—Source Surveillance**

Sec.



**Subpart L—Legal Authority**



* * * * *

**Subpart N—Compliance Schedules**



**Subpart K—Source Surveillance**

**§ 51.210 General.**

Each plan must provide for monitoring the status of compliance with any rules and regulations that set forth any portion of the control strategy. Specifically, the plan must meet the requirements of this subpart.

**§ 51.211 Emission reports and recordkeeping.**

The plan must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State—

(a) Information on the nature and amount of emissions from the stationary sources; and

(b) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy.

**§ 51.212 Testing, inspection, enforcement, and complaints.**

The plan must provide for—

(a) Periodic testing and inspection of stationary sources; and

(b) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints.

**§ 51.213 Transportation control measures.**

(a) The plan must contain procedures for obtaining and maintaining data on actual emissions reductions acheived as a result of implementing transportation control measures.

(b) In the case of measures involving inspection, maintenance, or retrofit, these data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to inspection, maintenance, and/or retrofit.

(c) In the case of measures based on traffic flow changes or reductions in vehicle use, the data must include observed changes in vehicle miles traveled and average speeds.

(d) The data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures.

**§ 51.214 Continuous emission monitoring.**

(a) The plan must contain legally enforceable procedures to—

(1) Require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and

(2) Provide other information as specified in Appendix P of this part.

(b) The procedures must—

(1) Identify the types of sources, by source category and capacity, that must install the equipment; and

(2) Identify for each source category the pollutants which must be monitored.

(c) The procedures must, as a minimum, require the types of sources set forth in Appendix P of this part to meet the applicable requirements set forth therein.

(d)(1) The procedures must contain provisions that require the owner or operator of each source subject to continuous emission monitoring and recording requirements to maintain a file of all pertinent information for at least two years following the date of collection of that information.

(2) The information must include emission measurements, continuous monitoring system performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems and other reports and records required by Appendix P of this part.

(e) The procedures must require the source owner or operator to submit information relating to emissions and operation of the emission monitors to the State to the extent described in Appendix P at least as frequently as described therein.

(f) (1) The procedures must provide that sources subject to the requirements of paragraph (c) of this section must have installed all necessary equipment and shall have begun monitoring and recording within 18 months after either—

(i) The approval of a State plan requiring monitoring for that source; or

(ii) Promulgation by the Agency of monitoring requirements for that source.

(2) The State may grant reasonable extensions of this period to sources that—

(i) Have made good faith efforts to purchases, install, and begin the monitoring and recording of emission data; and

(ii) Have been unable to complete the installation within the period.

**Subpart L—Legal Authority**

**§ 51.230 Requirements for all plans.**

Each plan must show that the State has legal authority to carry out the plan, including authority to:

(a) Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards.

(b) Enforce applicable laws, regulations, and standards, and seek injunctive relief.

(c) Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 305 of the Act.

(d) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

(e) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(f) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported

and as correlated with any applicable emission standards or limitations.

**§ 51.231 Identification of legal authority.**

(a) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations be submitted with the plan.

(b) The plan must show that the legal authorities specified in this subpart are available to the State at the time of submission of the plan.

(c) Legal authority adequate to fulfill the requirements of § 51.230 (e) and (f) of this subpart may be delegated to the State under section 114 of the Act.

**§ 51.232 Assignment of legal authority to local agencies.**

(a) A State government agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out the portion of plan.

(b) The State may authorize a local agency to carry out a plan, or portion thereof, within such local agency's jurisdiction if—

(1) The plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion of it; and

(2) This authorization does not relieve the State of responsibility under the Act for carrying out such plan, or portion thereof.

## Subpart N—Compliance Schedules

**§ 51.260 Legally enforceable compliance schedules.**

(a) Each plan shall contain legally enforceable compliance schedules setting forth the dates by which all stationary and mobile sources or categories of such sources must be in compliance with any applicable requirement of the plan.

(b) The compliance schedules must contain increments of progress required by § 51.262 of this subpart.

**§ 51.261 Final compliance schedules.**

(a) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a primary standard must—

(1) Provide for compliance with the applicable plan requirements as soon as practicable; or

(2) Provide for compliance no later than the date specified for attainment of the primary standard under;

(b) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a secondary standard must—

(1) Provide for compliance with the applicable plan requirements in a reasonable time; or

(2) Provide for compliance no later than the date specified for the attainment of the secondary standard under § 51.110(c).

**§ 51.262 Extension beyond one-year.**

(a) Any compliance schedule or revision of it extending over a period of more than one year from the date of its adoption by the State agency must provide for legally enforceable increments of progress toward compliance by each affected source or category of sources. The increments of progress must include—

(1) Each increment of progress specified in § 51.100(q); and

(2) Additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance.

(b) [Reserved]

## Subpart O—Miscellaneous Plan Content Requirements [Amended]

12. Sections 51.280 and 51.281 are added to Subpart O to read as follows:

**§ 51.280 Resources.**

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

**§ 51.281 Copies of rules and regulations.**

Emission limitations and other measures necessry for attainment and maintenance of any national standard, including any measures necessary to implement the requirements of Subpart L must be adopted as rules and regulations enforceable by the State agency. Copies of all such rules and regulations must be submitted with the plan. Submittal of a plan setting forth proposed rules and regulations will not satisfy the requirements of this section nor will it be considered a timely submittal.

13. Subpart R consisting of §§ 51.340 and 51.341 is added as follows:

**Subpart R—Extensions**

Sec.



## Subpart R—Extensions

**§ 51.340 Request for 2-year extension.**

(a) The Governor of a State may, at the time of submission of a plan to implement a primary standard, request the Administrator to extend, for a period not exceeding 2 years, the 3-year period prescribed by the Act for attainment of the primary standard in such region.

(b) Any such request regarding an interstate region must be submitted jointly with the requests of Governors of all States in the region, or shall show that the Governor of each State in the region has been notified of such a request.

(c) Any such request regarding attainment of a primary standard must be submitted together with a plan which shall:

(1) Set forth a control strategy adequate for attainment of such primary standard.

(2) Show that the necessary techology or alternatives will not be available soon enough to permit full implementation of such control strategy within such 3-year period, i.e., one or more emission sources or classes of sources will be unable to comply with applicable portions of the control strategy.

(3) Provide for attainment of such primary standard as expeditiously as practicable, but in no case later than 5 years after the date of the Administrator's approval of such plan.

(d) Any showing pursuant to paragraph (c) of this section must include the following:

(1) A clear identification of stationary emission sources or classes of moving sources which will be unable to comply with the applicable portions of such control strategy within a 3-year period because the necessary technology or alternatives will not be available soon enough to permit such compliance.

(2) A clear identification and justification of any assumptions made with the respect to the time at which the necessary technology or alternatives will be available.

(3) A clear identification of any alternative means of attainment of such primary standard which were considered and rejected.

(4) A showing that stationary emission sources or classes of moving sources other than those identified pursuant to paragraph (d)(1) of this section will be required to comply, within such 3-year period, with any applicable portions of such control strategy.

(5) A showing that reasonable interim control measures are provided for in

such plan with respect to emissions from the source(s) identified pursuant to paragraph (d)(1) of this section.

**§ 51.341 Request for 18-month extension.**

(a) Upon request of the State made in accordance with this section, the Administrator may, whenever he determines necessary, extend, for a period not to exceed 18 months, the deadline for submitting that portion of a plan that implements a secondary standard.

(b) Any such request must show that attainment of the secondary standards will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology.

(c) Any such request for extension of the deadline with respect to any State's portion of an interstate region must be submitted jointly with requests for such extensions from all other States within the region or must show that all such States have been notified of such request.

(d) Any such request must be submitted sufficiently early to permit development of a plan prior to the deadline in the event that such request is denied.

**§ 51.327 [Amended]**

14. Section 51.327 is amended by changing the term "§ 51.6" to "§ 51.104."

**§ 51.328 [Removed and reserved]**

15. Section 51.328 is removed and reserved.

**Appendices A through H, K, M O, and R [Removed and Reserved]**

16. Appendices A through H, K, M, O, and R are removed and reserved.

**Appendix L [Amended]**

17. The first paragraph of Appendix L is revised to read as follows:

**Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes**

The example regulations presented herein reflect generally recognized ways of preventing air pollution from reaching levels that would cause imminent and substantial endangerment to the health of persons. States are required under Subpart H to have emergency episodes plans but they are not required to adopt the regulations presented herein.

* * * * *

18. In Appendix L, section 1.1(b) is amended by changing the term "Ozone ($O_2$)=200 ug/m³ (0.1ppm) 1-hour average" to "Ozone ($O_2$)=400 ug/m³ (0.2 ppm)-hour average."

19. In Appendix L, section 1.1 (b), (c), and (d) the paragraphs for $NO_2$ are revised and a paragraph is added to read as follows:

* * * * *

(b) * * *

$NO_2$–1130 μg/m³ (0.6ppm) 1-hour average, 282 μg/m³ (0.15 ppm) 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(c) * * *

$NO_2$–2260 μg/m³ (1.2 ppm), 1-hour average; 565 μg/m³ (0.3 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(d) * * *

$NO_2$–3,000 μg/m³ (1.6 ppm), 1-hour average; 750 μg/m³ (0.4 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

**§§ 51.61 and 51.166 [Amended]**

20. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 51.61(e), § 51.166(a)(5), (g)(2)(i).

**§§ 51.40 and 51.41 [Amended]**

21. The following sections are amended by removing the reference to "§ 51.12(f)" and replacing it with "§ 51.110(i)": § 51.40(a), (b), § 51.41.

22. The following sections are amended by removing the reference to "§ 51.12(i)" and replacing it with "§ 51.110(l)": § 51.40(a), (b), § 51.41.

**§§ 51.54 and 51.166 [Amended]**

23. The following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": § 51.54(e)(b)(17), § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*f*).

**§51.166 [Amended]**

24. The following paragraphs are amended by removing the reference to "§ 51.24" and replacing it with "§51.166": § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(14)(i)(*b*), (b)(14)(ii)(*a*), (b)(15)(ii)(*b*), (b)(17), (f)(3), (i)(9).

**Appendix P—[Amended]**

25. In Appendix P, section 1.0 is amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.165(b)":

26. In Appendix P, section 4.0 is amended by removing the reference to "§ 51.19(e)(3) and (4)" and replacing it with "§ 51.214(d) and (e)":

**Appendix S—[Amended]**

27. In Appendix S, the following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": I, II. (A)(5)(iii)(*f*), II. (A)(5)(iii)(*e*)(*1*), II. (A)(12.

28. In Appendix S, section III.A is amended by removing the reference to "§ 51.18(k)" and replacing it with "§ 51.165(b)":

29. In Appendix S, the following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": II. (A)(5)(iii)(*e*)(*1*), II. (A)(12), II. (A)(5)(iii)(*f*).

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

**§ 52.771 [Amended]**

1A. The following paragraphs are amended by removing the references to "§ 51.3(a)," and § 51.3(b)" and replacing them with "§ 51.150": § 52.771(b), (c), (d).

**PART 52—[AMENDED]**

2. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 52.21(f)(1), (g)(2)(i), § 52.876(c)(2), § 52.1602(a), § 52.2056(a), § 52.2080(b)(3), § 52.2232(d), § 52.2345(a), § 52.2282(a).

**§ 52.1487 [Amended]**

3. The following section is amended by removing the reference to "§ 51.4 (a)(2)" and replacing it with "§ 51.102 (a) and (e)": § 52.1487(a).

**§ 52.497 and 52.2056 [Amended]**

4. The following sections are amended by removing the reference to "§ 51.5" and replacing it with "§ 51.103:" § 52.497(a), § 52.2056(a).

5. The following sections are amended by removing the reference to "§ 51.6" and replacing it with "§ 51.104": § 52.55(a), § 52.240(f)(1), § 52.576(a), § 52.677(b), § 52.730(c), § 52.778(c), § 52.825(c), § 52.828(b)(1)(iii), § 52.876(c), § 52.927(c), § 52.980(a), § 52.980(b), (c), § 52.980(d), § 52.1175(e), § 52.1274(a), § 52.1335(a), § 52.1425(a), § 52.1626(b), § 52.1774(a), § 52.1830(a),

§ 52.2078(b)(iii), § 52.2080(a), (b)(1)(iii), § 52.2123(b), § 52.2435(a), § 52.2578(d).

**§§ 52.828 and 52.2078 [Amended]**

6. The following sections are amended by removing the reference to "§ 51.8" and replacing it with "§ 51.105": § 52.828(b)(1)(iii), § 52.2078(b)(1)(iii).

**§ 52.2424 [Amended]**

7. The following section is amended by removing the reference to "§ 51.10(b)" and replacing it with "§ 51.110(b)(d)": § 52.2424(a).

**§ 52.795 [Amended]**

8. The following section is amended by removing the reference to "§ 51.10(d)" and replacing it with "§ 51.110(e)": § 52.795(c).

9. The following sections are amended by removing the reference to "§ 51.10(e)" and replacing it with "§ 51.116(c)": § 52.73(a), § 52.178(a), § 52.224(a), (c), § 52.525(a), § 52.624(a), § 52.925(a), § 52.1113(a), § 52.1224(a), § 52.1277(a), § 52.1324(a), § 52.1378(a), § 52.1473(a), § 52.1526(a), § 52.1574(a), § 52.1623(a), § 52.2024(a), § 52.2073(a), § 52.2274(a), § 52.2374(a), § 52.2573(a), § 52.2725(a).

**§ 52.74 [Amended]**

10. The following section is amended by removing the reference to "§ 51.11" and replacing it with "§ 51.230": § 52.74(a).

**§ 52.74 and 52.2224 [Amended]**

11. The following sections are amended by removing the reference to "§ 51.11(a)(2)" and replacing it with "§ 51.230(b)": § 52.74(a)(1)(iv), (a)(2)(i), § 52.2224(c), (d), (e).

12. The following sections are amended by removing the reference to "§ 51.11(a)(3)" and replacing it with "§ 51.230(c)": § 52.74(a)(2)(v), § 52.225(a), § 52.1325(b)(5)(i), § 52.2224(a).

13. The following sections are amended by removing the reference to "§ 51.11(a)(4)" and replacing it with "§ 51.230(d)": § 52.74(b), § 52.324(c), § 52.775(2)(i), (a)(7)(iii), (a)(8)(ii), (a)(9)(i), (a)(10)(iii), § 52.874(c), § 52.1275(a), § 52.1325(c), § 52.2124(d), § 52.2224(b).

14. The following sections are amended by removing the reference to "§ 51.11(a)(5)" and replacing it with "§ 51.230(e)": § 52.74(a)(1)(i), (a)(2)(ii), § 52.775(a)(1)(i), (a)(2)(ii), (a)(3)(i), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(9)(ii), (a)(10)(i), § 52.1325(b)(1)(i), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(4)(i), (b)(5)(ii), § 52.2074(a).

15. The following sections are amended by removing the reference to "§ 51.11(a)(6)" and replacing it with "§ 51.230(f)": § 52.74(a)(1)(ii), (a)(1)(iii), (a)(2)(iii), (a)(2)(iv), (c), § 52.775(a)(5)(ii), § 52.179(a), § 52.225(b), § 52.324(a), § 52.526(a), § 52.625(a), § 52.674(a), § 52.775(a)(1)(ii), (a)(2)(iii), (a)(3)(ii), (a)(4)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(i), (a)(9)(iii), (a)(10)(ii), § 52.1325(b)(4)(ii), (b)(5)(iii), (a)(11)(i), § 52.874(a), (b)(1)(i), (b)(2)(i), (b)(3)(i), § 52.924(a), § 52.1074(a), § 52.1275(b), (b)(1)(ii), (b)(2)(iii), § 52.1379(a), § 52.1575(a), § 52.2025(a), § 52.2074(b), § 52.2173(a), § 52.2333(a), § 52.2373(a), § 52.2574(a), § 52.2726(a).

16. The following sections are amended by removing the reference to "§ 51.11(b)" and replacing it with "Subpart L": § 52.74(a)(2)(iv), § 52.784(a), § 52.1227(a), § 52.1974(a).

**§ 52.2430 [Amended]**

17. The following section is amended by removing the reference to "§ 51.11(c)" and replacing it with "§ 51.231(a)": § 52.2430(a).

18. The following sections are amended by removing the reference to "§ 51.11(f)" and replacing it with "§ 51.232(b)": § 52.775(a), § 52.874(b), § 52.1325(b), § 52.2430(b), § 52.2475(a).

**§ 52.2678 [Amended]**

19. The following section is amended by removing the reference to "§ 51.12(a)" and replacing it with "§ 51.110(a)": § 52.2678(a).

20. The following sections are amended by removing the reference to "§ 51.12(e)" and replacing it with "§ 51.110(h)": § 52.95(a), § 52.182(a), § 52.431(a), § 52.497(a), § 52.631(a), § 52.735(a), § 52.792(a), § 52.883(b), § 52.1115(a), § 52.1602(a), § 52.1883(a), § 52.2056(a), § 52.2176(a), § 52.2232(a), § 52.2345(a).

21. The following sections are amended by removing the reference to "§ 51.12(e) and (f)" and replacing it with "§ 51.110(h) and (i)": § 52.59(a), § 52.95(b), § 52.143(a), § 52.182(b), § 52.267(a), § 52.341(a), § 52.379(a), § 52.431(b), § 52.497(b), § 52.529(a), § 52.580(a), § 52.631(b), § 52.682(a), § 52.735(b), § 52.792(b), § 52.832(a), § 52.883(a), (b), § 52.929(a), § 52.1028(a), § 52.1115(b), § 52.1178(a), § 52.1229(a), § 52.1279(a), § .1338(a), § .1381(a), § 52.1528(a), § 52.1602(b), § 52.1688(a), § 52.1777(a), § 52.1827(a), § 52.1883(b), § 52.1927(a), § 52.1986(a), § 52.2249(a), § 52.2056(b), § 52.2082(a), § 52.2129(a), § 52.2176(b), § 52.2232(b), § 52.2302(a), § 52.2345(b), § 52.2379(a), § 52.2449(a), § 52.2496(a), § 52.2526(a), § 52.2580(a), § 52.2631(a), § 52.2674(a), § 52.2728(a), § 52.2778(a), § 52.2826(a).

22. The following sections are amended by removing the reference to "§ 51.13(e)" and replacing it with "Subpart G": § 52.57(a), § 52.125(a) (1) (b), § 52.126(a), § 52.133(c), § 52.227(a), § 52.675(a) (1), § 52.676(a)(1), § 52.776(a), § 52.1475(a), § 52.1476(a), § 52.1678(d), § 52.1880(a), § 52.1881(a), § 52.1976(a), § 52.2678(a), § 52.2731(a), § 52.2780(a).

**§§ 52.794, 52.1117 and 52.2525 [Amended]**

23. The following sections are amended by removing the reference to "51.13(e)(1)" and replacing it with "§ 51.112(a)": § 52.794(b), § 52.1117(b), § 52.2525(a),

24. The following sections are amended by removing the reference to "§ 51.14," and replacing it with "Subpart G": § 52.269(a), § 52.729(a), § 52.777(a), (b), § 52.784(a), § 52.785(a), § 52.1227(a), § 52.1486(a), § 52.1676(a), § 52.1877(a).

**§§ 52.2431 [Amended]**

25. The following section is amended by removing the reference to "§ 51.14(c)" and replacing it with "§ 51.112": § 52.2431 (d),

26. The following paragraphs are amended by removing the references to "§ 51.14(a)(2)," "§ 51.14(a)(1) (b) and (c)," "§ 51.14(a)(2) (iii), and (iv) and replacing them with "§ 51.111": § 52.2431(a), (b), (c).

27. The following sections are amended by removing the reference to "§ 51.15" and replacing it with "Subpart N": § 52.07(a), § 52.20, § 52.55(a), § 52.84(b), § 52.240(e), (f)(1), (f)(2), § 52.429(a), § 52.524(c), § 52.576(a), § 52.626(a), § 52.677(b), (c) § 52.730(c), (d), § 52.778(c), (d), § 52.825(c), § 52.876(c) (1) and (2), § 52.927(c), § 52.980(a), (b), (c), (d), § 52.1023(a), § 52.1125(a), (b), § 52.1175(e), § 52.1274(a), § 52.1335(a), (b), § 52.1425(a), § 52.1482(b), (c), § 52.1524(a), (c), (d), § 52.1577(e), § 52.1626(b), § 52.1774(a), § 52.1830(a), § 52.1975(b), § 52.2036(a), § 52.2077(b), (c), (d), § 52.2123(b), § 52.2223(c), (d), (f), § 52.2376(a), § 52.2435(a), § 52.2481(b), § 52.2524(c), § 52.2578(d), § 52.2578(e), § 52.2625(a), § 52.2730(a).

**§§ 52.828 and 52.2078 [Amended]**

28. The following sections are amended by removing the reference to "§ 51.15b (1) and (2)" and replacing it with "§ 51.261 (a) and (b)": § 52.828(1)(i), § 52.2078(b)(1)(i).

29. The following sections are amended by removing the reference § 51.15(b)" and replacing it with "§ 51.261": § 52.240(b), § 52.828(b)(1)(iii), § 52.1577(b), § 52.1677(a).

30. The following sections are amended by removing the reference to "§ 51.15 (b) and (c)" and replacing it with "§ 51.261 and 51.262(a)": § 52.84(d)(10), § 52.255(g), § 52.256(i), § 52.524(b)(7), § 52.730(b)(4),

§ 52.927(b)(6), § 52.1175(d)(4), § 52.1975(c)(12), § 52.2078(b)(iii), § 52.2223(e)(18), § 52.2285(g), § 52.2438(g), § 52.2439(i), § 52.2524(b)(10), § 52.2578(c)(4).

31. The following sections are amended by removing the reference to "§ 51.15(c)" and replacing it with "§ 51.262(a)": § 52.84(a), § 52.240(a), § 52.524(a), § 52.677(a), § 52.730(a), § 52.778(a), § 52.927(a), § 52.1080(a), § 52.1175(c), § 52.1524(b), § 52.1577(c), § 52.1626(a), § 52.1677(b), (c), § 52.1975(a), § 52.2077(a), § 52.2223(b), § 52.2481(a), § 52.2524(a), § 52.2578(b).

**§ 52.274 [Amended]**

32. The following sections are amended by removing the reference to "§ 51.16" and replacing it with "Subpart H": § 52.274(a), (b), (e), (h), (g).

**§ 52.2227 [Amended]**

33. The following section is amended by removing the reference to "§ 51.16(b)(3)" and replacing it with "§ 51.152(a)": § 52.2227.

34. The following sections are amended by removing the reference "§ 51.18" and replacing it with "Subpart I": § 52.10, § 52.21(b)(2)(iii)(*e*)(*1*), (b),(2)(iii)(*f*), (b),(17), § 52.24(f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*e*)(*2*), (f)(5)(iii)(*f*), (f)(6)(iii), (f)(6)(v)(*c*), (f)(12), § 52.78(a), § 52.129(e), § 52.232(a)(1)(i), (a)(5)(i)(A), § 52.426(a), § 52.574(a), § 52.629(a), § 52.780(e), § 52.878(a), § 52.1124(a), § 52.1225(a), § 52.1276(a), § 52.1328(a), § 52.1578(a), § 52.1824(a), § 52.2125(a), § 52.2228(a), § 52.2579(a), § 52.2623(a), § 52.2724(a), § 52.2824(a).

**§§ 52.233 and 52.780 [Amended]**

35. The following sections are amended by removing the reference to "§ 51.18(a)" and replacing it with "§ 51.160(a)": § 52.233(c), § 52.780(a).

**§§ 52.129 and 52.233 [Amended]**

36. The following sections are amended by removing the reference to "§ 51.18(c)" and replacing it with "§ 51.160(a)": § 52.129(b), § 52.233(c)(d).

**§§ 52.1124 and 52.1879 [Amended]**

37. The following sections are amended by removing the reference to "§ 51.18(h)" and replacing it with "§ 51.161": § 52.1124(c), § 52.1879(c).

**§§ 52.24 and 52.688 [Amended]**

38. The following sections are amended by removing the reference to "§ 51.18(j)" and replacing it with § 51.165(a)":, § 52.24(j)(2), § 52.688(b)(2).

39. The following sections are amended by removing the reference to "§ 51.19(a)" and replacing it with "§ 51.211": § 52.130(a), § 52.234(a), § 52.1479(a), § 52.2075(a).

40. The following sections are amended by removing the references to "§ 51.19(b)," and "§ 51.19(c) and replacing them with "§ 51.212": § 52.234(b), (c), § 52.794(a), (b), § 52.1077(a), § 52.2030(b), (c).

41. The following sections are amended by removing the reference to "§ 51.19(d)" and replacing it with "§ 51.213": § 52.130(b), § 52.479(b), § 52.2298(b), § 52.2427(c), § 52.2477(a).

42. The following sections are amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.214": § 52.130 (d), (e), § 52.234(e), § 52.796(a), § 52.1479(b), § 52.1680(a), § 52.2684(a).

43. The following sections are amended by removing the reference to "§ 51.20" and replacing it with "§ 51.280": § 52.135(a), § 52.175(a), § 52.978(a), § 52.2031(a), (b), § 52.2483(a).

44. The following sections are amended by removing the reference to "§ 51.21," and replacing it with "Subpart M": § 52.80(a), § 52.1579(a), § 52.2032 (a), (b), § 52.2433(a).

45. The following sections are amended by removing the references to "§ 51.22," and "51.22(b)" and replacing it with "§ 51.281": § 52.125 (a)(1), (b), § 52.126 (a), (c), § 52.133(c), § 52.272(a), § 52.795(b), § 52.988(a), § 52.1082 (a), (b), § 52.1635(a), § 52.2436 (a), (b).

**§§ 52.21 and 52.24 [Amended]**

46. The following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": § 52.21 (b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(17), (f)(3), § 52.24 (f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*f*), (f)(12).

**§§ 52.1331 and 52.2428 [Amended]**

47. The following sections are amended by removing the reference to "§ 51.30" and replacing it with "§ 51.340": § 52.1331(a), § 52.2428 (a), (b).

**§ 52.782 [Amended]**

48. The following section is amended by removing the reference to "§ 51.31(c)" and replacing it with "§ 51.341": § 52.782(a).

49. The following sections are amended by removing the reference to Appendix N and replacing it with "Subpart G": § 52.88(a)(5), § 52.89(a)(4), § 52.90(a)(3), § 52.91(a)(3), § 52.786(a)(3), § 52.1878(a)(2), § 52.2038(a)(4), § 52.2039(a)(3), § 52.2337(a)(3), § 52.2485(a)(4), § 52.2491(a)(3).

**§ 52.235 [Removed]**

50. The following section is removed: § 52.235.

**§ 52.230 [Amended]**

51. Section 52.230(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of September 22, 1972 (47 *FR* 1983), are not met since the . . . ."

**§ 52.828 [Amended]**

52. Section 52.828(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

**§ 52.876 [Amended]**

53. Section 52.876(a) is amended by revising the first portion to read as follows: "The requirements of § 51.260 and of § 51.15(a)(2) of this chapter as of September 19, 1976 (40 *FR* 43216), are not met since the . . . ."

**§ 52.1576 [Amended]**

54. Section 52.1576(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16346), are not met since the . . . ."

**§ 52.1676 [Amended]**

55. Section 52.1676(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16347), are not met since the . . . ."

**§ 52.2078 [Amended]**

56. Section 52.2078(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

**§ 52.2682 [Amended]**

57. Section 52.2682(a) is amended by revising the first portion to read as follows: "The requirements of § 52.17(a)(2) of this chapter as of December 19, 1978 (43 *FR* 59067), are not met since the . . . ."

[FR Doc. 86-24433 Filed 11-6-86; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Friday
November 7, 1986

Part IV

# Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

# Part IV

# Information Security Oversight Office

## INFORMATION SECURITY OVERSIGHT OFFICE

### 32 CFR Part 2003

### National Security Information; Standard Forms

**AGENCY:** Information Security Oversight Office (ISOO).

**ACTION:** Final rule.

**SUMMARY:** This amendment to 32 CFR Part 2003 provides for the use of an alternative Classified Information Nondisclosure Agreement to be executed by non-Government personnel as a condition of access to classified information. It also updates other provisions on the use of the nondisclosure agreements.

**EFFECTIVE DATE:** November 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Steven Garfinkel, Director, ISOO. Telephone: (202) 535–7251.

**SUPPLEMENTARY INFORMATION:** This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356. ISOO has coordinated this amendment with those agencies that will be primarily affected by it.

**List of Subjects in 32 CFR Part 2003**

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

## PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

### Subpart A—General Provisions

2. Section 2003.3 is revised to read as follows:

**§ 2003.3 Waivers.**

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in Subpart B may be granted only by the Director of ISOO. The Director of ISOO will be responsible for ensuring that all waivers that necessitate changes to a standard form are cleared with the General Services Administration's Information Resources Management Service (41 CFR 201–45.5).

### Subpart B—Prescribed Forms

3. Section 2003.20 is revised to read as follows:

**§ 2003.20 Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189–A.**

(a) SF 189 and SF 189–A are nondisclosure agreements between the United States and an individual. An individual is to execute either the SF 189 or the SF 189–A, as appropriate, before the United States Government may authorize that individual access to classified information.

(b) All employees of executive branch departments, and independent agencies or offices must sign SF 189 before being authorized access to classified information.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, must sign either SF 189 or SF 189–A before being authorized access to classified information.

(d) Agencies may require other persons, who are not included under paragraph (b) or (c) of this section, to execute SF 189 or SF 189–A before receiving access to classified information.

(e) Only the National Security Council may grant a waiver from the use of SF 189 or SF 189–A. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has received a waiver from the use of SF 189 need not seek a waiver from the use of SF 189–A, if the employees of its contractors, licensees and grantees, and other non-Government personnel are required to sign a nondisclosure agreement identical or comparable to the agreement for which a waiver has been granted. (Also see 32 CFR 2003.3 and 41 CFR 201–45.5.)

(f) Each agency must retain its executed copies of SF 189 and SF 189–A in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement. The copies or legally enforceable facsimiles of them must be retained for 50 years following their date of execution. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractor, licensee or grantee shall deliver the SF 189 or SF 189–A of that employee to the Government agency primarily responsible for his or her classified work.

(g) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting on behalf of the United States, may witness the execution of SF 189 or SF 189–A by another non-Government employee, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189–A on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 189 or SF 189–A by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189–A on behalf of the United States.

(h) The national stock number for the SF 189 is 7540–01 161–1869. The national stock number for the SF 189–A is 7540–01–237–2597.

Dated: November 4, 1986.

**Steven Garfinkel,**

*Director, Information, Security Oversight Office*

[FR Doc. 86–25135 Filed 11–6–86; 8:45 am]

BILLING CODE 6820–AF–M

Federal Register

Friday
November 7, 1986

Part V

# Department of Energy

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste; Proposed Rulemaking

**DEPARTMENT OF ENERGY**

**10 CFR Part 961**

**[Docket No. OCRWM-NOPR-86-202]**

## Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On April 18, 1983, the Department of Energy (DOE) published a rule which established the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (standard disposal contract) to be used by the DOE in furnishing disposal services to the owners or generators of spent nuclear fuel and/or high-level radioactive waste (48 FR 16590). On December 6, 1985, the U.S. Court of Appeals for the District of Columbia ruled that the ongoing 1.0 mill per kilowatt hour (1M/KWH) fee in DOE's standard disposal contract should be based on net generation of electricity rather than gross generation of electricity as adopted in the final rule (*Wisconsin Electric Power Co. et al.* v. *Hodel*, 778 F.2d 1). In response to this decision, DOE is publishing for comment conforming amendments to Article I.13 and Appendix G of the standard disposal contract.

**DATES:** Written comments must be received on or before December 8, 1986, 4:30 p.m.

**ADDRESS:** Comments should be addressed to Samuel Rousso, Office of Civilian Radioactive Waste Management, Department of Energy, Docket No. OCRWM-NOPR-86-202, 1000 Independence Avenue SW., Room GB-270, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Alan B. Brownstein, Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Room GB-270, Washington, DC 20585 (202) 252-1652

Christopher T. Jedrey, Office of Procurement Operations, Department of Energy, 1000 Independence Avenue SW., Room 1J-027, Washington, DC 20585 (202) 252-1009

Robert Mussler, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-113, Washington, DC 20585 (202) 252-6947

**SUPPLEMENTARY INFORMATION:**



### I. Background

The Nuclear Waste Policy Act of 1982, enacted on January 7, 1983 (hereinafter referred to as "the Act," Pub. L. 97-425, 96 Stat. 2201 (42 U.S.C. 10101 et seq.)), provides a comprehensive framework for disposing of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW) of domestic origin. Section 302 of the Act required the DOE and each owner or generator (hereinafter referred to as "utility" or "purchaser") of SNF and/or HLW to execute, by June 30, 1983, a standard disposal contract under which DOE will accept and dispose of such material.

On April 18, 1983, the DOE published its final rule which established the standard disposal contract (48 FR 16590). Article I.13 defined "kilowatt hours generated" as "electricity generated by nuclear fuel at a civilian nuclear power reactor specified in Appendix A hereto as measured at the output terminals of the turbine generator including an equivalent amount of electricity for any process heat generated by the reactor and used other than at the reactor" [gross generation].[1] Article VIII.A.1 and B.1 used this definition as a basis for calculating the ongoing 1M/KWH fee.⅛

By its decision on December 6, 1985, the U. S. Court of Appeals for the District of Columbia held that the definition of "kilowatt hours generated" was invalid, in part, on the grounds that section 302(a)(2) of the Act meant to establish disposal charges based on electricity "generated and sold," i.e., "net" generation. Subsequent to the U.S. Court of Appeals ruling, the DOE informed all utilities having disposal contracts by letter dated January 23, 1986, that:

(1) Utilities should immediately calculate their future quarterly payments based on net generation rather than gross generation as had been the practice; and

(2) Utilities should not make adjustments on their own to their regular quarterly submittals for past overpayments.

The DOE letter of January 23, 1986, also defined net generation for fee calculation purposes as:

"The gross electrical output of the unit measured at the output terminals of the turbine generator minus the normal station service loads during the gross hours of the reporting period, expressed in megawatt hours. Negative quantities should not be used. If there is no net positive value for the period, enter zero."

This definition, which was taken from the existing instructions for completing Annex A of Appendix G of the standard disposal contract, was selected on an interim basis to expedite implementing the Court order. DOE recognized that several definitions of net generation are currently used by the Federal Government and electric utility industry, all of which result in different calculations for net generation and therefore would affect a utility's ongoing fee obligation. In addition, DOE recognized that different methods exist for calculating net generation regardless of which definition is ultimately selected and that this would also affect a utility's fee obligation.

DOE has reviewed and analyzed all utilities' payments of the ongoing fee made during the second quarter of Fiscal Year 1986, based on the definition and instructions provided in its January 23, 1986, letter. The review has shown that utilities used different methods and calculation techniques to develop their net generation data which caused the ongoing fee payments to the Nuclear Waste Fund to vary among utilities. Most of the differences found could be attributed to different treatment by utilities of negative megawatt hour (MWH) values reported during periods of low or no station-power generation. In essence, during such periods the normal flow of electricity is reversed and non-unit/station-generated electricity for station use is supplied from outside the station (e.g., the utility's transmission grid). This non-station-generated electricity could potentially serve to offset the MWH on which the fee is based.

Based on its review and analysis, the DOE sent a subsequent letter to utilities on June 13, 1986, that clarified how, on an interim basis, net generation should be calculated, subject to completion of the rulemaking process to amend the standard disposal contract. It directed that in calculating net generation, gross generation should not be offset by any electricity generated off-site or non-nuclear electricity generated on-site. This letter also established procedures for utilities to take a credit on their subsequent quarterly payments for overpayment of the ongoing fee since April 7, 1983. The utilities were also informed that such credits would not be considered final until completion of the

[1] Definition as corrected on May 24, 1983 (48 FR 23160).

rulemaking process and final verification of net generation data.

DOE has since reviewed and analyzed all utility ongoing fee payments for the third quarter of Fiscal Year 1986 based on the instructions in the June 13, 1986, letter. The results have shown that the vast majority of utilities were able to calculate net generation consistent with DOE instructions using existing data and metering equipment.

## II. Proposed Rule

As set forth below, the purpose of this proposed rule is to amend the standard disposal contract consistent with the court ruling that the ongoing fee should be based on net generation.

Proposed § 961.11 (amended) sets forth changes to the contract necessary to implement the payment of the ongoing fee based on net generation:

Article I—Definitions—Specifies the revised definition of "kilowatt hours generated" to mean net generation. Appendix G—Remittance Advice (RA) for Payment of Fees—Revises both the RA form and the Annex A to Appendix G form currently used by utilities [2] to reflect payment based on net generation. The Annex A form instructions have also been changed to reflect the proposed calculation procedures for identifying net generation for fee calculation purposes. In addition, three data items are proposed for elimination since they deal with equivalent electric energy generation (process heat) which is no longer applicable. With respect to the calculation of net generation, the DOE proposes that at all times when station use exceeds station generation, the resulting negative values should be treated as zero for fee calculation purposes. Non-nuclear electricity generated on-site should not be deducted from gross generation unless included in the gross generation data. In those cases involving a multi-unit nuclear station, DOE proposes that when at least one nuclear unit is operating (generation from at least one unit exceeds station use), electricity generated from that unit shall be assumed to be supplying the normal nuclear station load whether or not it can be separately metered. The DOE believes this is a reasonable assumption which will allow utilities to avoid the expense of adding costly metering equipment.

[2] Current forms are modified versions of the original forms published on April 18, 1983 (48 FR 16590). Copies of the modified forms are available upon request to members of the public who need them to respond to this Notice.

## III. Comment Procedures

### *A. Written Comments*

Interested persons are invited to participate in this proposed rulemaking by submitting comments no later than December 8, 1986, to the address indicated in the "ADDRESS" section of this notice and should be identified on the outside envelope and on the document with the designation: "Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste." Ten copies should be submitted.

All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, James E. Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information or data considered confidential by the person furnishing it must be so identified and submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat the information or data in accordance with its determination.

### *B. Public Hearing*

DOE believes that the amendments proposed in this Notice present no substantial issues of fact or law and are unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, DOE is not scheduling a public hearing as provided by section 501(c) of the Department of Energy Organization Act (DOE Act) (Pub. L. 95–91, 42 U.S.C. 7191) and the Administrative Procedure Act (Pub. L. 89–554, 5 U.S.C. 553). If a significant number of persons request an opportunity for oral presentation of views, data and arguments, a public hearing could be held after public notice.

## IV. Procedural Requirements

### *A. Executive Order No. 12291*

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

### *B. Regulatory Flexibility Act*

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of the said Act do not apply to this rule because, if promulgated, it will not have a significant economic impact on a substantial number of small entities. This finding is based on the fact that the parties to the contract, who are owners or generators of spent nuclear fuel or high-level radioactive waste, are not small entities.

### *C. National Environmental Policy Act*

Execution of amendments to the standard contract proposed in this rulemaking will not commit DOE to any specific activities not already prescribed by the Nuclear Waste Policy Act. Activities allowed under the Act will receive appropriate environmental review at the proper time, i.e., when such activities are proposed in accordance with the process established in the Act. Therefore, DOE has concluded that the proposed rulemaking does not give rise to any action not already prescribed by the Act and, thus, is not a proposal for a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of either an environmental assessment or an environmental impact statement is not required.

### *D. Paperwork Reduction Act*

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this proposed rule has been submitted to the Office of Management and Budget (OMB). The current Remittance Advice and Annex A forms were previously approved by OMB under control number 1901–0260. Comments on the information collection requirements of this proposal should be submitted both to the DOE address noted above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Vartkes Broussalian.

### List of Subjects in 10 CFR Part 961

Government contracts, Nuclear materials, Nuclear powerplants and reactors, Radiation protection, Waste treatment and disposal.

In consideration of the foregoing, it is proposed that Part 961, Chapter III of Title 10, Code of Federal Regulations be amended as set forth below.

Issued in Washington, DC, November 3, 1986.

**Berton J. Roth,**

*Director, Procurement and Assistance Management Directorate.*

## PART 961—[AMENDED]

1. The authority citation for Part 961 continues to read as follows:

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254) and Sec. 302, Pub. L. 97–425, 96 Stat. 2257 (42 U.S.C. 10222).

2. The Contract in § 961.11 is proposed to be amended by revising Article I, paragraph 13, and Appendix G to the Contract, including Annex A to Appendix G as set forth below. Annex B to Appendix G remains unchanged.

**§ 961.11 Text of the Contract.**

* * * * *

**Article I—Definitions**

* * * * *

13. The term "kilowatt hours generated" means the gross electrical output produced by a civilian nuclear power reactor measured at the output terminals of the turbine generator minus the normal on-site nuclear station service loads during the time electricity is being generated, expressed in megawatt hours.

* * * * *

BILLING CODE 6450-01-M

APPENDIX G

NWPA-830G

**U.S. DEPARTMENT OF ENERGY**

Germantown, MD 20874

STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

This information is being collected under mandatory authorities vested in the U.S. Department of Energy under Public Law 97-425. Late filing, failure to file or to otherwise comply with the instructions provided may result in interest penalties as provided by Article VIII, C. of the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste.

For information concerning confidentiality of information see Item 6 of the instructions.

## 1.0 IDENTIFICATION INFORMATION

1.1 Purchaser Information
- (a) Name _____
- (b) Address _____
- (c) City, State & Zip Code _____

1.2 Contact Person
- (a) Name _____
- (b) Telephone (Include Area Code) _____

1.3 Contract Number: _____

1.4 Period Covered by this Remittance Advice
- (a) From _____ (Month/Day/Year) to _____ (Month/Day/Year)
- (b) Number of Days in Covered Period: ____
- (c) Date of This Payment:

| Month | Day | Year |
|---|---|---|
| | | |

## 2.0 SPENT NUCLEAR FUEL (SNF) FEE

2.1 Number of Reactors Covered _____

2.2 Total Purchaser Obligation as of April 7, 1983 $

2.3 Date of First Payment:

| Month | Day | Year |
|---|---|---|
| | | |

2.4 10-Year Treasury Note Rate as of the Date of First Payment %

2.5 Unpaid Balance prior to this payment $_____

2.6 Option Chosen_____

2.7 Fee Data
- (a) Principal _____
- (b) Interest _____
- (c) Total Spent Nuclear Fuel Fee Transmitted with this Payment _____

## 3.0 ELECTRICITY GENERATION (MILLS Per KILOWATT HOUR, M/KWH) FEE

3.1 Number of Reactors Covered:____

3.2 Total Net Electricity Generated (megawatt hours) (Sum of Line 2.3 from All Annex A's)

3.3 Current Fee Rate _____ (M/KWH)

3.4 Total Electricity Generation (M/KWH) FEE Transmitted with this payment _____

## 4.0 UNDERPAYMENT/LATE PAYMENT (As notified by DOE)

| Type of Payment (a) | Date of Notification (Month/Day/Year) (b) | DOE Invoice Number (c) | Date of Payment Transmittal (Month/Day/Year) (d) | Interest Paid (e) | Amount Transmitted (f) |
|---|---|---|---|---|---|
| 4.1 SNF Underpayment | | | | | |
| 4.2 Electricity Generation Underpayment | | | | | |
| 4.3 TOTAL UNDERPAYMENT | | | | | |
| 4.4 SNF Late Payment | | | | | |
| 4.5 Electricity Generation Late Payment | | | | | |
| 4.6 TOTAL LATE PAYMENT | | | | | |

## 5.0 OTHER CREDITS CLAIMED (Attach Explanation)

Enter the Total Amount Claimed for all Credits $(_____)

## 6.0 TOTAL REMITTANCE

6.1 Total Spent Nuclear Fuel Fee Transmitted (from 2.7(c)) $_____

6.2 Total Electricity Generation Fee (from 3.4) $_____

6.3 Total Underpayment (from 4.3(f)) $_____

6.4 Total Late Payment (from 4.6(f)) $_____

6.5 Total Credits (from 5.0) $_____

6.6 TOTAL REMITTANCE (Sum of 6.1 through 6.4 less 6.5) $_____

## 7.0 CERTIFICATION

I certify that the information contained herein and appended hereto is true and accurate to the best of my knowledge

Name Date Signature

TITLE 18 USC 1001 makes it a crime for any person to knowingly and willfully make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

Copy Distribution: White, DOE-Controller; Canary, DOE-OCRWM; Pink, DOE-EIA; Goldenrod, Utility Copy

## DEPARTMENT OF ENERGY
## Germantown, MD 20874

## STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

General Information

1. Purpose.
Standard Remittance Advice (RA) form is designed to serve as the source document for entries into the Department's accounting records to transmit data from Purchasers concerning payment of their contribution to the Nuclear Waste Fund.

2. Who Shall Submit.
The RA must be submitted by purchasers who signed the Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste and will participate in the Nuclear Waste Fund. Submit Copy 1, 2, and 3 to DOE, Office of the Controller, Cash Management Division and retain Copy 4.

3. Where to Submit.
Purchasers shall forward completed RA to:

U.S. Department of Energy
Office of the Controller
Special Accounts and Payroll Division (C-216 Gtn)
Box 500
Germantown, MD 20874-0500

Request for further information, additional forms, and instructions may be directed to the address above or by telephone to (301) 353-4014

4. When to Submit.
For electricity generated on or after 4-7-83 fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of business on the last business day of the month following the end of each assigned three month period.

Payment is by electronic wire transfer only.

5. Sanctions.
The timely submission of RA by a Purchaser is mandatory. Failure to file may result in late penalty fees as provided by Article VIII, Section C of the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste.

6. Provisions Regarding the Confidentiality of Information.
The information contained on these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets confidential commercial information specified in the Freedom of Information Act of 5 USC 522(b) (4) (FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis if possible), in a letter accompanying submission of the form why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should not be released to the public, DOE may assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the NWPA-830G is submitted if:

a. views concerning information items identified as privileged or confidential have not changed: and

b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any committee of Congress, the General Accounting Office, and other Federal agencies authorized by law to received such information.

## INSTRUCTIONS FOR COMPLETING STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Name of Purchaser as it appears on the contract, the mailing address, state and zip code.

1.2 Name and telephone number of person responsible for the completion of this form.

1.3 Contract identification number as assigned by Department of Energy (DOE).

1.4 Period covered by this advice and date of this payment. Any period different from the assigned three month period should be explained on a separate attachment.

Section 2.0 *Spent Nuclear Fuel (SNF) Fee*

2.1 Enter the number of reactors for which the Purchaser had irradiated fuel as of midnight between 6/7 April 1983 (equal to the number of Annex B Forms attached).

2.2 Total amount owed to the Nuclear Waste Fund for spent fuel used to generate electricity prior to April 7, 1983. (See Annex B for calculation.)

2.3 Self explanatory.

2.4 Ten year Treasury Note rate on the date the payment is made, to be used if payments are being made using the 40 quarter option, or if lump sum payment is made after June 30, 1985.

2.5 Unpaid balance before this payment is made.

2.6 Enter the payment option (1, 2, or 3) chosen. The selection of payment option must be made within two years of contract execution.

2.7 Total payment of fee which this advice represents. Show principal, interest, and total.

Section 3.0 *Electricity Generation (M/KWH) Fee*

3.1 Enter the number of reactors the operations of which the Purchaser is reporting on during the reporting period (equal to the number of Annex A Forms attached).

3.2 Enter total net electricity generated during the reporting period from all reactors being reported. This is the sum of such figures from all Annex A forms attached, expressed in megawatt hours.

3.3 Current Fee Rate as provided by DOE (initially 1.0 M/KWH which is equal to 1.0 $/MWH).

3.4 Total Electricity Generation (M/KWH) Fee represented by this advice.

Section 4.0 *Underpayment/Late Payment (as notified by DOE)*

4.1-4.6 Self explanatory.

Section 5.0 *Other Credits Claimed*

Represents all items for which a Purchaser may receive credit, as specified in the Contract.

Section 6.0 *Total Remittance*

6.1-6.6 This section is a summary of the payments made in the previously mentioned categories with this remittance.

Section 7.0 *Certification*

Enter the name and title of the individual your company has designated to certify the accuracy of the data. Sign the "Certification" block and enter the current date.

NWPA-830G ANNEX A TO APPENDIX G

**ANNEX A**
to
Standard Remittance Advice for Payment of Fees
Quarterly Electricity Generation Report

- Please read all instructions before completing form.
- Complete a separate Annex A for each reactor
- Submit Annex A's quarterly with Standard Remittance Advice

1.0 Identification Information

1.1 Purchaser Information
(a) Name _____
(b) Address _____
_____
(c) Utility ID number ☐☐

1.2 Contact Person
(a) Name _____
(b) Telephone (Include area code)
_____

1.3 Reactor Name/ID (From Code List Provided by DOE)
(a) Name _____
(b) ID Code ☐☐

1.4 Contract Identification Number
_____

1.5 Period Covered
(a) From _____ to _____
(Mo/day/yr) (Mo/day/year)
(b) Number of days covered Period: _____
(c) Date of this submission:

| Month | Day | Year |
|---|---|---|
| / | / | / |

2.0 Electricity Generation Fee Calculation

2.1 Gross Thermal Energy Generated (MWH) _____
2.2 Gross Electrical Energy Generated (MWH) _____
2.3 Net Electrical Energy Generated (MWH) _____
2.4 Current Fee Rate (mills/KWH = $/MWH) _____
2.5 Current Fee Due for this Reactor (Dollars) _____
Sum for All Reactors Enter on Line 3.4 of RA

## INSTRUCTIONS FOR COMPLETING ANNEX A TO STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Utility name, address, and ID number. The ID number comes from Table 1 of these instructions.

1.2 Contact person for additional information on data submitted in this annex

1.3 Reactor name/ID number. Enter the name of the Reactor covered in this annex. Only reactor may be covered in this annex—even if the utility operates more than one reactor. The reactor ID number may be found in Table 1 of these instructions.

1.4 Self-explanatory

1.5a The dates shown should be days for which electrical output is reported. For example, for the last 3 month period of 1983, the report should show:

From 10 1 83 to 12 31 83
(Mo/Day/Yr) (Mo/Day/Yr)

1.5b Enter the total number of days in the report period. For example, from the above example show:

Number of days covered period: 92

1.5c Self-explanatory

Section 2.0 *Electricity Generation Fee Calculation*

2.1 Gross Thermal Energy Generated (MWH). The thermal output of the nuclear steam supply system during the gross hours of the reporting period, expressed in megawatt hours.

2.2 Gross Electrical Energy Generated (MWH). The gross electrical output of the unit measured at the output terminals of the turbine-generator during the gross hours of the reporting period, expressed in megawatt hours.

2.3 Net Electrical Energy Generated (MWH). The gross electrical output of the unit measured at the output terminals of the turbine-generator minus the normal on-site nuclear station service loads during the times electricity is being generated, expressed in megawatt hours. At all times when station use exceeds station generation, the resulting negative values should be treated as zero for fee calculation purposes. On-site non-nuclear generated electricity should not be deducted from the gross generation unless included in the gross generation. For multi-unit stations, the utility can assume that when at least one nuclear unit is operating and when generation from that one unit exceeds the nuclear station's use, the electricity from that unit is supplying the normal nuclear station load, whether or not the electricity has been metered separately.

2.4 Current Fee Rate (mills/KWH = $/MWH). Initially 1.0 mills/KWH or 1.0 dollars/MWH. The units mills/KWH are exactly equivalent to dollars/MWH. Enter here on line 3.3 of the Remittance Advice.

2.5 Current Fee Due (dollars). The product of Items 2.3 and 2.4. The Current Fee Due for this reactor must be added to the Current Fee Due for all other reactors operated by the Purchaser and the sum entered on line 3.4 of the Remittance Advice.

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federal register

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November 7, 1986

Part VI

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 1, 43, 45, 61, 91, 133, and 135**

**Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 1, 43, 45, 61, 91, 133, and 135**

**[Docket No. 24550; Amdts. 1-33, 43-25, 45-16, 61-77, 91-196, 133-9, and 135-20]**

# Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends and updates the operations and maintenance requirements pertaining to rotorcraft and establishes a new Class D rotorcraft-load combination. Amendments affect certain sections of Parts 1, 43, 45, 61, 91, 133 and 135 of the Federal Aviation Regulations that apply to rotorcraft.

**EFFECTIVE DATE:** January 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marian Clemens or Thomas Stuckey, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8150.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 5, 1979, the Federal Aviation Administration (FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during a forthcoming Rotorcraft Regulatory Review Conference (Notice 79-1; 43 FR 23925). Such a Rotorcraft Regulatory Review Conference was held on December 10-14, 1979, in New Orleans, Louisiana. A subsequent Rotorcraft Regulatory Review Meeting was held August 16-20, 1980, in Washington, DC.

After the conference and meeting, the FAA developed plans to publish a series of five notices of proposed rulemaking. The first notice included proposals dealing with the applicability sections of Parts 27 and 29 of the Federal Aviation Regulations (FAR), plus Instrument Flight Rules (IFR) certification and icing criteria. These were subsequently adopted as a final rule effective March 2, 1983 (48 FR 4374; January 31, 1983). The second notice addressed airworthiness standards for type certification of normal and transport category rotorcraft. Amendments based upon that notice were subsequently published in the **Federal Register** on November 6, 1984 (49 FR 44422), and were effective December 6, 1984. The third notice, which covers powerplant proposals, and the fourth notice, covering airframe proposals, are still in preparation.

These amendments, the fifth in the series, are based on Notice of Proposed Rulemaking (NPRM) No. 85-8 published in the **Federal Register** on March 13, 1985 (50 FR 10144). All interested persons have been given an opportunity to participate in the making of these amendments, and due consideration has been given to all matters presented.

## Discussion of Comments

The public comments are discussed below on a section by section basis. The references following each discussion relate to proposals and committees associated with the Regulatory Review Conference.

*Section 1.1 General definitions.*

The proposal to amend § 1.1 by revising the definition of "rotorcraft-load combination" and defining a "Class D rotorcraft-load" received no adverse comments. It is adopted as proposed in Notice No. 85-8.

**Ref:** Proposals 4.506, 507, 526, 527, 532, and 534; Committee III.

*Section 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.*

The proposed amendment would permit a Part 135 certificate holder that operates rotorcraft in remote sites to allow an appropriately trained and authorized pilot to perform preventive maintenance as defined in Part 1 of this chapter and as listed in Appendix A to Part 43. Commenters strongly support this proposal. Numerous exemptions to the current regulations that allow such maintenance have been in effect for some time. To date, preventive maintenance performed under these exemptions has been extremely successful without any known misuse and has resulted in reducing the operating cost of helicopters operating in remote areas.

One commenter suggests that the term "remote area" be further defined to prevent misuse of the intent of this authorization. A remote area can be considered as an area out of the way, far removed from normal support services, or not easily accessible by land or sea. For example, offshore oil derricks, villages in the tundra area of Alaska, and mining sites in the upper Sierra Nevada would normally be considered remote. Any additional explanation is not appropriate for the regulations. Accordingly, § 43.3(h) is adopted as proposed.

**Ref:** Proposal 424; Committee III.

*Section 43.15 Additional performance rules for inspections.*

When this rule was initially proposed in Notice No. 85-8, the progressive inspection was inadvertently omitted. To correct this error, the word "progressive" was inserted in § 43.15(c)(3) between the words "100-hour" and "inspection."

Several commenters recommend that § 43.15(c) (2) and (3) be consolidated into one paragraph and that reference to aircraft type be changed to "a powered aircraft." Consolidation would not make the regulation any clearer. Emphasis on the fact that both reciprocating-engine-powered aircraft and turbine-engine-powered aircraft require runups will help to clarify the intent of the present rule, which does not explicitly address turbine-engine-powered aircraft. Thus, the structure of the proposed rule is retained.

Commenters also express the view that the proposal would add confusion as to who should actually runup and/or start the aircraft engine to perform the required runup. As proposed, the regulation could be interpreted as requiring that the person who does the runup be the same person who approves the aircraft for return to service, even though that person may not be qualified to run the engine or engines. The rule requires that the person approving an aircraft for return to service be the person who shall perform the runup to determine satisfactory performance in accordance with the manufacturer's recommendation. If that person is qualified to return the aircraft to service, that person should also be qualified to perform the runup as required. Two other commenters recommend that, for rotorcraft, the person performing the runup should be a qualified pilot. They argue that when the engines of a helicopter with a fully articulated rotor system are runup, safety dictates that a pilot should perform that runup in case the rotorcraft becomes airborne. The FAA disagrees. Experience has shown that a mechanic who can approve the return of the helicopter to service should be able to safely runup the helicopter, exercising normal caution and good judgment. Section 43.15(c) (2) and (3) is amended as proposed.

**Ref:** Proposal 429; Committee III.

**Part 43, Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance**

All commenters referring to Part 43, Appendix A, strongly concur with the proposal, which would amend the Appendix by adding routine checks or replacement of fuel and oil strainers and filters and magnetic chip detectors under the category of preventive maintenance. The changes to Part 43, Appendix A, are adopted as proposed.

**Ref:** Proposals 431 and 432; Committee III.

*Section 45.14 Identification of critical components.*

One commenter proposes that the rule be amended to allow the omission of markings when the Administrator finds that a part is too small or that it is otherwise impractical to mark a part with any of the information required by the rule. The regulation for the marking of critical/life limited components is not new. The only change is that such marking must be made permanent and legible. The FAA has always recognized that some parts "on condition" and removed at overhaul due to wear, tolerance excesses, etc., are not suitable for permanent marking and do not have finite lives approved by the FAA. Further, such parts are not individually specified in the Maintenance Manual Limitations or Continued Airworthiness Document. Thus, such parts need not be permanently marked. Therefore, § 45.14 is amended as proposed.

**Ref:** Proposal 433; Committee III.

*Section 61.3 Requirement for certificates, ratings, and authorizations.*

It was the intent of the Rotor 5 review to include authority for Category II operations for rotorcraft. The NPRM inadvertently omitted some of the changes necessary to implement this new authorization; therefore, several changes have been made to the final rule. One such change is the removal of the word "airplane" and its replacement by the word "aircraft" in § 61.3(g). Another is the addition of Part 135 to the flush paragraph after paragraph (f)(2).

*Section 61.21 Duration of Category II pilot authorization.*

No public comments were received on § 61.21, and the rule is amended as proposed.

*Section 61.55 Second-in-command qualifications.*

The rule will extend the second-in-command pilot qualifications to include helicopters that are type certificated for more than one required pilot flight crewmember. The proposed rule refers to "required flight crewmember." One commenter points out that unless the word "pilot" is inserted, the rule could be construed to include flight engineers. Since this is not the intent and the omission of the word "pilot" was unintentional, the FAA agrees with the suggestion and the rule is changed accordingly.

The portion of the rule pertaining to an "aircraft" simulator has been changed to "airplane" simulator to reflect the current rule. The FAA had proposed to permit the use of an "aircraft" simulator; however, the technology for helicopter simulation has not developed as rapidly as the technology for airplane simulation. The FAA will continue to develop guidelines for approval of rotorcraft simulation, and this issue will be addressed in another rulemaking action.

**Ref:** Proposal 438; Committee III.

*Section 61.57 Recent flight experience: Pilot in command.*

*Section 61.67 Category II pilot authorization requirements.*

*Section 61.87 Requirements for solo flight.*

*Section 61.105 Aeronautical knowledge.*

*Section 61.107 Flight proficiency.*

No public comments were received on § 61.57, § 61.67, § 61.87, § 61.105, or § 61.107, and they are amended as proposed.

*Section 61.113 Rotorcraft rating: Aeronautical experience.*

Regarding the requirements for a helicopter class rating for a private pilot's license, one commenter suggests that the number of takeoffs and landings required in paragraph (a)(1)(ii) should be reduced to five or, alternatively, that the phrase "en route phase of flight" should be deleted. According to the commenter, if each landing/takeoff operation is separated by an en route phase of flight, an undue economic burden would be placed on the student since "the majority of these operations will be airport-to-airport." The commenter also points out that in some parts of the western United States, suitable night landing areas may be separated by distances in excess of 50 miles.

The FAA has not accepted the requested change for the following reason: The proposed aeronautical experience requirements were discussed at the conference, and it was the consensus that these specific experience requirements are needed to adequately train and prepare a private pilot applicant for a class rating in present-day rotorcraft. It should also be noted that ten takeoffs and landings are required for a private pilot's certificate in an airplane, which is less difficult to operate than a helicopter. It is the position of the FAA that, by increasing the level of aeronautical experience for helicopters, the agency is promoting increased levels of safety. The requirement for ten takeoffs and landings is therefore adopted in the final rule.

The phrase "en route phase of flight" is a necessary part of the regulation, designed to prevent the applicant from merely lifting the helicopter above a given spot, hovering, and then returning it to that spot to achieve the required number of takeoffs and landings. Eliminating the requirement for an "en route phase of flight" would enable the applicant to circumvent the need to demonstrate an ability to maneuver the helicopter successfully at night in all phases of flight.

This requirement will not result in an undue economic burden. Contrary to the assumption made by the commenter that the majority of these operations would be airport-to-airport, a "takeoff and landing separated by an en route phase of flight" could be comprised of a takeoff, a short flight in the vicinity of the takeoff point, and a landing at the same place as the takeoff. An example would be a flight around the landing pattern. The "en route phase of flight" is intended to relate to the need for certain piloting skills. Demonstration of these skills may be accomplished without flying over long distances. There is nothing in the regulation that requires an applicant to fly from one airport to another. The flight hours and maneuvers required in paragraph (a)(1)(ii) are necessary for safety and do not pose an unnecessary economic burden. Consequently, the rule is adopted as proposed.

An objection was raised to the proposed requirement for 15 hours of flight instruction in a gyroplane. This requirement is necessary to ensure a level of proficiency needed for safe operation of the aircraft. Accordingly, the proposed rule is adopted.

**Ref:** Proposals 448, 449, and 450; Committee III.

*Section 61.125 Aeronautical knowledge.*

No public comments were received on § 61.125, and it is amended as proposed.

*Section 61.127 Flight proficiency.*

This section sets forth the operations that must be performed successfully to demonstrate the flight proficiency

required to obtain a commercial pilot certificate. Among the maneuvers required for a helicopter commercial rating is rapid descent with power and recovery.

A number of objections were received regarding this rule. The commenters believe that a strong potential exists for an inexperienced student to be given a check ride by a check pilot not proficient in that particular helicopter. They express fear that this situation could lead to an accident in the event the maneuver is allowed to progress beyond reasonable limits. They question the benefit of requiring this maneuver during a check ride and suggest, alternatively, that settling with power be considered accomplished if the maneuver is signed in the student's log book by that student's instructor.

The FAA agrees that this maneuver may place the student and check pilot at undue risk. Under present Parts 27 and 29, neither the manufacturer nor the FAA demonstrates or evaluates entry or recovery from "settling with power" as part of the aircraft certification. Consequently, it is inappropriate to require the performance of an inflight maneuver that neither the manufacturer nor the FAA is required to observe during aircraft certification.

Delegation to the student's instructor of the FAA responsibility for ensuring that a certain level of flight proficiency has been attained is not the solution to this problem. Instead, the applicant must demonstrate the ability to recognize and recover from imminent entry into settling with power, rather than to actually enter the flight regime from which it may be difficult to recover.

Accordingly, the final rule incorporates this requirement.

**Ref:** Proposal 453; Committee III.

*Section 61.131 Rotorcraft ratings: Aeronautical experience.*

A commenter suggests that commercial helicopter pilot applicants be required to have instrument flight training. The FAA does not agree with this position for several reasons. First, most helicopter operations are and will be conducted in Visual Flight Rules (VFR) conditions. In addition, the flight characteristics of rotorcraft are such that, if weather conditions begin to deteriorate, a pilot may easily and rapidly adjust altitude and direction or, if necessary, find a suitable landing site. Encountering IFR conditions in a rotorcraft is therefore not analogous to the same situation in an airplane, where suitable landing sites are far less numerous and altitude restrictions may be greater. Furthermore, there are fewer rotorcraft properly equipped for instrument flight than airplanes, making training and testing more difficult.

If a pilot wants to conduct operations in IFR conditions, the pilot can obtain an instrument rating. To require all commercial helicopter applicants to be trained in instrument flight would pose an unnecessary burden on the public.

Another commenter objects to the number of required hours for helicopter pilot-in-command flight. The commenter states that the requirements are reasonable for an upgrade from a private to a commercial certificate but excessive for a move from a commercial airplane to a commercial helicopter certificate. According to the commenter, most applicants will need more than 15 hours of flight instruction, and these hours are more important at this stage than pilot-in-command time. It is, therefore, suggested that the requirements be changed to 35 hours of flight instruction and 15 hours of pilot-in-command time.

Two commenters also state that the requirements for crosscountry helicopter flight are excessive, especially for those applicants who already have a commercial pilot certificate with an airplane rating. One of the commenters believes that the act of cross-country flying is not different in a helicopter than in an airplane and, therefore, the requirements should be relaxed for those applicants who hold a commercial pilot certificate with an airplane rating. The other suggests that, since helicopters are short-haul aircraft compared to airplanes, the 50 nautical mile requirement for cross-country flight should be reduced to 25 nautical miles.

The FAA does not concur with these suggestions. The requirements are necessary to demonstrate a proficiency commensurate with the subject rating. The current rule, which requires 10 hours of pilot-in-command time for commercial rotorcraft applicants, is outdated. In addition, as the world leader in training helicopter pilots, the United States is obligated to ensure that the terms of the International Civil Aviation Organization (ICAO) Convention are met. The requirement for 35 hours of pilot-in-command time is consistent with ICAO standards and is clearly reasonable for operations conducted by individuals accepting remuneration for their services.

The cross-country flight-time experience is introduced in these rules to align these minimums with ICAO standards. A cross-country flight in an airplane is not identical to a cross-country flight in a helicopter. A helicopter, with its different flight characteristics, is more affected by wind, which must be taken into consideration during the flight planning process. The wind effect becomes more significant over longer distances. In addition, piloting a helicopter, without the aid of an autopilot, is clearly more challenging when the pilot is, at the same time, attempting to navigate cross-country. Thus, the requirement for cross-country flight for an airplane commercial certificate cannot be substituted for the helicopter cross-country flight requirement.

Another commenter objects to the aeronautical experience required of an applicant for a commercial pilot certificate with a gyroplane class rating. The FAA agrees with the commenter that the proposed minimum flight hours are excessive. The regulation as proposed would impose the same hour requirements for a gyroplane class rating as for a helicopter class rating: 50 hours of flight time in a gyroplane/helicopter; 15 hours of gyroplane/helicopter flight instruction time; and 35 hours of pilot-in-command time in a gyroplane/helicopter. The commenter has operated under an exemption to the requirements contained in paragraphs (b) (3) and (4) since 1983. The exemption reduces the respective requirements for a gyroplane class rating to: 25 hours of flight time in a gyroplane; 10 hours of flight instruction in a gyroplane; and 15 hours of pilot-in-command time in a gyroplane. In granting this exemption, the FAA determined that the requirements could be reduced without adversely affecting safety. The FAA now reaffirms this finding and has amended § 61.131(b) accordingly.

**Ref:** Proposal 454; Committee III.

*Section 61.159 Rotorcraft rating: Aeronautical knowledge.*

No public comments were received on § 61.159, and it is amended as proposed.

*Section 61.161 Rotorcraft rating: Aeronautical experience.*

Proposed § 61.161(b)(4) is clarified by adding the word "performing" before the phrase "the duties of a pilot in command." The remainder of § 61.161 is adopted as proposed.

*Section 61.163 Rotorcraft rating: Aeronautical skill.*

The portion of the proposed rule pertaining to an approved rotorcraft simulator or training device has been deleted. Helicopter simulation issues will be addressed in a separate rulemaking action.

*Section 61.165 Rotorcraft rating: Additional category ratings.*

**Part 61, Appendix A—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings**

No public comments were received on § 61.165 or Appendix A. They are amended as proposed.

**Part 61, Appendix B — Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates With a Helicopter Class Rating and Associated Type Ratings**

The phrase "ground control approach" in proposed paragraph III(c) has been changed to "surveillance or precision radar approach" to agree with the terminology used in the Airman's Information Manual.

One commenter suggests that in paragraph I(d), the phrase "in accordance with operating limitations" be changed to "in accordance with the Rotorcraft Flight Manual procedures." The commenter notes that power assurance procedures are not operating limitations and are placed in the Rotorcraft Flight Manual in the normal procedures or performance section. The comment is valid, and the language of the final rule has been changed accordingly.

The utility of requiring circling approaches as part of the practical test requirements for rotorcraft airline transport pilot certificates was the subject of another comment. The commenter suggests deleting section III(d) based on the view that a circle-to-land maneuver after completion of an instrument approach is remarkably simple and hazard free.

The FAA does not accept this argument. Performing the circle-to-land maneuver after completion of an instrument approach procedure may not always be simpler in a helicopter than it is in an airplane, depending upon the airport environment, weather, and other traffic. A circling approach basically involves different procedures than straight-in approaches. It is, therefore, appropriate for the FAA to require a demonstrated proficiency in executing the maneuver.

A number of commenters strongly object to other maneuvers and procedures required for rotorcraft airline transport pilot ratings. They question the safety and practicality of performing such maneuvers as simulated engine failure and autorotative landings during takeoffs and landings; settling with power; and demonstration of certain emergency procedures. They argue that the FAA inspector on a check ride may be inexperienced with the aircraft and, therefore, might not be able to ensure a safe recovery from these procedures. One commenter also notes that some insurance companies specifically exclude coverage of the aircraft if autorotative landings are involved. The commenters suggest that these maneuvers not be required during a check ride but, rather, that they be considered accomplished if there is an indication in the student's log book by that student's instructor pilot that, the student has demonstrated adequate proficiency.

As mentioned in the discussion under § 61.127, the FAA agrees that settling with power should not be a requirement for any flight check. Therefore, the requirement of proposed Part 61, Appendix B IV(b), has also been changed so that the applicant need only demonstrate a recognition of and recover from imminent flight in the regime referred to as "settling descent with power."

The FAA maintains that all of the other maneuvers and procedures specified in Part 61, Appendix B, should be performed as part of the check ride. It is the responsibility of the FAA to ensure that an applicant for a particular rating is sufficiently competent to maintain a high degree of safety throughout all flight regimes. The standards are even higher for those certificates that enable the successful applicant to offer services for financial remuneration. Thus, it would be inappropriate for the FAA to delegate this responsibility and only require a log book entry by a flight instructor indicating adequate proficiency.

Furthermore, FAA flight inspectors are trained for flight check duties in the category of aircraft in which they conduct flight checks. Also, if an aircraft insurer objects to the routine performance of certain procedures, such as autorotative landings, a one-day waiver can usually be obtained to enable the applicant to take a flight check ride. Finally, if a maneuver or procedure is too dangerous for performance in the aircraft, a prohibition against such activity will appear in the flight manual. Therefore, this maneuver or procedure would not be required in that Particular aircraft.

**Ref:** Proposals 434, 456, 458, 463, 464, 466, and 471 through 480; Committee III.

*Section 91.2 Certificate of authorization for certain Category II operations.*

No comments were received on the proposal to amend § 91.2 to afford small helicopter operators the opportunity of applying for Category II instrument approach authorization. To clarify the application of § 91.2, the proposed language is revised in the final rule by substituting the word "aircraft" for "airplane" and by deleting the phrase "and helicopters," thereby excluding large helicopters as well as large airplanes from the authorization to deviate from the applicable requirements for Category II operations.

*Section 91.23 Fuel requirements for flight in IFR conditions.*

Section 91.23 requires 45 minutes of reserve fuel for all aircraft operating in IFR conditions and ceiling and visibility requirements of 2,000 feet and 3 miles for determining if an alternate airport is needed. The proposal contained in Notice No. 85–8 would reduce the IFR reserve fuel requirement for helicopters from 45 minutes to 30 minutes. It would also lower the minimum ceiling from 2,000 feet to 1,000 feet and lower the visibility minimum from 3 statute miles to 1 statute mile as criteria for determining if an alternate airport is needed.

Five of the seven commenters expressing views on this proposal fully support the proposed changes. One commenter, however, opposes the proposal, not only for lowering fuel reserve from 45 minutes to 30 minutes for helicopters, but for reducing the ceiling and visibility requirements used to determine whether an alternate airport is needed. This commenter expresses the view that the proposal would not only provide little usefulness to the helicopter operator, but would significantly lessen the degree of safety that exists with the current rules. The commenter suggests that helicopter operators do not need relief from the fuel requirement rules in § 91.23 for flight in IFR conditions but would be better served by modifying § 91.83 concerning alternate airport selection requirements. A suggested amendment to § 91.83 to accomplish this recommendation was proposed. Amendments to § 91.83 were not considered in Notice No. 85–8; therefore, any changes affecting the substance of that section are not within the scope of this rulemaking.

Another commenter, though supporting the reduction of the required fuel reserve to 30 minutes for helicopters, questions the reduction of the ceiling and visibility requirements that determine the need for an alternate airport.

The FAA has sufficient experience with operations conducted under Special Federal Aviation Regulation (SFAR) 29, which reduces the required

fuel reserve to 30 minutes for helicopters, to conclude that such a reduction will not lower the level of safety that has been established. This proposal would allow operators greater flexibility and utilization of their helicopters in the IFR environment. Accordingly, § 91.23(a)(3) is adopted as proposed.

The question of weather minimums defined in paragraph (b)(2) has been analyzed in some detail. Subsequent to the recommendations developed at the Rotorcraft Regulatory Review Conference and Review Meeting, the FAA undertook an investigation to examine methods of providing a data base of weather information pertinent to the requirements and qualifications for alternate airports. The increased risk of ceilings and visibilities falling below landing minimums at several U.S. cities was quantified as a function of lowered visibility and ceiling requirements defined in paragraphs (b)(2) (i) and (ii). The study utilized climatology data and weather deterioration models to calculate the probability that an airport would be below precision and nonprecision approach minimums. This investigation and study resulted in a report entitled "Weather Deterioration Models Applied to Alternate Airport Criteria," dated September 1981 (FAA–RD–81–92). The report reaches several preliminary but convincing conclusions. One of these directly related to the limitations defined in § 91.23(b)(2) is: "Any reduction in alternate airport requirements should be offset by limiting the duration of the flights for which the reduced requirements apply. It is recommended that reduced requirements only apply to flights whose flight time is two hours or less." The proposal in Notice No. 85–8 to reduce the ceiling and visibility requirement, however, has no such limitation of flight time as considered necessary by the report. In light of this evidence, the ceiling and visibility requirements for helicopters contained in paragraphs (b)(2) (i) and (ii) remain unchanged from the previous rule.

**Ref:** Proposals 483 and 484; Committee III.

*Section 91.116 Takeoff and landing under IFR: General.*

No unfavorable comments were received on the proposal to amend § 91.116 to establish a separate takeoff minimum of one-half mile visibility for helicopters. One commenter writing on this section recommends that takeoff minimums be established for all Part 91 operations as are landing minimums under this section. Such a suggestion is not a part of the rotorcraft review and is outside the scope of this rulemaking.

**Ref:** Proposal 494; Committee III

*Section 91.171 Altimeter system and altitude reporting equipment tests and inspections.*

No comments were received on the proposed changes to § 91.171, and the rule is amended as proposed.

**Part 91, Appendix A—Category II Operations: Manual, Instruments, Equipment and Maintenance**

One of the purposes of the Rotor 5 rulemaking was to enable rotorcraft to perform Category II operations. In the NPRM, changes that would have made this new authority possible were inadvertently omitted. These changes are now included in the final rule. In Part 91, Appendix A, this change has been accomplished by removing the word "airplane" and replacing it with the word "aircraft" wherever "airplane" appears.

*Section 133.1 Applicability.*

One comment was received regarding the rotorcraft external load operations requirements of paragraph (c)(4). The commenter suggests eliminating the requirement for a Rotorcraft External-Load Operator Certificate for customer acceptance flights. The commenter argues that it is not logical for the FAA to eliminate the requirements for a Rotorcraft External-Load Operator Certificate during the development phase and demonstration of compliance with requirements of Parts 27, 29, and 133 and continue to require a Rotocraft External-Load Operator Certificate for customer acceptance flights. The FAA disagrees with this reasoning. When a manufacturer offers such rides to the public, a higher degree of safety should be required. These customer passengers have a right to know that the safety of the flight on which they are about to embark has been reviewed by the FAA. The language proposed for paragraph (c)(4) is therefore adopted in the final rule.

Section 133.1(c)(5), as proposed, reiterated the exclusion of air carriers from rotorcraft external-load certification rules. The FAA has eliminated this exclusion from the final rule for the following reasons. The exclusion eliminates the applicability of all of Subpart B. Contained within Subpart B is § 133.19(a)(2), which requires aircraft to meet certification requirements of Subpart D, including § 133.43, Structures and design. Similarly, neither § 133.21 nor § 133.23 would be applicable to air carrier operators conducting external-load operations. It would therefore be possible for a pilot who had met the proficiency and skill requirements under Part 135 to not have the experience, knowledge, and skill required to conduct safely an external-load operation under Part 133.

This is not the intent of the regulation. Air carrier and external-load operations are so dissimilar in function that a separate pilot certification process should be required of an air carrier when requesting external-load approval. For this reason, the proposed § 133.1(c)(5) has been deleted from the final rule.

Regarding proposed § 133.1(c)(6), one commenter suggests that only external-load operations conducted by a U.S. military organization for purely military purposes or for operations that cannot be conducted by a certificated commercial operator be exempt from the certification rules. The commenter cites a growing trend of use of public aircraft in competition with bona fide certificated commercial operators that is placing commercial operators at an alleged unfair disadvantage. The commenter further claims that when operations that could be performed by a commercial operator within the limits of his certificate are performed by the military, the public is entitled to the same level of safety. The commenter also suggests that the exclusion be removed from all other operators of public aircraft when conducting external-load operations.

In response to these suggested changes, the FAA notes that according to section 601 of the Federal Aviation Act of 1958, the Administrator is empowered to promote safety of flight of "civil aircraft," defined in section 101(17) of the Act as "any aircraft other than a public aircraft." Thus, public-use aircraft are, by definition, already excluded from § 133.1. The language of proposed § 133.1(c)(6) is not a change in existing regulations; it merely makes explicit the exclusion of public-use aircraft from applicability. The rule is adopted as proposed and renumbered as § 133.1(c)(5).

The number of persons to be carried in Class D rotorcraft-load combinations (§ 133.1(d)) is an issue for several commenters. One commenter states that "person" should be changed to "persons" so that the rule would provide for more than one person to be hoisted into and out of helicopters. The commenter, however, adds that these persons should be hoisted one at a time.

The rule, as written, does not limit the number of persons that can be hoisted into and out of helicopters. Therefore, no

change to the rule is necessary to respond to the commenter's point.

Regarding the number of persons that can be carried at one time, the FAA does not want to place any restrictions on this number at the present time. (See additional discussion on this issue in relation to proposed § 133.35(b)).

**Ref:** Proposals 4, 506, 507, 526, 527, 532, and 534; Committee III.

*Section 133.11 Certificate required.*

*Section 133.13 Duration of certificate.*

*Section 133.21 Personnel.*

*Section 133.23 Knowledge and skill.*

*Section 133.25 Amendment of certificate.*

*Section 133.27 Availability, transfer, and surrender of certificate.*

*Section 133.31 Emergency operations.*

No public comments were received on § 133.11, § 133.13, § 133.21, § 133.23, § 133.25, § 133.27, or § 133.31; they are amended as proposed.

*Section 133.33 Operating rules.*

A commenter suggests a new paragraph for this section. The purpose is to exclude the flight operations checks in § 133.33(c)(4) to (6) if the external load is to be moved only a short distance and at translational speeds just above a hover. The stated rationale is that loads are often carried only vertically with little or no horizontal movement. The commenter argues that the requirement for forward flight tests to determine controllability is superfluous and unnecessary in these cases.

The FAA does not agree that the suggested additional paragraph is needed. Revised § 133.33(c) clearly states that those flight-operational checks will be required "as the Administrator determines are appropriate to the rotorcraft-load combination." Those flight tests that are "superfluous and unnecessary" would not be required.

The requirement in § 133.33(d)(1) for submitting and gaining approval for a plan for each rotorcraft external-load operation over congested areas presents problems for one commenter, who claims that much business would be lost to ground-based competition while the rotorcraft operator attempts to comply with the regulation. The commenter notes that the detail contained in the proposed regulations is more appropriate for an advisory circular or handbook. If some type of plan is deemed necessary, the commenter suggests that the helicopter operator be required to submit to the FAA district office a plan that provides details of steps to be taken to conduct the operation without hazard to persons and property. The plan should be given to the district office before the operation, and the chief pilot or assistant chief pilot would have to certify that the operation would be conducted safely.

The FAA is responsible for developing procedures designed to ensure that external-load operations over congested areas are conducted safely and, through inspection and surveillance activities, to make certain that such procedures are followed. The FAA cannot delegate this oversight responsibility to those who actually conduct the operations, and consequently, has not adopted the suggested change.

The FAA also disagrees with the statement that the regulations go beyond the scope of a normal rulemaking and are more appropriate for an advisory circular or handbook. On the contrary, the regulation provides only guidelines on the types of components comprising a plan of the kind required. Details regarding specific information to be included in each component of the plan would be more appropriately the subject of an advisory circular or handbook. As for the issue of delay, the FAA will attempt to act on any submitted plan in an expeditious manner; however, the FAA cannot compromise safety to promote any given helicopter operation.

One commenter finds the language of § 133.33(f) too restrictive and suggests a change so that a person could conduct operations under IFR within the confines of a control zone when under the terms of a special VFR clearance or otherwise specifically approved by the Administrator. The rationale is that an external-load operation conducted in IFR conditions within a control zone is viable and safe under the terms of a special VFR clearance.

The FAA does not agree. The conduct of an external-load operation in IFR conditions is of sufficiently high risk that the FAA reserves the right to approve each operation. In fact, to clarify that the rule applies to all operations conducted under IFR and not only those in IFR meteorological conditions, the final rule has been changed to read "under IFR" instead of "in IFR conditions."

Finally, it should be noted that the operator has not been precluded from conducting operations under the terms of a special VFR clearance. However, approval from the Administrator will be required for a special VFR clearance to conduct external-load operations.

One commenter proposes the deletion of subparagraph (e) because, it is argued, § 91.119(d) specifically excludes helicopters from "hard numbers." The FAA chooses not to delete this language because it serves as a clarification of the § 133.33 rules as they pertain to helicopter operations. The language of § 133.33 is consistent with § 91.119(d).

*Section 133.35 Carriage of persons.*

One commenter proposes the following addition to § 133.35(a):

"(5) Is a person which forms a part of or is associated with a Class D external-load."

This language is redundant with the provisions already in the rule. The language proposed in Notice No. 85–8 clearly permits a person to be associated with a Class D external-load. The final rule, therefore, is adopted as proposed.

There were a number of comments on § 133.35(b) regarding the persons to be carried as a Class D load and the distance over which they can be transported. One commenter states that there should be restrictions on how many persons should be carried at a time, suggesting that the number be limited to one. Others object to the carriage of any person in a hoist outside the aircraft for any distance.

In contrast, one commenter proposes an exclusion from paragraph (b) for those operations where persons are carried externally but are not intended to be hoisted inside the helicopter, such as the transfer of workers from a boat alongside a well-head to the well-head proper. Another commenter claims that it is too restrictive to limit a Class D load to one person, citing the successful experiments with 10-man Billy Pugh nets in rescue operations.

Proposed § 133.35(b) has been deleted on the basis that it is too restrictive to implement a blanket restriction on the number of persons carried as a Class D load and the distance over which these persons can be carried. Rather than specify limits in a regulation, the FAA will give appropriate guidance for Class D external-load operations to FAA district offices. The conditions under which an operator can carry persons externally will be included in that operator's approved Operations Specification. Proposed § 133.35(c) has been redesignated as § 133.35(b) in the final rule.

**Ref:** Proposal 532; Committee III.

*Section 133.37 Crewmember training, currency, and testing requirements.*

No public comments were received on § 133.37. However, there is a potentially confusing use of the terms "class" and "type" in paragraph (c) in conjunction with external-load operations. The

operation referred to relates to a particular class of external-load operation in a particular type of aircraft. No class of aircraft is intended to be specified. Accordingly, the rule has been amended to clarify the intent. Also, the proposed requirement for testing within the past 12 calendar months has been deleted.

*Section 133.41 Flight characteristics requirements.*

No public comments were received on § 133.41, and it is adopted as proposed.

*Section 133.45 Operating limitations.*

One commenter notes that the proposed rule would eliminate all multiengine helicopters certificated under Part 27 and those certificated as Category B under Part 29 from conducting Class D operations. The FAA has considered this effect; however, the appropriate level of safety dictates a higher standard of airworthiness requirements for conducting Class D operations. Therefore, the rule requires multiengine Category A rotorcraft for Class D operations.

*Section 133.47 Rotorcraft-load combination flight manual.*

*Section 133.51 Airworthiness certification.*

*Section 135.1 Applicability.*

*Section 135.23 Manual contents.*

*Section 135.39 Management personnel qualifications.*

*Section 135.117 Briefing of passengers before flight.*

No public comments were received on § 133.47, § 133.51, § 135.1, § 135.23, § 135.39, or § 135.117, and they are adopted as proposed.

*Section 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR-over-the-top conditions.*

One commenter, noting that the requirements of § 135.159 serve to underline the need for training of helicopter pilots in instruments, proposes that a radio altimeter with a visual or aural warning be required in addition to gyroscopic flight instruments. No justification other than the need for instrument training is given by the commenter. No safety justification is given for the proposal. Further, requirement of such a radio altimeter was not included in Notice No. 85–8, and the public has not had the opportunity to comment on an item of equipment that could have a considerable economic impact on some helicopter operators. Accordingly, the proposal is not accepted.

Another commenter points out that the proposed amendment to § 135.159 is somewhat confusing and does not completely solve the problem of determining what instruments are appropriate for the safe operation of helicopters under VFR at night. The FAA agrees, and the organization for § 135.159 has been modified. Though the regulation adopted is basically the same as proposed in Notice No. 85–8, the rule as adopted has been clarified to provide a clear and more meaningful presentation of the requirements.

**Ref:** Proposal 552; Committee III.

*Section 135.167 Emergency equipment: Extended overwater operation.*

No adverse comments were received on the proposal. One commenter, however, expresses concern that the proposed regulation did not recognize the high incidence of puncturing of liferafts on ditching. That commenter believes the text should stipulate an adequate design requirement versus the number of passengers anticipated. Proposed language was offered as an addition to the proposal to ensure that there were no sharp projections on the aircraft that might puncture survival equipment. The FAA has determined that this is not necessary. This regulation must be read in context with all of the regulations in this chapter, particularly those certification regulations for design requirements for aircraft and equipment. Such basic design requirements are adequate to ensure inadvertent puncturing of survival equipment or difficulties that could arise during a ditching situation.

Paragraph (b)(3)(i) was revised by deleting the word "approved." The FAA will provide guidelines for the contents of survival kits through advisory material rather than set specific standards to which all kits should conform. Air Carrier Operations Bulletin 9–59 provides such guidance. Section 135.167 is adopted as revised.

**Ref:** Proposal 555; Committee III.

*Section 135.173 Airborne thunderstorm detection equipment requirements.*

*Section 135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.*

No public comments were received on § 135.173 or § 135.181, and they are adopted as proposed.

*Section 135.223 IFR: Alternate airport requirements.*

This proposal reduces helicopter fuel reserve requirements from 45 minutes to 30 minutes for flights in IFR conditions. It is closely related to proposed § 91.167 concerning fuel requirements for flight in IFR conditions. The commenters who oppose the reduction of such requirements in Part 91 also oppose the proposed change in the operating rules of Part 135. However, the majority of commenters strongly support the proposal. As previously stated, the FAA has gained sufficient experience in SFAR 29 operations to conclude that reducing the required fuel reserve to 30 minutes for helicopters will not compromise safety. Accordingly, § 135.223 is adopted as proposed.

**Ref:** Proposal 562; Committee III.

*Section 135.227 Icing conditions: Operating limitations.*

No adverse comments were received on this proposal to amend § 135.227 to allow helicopters to fly in icing conditions when the aircraft has been type certificated and appropriately equipped for operations in icing conditions. In this regard, it should be noted that at least one helicopter is now so certificated. Thus, it is appropriate to amend the operating rule to allow the use of such helicopters in icing conditions. Section 135.227 has been amended accordingly.

**Ref:** Proposal 564; Committee III.

*Section 135.429 Required inspection personnel.*

One commenter objects to proposed § 135.429(d), arguing that a person whose competency as a mechanic has not been certified should not be performing maintenance on or inspecting an air carrier aircraft. The commenter does not agree with the argument that remote area operations require unique and innovative accommodations to allow a pilot to perform such inspections on helicopters.

The FAA disagrees. The pilot training under the regulations for utilization of this section requires the same level of competency as an inspector at the home base to ensure safety in all circumstances, particularly in the unique situations that may arise at "remote" localities. In addition, the remaining requirements of this section ensure that the procedures developed for this situation are tightly controlled. Another commenter suggests that "remote areas" be further defined. This issue has been discussed in conjunction with the proposal affecting § 43.3. Section 135.429(d) is adopted as proposed.

**Ref:** Proposal 568; Committee III.

## Economic Summary

The revised rules are expected to have immediate economic impact. All costs and savings data have been inflated [1] to 1985 dollars from the original 1982 dollars data appearing in the regulatory analysis for the NPRM. These data were derived by the FAA from estimates of industry conditions in late 1981 obtained by research on representative operator groups (operating under Parts 91, 133, 135, 137 and 141), which comprise the rotorcraft industry. A 5 percent profit margin factor was used to derive increased profits and lost profits from revenue increases or decreases, respectively. Cost savings are presumed to increase profits by an equal amount.

[1] The Department of Commerce's December 1985 implicit price deflator for the period 1982–1985 was used to inflate the costs and savings data for this analysis.

The 43 regulatory changes in Notice No. 85–8, which were determined to have a negligible or no technical impact, and consequently a negligible or no economic impact, are listed in Table 2, "Rotorcraft Regulatory Review Program Notice No. 85–8 Rule Changes Having Negligible Or No Economic Impact." Many of these changes are either editorial or clarifying in nature. In addition, some changes incorporate into regulations what has become the current practice of the FAA or industry. The assessment of their economic impacts is based on current industry practice, agency experience, and the explanations given under each rule change in the preamble for this rule. No estimates of specific costs or savings are made for these groups of proposals, and the proposed changes are not further discussed in the economic evaluation except where referenced in the table to Appendix A. Additional discussion to that given in the preamble for those eight referenced changes is given in Appendix A of the Regulatory Evaluation.

The remaining operation and maintenance changes in Notice No. 85–8 are determined to have an impact, but the impact is not considered to be major under the procedures and criteria prescribed by Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (46 FR 11034; February 26, 1979), and the changes will not have a significant economic impact on a substantial number of small entities. A discussion of and tables for the benefits and costs (savings) of the eight changes shown in Table 1 and a regulatory flexibility determination for the impacts on small business entities for each of the four changes having an adverse economic impact are presented below.

TABLE 1.—COST AND SAVINGS OF NOTICE NO. 85–8 RULE CHANGES HAVING AN ECONOMIC IMPACT

| FAR section and rule changes | Industry cost (savings) | Principal reason(s) |
|---|---|---|
| Part 43: Appendix A: Major alterations, major repairs and preventive maintenance. | ($461,000 recurring annual cost decrease) ($25,000 annual profit increase). | Reduced expense to transport and use mechanics in remote areas; reduced rotorcraft downtime. |
| 91.23: Fuel requirements for IFR flight | ($542,000 recurring annual cost decrease) | Reduced operational costs from carrying less fuel. |
| 133.021: Pilots | ($537,000 recurring annual cost decrease) | Reduced cost from not having to transport chief pilot to field locations. |
| 133.41: Flight characteristics requirements | ($380,000 recurring annual cost decrease) ($2,100 annual profit increase). | Reduced number of operational flight checks. |
| 133.51: Airworthiness certification | ($116,000 annual cost decrease) ($10,000 annual profit increase). | Reduced paperwork and administrative costs. |
| 135.159: Equipment requirements | $681,000 one-time cost increase, $70,000 recurring annual cost, $3,400 one-time lost profit, $18,000 annual lost profit. | Purchase and installation of Attitude and Heading indicators for rotorcraft now operated under Exemption 2695B. Maintenance cost for instruments; one-time loss for downtime associated with installation; annual loss for some operators stopping night flight instead of purchasing instruments. |
| 135.173: Airborne thunderstorm detection equipment requirements. | $153,000 one-time cost increase, $16,000 recurring annual cost [1]. | Purchase, installation and maintenance of minimum thunderstorm detection (TDX) equipment. It is equipment meeting intent and requirement of rule change for rotorcraft now operating under Exemption 2695B.[1] |
| 135.429: Required inspection personnel | $117,000 one-time cost [2] ($281,000 recurring annual cost decrease) or ($262,000 net annualized cost decrease—10 years, 10 pct capital recovery). | Relieved work requirements for work done at remote areas or sites. One-time cost for some operators to install more extensive system of maintenance.[2] |

[1] This estimate can vary from no cost to industry estimate shown. The decision to install TDX equipment or to cease flying depends on the prevailing thunderstorm weather occurrence in the area of normal operations and the flexibility an operator has to delay revenue flights until weather improves and to reschedule time into other time periods.
[2] The one-time cost accrues to a limited number of operators currently utilizing Exemption 2695B, which permits maintenance under § 135.411(a)(1) instead of § 135.411(a)(2). If only the exemption itself were removed, industry may have recurring cost increases. However, the change provides the primary benefit of the exemption to § 135.411(a)(2), and almost all of the expected recurring costs for them would not be incurred.

TABLE 2.— ROTORCRAFT REGULATORY REVIEW PROGRAM

[Notice No. 85–8 Rule changes having negligible or no economic impact]

| FAR Section | Economic impact |
|---|---|
| FAR Part 1: 1.1 | No impact—definition. |
| FAR Part 43: | |
| 43.3 | Impact considered with Part 43 Appendix A. |
| 43.15 | Negligible costs. |
| FAR Part 45: 45.14. | Negligible costs (Also see Appendix A in this evaluation). |
| FAR Part 61: | |
| 61.55 | Negligible costs (Also see Appendix A in this evaluation). |
| 61.57 | No impact—clarification. |
| 61.87 | Negligible costs. |
| 61.105 | Negligible costs. |
| 61.107 | Negligible costs. |
| 61.113 | Negligible costs (Also see Appendix A in this evaluation). |
| 61.125 | Negligible costs. |
| 61.127 | No impact. |
| 61.131 | Negligible costs (Also see Appendix A in this evaluation). |

TABLE 2.— ROTORCRAFT REGULATORY REVIEW PROGRAM—Continued

[Notice No. 85–8 Rule changes having negligible or no economic impact]

| FAR Section | Economic impact |
|---|---|
| 61.159 | Negligible costs. |
| 61.161 | Negligible savings. |
| 61.163 | Negligible costs (Also see Appendix A in this evaluation). |
| 61.165 | No impact. |
| Appendix A | No impact—clarification. |
| Appendix B | Negligible costs (Also see Appendix A in this evaluation. |
| FAR Part 91: | |
| 91.2 | No impact. |
| 91.116 | Negligible savings. |
| 91.171 | Negligible costs. |
| FAR Part 133: | |
| 133.1 | Negligible savings. |
| 133.11 | No impact—clarification. |
| 133.13 | No impact—clarification. |
| 133.23 | Negligible savings. |
| 133.25 | No impact—clarification (see 133.51). |
| 133.27 | No impact—clarification (see 133.25). |
| 133.31 | No impact—clarification. |

TABLE 2.— ROTORCRAFT REGULATORY REVIEW PROGRAM—Continued

[Notice No. 85–8 Rule changes having negligible or no economic impact]

| FAR Section | Economic impact |
|---|---|
| 133.33 | No impact—clarification. |
| 133.35 | Negligible savings. |
| 133.37 | No impact—optional standard—see 133.1 (Also see Appendix A in this evaluation). |
| 133.39 | No impact. |
| 133.45 | Negligible savings. |
| 133.47 | No impact—clarification (see 133.45). |
| FAR Part 135: | |
| 135.1 | Negligible savings. |
| 135.23 | No impact—clarification. |
| 135.39 | Negligible savings. |
| 135.117 | Negligible savings. |
| 135.167 | Negligible costs (Also see Appendix A in this evaluation). |
| 135.181 | Negligible savings. |
| 135.223 | Negligible savings. |
| 135.227 | No impact—clarification. |

**Benefits and Costs (Savings)**

In addition to editorial changes to and clarification of the present regulations, benefits are likely to accrue from other changes in this notice. Five changes (Part 43, Appendix A; §§ 91.167, 133.21, 133.41, and 133.51) will provide operational and maintenance cost savings to Parts 91, 133, and/or 135 operators. Three changes will cause incurring of new costs. One of these, § 135.429, has an initial one-time cost but will provide a net annual cost decrease through relieved inspection work requirements. The other two, §§ 135.159 and 135.173, increase passenger safety. The costs of these will impact Part 135 operators currently provided relief from the present regulations by using Exemption 2695B.

For a complete discussion of the above, see the copy of the economic evaluation in the Docket, or request a copy from the individual listed under **"FOR FURTHER INFORMATION CONTACT."**

**International Trade Impact Analysis**

With the exception of three negligible cost changes that affect both airplanes and rotorcraft, this rulemaking action implements changes to the regulations governing only the operation and maintenance of rotorcraft in the United States. It should not impact U.S. services in foreign countries nor have a significant impact on foreign services in the United States. In regard to foreign services, for one example, persons authorized to conduct operations in the United States as a foreign air carrier are issued operations specifications in accordance with the requirements of Part 129 of the Federal Aviation Regulations. Therefore, the FAA cannot discern what impact, if any, this regulation would have on international trade.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not unduly affected by Government regulations.

The RFA requires agencies to prepare regulatory flexibility analyses of rules that may have a "significant economic impact on a substantial number of small entities." Thus, the first step in conducting a regulatory flexibility analysis is to determine whether any rule change has a significant economic impact on a substantial number of small entities. The number of businesses and all other estimates used in the following determination have been derived from information and data obtained through industry research on representative rotorcraft operators.

Three changes—§ 135.159, Equipment requirements; § 135.173, Airborne thunderstorm detection equipment; and § 135.429, Required inspection personnel—impose an additional cost on some Part 135 operators. The cost imposed by the three changes is due to the planned expiration of FAA Exemption 2695F and the impact of its removal on those operators now holding the exemption. By examining the exemption holding status of the rotorcraft operators now eligible for relief from the particular rule requirement, two tests can be used to determine whether or not a substantial number of them are significantly impacted.

The RFA requirements are triggered if 34 percent of the operators using the exemption to meet the requirements of § 135.159 (96 operators out of an estimated 286 who conduct night operations) incur an annualized cost increase greater than $3,300. As further explained below, the analysis indicates that these conditions are not met for any of these changes.

*Section 135.173 Airborne thunderstorm detection equipment requirements.*

Although the rule change will be relieving because the requirement for thunderstorm detection equipment for VFR operations has been modified to allow helicopter flight without the equipment under certain conditions, one group of small rotorcraft operators will be adversely affected. These are the operators who use Exemption No. 2695F, which permits the operation of rotorcraft of ten passenger seats or more under VFR (day or night) without thunderstorm detection equipment.

An estimated 41 small operators own or operate rotorcraft with 10 or more passenger seats. An estimated 9 of these 41 use the exemption and are directly affected, but only 6 will incur an annualized economic impact greater than $3,300 when the exemption is removed.[2] Because these six comprise only 15 percent of the affected population, a regulatory flexibility analysis of the exemption from the requirements of § 135.173 is not required.

[2] The analysis was measured with information obtained from industry research made for a stricter rule proposal removing the exemption for this FAR, and the estimate is therefore conservative; that is, the magnitude of impact for each operator is expected to be less.

*Section 135.429 Required inspection personnel.*

Currently, a limited number of small operators of rotorcraft with passenger seating configurations of 10 seats or more use the exemption, which permits such operators to utilize the maintenance requirements of § 135.411(a)(1) for 9 passenger seats or less instead of § 135.411(a)(2) for their rotorcraft. When the exemption is removed, these operators may incur costs to install a more extensive system of maintenance for 10 plus passenger rotorcraft, but the change to § 135.429 will also retain most of the annual benefits that these operators achieved under the exemption to § 135.411(a)(2).

An estimated 41 small operators own or operate rotorcraft with 10 passenger seats or more. Six of these use the exemption and will be directly affected when the exemption is removed. Even if all six incurred an annualized economic impact greater than $3,300, these six would comprise only 15 percent of the affected population. Therefore, a regulatory flexibility analysis for removal of the exemption from the requirements of § 135.411(a)(2) is not required.

*Section 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.*

This rule requires that, for § 135.159, FAA Exemption No. 2695B be rescinded. The exemption permits the operation of rotorcraft with a maximum certificated takeoff weight of 6,000 pounds or less at night under VFR without the following instruments:

(a) Slip skid indicator;

(b) Gyroscopic bank and pitch (attitude) indicator; and

(c) Gyroscopic direction (heading) indicator.

An estimated 254 small operators conduct night operations and have one or more of the subject size aircraft in their fleet. Of these 254 operators, an estimated 104 would be directly affected by removal of the exemption. However, further industry research indicates that of the 120 operators who use the exemption, only 59 will experience an annualized cost greater than $3,300 when the exemption is removed. Because these 59 operators comprise only 23 percent of the 254 operators who are subject to the proposed regulation (they fly at night), a regulatory flexibility analysis is not required for removal of Exemption No. 2695F from the requirements of § 135.159.

In addition to the above economic impacts, the final rule is expected to have beneficial effects on many small businesses. These also are discussed in detail in the Regulatory Flexibility Analysis contained in Appendix B of the Regulatory Evaluation which has been placed in the docket. A summary of these beneficial effects follows.

*Section 133.21 Personnel.*

The objective of these rules is to eliminate external-load accidents due to inadequate pilot competence in performing particular operations. Two methods of ensuring such pilot competence (which can be combined) are to require experience, such as through a "trainee" pilot working a certain amount of time with a "qualified" pilot, and through pilot testing by a qualified examiner. The proposal would permit pilot testing to be carried out by FAA employees, designated examiners, or individuals within the particular company performing the external-load operation. Present regulations provide for such testing only by the Chief Pilot.

An estimated 179 external-load operators are potentially affected by this rule. Almost all may be assumed to be small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to operating territory and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $481,000 projected annual cost savings may be expected to average no more than $2,687 per affected operator.

Industry research indicates that over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The total fleet size distribution of Part 133 operators is unknown. Regardless of whether or not it resembles the distribution of the Part 135 fleet. The relatively high maximum average impact suggests that the threshold of economic impact significance could very well be exceeded by one-third of the potentially affected small operators.

*Section 133.41 Flight characteristics requirements.*

The objective of these rules is to reduce accidents resulting from the use of particular combinations of rotorcraft models with certain external loads and external-load attaching devices. Many such combinations of rotorcraft models, external loads, and external-load attaching devices pose a significant risk of accident even when under the control of a competent pilot. The FAA concludes that confidence in the external-load operation can only be maintained when each possible rotorcraft-load combination is successfully demonstrated at least once.

An estimated 164 external-load rotorcraft operators are potentially affected by this rule. Almost all may be considered small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to fleet diversity and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $340,000 projected annual cost savings and $2,000 annual profit increase for all affected carriers combined may be expected to be no greater than $2,085 per potentially affected small operator, on average.

As stated previously, industry research indicates that somewhat over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The size of the average impact, however, suggests that the threshold of economic impact significance could well be exceeded by one-third of the potentially affected small operators. Section 133.41 is closer to the borderline in this regard than § 133.21.

**Cumulative Economic Impact**

The changes to Part 43, Appendix A, and §§ 91.23, 133.21, 133.41, 133.51, 135.169, 135.173, and 135.429 refer to different, but partially overlapping, categories of operators. The following eight changes are considered to have overlapping impacts:

(1) Part 43, Appendix A—Part 135 operators serving remote areas.

(2) Section 91.23—Part 91 operators (not holding Part 135 certificates) flying to some extent under IFR.

(3) Section 133.21—Part 133 operators in general.

(4) Section 133.41—Part 133 operators in general.

(5) Section 133.51—Part 133 operators in general.

(6) Section 135.159—Part 135 operators flying to some extent VFR at night.

(7) Section 135.173—Part 135 operators using rotorcraft with 10 seats or more.

(8) Section 135.429—Part 135 operators using rotorcraft with 10 seats or more.

Although the first and second categories are, by definition, separate from each other, there exists no operator survey data that would allow the determination or reliable estimation of the actual extent to which each of the other categories overlaps. It is possible to estimate, however, whether or not it is likely that the number of operators experiencing a significant cumulative net economic impact (beneficial or detrimental) from all eight of these rules would constitute one-third or more of the total of individual potentially affected operators, given the (separate) distributions of fleet size for Part 135 and non-Part 135 operators. The determination can be made by assuming operator impact is proportional to operator fleet size.

The total of individual operators potentially affected by any of the rules may be estimated as follows:

| | |
|---|---|
| Part 135 operators, including all in proposal categories (1), (6), (7), and (8), and 42 percent of those in categories (3), (4), and (5). Note.—It is estimated that 42.4 percent of Part 133 operators also hold Part 135 certificates | 358 |
| Non-Part 135 certificate holders, including 57.6 percent of those in proposal categories (3), (4), and (5) | 393 |
| Total | 751 |

This estimate maximizes the extent of "overlapping" among relevant categories and increases the chance of one-third or more of the total individual operators' experiencing a significant cumulative net impact. This is the case because some of the overlapping considered above is not necessarily the most likely representation of actual practice. For example, Part 91 operators that fly under IFR may well not also engage in Part 133 operations, which are generally carried out under VFR. Even with maximum overlapping of potentially affected small operator categories and given the relatively large number of non-Part 135, and even Part 135, operators that have single-craft or very small fleets, an estimated 217 out of 751 would be expected to bear a significant cumulative impact from the eight rules. The remaining 534 would not be significantly impacted. The number of small operators expected to be impacted would be less than one-third of the total of such operators unless at least 120 of those operators were eliminated by being designated "large" operators. Therefore, it is reasonable to expect that the cumulative net economic impact (beneficial or detrimental) of these rules would not reach significant levels for one-third or more potentially affected small operators.

The determination is sensitive to assumptions made concerning: (1) The number of proposal category (2) operators eliminated as "large" entities, and (3) the fleet size of "small operators."

**Conclusion**

A final regulatory flexibility analysis is not required for the revisions being made to §§ 135.159, 135.173, and 135.429. For each of the revisions, the annualized

cost is not greater than $3,300 for more than one-third of the operators who would be affected by the revised regulation. In view of the above, the regulatory changes herein will not have a significant economic impact on a substantial number of small entities.

**Reporting and Recordkeeping Requirements**

The reporting and recordkeeping requirements contained in this amendment have previously been approved by the Office of Management and Budget and have been assigned Control No. 2120–0044.

**Conclusion**

This rule upgrades rotorcraft certification and operational requirements and allows operators to utilize rotorcraft more fully. Therefore, the FAA has determined that this rule is not major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Based on the Regulatory Flexibility determinations discussed in this document, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory evaluation of this rule is contained in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects**

*14 CFR Part 1*

Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Rotorcraft, Helicopters.

*14 CFR Part 43*

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

*14 CFR Part 45*

Air safety, Safety, Aviation safety, Air transportation, Transportation, Helicopters, Rotorcraft.

*14 CFR Part 61*

Airmen, Aircraft pilots, Pilots, Transportation, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Helicopters, Rotorcraft.

*14 CFR Part 91*

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots, Air transportation, Cargo.

*14 CFR Part 133*

Aircraft, Airworthiness, Pilots.

*14 CFR Part 135*

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Transportation, Helicopters.

**Adoption of the Amendment**

In consideration of the foregoing, Parts 1, 43, 45, 61, 91, 133, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 43, 45, 61, 91, 133, and 135) are amended as follows:

## PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 1 is revised to read as set forth below, and the authority citations following each of the sections of Part 1 are removed:

**Authority:** 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 1.1 by revising the introductory paragraph of the definition of "Rotorcraft-load combination" and by adding a new paragraph (4) to read as follows:

**§ 1.1 General definitions.**

* * * * *

"Rotorcraft-load combination" means the combination of a rotorcraft and an external-load, including the external-load attaching means. Rotorcraft-load combinations are designated as Class A, Class B, Class C, and Class D, as follows:

* * * * *

(4) "Class D rotorcraft-load combination" means one in which the external-load is other than a Class A, B, or C and has been specifically approved by the Administrator for that operation.

* * * * *

## PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

3. The authority citation for Part 43 is revised to read as set forth below, and the authority citations following each of the sections of Part 43 are removed:

**Authority:** 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. By amending § 43.3 by redesignating paragraph (h) as paragraph (i) and by adding a new paragraph (h) to read as follows:

**§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.**

* * * * *

(h) Notwithstanding the provisions of paragraph (g) of this section, the Administrator may approve a certificate holder under Part 135 of this chapter, operating rotorcraft in a remote area, to allow a pilot to perform specific preventive maintenance items provided—

(1) The items of preventive maintenance are a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area;

(2) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform;

(3) There is no certificated mechanic available to perform preventive maintenance;

(4) The certificate holder has procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft; and

(5) The items of preventive maintenance authorized by this section are those listed in paragraph (c) of Appendix A of this part.

* * * * *

5. By amending § 43.15 by revising the introductory text of paragraph (c)(2) and by adding a new paragraph (c)(3) to read as follows:

**§ 43.15 Additional performance rules for inspections.**

* * * * *

(c) * * *

(2) Each person approving a reciprocating-engine-powered aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations of—

* * * * *

(3) Each person approving a turbine-engine-powered aircraft for return to service after an annual, 100-hour, or progressive inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations.

* * * * *

6. By amending Part 43, Appendix A, by revising paragraph (c)(23) and by adding new paragraph (c)(30) to read as follows:

**Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance**

* * * * *

(c) * * *

(23) Cleaning or replacing fuel and oil strainers or filter elements.

* * * * *

(30) Removing, checking, and replacing magnetic chip detectors.

## PART 45—IDENTIFICATION AND REGISTRATION MARKING

7. The authority citation for Part 45 is revised to read as set forth below, and the authority citations following each of the sections of Part 45 are removed:

**Authority:** 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, 1522, 1655(c); (Revised Pub. L. 97–449, January 12, 1983).

8. By revising § 45.14 to read as follows:

### § 45.14 Identification of critical components.

Each person who produces a part for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall permanently and legibly mark that component with a part number (or equivalent) and a serial number (or equivalent).

## PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

9. The authority citation for Part 61 is revised to read as set forth below, and the authority citations following each of the sections of Part 61 are removed:

**Authority:** 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

### § 61.3 [Amended]

10. By revising § 61.3 by amending paragraph (f)(2) by removing the phrase "airline transport pilot certificate (airplane)" and replacing it with the phrase "appropriate airline transport pilot certificate"; by amending the flush paragraph after (f)(2) by removing the phrase "Part 121" and replacing it with the phrase "Parts 121 and 135"; and by amending paragraph (g) by removing the word "airplane" wherever it appears and replacing it with the word "aircraft".

### § 61.21 [Amended]

11. By amending § 61.21 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section.

12. By amending § 61.55 by revising the section title, the introductory text of paragraphs (a) and (b), and paragraphs (b)(1), (b)(2) (i) and (ii), and (d)(1) through (d)(3) to read as follows:

### § 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required pilot flight crewmember unless that person holds—

* * * * *

(b) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required pilot flight crewmember unless, since the beginning of the 12th calendar month before the month in which the pilot serves, the pilot has, with respect to that type of aircraft—

(1) Become familiar with all information concerning the aircraft's powerplant, major components and systems, major appliances, performance and limitations, standard and emergency operating procedures, and the contents of the approved aircraft flight manual or approved flight manual material, placards, and markings.

(2) * * *

(i) Three takeoffs and three landings to a full stop in the aircraft as the sole manipulator of the flight controls; and

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command. For airplanes, this requirement may be satisfied in a simulator acceptable to the Administrator.

* * * * *

(d) * * *

(1) Meets the pilot in command proficiency check requirements of Part 121, 125, 127, or 135 of this chapter;

(2) Is designated as the second in command of an aircraft operated under the provisions of Part 121, 125, 127, or 135 of this chapter; or

(3) Is designated as the second in command of an aircraft for the purpose of receiving flight training required by this section and no passengers or cargo are carried on that aircraft.

* * * * *

13. By amending § 61.57 by adding the word "calendar" before the word "months" in the flush paragraph following paragraph (a)(2) and in paragraphs (e)(1) and (e)(2) and by revising the introductory text of paragraph (a) to read as follows:

### § 61.57 Recent flight experience: Pilot in command.

(a) *Flight review.* No person may act as pilot in command of an aircraft unless, within the preceding 24 calendar months, that person has—

* * * * *

### § 61.67 [Amended]

14. By amending § 61.67 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section.

15. By amending § 61.87 by redesignating paragraphs (c)(2) (v), (vi), and (vii) as paragraphs (c)(2) (vi), (vii), and (viii), respectively; by revising the heading of (c)(2); by revising (c)(2)(ii); by adding a new paragraph (c)(2)(v); and by revising redesignated paragraph (c)(2)(viii) and paragraph (c)(3) to read as follows:

### § 61.87 Requirements for solo flight.

* * * * *

(c) * * *

(2) *In rotorcraft other than single-place gyroplanes.*

* * * * *

(ii) Ground maneuvering and runups;

* * * * *

(v) Rapid decelerations (helicopters only);

* * * * *

(viii) Simulated emergency procedures, including autorotational descents with a power recovery or running landing in gyroplanes, a power recovery to a hover in single-engine helicopters, or approaches to a hover or landing with one engine inoperative in multiengine helicopters.

* * * * *

(3) *In single-place gyroplanes.*

(i) Flight preparation procedures, including preflight inspection and powerplant operation;

(ii) Ground maneuvering and runups;

(iii) Straight and level flight, turns, climbs, and descents;

(iv) Navigation by ground references, airport traffic patterns, and collision avoidance procedures;

(v) Normal takeoffs and landings;

(vi) Simulated emergency procedures, including autorotational descents with a power recovery or a running landing; and

(vii) At least three successful flights in a gyroplane under the observation of a qualified instructor. Items in paragraphs (c)(3) (iii) and (iv) of this section may be accomplished in a dual-control helicopter or gyroplane. Instruction must be given by a flight instructor who is authorized to give instruction in helicopters or gyroplanes, as appropriate.

* * * * *

16. By amending § 61.105 by revising paragraph (a) to read as follows: by removing paragraph (b); and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively.

**§ 61.105 Aeronautical knowledge.**

* * * * *

(a) *Airplanes and rotorcraft.* (1) The accident reporting requirements of the National Transportation Safety Board and the Federal Aviation Regulations applicable to private pilot privileges, limitations, and flight operations for airplanes or rotorcraft, as appropriate, the use of the "Airman's Information Manual," and FAA advisory circulars;

(2) VFR navigation using pilotage, dead reckoning, and radio aids;

(3) The recognition of critical weather situations from the ground and in flight, the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and radio communication procedures; and

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate.

* * * * *

17. By amending § 61.107 by revising paragraphs (b)(4), (5) and (6) and by adding new paragraph (b)(7) to read as follows:

**§ 61.107 Flight proficiency.**

* * * * *

(b) * * *

(4) Cross-country flying, using pilotage, dead reckoning, and radio aids, including one 1-hour flight;

(5) Operations in confined areas and on pinnacles, rapid decelerations, landings on slopes, high-altitude takeoffs, and run-on landings;

(6) Night flying, including takeoffs, landings, and VFR navigation; and

(7) Simulated emergency procedures, including aircraft and equipment malfunctions, approaches to a hover or landing with an engine inoperative in a multiengine helicopter, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

18. By revising § 61.113 to read as follows:

**§ 61.113 Rotorcraft rating: Aeronautical experience.**

An applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) *For a helicopter class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters in preparation for the private pilot flight test within 60 days before that test; and

(iv) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters at an airport with an operating control tower, each of which must be separated by an en route phase of flight.

(b) *For a gyroplane class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 days before that test; and

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

(c) An applicant who does not meet the night flying requirement in paragraphs (a)(1)(ii) or (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraphs (a)(1)(ii) or (b)(1)(ii) of this section, as appropriate.

19. By amending § 61.125(b) by removing the word "and" in paragraph (b)(3); by removing the period at the end of paragraph (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

**§ 61.125 Aeronautical knowledge.**

* * * * *

(b) * * *

(5) Basic aerodynamics and principles of flight which apply to rotorcraft and the significance and use of performance charts.

* * * * *

20. By amending § 61.127 by removing the word "and" at the end of paragraph (b)(7); by revising paragraphs (b)(5) and (8); and by adding a new paragraph (b)(9) to read as follows:

**§ 61.127 Flight proficiency.**

* * * * *

(b) * * *

(5) Recognition of and recovery from imminent flight at critical/rapid descent with power (settling with power);

* * * * *

(8) Operations in confined areas and on pinnacles, rapid decelerations, landing on slopes, high-altitude takeoffs, and run-on landings; and

(9) Simulated emergency procedures, including failure of an engine or other component or system, and approaches to a hover or landing with one engine inoperative in multiengine helicopters, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

21. By revising § 61.131 to read as follows:

**§ 61.131 Rotorcraft ratings: Aeronautical experience.**

An applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience as a pilot:

(a) *For a helicopter class rating,* 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters preparing for the commercial pilot flight test within 60 days before that test; and

(iv) Takeoffs and landings at three points other than airports; and

(2) 100 hours of pilot-in-command flight time, 35 hours of which must be in a helicopter, including at least—

(i) 10 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters, each of which must be separated by an en route phase of flight, at an airport with an operating control tower.

(b) *For a gyroplane class rating,* 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 10 hours of which must be in a gyroplane, including at least—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes preparing for the commercial pilot flight test within 60 days before that test; and

(2) 100 hours of pilot-in-command flight time, 15 hours of which must be in a gyroplane, including at least—

(i) 10 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which is more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

22. By revising § 61.159 to read as follows:

**§ 61.159 Rotorcraft rating: Aeronautical knowledge.**

An applicant for an airline transport pilot certificate with a rotorcraft category and a helicopter class rating must pass a written test on—

(a) So much of this chapter as relates to air carrier rotorcraft operations;

(b) Rotorcraft design, components, systems, and performance limitations;

(c) Basic principles of loading and weight distribution and their effect on rotorcraft flight characteristics;

(d) Air traffic control systems and procedures relating to rotorcraft;

(e) Procedures for operating rotorcraft in potentially hazardous meteorological conditions;

(f) Flight theory as applicable to rotorcraft; and

(g) The items listed under paragraphs (b) through (m) of § 61.153.

23. By revising § 61.161 to read as follows:

**§ 61.161 Rotorcraft rating: Aeronautical experience.**

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating must hold a commercial pilot certificate, or a foreign airline transport pilot or commercial pilot certificate with a rotorcraft category and helicopter class rating issued by a member of ICAO, or be a pilot in an armed force of the United States whose military experience qualifies that pilot for the issuance of a commercial pilot certificate under § 61.73.

(b) An applicant must have had at least 1,200 hours of flight time as a pilot, including at least—

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time, of which at least 15 hours are in helicopters;

(3) 200 hours in helicopters, including at least 75 hours as pilot in command, or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof; and

(4) 75 hours of instrument time under actual or simulated instrument conditions of which at least 50 hours were completed in flight with at least 25 hours in helicopters as pilot in command, or as second in command performing the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof.

24. By revising § 61.163 to read as follows:

**§ 61.163 Rotorcraft rating: Aeronautical skill.**

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating, or additional aircraft rating, must pass a practical test on those maneuvers set forth in Appendix B of this part in a helicopter. The FAA inspector or designated examiner may modify or waive any maneuver where necessary for the reasonable and safe operation of the rotorcraft being used and may combine any maneuvers and permit their performance in any convenient sequence to determine the applicant's competency.

(b) Whenever an applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating does not already have an instrument rating, the applicant shall, as part of the practical test, comply with § 61.65(g).

25. By amending § 61.165 by removing paragraph (b); by redesignating paragraph (c) as (b); and by revising the introductory text of both paragraphs (a) and redesignated (b) to read as follows:

**§ 61.165 Additional category ratings.**

(a) *Rotorcraft category with a helicopter class rating.* The holder of an airline transport pilot certificate (airplane category) who applies for a rotorcraft category with a helicopter class rating must meet the applicable requirements of §§ 61.159, 61.161, and 61.163 and—

* * * * *

(b) *Airplane rating.* The holder of an airline transport pilot certificate (rotorcraft category) who applies for an airplane category must comply with §§ 61.153, 61.155 (except § 61.155(b)(1)), and 61.157 and—

* * * * *

26. By amending Part 61 by revising the title of Appendix A to read as follows:

**Appendix A—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings**

* * * * *

27. By amending Part 61 by adding a new Appendix B to read as follows:

**Appendix B—Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates with a Helicopter Class Rating and Associated Type Ratings**

Throughout the maneuvers prescribed in this appendix, good judgment commensurate with a high level of safety must be demonstrated. In determining whether such judgment has been shown, the FAA inspector or designated pilot examiner who conducts the check considers adherence to approved procedures, actions based on analysis of situations for which there is no prescribed procedure or recommended practice, and qualities of prudence and care in selecting a course of action. The successful outcome of a procedure or maneuver will never be in doubt.

*Maneuvers/Procedures*

The maneuvers and procedures in this appendix must be performed in a manner that satisfactorily demonstrates knowledge and skill with respect to—

(1) The helicopter, its systems, and components;

(2) Proper control of airspeed, direction, altitude, and attitude in accordance with procedures and limitations contained in the approved Rotorcraft Flight Manual, checklists, or other approved material appropriate to the rotorcraft type; and

(3) Compliance with approved en route, instrument approach, missed approach, ATC, and other applicable procedures.

*I. Preflight*

(a) *Equipment examination (oral).* The equipment examination must be repeated if the flight maneuvers portion is not satisfactorily completed within 60 days. The equipment examination must cover—

(1) Subjects requiring a practical knowledge of the helicopter, its powerplants, systems, components, and operational and performance factors;

(2) Normal, abnormal, and emergency procedures and related operations and limitations; and

(3) The appropriate provisions of the approved helicopter Flight Manual or manual material.

(b) *Preflight inspection.* The pilot must—

(1) Conduct an actual visual inspection of the exterior and interior of the helicopter, locating each item and explaining briefly the purpose of inspecting it; and

(2) Demonstrate the use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies before flight.

(c) *Taxiing.* The maneuver includes ground taxiing, hover taxiing (including performance checks),,and docking procedures, as appropriate, in compliance with instructions issued by ATC, the FAA inspector, or the designated pilot examiner.

(d) *Powerplant checks.* As appropriate to the helicopter type in accordance with the Rotorcraft Flight Manual procedures.

*II. Takeoffs*

(a) *Normal.* One normal takeoff from a stabilized hover which begins when the helicopter is taxied into position for takeoff.

(b) *Instrument.* One takeoff with instrument conditions simulated at or before reaching 100 feet above airport elevation.

(c) *Crosswind.* One crosswind takeoff from a stabilized hover, if practical under the existing meteorological, airport, and traffic conditions.

(d) *Powerplant failure.* (1) For single-engine rotorcraft, one normal takeoff with simulated powerplant failure.

(2) For multiengine rotorcraft, one normal takeoff with simulated failure of one engine—

(i) At an appropriate airspeed that would allow continued climb performance in forward flight; or

(ii) At an appropriate airspeed that is 50 percent of normal cruise speed, if there is no published single-engine climb airspeed for that type of helicopter.

(e) *Rejected.* One normal takeoff that is rejected after simulated engine failure at a reasonable airspeed, determined by giving due consideration to the helicopter's characteristics, length of landing area, surface conditions, wind direction and velocity, and any other pertinent factors that may adversely affect safety.

*III. Instrument Procedures*

(a) *Area departure and arrival.* During each of these maneuvers, the applicant must—

(1) Adhere to actual or simulated ATC clearances (including assigned bearings or radials); and

(2) Properly use available navigation facilities.

(b) *Holding.* This maneuver includes entering, maintaining, and leaving holding patterns.

(c) *ILS and other instrument approaches.* The instrument approach begins when the helicopter is over the initial approach fix for the approach procedure being used (or turned over to the final controller in case of a surveillance or precision radar approach) and ends when the helicopter terminates at a hover or touches down or where transition to a missed approach is completed. The following approaches must be performed:

(1) At least one normal ILS approach.

(2) For multiengine rotorcraft, at least one manually controlled ILS approach with a simulated failure of one powerplant. The simulated engine failure should occur before initiating the final approach course and continue to a hover to touchdown or through the missed approach procedure.

(3) At least one nonprecision approach procedure that is representative of the nonprecision approach procedure that the applicant is likely to use.

(4) At least one nonprecision approach procedure on a letdown aid other than the approach procedure performed under subparagraph (3) of this paragraph that the applicant is likely to use.

(d) *Circling approaches.* At least one circling approach must be made under the following conditions:

(1) The portion of the circling approach to the authorized minimum circling approach altitude must be made under simulated instrument conditions.

(2) The approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90 degrees from the final approach course of the simulated instrument portion of the approach.

(3) The circling approach must be performed without excessive maneuvering and without exceeding the normal operating limits of the rotorcraft. The angle of bank should not exceed 30 degrees.

(e) *Missed approaches.* Each applicant must perform at least two missed approaches with at least one missed approach from an ILS approach. At the discretion of the FAA inspector or designated examiner, a simulated powerplant failure may be required during any of the missed approaches. The maneuvers may be performed either independently or in conjunction with maneuvers required under section III or V of this appendix. At least one must be performed in flight.

*IV. In-flight Maneuvers*

(a) *Steep turns.* At least one steep turn in each direction must be performed. Each steep turn must involve a bank angle of 30 degrees with a heading change of at least 180 degrees but not more than 360 degrees.

(b) *Settling with power.* Demonstrate recognition of and recovery from imminent flight at critical/rapid descent with power. For the purpose of this maneuver, settling with power is reached when a perceptive buffet or other indications of imminent settling with power have been induced.

(c) *Powerplant failure.* In addition to the specific requirements for maneuvers with simulated powerplant failures, the FAA inspector or designated examiner may require a simulated powerplant failure at any time during the check.

(d) Recovery from unusual attitudes.

*V. Approaches and Landings*

(a) *Normal.* One normal approach to a stabilized hover or to the ground must be performed.

(b) *Instrument.* One approach to a hover or to a landing in sequence from an ILS instrument approach.

(c) *Crosswind.* One crosswind approach to a hover or to the ground, if practical under the existing meteorological, airport, or traffic conditions.

(d) *Powerplant failure.* For a multiengine rotorcraft, maneuvering to a landing with simulated powerplant failure of one engine.

(e) *Rejected.* Rejected landing, including a normal missed approach procedure at approximately 50 feet above the runway. This maneuver may be combined with instrument or missed approach procedures, but instrument conditions need not be simulated below 100 feet above the runway or landing area.

(f) *Autorotative landings.* Autorotative landings in a single-engine helicopter. The applicant may be required to accomplish at least one autorotative approach and landing from any phase of flight as specified by the FAA inspector or designated examiner.

*VI. Normal and Abnormal Procedures*

Each applicant must demonstrate the proper use of as many systems and devices listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has a practical knowledge of the use of the systems and devices appropriate to the helicopter type:

(a) Anti-icing or deicing systems.

(b) Autopilot or other stability augmentation devices.

(c) Airborne radar devices.

(d) Hydraulic and electrical systems failures or malfunctions.

(e) Landing gear failures or malfunctions.

(f) Failure of navigation or communications equipment.

(g) Any other system appropriate to the helicopter as outlined in the approved Rotorcraft Flight Manual.

*VII. Emergency Procedures*

Each applicant must demonstrate the proper emergency procedures for as many of the emergency situations listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has adequate knowledge of, and ability to perform, such procedures:

(a) Fire or smoke control in flight.

(b) Ditching.

(c) Evacuation.

(d) Operation of emergency equipment.

(e) Emergency descent.

(f) Any other emergency procedure outline in the approved Rotorcraft Flight Manual.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

28. The authority citation for Part 91 is revised to read as set forth below, and the authority citations following each of the sections of Part 91 are removed:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

### § 91.2 [Amended]

29. By amending § 91.2 by substituting the word "aircraft" for "airplane" after the phrase "for the operation of small" and changing the word "find" to "finds" after the phrase "Category II operations, if he".

30. By amending § 91.23 by revising paragraph (a)(3) to read as follows:

### § 91.23 Fuel requirements for flight in IFR conditions.

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

* * * * *

31. By amending § 91.116 by revising the title, revising the first clause in the introductory text of paragraph (f), revising paragraph (f)(1), and adding paragraph (f)(3) to read as follows:

### § 91.116 Takeoff and landing under IFR: General.

* * * * *

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no person operating an aircraft under Part 121, 125, 127, 129, or 135 of this chapter * * *

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

* * * * *

(3) For helicopters—1/2 statute mile visibility.

* * * * *

### § 91.171 [Amended]

32. By amending § 91.171 by inserting the words "or helicopter" after the word "airplane" each time it appears in paragraphs (a), (b)(1), (b)(2)(iv), and (d).

### Appendix A—[Amended]

33. By amending Part 91, Appendix A, by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears and by removing the words "General Aviation District Office" in section 1(a) and inserting in its place the words "Flight Standards District Office."

## PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

34. The authority citation for Part 133 is revised to read as set forth below, and the authority citations following each of the sections of Part 133 are removed:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

35. By amending § 133.1 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

### § 133.1 Applicability.

* * * * *

(b) Operating and certification rules governing the conduct of rotorcraft external-load operations in the United States by any person.

(c) The certification rules of this part do not apply to—

(1) Rotorcraft manufacturers when developing external-load attaching means;

(2) Rotorcraft manufacturers demonstrating compliance of equipment utilized under this part or appropriate portions of Part 27 or 29 of this chapter;

(3) Operations conducted by a person demonstrating compliance for the issuance of a certificate or authorization under this part;

(4) Training flights conducted in preparation for the demonstration of compliance with this part; or

(5) A Federal, State, or local government conducting operations with public aircraft.

(d) For the purpose of this part, a person other than a crewmember or a person who is essential and directly connected with the external-load operation may be carried only in approved Class D rotorcraft-load combinations.

36. By amending § 133.11 by revising paragraph (b) to read as follows:

### § 133.11 Certificate required.

* * * * *

(b) No person holding a Rotorcraft External-Load Operator Certificate may conduct rotorcraft external-load operations subject to this part under a business name that is not on that certificate.

### § 133.13 [Amended]

37. By amending § 133.13 by placing a period after the word "renewed" and by removing the phrase ", except that a certificate issued before June 25, 1977 expires on August 10, 1979."

38. By amending § 133.21 by revising the title; by revising paragraph (b); and by adding new paragraph (c) to read as follows:

### § 133.21 Personnel.

* * * * *

(b) The applicant must designate one pilot, who may be the applicant, as chief pilot for rotorcraft external-load operations. The applicant also may designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot when the chief pilot is not readily available. The chief pilot and assistant chief pilots must be acceptable to the Administrator and each must hold a current Commercial or Airline Transport Pilot Certificate, with a rating appropriate for the rotorcraft prescribed in § 133.19.

(c) The holder of a Rotorcraft External-Load Operator Certificate shall report any change in designation of chief pilot or assistant chief pilot immediately to the FAA certificate-holding office. The new chief pilot must be designated and must comply with § 133.23 within 30 days or the operator may not conduct further operations under the Rotorcraft External-Load Operator Certificate unless otherwise authorized by the FAA certificate-holding office.

39. By amending § 133.23 by adding a new paragraph (b)(5) and by revising the introductory text of paragraph (c) to read as follows: By removing the introductory text of paragraph (c)(6); by removing "; and" in paragraph (c)(6)(i) and inserting a period in its place; and by redesignating amended paragraphs (c)(6) (i) and (ii) as (c) (6) and (7), respectively.

### § 133.23 Knowledge and skill.

* * * * *

(b) * * *

(5) Appropriate rotorcraft-load combination flight manual.

(c) The test of skill requires appropriate maneuvers for each class requested. The appropriate maneuvers for each load class must be demonstrated in the rotorcraft prescribed in § 133.19.

* * * * *

40. By amending § 133.25 by designating the current undesignated text as paragraph (a); by removing from redesignated paragraph (a) the phrase "a rotorcraft or" after the words "amendment of the applicant's certificate, to add or delete"; by amending paragraph (a) by removing the phrase "§§ 133.19, 133.21, and 133.23," and inserting the phrase "§§ 133.19 and 133.49," in its place; and by adding a new paragraph (b) to read as follows:

**§ 133.25 Amendment of certificate.**

* * * * *

(b) The holder of a rotorcraft external-load certificate may apply for an amendment to add or delete a rotorcraft authorization by submitting to the certificate-holding FAA district office a new list of rotorcraft, by registration number, with the classes of rotorcraft-load combinations for which authorization is requested.

41. By amending § 133.27 by revising paragraph (a) to read as follows:

**§ 133.27 Availability, transfer, and surrender of certificate.**

(a) Each holder of a rotorcraft external-load operator certificate shall keep that certificate and a list of authorized rotorcraft at the home base of operations and shall make it available for inspection by the Administrator upon request.

* * * * *

42. By revising § 133.31 to read as follows:

**§ 133.31 Emergency operations.**

(a) In an emergency involving the safety of persons or property, the certificate holder may deviate from the rules of this part to the extent required to meet that emergency.

(b) Each person who, under the authority of this section, deviates from a rule of this part shall notify the Administrator within 10 days after the deviation. Upon the request of the Administrator, that person shall provide the certificate-holding FAA district office a complete report of the aircraft operation involved, including a description of the deviation and reasons for it.

**§ 133.33 [Redesignated as § 133.39]**

43. By redesignating § 133.33 as § 133.39.

44. By adding a new § 133.33 to read as follows:

**§ 133.33 Operating rules.**

(a) No person may conduct a rotorcraft external-load operation without, or contrary to, the Rotorcraft-Load Combination Flight Manual prescribed in § 133.47.

(b) No person may conduct a rotorcraft external-load operation unless—

(1) The rotorcraft complies with § 133.19; and

(2) The rotorcraft and rotorcraft-load combination is authorized under the Rotorcraft External-Load Operator Certificate.

(c) Before a person may operate a rotorcraft with an external-load configuration that differs substantially from any that person has previously carried with that type of rotorcraft (whether or not the rotorcraft-load combination is of the same class), that person must conduct, in a manner that will not endanger persons or property on the surface, such of the following flight-operational checks as the Administrator determines are appropriate to the rotorcraft-load combination:

(1) A determination that the weight of the rotorcraft-load combination and the location of its center of gravity are within approved limits, that the external load is securely fastened, and that the external load does not interfere with devices provided for its emergency release.

(2) Make an initial liftoff and verify that controllability is satisfactory.

(3) While hovering, verify that directional control is adequate.

(4) Accelerate into forward flight to verify that no attitude (whether of the rotorcraft or of the external load) is encountered in which the rotorcraft is uncontrollable or which is otherwise hazardous.

(5) In forward flight, check for hazardous oscillations of the external load, but if the external load is not visible to the pilot, other crewmembers or ground personnel may make this check and signal the pilot.

(6) Increase the forward airspeed and determine an operational airspeed at which no hazardous oscillation or hazardous aerodynamic turbulence is encountered.

(d) Notwithstanding the provisions of Part 91 of this chapter, the holder of a Rotorcraft External-Load Operator Certificate may conduct (in rotorcraft type certificated under and meeting the requirements of Part 27 or 29 of this chapter, including the external-load attaching means) rotorcraft external-load operations over congested areas if those operations are conducted without hazard to persons or property on the surface and comply with the following:

(1) The operator must develop a plan for each complete operation, coordinate this plan with the FAA district office having jurisdiction over the area in which the operation will be conducted, and obtain approval for the operation from that district office. The plan must include an agreement with the appropriate political subdivision that local officials will exclude unauthorized persons from the area in which the operation will be conducted, coordination with air traffic control, if necessary, and a detailed chart depicting the flight routes and altitudes.

(2) Each flight must be conducted at an altitude, and on a route, that will allow a jettisonable external load to be released, and the rotorcraft landed, in an emergency without hazard to persons or property on the surface.

(e) Notwithstanding the provisions of Part 91 of this chapter, and except as provided in § 133.45(d), the holder of a Rotorcraft External-Load Operator Certificate may conduct external-load operations, including approaches, departures, and load positioning maneuvers necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

(f) No person may conduct rotorcraft external-load operations under IFR unless specifically approved by the Administrator. However, under no circumstances may a person be carried as part of the external-load under IFR.

45. By adding a new § 133.35 to read as follows:

**§ 133.35 Carriage of persons.**

(a) No certificate holder may allow a person to be carried during rotorcraft external-load operations unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with the external-load operation; or

(4) Is necessary to accomplish the work activity directly associated with that operation.

(b) The pilot in command shall ensure that all persons are briefed before takeoff on all pertinent procedures to be followed (including normal, abnormal, and emergency procedures) and equipment to be used during the external-load operation.

46. By adding a new § 133.37 to read as follows:

**§ 133.37 Crewmember training, currency, and testing requirements.**

(a) No certificate holder may use, nor may any person serve, as a pilot in operations conducted under this part unless that person—

(1) Has successfully demonstrated,to the Administrator knowledge and skill with respect to the rotorcraft-load combination in accordance with § 133.23 (in the case of a pilot other than the chief pilot or an assistant chief pilot who has been designated in accordance with § 133.21(b), this demonstration may be made to the chief pilot or assistant chief pilot); and

(2) Has in his or her personal possession a letter of competency or an appropriate logbook entry indicating

compliance with paragraph (a)(1) of this section.

(b) No certificate holder may use, nor may any person serve as, a crewmember or other operations personnel in Class D operations conducted under this part unless, within the preceding 12 calendar months, that person has successfully completed either an approved initial or a recurrent training program.

(c) Notwithstanding the provisions of paragraph (b) of this section, a person who has performed a rotorcraft external-load operation of the same class and in an aircraft of the same type within the past 12 calendar months need not undergo recurrent training.

47. By amending § 133.41 by revising the first sentence of paragraph (a) and the introductory text of (c) and by revising paragraph (c)(5) to read as follows:

**§ 133.41 Flight characteristics requirements.**

(a) The applicant must demonstrate to the Administrator, by performing the operational flight checks prescribed in paragraphs (b), (c), and (d) of this section, as applicable, that the rotorcraft-load combination has satisfactory flight characteristics, unless these operational flight checks have been demonstrated previously and the rotorcraft-load combination flight characteristics were satisfactory. * * *

* * * * *

(c) *Class B and D rotorcraft-load combinations:* The operational flight check must consist of at least the following maneuvers:

* * * * *

(5) Demonstrating appropriate lifting device operation.

* * * * *

48. By amending § 133.45 by removing paragraph (a); by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d), respectively; and by adding a new paragraph (e) to read as follows:

**§ 133.45 Operating limitations.**

* * * * *

(e) The rotorcraft-load combination of Class D may be conducted only in accordance with the following:

(1) The rotorcraft to be used must have been type certificated under transport Category A for the operating weight and provide hover capability with one engine inoperative at that operating weight and altitude.

(2) The rotorcraft must be equipped to allow direct radio intercommunication among required crewmembers.

(3) The personnel lifting device must be FAA approved.

(4) The lifting device must have an emergency release requiring two distinct actions.

49. By amending § 133.47 by revising paragraph (c)(2) to read as follows:

**§ 133.47 Rotorcraft-load combination flight manual.**

* * * * *

(c) * * *

(2) Precautionary advice regarding static electricity discharges for Class B, Class C, and Class D rotorcraft-load combinations; and

* * * * *

50. By revising § 133.51 to read as follows:

**§ 133.51 Airworthiness certification.**

A Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft type certificated under Part 27 or 29 of this chapter (or their predecessor parts) and listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under this part.

## PART 135—AIR TAXI OPERATOR AND COMMERCIAL OPERATORS

51. The authority citation for Part 135 is revised to read as set forth below, and the authority citations following each of the sections of Part 135 are removed:

**Authority:** 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

52. By amending § 135.1 by revising paragraph (b)(4)(vi) to read as follows:

**§ 135.1 Applicability.**

* * * * *

(b) * * *

(4) * * *

(vi) Powerline or pipeline patrol, or similar types of patrol approved by the Administrator;

* * * * *

53. By amending § 135.23 by revising paragraph (a) to read as follows'

**§ 135.23 Manual contents.**

* * * * *

(a) The name of each management person required under § 135.37(a) who is authorized to act for the certificate holder, the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operational control under § 135.77;

* * * * *

54. By amending § 135.39 by revising paragraph (b)(2)(i) to read as follows:

**§ 135.39 Management personnel qualifications.**

* * * * *

(b) * * *

(2) * * *

(i) Hold a current, commercial pilot certificate with an instrument rating. If an instrument rating is not required for the pilot in command under this part, the chief pilot must hold a current, commercial pilot certificate; and

* * * * *

55. By amending § 135.117 by revising paragraph (c) and adding new paragraphs (d), (e), and (f) to read as follows:

**§ 135.117 Briefing of passengers before flight.**

* * * * *

(c) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a crewmember.

(d) Notwithstanding the provisions of paragraph (c) of this section, for aircraft certificated to carry 19 passengers or less, the oral briefing required by paragraph (a) of this section shall be given by the pilot in command, a crewmember, or other qualified person designated by the certificate holder and approved by the Administrator.

(e) The oral briefing required by paragraph (a) shall be supplemented by printed cards which must be carried in the aircraft in locations convenient for the use of each passenger. The cards must—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(f) The briefing required by paragraph (a) may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

56. By amending § 135.159 by revising paragraphs (a) through (f) and by adding new paragraphs (g) and (h) to read as follows:

**§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.**

* * * * *

(a) A gyroscopic rate-of-turn indicator except on the following aircraft:

(1) Helicopters with a third attitude instrument system usable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(2) Helicopters with a maximum certificated takeoff weight of 6,000 pounds or less.

(b) A slip skid indicator.

(c) A gyroscopic bank-and-pitch indicator.

(d) A gyroscopic direction indicator.

(e) A generator or generators able to supply all probable combinations of continuous in-flight electrical loads for required equipment and for recharging the battery.

(f) For night flights—

(1) An anticollision light system;

(2) Instrument lights to make all instruments, switches, and gauges easily readable, the direct rays of which are shielded from the pilots' eyes; and

(3) A flashlight having at least two size "D" cells or equivalent.

(g) For the purpose of paragraph (e) of this section, a continuous in-flight electrical load includes one that draws current continuously during flight, such as radio equipment and electrically driven instruments and lights, but does not include occasional intermittent loads.

(h) Notwithstanding provisions of paragraphs (b), (c), and (d), helicopters having a maximum certificated takeoff weight of 6,000 pounds or less may be operated until January 6, 1988, under visual flight rules at night without a slip skid indicator, a gyroscopic bank-and-pitch indicator, or a gyroscopic direction indicator.

57. By amending § 135.167 by redesignating paragraph (b) as (c); by revising paragraphs (a) (1) and (2); and by adding a new paragraph (b) to read as follows:

**§ 135.167 Emergency equipment: Extended overwater operations.**

* * * * *

(a) * * *

(1) An approved life preserver equipped with an approved survivor locator light for each occupant of the aircraft. The life preserver must be easily accessible to each seated occupant.

(2) Enough approved liferafts of a rated capacity and buoyancy to accommodate the occupants of the aircraft.

(b) Each liferaft required by paragraph (a) of this section must be equipped with or contain at least the following:

(1) One approved survivor locator light.

(2) One approved pyrotechnic signaling device.

(3) Either—

(i) One survival kit, appropriately equipped for the route to be flown; or

(ii) One canopy (for sail, sunshade, or rain catcher);

(iii) One radar reflector;

(iv) One liferaft repair kit;

(v) One bailing bucket;

(vi) One signaling mirror;

(vii) One police whistle;

(viii) One raft knife;

(ix) One $CO_2$ bottle for emergency inflation;

(x) One inflation pump;

(xi) Two oars;

(xii) One 75-foot retaining line;

(xiii) One magnetic compass;

(xiv) One dye marker;

(xv) One flashlight having at least two size "D" cells or equivalent;

(xvi) A 2-day supply of emergency food rations supplying at least 1,000 calories per day for each person;

(xvii) For each two persons the raft is rated to carry, two pints of water or one sea water desalting kit;

(xviii) One fishing kit; and

(xix) One book on survival appropriate for the area in which the aircraft is operated.

* * * * *

58. By amending § 135.173 by redesignating paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), respectively; by amending redesignated paragraph (c) by inserting the phrase "or (b)" after the words "required by paragraph (a)"; by revising paragraph (a); and by adding a new paragraph (b) to read as follows:

**§ 135.173 Airborne thunderstorm detection equipment requirements.**

(a) No person may operate an aircraft that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, except a helicopter operating under day VFR conditions, unless the aircraft is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

(b) After January 6, 1988, no person may operate a helicopter that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, under night VFR when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with airborne thunderstorm detection equipment may reasonably be expected along the route to be flown, unless the helicopter is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

* * * * *

59. By amending § 135.181 by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

**§ 135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.**

* * * * *

(b) Notwithstanding the restrictions in paragraph (a)(2) of this section, multiengine helicopters carrying passengers offshore may conduct such operations in over-the-top or in IFR conditions at a weight that will allow the helicopter to climb at least 50 feet per minute with the critical engine inoperative when operating at the MEA of the route to be flown or 1,500 feet MSL, whichever is higher.

* * * * *

60. By amending § 135.223 by revising paragraph (a)(3) to read as fcllows:

**§ 135.223 IFR: Alternate airport requirements.**

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

* * * * *

61. By amending § 135.227 by redesignating paragraphs (c) and (d) as (d) and (e), respectively; by amending newly designated paragraph (e) by inserting the phrase "the restrictions in paragraphs (b), (c), and (d)" in place of "the restrictions in paragraphs (b) and. (c)"; and by adding a new paragraph (c) to read as follows:

**§ 135.227 Icing conditions: Operating limitations.**

* * * * *

(c) No pilot may fly a helicopter under IFR into known or forecast icing conditions or under VFR into known icing conditions unless it has been type certificated and appropriately equipped for operations in icing conditions.

* * * * *

62. By amending § 135.429 by redesignating paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

**§ 135.429 Required inspection personnel.**

* * * * *

(d) In the case of rotorcraft that operate in remote areas or sites, the Administrator may approve procedures for the performance of required inspection items by a pilot when no other qualified person is available, provided—

(1) The pilot is employed by the certificate holder;

(2) It can be shown to the satisfaction of the Administrator that each pilot authorized to perform required inspections is properly trained and qualified;

(3) The required inspection is a result of a mechanical interruption and is not a part of a certificate holder's continuous airworthiness maintenance program;

(4) Each item is inspected after each flight until the item has been inspected by an appropriately certificated mechanic other than the one who originally performed the item of work; and

(5) Each item of work that is a required inspection item that is part of the flight control system shall be flight tested and reinspected before the aircraft is approved for return to service.

* * * * *

Issued in Washington, DC on October 31, 1986.

**Donald D. Engen,**

*Administrator.*

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Part VII

# Department of Energy

## Office of Hearings and Appeals

## Implementation of Special Refund Procedures; Notice

## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

### 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 $25 million obtained as a result of a consent order which the DOE entered into with Getty Oil Company, a major integrated refiner. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund of a portion of the Getty consent order funds must be filed in duplicate and must be received by June 30, 1987. All applications should refer to Case Number HEF-0209 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

**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 relates to a consent order entered into by the DOE and Getty Oil Company (Getty), and its subsidiary Skelly Oil Company, which settled all claims and disputes between Getty and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period August 19, 1973 through December 31, 1978 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Getty consent order funds was issued on December 13, 1985, 50 FR 51984 (December 20, 1985), and February 18, 1986, 51 FR 5790 (February 18, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Getty pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased refined petroleum products sold by Getty and Skelly during the consent order period. Eligible applicants include indirect customers as well as first purchasers. In order to receive a refund, a claimant may submit all of the required information listed in the Decision. In order to assist applicants, the DOE has attached as an Appendix to the Decision a suggested format that contains all of the required information.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased petroleum products sold by Getty during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than June 30, 1987.

Dated: October 24, 1986.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

October 24, 1986.

### Decision and Order of the Department of Energy

*Implementation of Special Refund Procedures*

Name of Firm: Getty Oil Co.
Date of Filing: October 13, 1983.
Case No.: HEF-0209.

On October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) concerning a December 3, 1979 consent order which ERA entered into with Getty Oil Company (Getty). In its Petition, ERA requests that OHA formulate and implement special procedures to make refunds to parties that were injured by the alleged regulatory violations settled in the Getty consent order.

I. Background

Getty was an integrated refiner of crude oil and petroleum products during the period of federal price controls and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150, and 10 CFR Parts 210, 211 and 212. The ERA conducted an extensive audit of Getty's operations—and those of its wholly-owned affiliate, Skelly Oil Company (generally referred to collectively as Getty)[1]—for the period August 19, 1973 through December 31 1978. As a result of this audit, ERA contended in a number of administrative and judicial proceedings that Getty had violated applicable DOE price and allocation regulations in its sales of crude oil and petroleum products. On December 3, 1979, ERA and Getty executed a consent order that, with the exception of three enumerated issues, settled all compliance disputes involving the firm's regulated operations during the period August 19, 1973 through December 31, 1978 (hereinafter referred to as the consent order or settlement period).[2] Getty agreed in the consent order to deposit $25 million into an escrow account for subsequent distribution by DOE to Getty customers and to reduce by $50 million its banks of unrecovered product costs. *See generally* 10 CFR 212.83(e); Consent Order ¶ 5.[3] In return, ERA agreed to end all its challenges to Getty's compliance with the federal petroleum regulations except for the three issues listed in the consent order. The Getty consent order specifically pointed out that "[E]xecution of this Consent Order constitutes neither an admission by Getty nor a finding by Special Counsel or DOE that Getty has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, or the Department of Energy." Consent Order ¶ 11.

On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures concerning the Getty settlement fund. In a Proposed Decision and Order (PD&O) issued on December 13, 1985, OHA tentatively accepted jurisdiction over the Getty settlement fund and set forth for public comment proposed refund procedures. *See* 50 FR 51984 (December 20, 1985). The purpose of this determination is to review the proposed procedures in light

[1] During the consent order period, Getty exercised indirect control over Skelly. It owned a 3.56 percent interest in Skelly and an 87.93 percent interest in Mission Corporation (Mission), which in turn held a 72.53 percent interest in Skelly. Getty and Skelly were generally considered by the agency to be a single "firm" pursuant to 10 CFR 212.83(b). The ERA audit covered all of both firms' regulated activities during the consent order period.

[2] The three issues exempted from the consent order are: (i) A June 27, 1978 Notice of Probable Violation (NOPV) involving crude oil production at Getty's Kern River field (this enforcement proceeding was subsequently administratively closed by ERA); (ii) the Decision and Order in Getty Oil Co., 1 DOE ¶ 80,102 (1977), and Getty Oil Co. v. DOE, 539 F.Supp. 1204 (D.Del., 1983), *aff'd*, 749 F.2d 734 (Temp. Emer. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1176 (1985)), concerning certain crude oil exchanges with Standard Oil Company of Ohio; and (iii) issues relating to the propriety of the costs reported by Getty or its predecessors for interaffiliate purchases of natural gas liquids or natural gas liquid products or shrinkage costs under 10 CFR Part 212, Subpart K.

[3] The amount of escrowed funds currently held in an interest-bearing account with the United States Treasury had grown to $48,418,826.10 as of September 30, 1986.

of the comments which we received and to adopt final procedures, including a suggested application format, for the filing of first-stage refund applications by individuals and firms that purchased Getty refined petroleum products during the consent order period. Since we will not make a determination as to the distribution of any funds remaining after the payment of injured parties in the first stage until all of the first stage claims have been paid, we will not address comments concerning second-stage procedures until that time.

II. Jurisdiction and Authority to Fashion Refund Procedures

The DOE procedural regulations at 10 C.F.R Part 205, Subpart V, provide that the OHA may, upon petition by ERA, formulate and implement special procedures by which refunds may be made to injured persons. In the PD&O, we tentatively determined that we should assume jurisdiction over the Getty settlement fund. We noted that during the consent order period Getty was a producer of crude oil, a natural gas plant operator, and a refiner and marketer of a full slate of petroleum products in 43 states. We observed that the ERA audits which preceded the consent order alleged a substantial number of refiner pricing formula violations, the effects of which would have been distributed throughout all sales of Getty's petroleum products. We therefore concluded that a Subpart V proceeding would be appropriate to distribute the Getty settlement fund. No commenter has challenged this conclusion and, accordingly, we accept jurisdiction to administer this consent order fund.

III. Proposed Refund Procedures

In the December 13, 1985 PD&O, after reviewing publicly available, relevant marketing information, the Getty audit files, and proprietary data reported to the Energy Information Administration (EIA) by Getty, we found that most potential claimants would likely be firms and individuals that purchased Getty refined products, rather than crude oil purchasers.[4] We proposed the adoption of general presumptions and findings that had been used successfully in prior refund proceedings. The first presumption, the "volumetric presumption," stated that the maximum refund available to a particular applicant would be that proportion of the total consent order fund equal to the volume of Getty purchases made by the applicant divided by all sales of covered products by Getty during the settlement period. We have set the Getty volumetric factor at $0.001526 per gallon, which we will use to divide the settlement monies among applicants who demonstrate that they are eligible to receive refunds.[5] The other presumptions and findings contained in the PD&O included: (i) The presumption that spot purchasers were unlikely to have been injured by their purchases of Getty products; (ii) the presumption that consignee agents were not injured; (iii) the presumption that regulated industries and agricultural cooperatives need not prove absorption of injury provided they certify that any refunds received will be passed through to their customers; (iv) the presumption that resellers and retailers seeking refunds of $5,000 or less for their purchases of products other than motor gasoline were injured (the small claims presumption); (v) a standard for establishing injury for larger claimants which required showings of banks of unrecovered product costs and inability to pass through increased prices during the consent order period; (vi) a finding that ultimate consumers of products other than motor gasoline were injured in their purchases of Getty products. We also suggested that we would apply to allocation claims, *i.e.*, claims by firms alleging injury due to a failure by Getty to furnish product which it was obliged to supply pursuant to the DOE mandatory allocation regulations, 10 CFR Part 211, the standards used in related refund cases. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.* 10 DOE ¶ 85,012 (1982).

We also proposed the adoption of level-of-distribution presumptions for Getty motor gasoline purchases which were based upon Getty-specific pricing data for a portion of the consent order period. That data formed the basis for certain tentative inferences about the absorption of alleged overcharges by Getty's resellers. Under these presumptions, a reseller applicant that elected to use the presumption would receive 93 percent of its volumetrically allocated refund amount for volumes of Getty motor gasoline sold at retail, without having to provide proof of injury beyond purchase volumes. The presumption level for resellers' volumes sold to customers other than end users (*i.e.*, at dealer tankwagon (DTW) prices) was 7 percent; the level-of-distribution percentage for consumers that purchased from resellers was also set at 7 percent. We noted that the data available to us regarding Getty's middle distillate and related refined product prices was too indefinite to use as the basis for the adoption of level-of-distribution presumptions for those products. We therefore solicited comments and information on appropriate level-of-distribution presumptions for middle distillates, propane, and other refined products.

The PD&O was first published in the **Federal Register** on December 20, 1985, and comments were requested by February 18, 1986. *See* 50 FR 51984 (December 20, 1985). Under the disclosure agreement with EIA under which OHA received Getty-specific price information that formed a basis for our tentative determinations, OHA was obliged to delete confidential data from the copy of the PD&O which was published. Texaco Inc., Getty's successor, later agreed to the publication of a complete version of the PD&O, but requested that disclosure of the underlying data be restricted to persons who entered into a protective order limiting use of the data to this refund proceeding. On February 18, 1986, a complete copy of the PD&O was published and the comment period was extended to March 20, 1986. See 51 FR 5789 (February 18, 1986). Only one party requested a protective order under which it would receive the underlying data and that request was denied because it was untimely and because disclosure of the information was unlikely to produce any useful comments. *See Geraldine H. Sweeney*, 14 DOE ¶ 82,501 (1986).

IV. Comments on the Proposed Procedures

The PD&O was mailed to a variety of organizations representing a broad spectrum of potential Getty refund applicants. Eight parties filed comments, of which two are states. These two comments concern second-stage refund procedures and will not be considered until the first-stage refunds are completed.

A. *Overall Refund Procedures.* The National Council of Farmers Cooperatives (NCFC) generally objected to the PD&O's failure to include

[4] Refined product pricing violations were the focus of the Getty consent order. *See, e.g.*, March 31, 1978 Notice of Probable Violation (alleging overstatement of costs due to excessive shipping costs). The audit underlying the consent order included relatively few crude oil issues. *See* PD&O, 50 FR at 51936.

[5] The volumetric factor was computed by dividing the consent order fund ($25,439,677.90) by the number of gallons of refined products which Getty and Skelly sold during the consent order period (16,667,285,701 gallons). In addition to principal, claimants will receive a portion of the interest which has accrued since the Getty funds were received by the DOE. Interest in the Getty account is currently almost equal to the principal. For example, a firm receiving a volumetric refund of $3,000 would receive an additional $2,900 in interest.

procedures for crude oil claims. In the PD&O, we noted that the majority of the enforcement issues underlying the Getty consent order related to Getty's activities as a refiner and seller of refined petroleum products. In fact, the few crude oil issues raised during the Getty audit were either reserved for separate treatment or did not represent a significant part of the negotiations which led to the settlement. *See* PD&O, 50 FR at 51936. *Compare Conoco, Inc.*, 13 DOE ¶ 85,316 (1985) (separate claims pool and refund process established for crude oil claims where consent order specified that it included allegations of crude oil overcharges). The NCFC has not provided any evidence or even any specific argument as to why the tentative determination to limit the claims process to refined products customers was incorrect. The focus of this Subpart V proceeding is the restitution of funds to "injured parties." See 10 CFR 205.280(a). Our review of the audit record in this proceeding confirms the judgment that the consent order which led to this proceeding focused on Getty's sales of refined products; thus, the injured parties to receive remedies in this proceeding are those that purchased refined products from Getty. Accordingly, we reject the suggestion that procedures for refunds to purchasers of crude oil from Getty be adopted in this proceeding.

The NCFC also requests that cooperatives be exempted from the spot purchaser presumption as they were in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). In *Husky*, we held that, to the extent that a cooperative's spot purchases were resold to its member/owners, we would not apply the general presumption that spot purchasers were not injured by their purchases. *See also Sid Richardson Carbon and Gasoline Co./ MFA Oil Co.*, 14 DOE ¶ 85,339 (1986). As in other refund proceedings, cooperatives will be required to certify that they will pass on to their members any refunds pertaining to any Getty products that they resold to their members. As a result, any refunds made on the basis of spot purchases will flow to the ultimate consumers of the products that, under the spot purchaser presumption, are presumed to have borne the brunt of alleged overcharges associated with product purchased on a spot basis. Accordingly, we will adopt the NCFC's suggestion and exempt cooperatives from the spot purchaser presumption to the extent their spot purchases were resold to member/ owners.[6]

Geraldine H. Sweeney, a motorist, National Freight, Inc., an interstate trucking company, and RJG Cab, Inc., a taxicab company (collectively styling themselves as the surface transportation end users), included among their comments their objection to the PD&O's limitation of claims to refined products that were subject to federal price controls. For example, the PD&O provided that applicants could only receive refunds for middle distillates purchased between August 19, 1973, and June 30, 1976, the date when middle distillate prices were decontrolled. The surface transporters contend that the OHA had previously concluded that refiner overcharges affected all refined products, not just those subject to federal price controls, in *Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). The group therefore requests that OHA permit claims to be made by end users of all products, controlled and uncontrolled.

We are unable to accept this suggestion. It would be inconsistent with the purpose of this proceeding to permit claims to be made for products that were not covered by the terms of the consent order. The purpose of this proceeding is to formulate procedures for distributing funds obtained through DOE's enforcement proceedings. Those enforcement proceedings necessarily involve only controlled products since without price or allocation controls, there could be no regulatory violations. The language which the surface transporters cite from the OHA Stripper Well Report refers to a different situation. That report involved an analysis of the impact of crude oil overcharges on the refining industry as a whole, and the focus was on absorption or passthrough of those overcharges in sales of any products by refiners. Thus decontrol of certain products during the period of price controls was irrelevant. Here, the alleged regulatory violations involved in this case could only have occurred on controlled products. We therefore reject the suggestion that purchasers of uncontrolled products be permitted to file claims for those purchases.

Skelgas Service Center, Ltd., a retailer of Skelly propane located in Rhinelander, Wisconsin, filed comments endorsing the volumetric allocation of refund money for propane claimants. The firm also suggested that successful reseller applicants should be required to pass on any refunds received to their customers. Before we could consider such a requirement, we would have to conclude that propane resellers as a group likely passed on all alleged Getty overcharges to their customers, were not injured by any alleged overcharges, and thus are not themselves entitled to a refund. There is no material in the record to support such a conclusion and, in fact, our experience in other refund proceedings has been to the contrary. *See, e.g., MAPCO, Inc./Vanguard Petroleum Corp.*, 14 DOE ¶ 85,267 (1986). Consequently, we are unable to adopt Skelgas Service's suggestion that propane resellers be required to pass on all refunds.

*B. Motor Gasoline Presumptions.* Three groups of resellers and one consumer representative filed comments on the proposed level-of-distribution presumptions of injury for motor gasoline. Energy Watch, Inc., which represents several independent Getty retailers, urged adoption of the PD&O without modification and obliquely criticized the comments of those who suggested revisions as being based upon self-serving and unrepresentative pricing data. The Getty/Skelly Brand Committee of the Petroleum Marketers Association of America (PMAA), which represents approximately 200 Getty wholesalers, filed comments arguing that the data underlying the PD&O's analysis was faulty and proposing an alternative methodology of determining injury based upon data which it had collected from its members. The National Association of Texaco Wholesalers, Inc., which represents approximately 300 Getty/Skelly independent jobbers who converted to the Texaco brand when Texaco acquired Getty, generally supported the PMAA analysis, stating that it agreed with data supplied to the association by its members.

Subsequently, the PMAA filed additional comments suggesting that the Getty motor gasoline procedures be modified to comport with procedures OHA adopted in a recent refund proceeding, *Marathon Oil Company*, 14 DOE ¶ 85,269 (1986). (In *Marathon* we allowed each reseller applicant (including retailers) for a refined products refund to elect whether its claim would be governed by the $5,000 small claims presumption or the overall reseller level-of-distribution presumption.) Finally, the aforementioned surface transportation

[6] Sales to non-members will be treated like sales by any other reseller.

end users, on their own behalf and as purported representatives of all surface transportation end users, criticized the PD&O's marginal analysis of probable injury for resellers and proposed that an alternative analysis based upon testimony offered to OHA in the Stripper Well Litigation be substituted. *See* the OHA Stripper Well Report. As we shall discuss below, we have concluded that the PMAA's observations concerning the data utilized in the PD&O are accurate and that the alternate data which it provided is more reliable than the EIA data discussed in the PD&O. We will substantially revise the proposed refund procedures for motor gasoline in accordance with these findings.

The PD&O compared the wholesale, DTW and retail prices for motor gasoline which Getty reported to the EIA during the consent order period, with the national average refiner prices at the same levels of distribution. From this comparison it appeared that Getty's wholesale and retail motor gasoline prices were always lower than the national average, while its DTW price was about the same. On this basis we proposed the conclusion that throughout the settlement period, profit margins for Getty jobbers selling at DTW were better than average and profit margins for jobbers and retailers were generally depressed. It also appeared that consumers of Getty motor gasoline enjoyed lower than average prices during most of the consent order period. Although the proposed conclusions varied substantially from the findings in other refiner refund proceedings, in the absence of any other material pertaining to Getty's pricing, we proposed that specified presumptions of injury for motor gasoline refund applicants should be based upon this material and the claimant's position in the chain of distribution. Since there was little or no price information pertaining to Getty's sales of middle distillates and natural gas liquid products (NGLPs), no level-of-distribution presumptions were proposed for those products. Instead, the PD&O solicited data from commenters that might lead to such presumptions.

In its comments, the PMAA presented substantial evidence consisting of statistical summaries of Getty price data which it had gathered from approximately 100 Getty jobbers. The PMAA's submission also included the underlying data and solicitation forms used in its survey. That material showed that the wholesale prices which Getty had actually charged these jobbers for motor gasoline differed significantly from the prices which Getty reported to the EIA.[7] The material included the prices that the jobbers had paid Getty for regular and premium motor gasoline and diesel fuel during the consent order period. According to PMAA, a comparison of these prices with those reported by *Platt's Oil Price Handbook and Oilmanac (Platt's)* for the appropriate region, shows that the jobbers absorbed far more overcharges than indicated by the Getty/EIA data. In fact, the level of injury alleged by the PMAA on the basis of this data is approximately five times greater than that produced by the EIA data. Furthermore, the PMAA data conforms more closely to our experience in other refiner refund proceedings. *See, e.g., Standard Oil Company (Indiana),* 10 DOE ¶ 85,048 (1982) *(Amoco); Mobil Oil Corp.,* 13 DOE ¶ 85,339 (1985) *(Mobil).*

Our own comparison of the PMAA data with the EIA data which were used in the preliminary analysis of the PD&O confirms that the PMAA data are more reliable for our purposes. The EIA data used weighted averages of the prices of each grade of motor gasoline reported by Getty. As a result, certain inconsistencies and peculiarities in the prices reported by Getty for individual grades of gasoline were hidden. Once these individual prices reported for the different grades of gasoline are examined, the unreliability is apparent. For example, in addition to the problems identified by the PMAA,[8] the wholesale price which Getty reported for regular gasoline during the relevant period frequently exceeded the wholesale prices reported for premium and/or unleaded motor gasoline. Obviously, since regular gasoline should always have been sold at the lowest of the prices reported for the three fuels, the underlying data and thus the weight-averaged data relied on in the PD&O cannot be accurate.

In contrast, the summary (and underlying) data provided by the PMAA is not marked by anomalies like the Getty/EIA data and utilizes well-known, reliable sources often employed by OHA. For example, the PMAA has used *Platt's* for its price comparisons, a highly reliable reference for regional wholesale prices. *See, e.g., Husky Oil Co./Montana Petroleum Marketing Co.,* 14 DOE ¶ 85,270 (1986) (gasoline and diesel fuel); *Belridge Oil Co./Chevron, U.S.A.,* 14 DOE ¶ 85,389 (1986) (propane). In addition, the PMAA's proposed alternative analysis is based upon data provided by approximately one-half of its 200 Getty wholesale members, a substantial portion of the eligible jobber claimants.[9] Furthermore, we have examined the raw data actually provided by all of the PMAA members which responded to the PMAA survey, including some information which was not used in the summary because the respondent did not provide data for the entire consent order period.[10] We also reviewed all of the compilations that the PMAA used in its proposed alternative analysis, and find all of the material to be consistent, both within the data set and with our experience with refined products markets.[11] We also performed the same analysis as done by PMAA and confirmed its results.[12] Moreover, the results of the PMAA survey and analysis are very similar to our experience in other refund proceedings. *See, e.g., Amoco; Mobil.* On the basis of these factors, we have concluded that in establishing a presumption of injury for jobber purchasers of Getty motor gasoline, the PMAA material should be substituted for the data which Getty reported to the EIA. Based upon our analysis of this material, we find that Getty jobbers incurred injury in their purchases of Getty motor gasoline in the range of 37.6 to 45.3 percent.

In view of these conclusions regarding the EIA wholesale pricing data, we also reconsidered the DTW and retail prices

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[7] The PMAA had obtained the Getty-specific EIA price data under the Freedom of Information Act pursuant to a protective order entered in Mobil Oil Corp. v. DOE, No. CA 84-1683 (D.D.C., July 10, 1984). The PMAA has submitted a letter indicating that Getty's successor, Texaco Inc., has authorized PMAA to use this confidential material in the Getty refund proceeding.

[8] The PMAA pointed out several counter-intuitive aspects of the EIA data which cast doubt on the entire data set. For example, it noted that according to the EIA data, Getty's wholesale premium gasoline sales volumes fell about 25 percent from January to February 1977 and then doubled in March. There is no apparent explanation for such an anomaly. In addition, Getty's reported gasoline prices prior to February 1977 consisted entirely of premium and no-lead grades, although presumably the firm produced regular gasoline at its refining operations.

[9] The PMAA claims that the total number of eligible jobber claimants is approximately four hundred.

[10] Not all of the PMAA members responded to the association's survey and not all of the respondents furnished data for the entire consent order period.

[11] We therefore reject Energy Watch, Inc.'s unsupported assertions that the data submitted by the PMAA is self-serving and unrepresentative.

[12] In reviewing the PMAA's analysis, we found that price data from one jobber whose motor gasoline prices were markedly different from others reporting in the same marketing region had been included in the summary presentation. In addition, the averages calculated for some marketing regions may have been slightly skewed by the inclusion of data provided by this jobber and a number of other jobbers that did not report prices for the entire consent order period. Therefore, we recalculated the summary material to eliminate these problems and found that the results of the analysis were not materially altered.

which Getty had reported to EIA. The DTW prices were, on the whole, unexceptionable, generally following national average prices. However, the Getty retail price data were irregular. For example, Getty did not report any price data for its retail sales of regular leaded motor gasoline until February 1977, the same month that Skelly's retail sales were first included with the Getty reports. Since regular leaded motor gasoline should have been the lowest priced automotive fuel, it is difficult to understand how the retail motor gasoline price which Getty reported for months prior to February 1977—based upon an average of only the higher unleaded regular and premium gasoline prices—could have consistently been $0.03 to $0.05 *lower* than the national average price data which included regular gasoline. This price data also shares some of the difficulties which led us to reject the Getty jobber data. Consequently, we have concluded that the preliminary determinations of injury for retailers in the PD&O should be revised.

Neither the PMAA nor the retailer representative, Energy Watch, Inc., provided any information showing actual DTW prices paid or retail prices charged in sales of Getty motor gasoline during the consent order period. The PMAA suggests we utilize the cost absorption presumption adopted in *Marathon* in which a reseller claimant may elect to limit its claim to $5,000, or the amount obtained by applying a presumed absorption percentage figure to its claim, whichever is larger. Claims above $5,000 automatically have applied to them the cost absorption presumption, up to $50,000, unless the applicant provides a detailed demonstration of injury in support of its full volumetric share. Claimants seeking refunds of more than $50,000 were required to provide more extensive proof of injury, including banks of unrecovered product cost increases and evidence that price increases were not passed through in resales to customers.

Using the *Marathon* procedures, a reseller claimant in this proceeding would qualify for the maximum small claims refund of $5,000 if it documents purchases of approximately 50,400 gallons of controlled Getty/Skelly products per month throughout the consent order period, or a total of 3,276,540 gallons. This has obvious advantages. Utilizing this provision will afford most retailers the opportunity to apply for a refund based on their purchase volumes without having to provide detailed information concerning injury. In the *Marathon* proceeding we have found this methodology to be fair, efficient and cost-effective, and we have determined that we will adopt it in this case as well.

For larger reseller and retailer motor gasoline claims, however, we will adopt a level-of-distribution percentage. Because EIA's retail Getty price data is both incomplete and flawed and no other Getty-specific material has been provided or is otherwise available, we must look elsewhere for a valid absorption presumption. After surveying all other refiner refund proceedings, it appears that for our purposes, the *Amoco* case is the most similar to the present proceeding. Amoco's sales were concentrated in the Eastern and Midwestern regions of the United States, as were Getty/Skelly's, and the Amoco consent order period most closely corresponds to the Getty settlement period. Furthermore, the percentage of absorption of injury adopted for retailers in *Amoco* was 40 percent. We note that the 40 percent figure falls within the middle of the range of injury calculated for jobbers based upon the alternative PMAA data set. For these reasons we will adopt a 40 percent level-of-distribution figure for claims by retailers and wholesalers.[13] As stated, these presumptions may be rebutted in favor of an actual showing of injury at a greater level.

*C. Other Revisions to the Proposed Procedures.* As noted, in the PD&O we requested that responsible industry representatives provide data upon which presumptions of injury for purchasers of middle distillates, propane and other refined products might be based. The PMAA responded by providing diesel fuel price data obtained from 42 of its members. Although not as conclusive as its motor gasoline survey, the diesel fuel analysis provided by the PMAA has the same indicia of reliability. As stated in the PD&O, the price data reported by Getty to the EIA was erratic and not of sufficient duration to allow an injury analysis. In contrast, the prices reported by the PMAA follow a rational pattern and extend over the entire period of price controls for middle distillates. As with the motor gasoline analysis, the association has compared the prices reported by its members with those found in the relevant *Platt's* listing for each reporting jobber. We have concluded from our examination of the materials submitted and the analysis presented by the PMAA that the diesel fuel data form a reliable basis for a presumption of injury for all middle distillates. We will therefore adopt a percentage presumption of injury for sales of middle distillates to jobbers in the range proposed by the PMAA (35 to 67 percent). The mid-point of that range is approximately 50 percent, which for ease of administration we shall adopt for claims above $5,000.

No industry representative came forward with price data for sales of Getty NGLPs for the consent order period. This is unfortunate, inasmuch as additional data would be very useful. The record indicates that Getty's propane sales were substantial—they represented about 17 percent of Getty's total refined product sales and involved at least 1,000 dealers. Moreover, the Getty audit file indicates that issues concerning Getty's natural gas processing operations and NGLP sales were integral to the settlement negotiations. Under those circumstances, and in view of our experience in other proceedings, we find that there is a high probability that purchasers of Getty propane and other NGLPs experienced injury in their purchases of these products. The presumption of injury for small claims will apply to Getty's NGLP customers, and in order to provide larger claimants for other products, we have determined that a mid-range absorption percentage should be adopted. We have surveyed other NGLP refund cases in which claimants have documented their injury by providing evidence of banks of unrecouped product cost increases and of competitive disadvantage due to uncompetitive prices and have found that their "success ratio" (amount claimed versus amount proven) ranges from 20 to 100 percent. We will adopt 60 percent, the middle of that range, as the presumption percentage for mid-level reseller and retailer NGLP claimants. NGLP reseller and retailer applicants claiming above $5,000 may utilize this presumption percentage and will be granted refunds up to $50,000 upon a showing of their purchase volumes. As in *Marathon*, claimants seeking amounts larger than $50,000 will be required to document injury by showing banks and competitive disadvantage.

V. Summary

In summary, we have substantially revised the motor gasoline claims procedures proposed in the PD&O because the information that Getty had reported to the EIA, upon which we based our tentative conclusions, was unreliable. Instead, for motor gasoline and middle distillates we have

[13] As in *Marathon*, end users of Getty motor gasoline will be permitted to receive 100 percent of their volumetric refund share, as will end users of other Getty refined products.

substituted data furnished by the Petroleum Marketers Association of America. This data, while not drawn from as large a sample as that of EIA, is reliable and more closely accords with reliable industry indices and our own experience with refined products markets during the consent order period. Based upon these materials, we have calculated percentage figures that approximate injury experienced by resellers of these products. Similarly, we have used information gleaned from recent refund applications filed by NGLP resellers to estimate a reasonable percentage figure to approximate their experience during the period of federal price controls. These percentage presumptions of injury further the needs of individual claimants, many of whom lack records to substantiate specific injury, for an equitable method of obtaining redress for that injury, and OHA's need to formulate an equitable, efficient means of distributing refund monies to injured parties.

In order to obtain a refund, an applicant must provide its purchase volumes of Getty or Skelly product during the consent order period and must identify its position in the distribution chain. Applicants whose total claim falls under the $5,000 small claims presumption—which is applied to an applicant's total purchases of all Getty products, not on a product-by-product basis—as well as end users of all covered products, are only required to furnish proof of their volume of purchases from Getty. For larger motor gasoline claims—above $5,000—resellers and retailers, including refiners who resold the Getty product, may elect to receive either $5,000 or 40 percent of their volumetric amount, whichever is larger, up to $50,000. Similarly, large middle distillate resellers and retailers may elect between the larger of $5,000 or 50 percent of their volumetric amount, up to $50,000, and large NGLP resellers and retailers will be eligible for $5,000 or 60 percent of their volumetric amount, up to $50,000. Firms seeking refunds greater than $50,000, as well as applicants attempting to rebut the level-of-distribution percentages in favor of a full volumetric refund, will be required to furnish their banks of unrecovered product costs and evidence showing that they were prevented by competitive conditions from passing through Getty price increases to their customers. As always, claimants which allege a level of injury greater than that established by either the level-of-distribution percentages or the volumetric methodology may present in their refund applications evidence of their specific injury. Consumers, cooperatives, and regulated industries will receive 100 percent of the volumetric amount allocated to their purchases of all Getty covered products. Detailed procedures for filing a refund application appear in Section VI and the Appendix.

## VI. Final Refund Procedures

Based upon the foregoing, we have determined to adopt the revised refund procedures therein for firms seeking refunds based upon their purchases of Getty and Skelly refined petroleum products during the consent order period. In the Appendix to this Decision, we set forth a suggested application format which may be used by all applicants. Gasoline retailer applicants using the suggested form must file a separate form for *each gasoline station* for which a refund is requested. All applicants using the suggested form must file a separate form for *each product* for which a refund is requested. We will accept all applications that contain the information necessary to process a claim, whether or not the suggested form is used. For those claimants not using the suggested form, the information that must be included in an application is set forth below.

1. An application for refund must be printed or typed, signed by the applicant, and specify that it pertains to the Getty Oil Company Special Refund Proceeding, Case No. HEF-0209.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

3. Each applicant should specify how it used the product—*i.e.*, whether it was a refiner, reseller, retailer or an end user.

4. Each applicant must submit a monthly purchase schedule for Getty purchases during the consent order period, August 19, 1973 through December 31, 1978.

5. If an applicant purchased Getty refined products from a reseller, it must establish its basis for belief that the product originated with Getty and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Getty products passed through the alleged Getty overcharges to its own customers.

6. The application for refund should contain the name, address, and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the applicant should furnish us with the name and telephone number of a contact person familiar with the facts set forth in the application who we may contact for additional information concerning the application. Unless otherwise specified, the refund check will be issued to the preparer.

7. Each applicant must indicate whether it or a related firm has authorized any individual to file any other refund application in the Getty refund proceeding on its behalf, and if so attach an explanation.

8. If the applicant is affiliated or associated with Getty in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm.

9. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved.

10. If the applicant is a firm which did not actually purchase gasoline from Getty but is a successor to a Getty customer, the applicant must provide evidence establishing that it, rather than Getty's former customer, is entitled to a refund.

11. Each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

12. All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant who 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 confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

13. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

14. Applications must be filed no later than June 30, 1987. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

It Is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Getty Oil Company pursuant to the consent order executed on December 3, 1979, may now be filed.

(2) All applications must be filed no later than June 30, 1987.

Dated: October 24, 1986.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

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APPENDIX RF265-_____
DOE Use Only

Suggested Format for
Application for Getty Refund--HEF-0209

(Separate Application for Each Product Please)

1. Name of applicant firm during refund period: _____

Address during refund period (August 19, 1973 --December 31, 1978) _____

_____

2. To whom should refund check be made out? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone: (_____) _____

3. (a) Type of applicant:

_____ Gas Station _____ Consumer

_____
Other (please specify the nature of your business)

(b) If you are a reseller-retailer and the total refund requested by your firm and all affiliated entities on Getty/Skelly products exceeds $5,000, do you elect the level-of-distribution presumption for calculating your refund?

_____ Yes _____ No

(c) If you do not elect the presumption of injury, or if using the presumptive level of injury your refund exceeds $50,000, attach a demonstration of your firm's injury, as described in the Decision and Order.

4. (a) Total gallonage for which refund is requested (from page 3) _____

(b) Product (e.g., motor gasoline, diesel): _____

5. Was the product you bought Getty/Skelly-branded? _____ Yes _____ No

6. Were you supplied by Getty/Skelly directly? _____ Yes _____ No

If yes, provide Getty/Skelly customer number here: _____

If no to Items 4 and 5, attach an explanation of why you believe the product was sold by Getty/Skelly.

7. Name of your immediate suppliers(s) during refund period: _____

Address: _____

_____

_____

Telephone: (____) _____

8. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? If yes, attach an explanation.

_____ Yes _____ No

9. Have you or a related firm filed any other application for refund involving any Getty/Skelly product? If yes, attach an explanation.

_____ Yes _____ No

10. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf? If yes, attach an explanation.

_____ Yes _____ No

11. Were you a consignee agent? (A consignee agent distributed products for Getty/Skelly, but did not own them. Getty/Skelly specified the price, and gave the agent a commission.)

_____ Yes _____ No

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA Public Reference Room.

_____ Date

_____ Signature of Applicant

_____ Title

Name of Applicant: _____

MONTHLY PURCHASE VOLUMES OF _____

| | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 |
|---|---|---|---|---|---|---|
| January | ******* | _____ | _____ | _____ | _____ | _____ |
| February | ******* | _____ | _____ | _____ | _____ | _____ |
| March | ******* | _____ | _____ | _____ | _____ | _____ |
| April | ******* | _____ | _____ | _____ | _____ | _____ |
| May | ******* | _____ | _____ | _____ | _____ | _____ |
| June | ******* | _____ | _____ | _____ | _____ | _____ |
| July | ******* | _____ | _____ | _____ | _____ | _____ |
| August | _____ | _____ | _____ | _____ | _____ | _____ |
| September | _____ | _____ | _____ | _____ | _____ | _____ |
| October | _____ | _____ | _____ | _____ | _____ | _____ |
| November | _____ | _____ | _____ | _____ | _____ | _____ |
| December | _____ | _____ | _____ | _____ | _____ | _____ |
| Yearly Total | _____ | _____ | _____ | _____ | _____ | _____ |

GRAND TOTAL FOR THIS PRODUCT: _____ GALLONS

NOTE: Refunds will be computed at the rate of $0.001526 per gallon, plus accrued interest. Claims for less than $15.00 will not be processed (9,830 gallons total purchases).

DO NOT INCLUDE ANY PURCHASES OF PRODUCT AFTER THAT PRODUCT'S DATE OF DECONTROL:

| Product | Date Decontrolled |
|---|---|
| Naptha-Based Jet Fuel | October 1, 1976 |
| Naphthas | September 1, 1976 |
| Middle Distillates | July 1, 1976 |
| Residual Fuels | June 1, 1976 |
| Ethane and Asphalt | April 1, 1974 |

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Friday
November 7, 1986

## Part VIII

# Environmental Protection Agency

**40 CFR Parts 260, 264, and 270**

**Hazardous Waste Management System; Standards for Owners and Operators of Miscellaneous Units; Proposed Rulemaking**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 260, 264, and 270**

**[SW-FRL-3062-8]**

## Hazardous Waste Management System; Standards for Owners and Operators of Miscellaneous Units

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to issue standards applicable to owners and operators of hazardous waste management facilities. Over the past several years, the Agency has promulgated standards for specific types of treatment, storage, and disposal units including containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, underground injection wells, and research, development, and demonstration facilities. However, some hazardous waste management technologies are not covered by the existing permitting standards. Owners and operators of facilities utilizing these technologies cannot obtain the RCRA permits necessary to operate these miscellaneous units.

To fill this gap, the Agency is today proposing a new set of standards, under Subpart X of Part 264, that is applicable to owners and operators of new and existing hazardous waste management units not covered under the existing regulations. This will enable the Agency, and the States that adopt equivalent authorities, to issue permits to miscellaneous waste management units.

**DATES:** The Agency will accept comments on these proposed rules on or before December 22, 1986.

**ADDRESS:** Send original comments plus two copies to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as follows: F-86-SPXP-FFFFF.

The public docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000.

*For questions on the technical aspects of this proposed rule contact:* Ossi Meyn, Land Disposal Branch, Waste Management Division, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382-4654.

**SUPPLEMENTARY INFORMATION:**

**Preamble Outline**



## I. Authority

These proposed rules are issued under authority of sections 1006, 2002(a), and 3001 through 3013 of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

## II. Background

### *A. Development of the Hazardous Waste Regulatory Program*

Under section 3004 of RCRA, the Environmental Protection Agency (EPA) must establish such standards, applicable to owners and operators of hazardous waste management facilities, as may be necessary to protect human health and the environment. These standards establish the duties of and provide the basis for issuing permits to the owners and operators of hazardous waste treatment, storage, and disposal facilities under section 3005 of RCRA. The Agency has promulgated these regulations in stages. On May 19, 1980 (45 FR 33221), the Agency issued regulations establishing administrative requirements for certain types of hazardous waste management, general provisions for facility owners and operators, permitting procedures for hazardous waste management facilities, and procedures for state program authorization. On January 12, 1981 (46 FR 2802), the Agency issued regulations establishing technical standards and permitting requirements for certain storage and treatment facilities. On January 23, 1981 (46 FR 7678) and June 24, 1982 (47 FR 27516) the Agency issued technical standards for hazardous waste incinerators. On April 7, 1982 (47 FR 15032) and April 16, 1982 (47 FR 16544), the Agency issued regulations for demonstrating financial responsibility. On July 26, 1982 (47 FR 32274), the Agency promulgated technical and permitting standards for new and existing treatment, storage, and disposal facilities on land, including surface impoundments, waste piles, land treatment units, and landfills. On July 15, 1985 (50 FR 28702), the Agency amended its hazardous waste management rules to codify several statutory changes required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These changes included revisions to the technical requirements for land treatment, storage, and disposal facilities, revisions to the permitting requirements for all treatment, storage, and disposal facilities, and limitations on the placement of hazardous waste in salt dome formations, salt bed formations, underground mines, and caves. In addition, these amendments included new rules that allow for the permitting of certain research,

development, and demonstration (RD&D) facilities.

The Federal rules pertaining to the management of hazardous waste are codified in 40 CFR Parts 260 through 266, 270, 271, and 124. In brief, Part 260 contains definitions; Part 261 defines what is a hazardous waste; and Parts 262 and 263 contain generator and transporter requirements, respectively. The permitting provisions of the RCRA hazardous waste management program are structured as follows:

1. Part 264—Establishes permitting standards for facility performance, design, operation, and location. These requirements are applied through RCRA permits in the form of specific conditions. Once a permit is issued, an owner's or operator's compliance with the conditions of the permit during the permit's term will constitute compliance, for purposes of enforcement, with Subtitle C of RCRA.

2. Part 265—Establishes interim standards that apply to all existing facilities that have notified the Agency of their regulated activities, as required under section 3010 of RCRA. These "interim status" standards apply until the Agency has approved or disapproved issuance of a final RCRA permit or when it is terminated under the HSWA provision for loss of interim status. The provisions of Subpart G and H still apply, however, to facilities that have lost interim status. (49 FR 46094)

3. Part 270—Establishes definitions and basic requirements for all RCRA permits administered by the Agency. It spells out in detail who must apply for a permit; the information and data necessary in permit applications; the general conditions that must be incorporated into permits; the circumstances under which permits may be revised, reissued, and terminated; and the circumstances under which special forms of permits may be issued, among other requirements.

4. Part 271—Establishes the requirements for final authorization of State hazardous waste programs to be administered in lieu of the Agency's program, and the procedures for the Agency approval, revision, and withdrawal of a State program. It includes specific requirements regarding permits and permit applications as administered under approved State programs.

5. Part 124—Establishes the procedures to be followed in making permit decisions under several Agency permitting programs including the RCRA hazardous waste program. It specifies provisions for public participation; consolidated review and issuance of two or more permits for the same facility or activity; compilation of administrative records; the effective dates of permits; and appeals from permit decisions and stays of contested conditions, among others.

*B. Need for the Proposed Subpart X*

Current promulgated regulations in 40 CFR Part 264 and other Parts regulate many types of hazardous waste management units. These include: Containers, tanks, surface impoundments, waste piles, land treatment units, landfills, and incinerators under specific subparts of Parts 264 and 265; research development, and demonstration (RD&D) facilities under Part 270; and underground injection wells in the Underground Injection Control (UIC) Program under the Safe Drinking Water Act in 40 CFR Part 146.

The Agency is aware, however, that certain hazardous waste management practices and certain technologies (including those that may be developed in the future) do not fit the description of any of the units covered by the existing regulations. For example, thermal treatment of hazardous waste in units other than incinerators, boilers, or industrial furnaces may not be permitted because such units are not now covered by Parts 264, 265, or 266. This means that existing units of these types, currently regulated under Part 265, may not receive a RCRA permit. Perhaps more significantly, new units may not be constructed. The Agency has received a number of requests for standards to allow the construction of new hazardous waste management units not now covered by Part 264.

Although the Agency has issued regulations for the major hazardous waste management technologies and practices, there are gaps in the coverage of the regulations. Subpart X will cover miscellaneous units and will essentially complete the coverage of hazardous waste management units. For existing units, the Agency believes that application of more specific Part 264 standards through a permit may provide better protection. Furthermore, some types of new units that cannot now be constructed may reduce risks to human health and the environment from the management of hazardous waste. Therefore, the Agency regards today's proposal as a step towards increasing the protection of human health and the environment, while also allowing flexibility for technological development and innovations.

*C. Consideration of Comments Received on the July 26, 1982 Preamble Section (47 FR 32281)*

In the preamble to the July 26, 1982 hazardous waste management regulations, the Agency outlined additional regulatory activities that the Agency was considering under 40 CFR Part 264 to improve the management of hazardous waste. A major activity discussed in that notice was the promulgation of standards for units not then covered by Part 264 regulations. At that time, the Agency solicited comments on the appropriate approach for standards for such units. The Agency also solicited comments on what types of facilities were in existence, or likely to come into existence, that were not then covered by Part 264 regulations.

The Agency received a limited number of comments in regard to the July 26, 1982, preamble discussion. Several respondents indicated that regulations for miscellaneous units would not be necessary and suggested that such units could easily be handled by the Director of the hazardous waste management program on a case-by-case permitting basis using interim standards under 40 CFR Part 267. Although the Agency agrees that certain portions of Part 267 would be appropriate for regulating miscellaneous units, the Part 267 requirements are inappropriate because they were limited to four specific types of land disposal facilities (landfills, surface impoundments, land treatment units, and injection wells). In contrast to the Part 267 rules, Subpart X will not be limited to land disposal units.

In addition, the Part 267 standards were designed to be temporary to allow for the permitting under interim status of new land disposal facilities while final Part 264 standards were being developed. The Part 267 standards for surface impoundments, land treatment units, and landfills were superseded by the Part 264 standards on January 26, 1983, and the Part 267 standards applicable to Class I underground injection wells expired on February 13, 1983. At present, there are no facilities that are subject to the Part 267 standards.

Several respondents favored the development of a new subpart for units not covered under the existing subparts of Part 264, but urged the Agency to develop and implement hazardous waste standards on an industry-by-industry basis or on a waste-by-waste basis for miscellaneous waste management units. This approach would be similar to that used in developing

effluent guidelines under the Clean Water Act. The Agency considered the suggested approach but decided that development of industry-specific or waste-specific standards would be unnecessarily resource-intensive and could result in standards that did not cover all miscellaneous units. Further, the commenters' suggested approach would have been a departure from the general framework of the Agency's current hazardous waste regulatory program. However, at some future time the Agency may be able to make waste-specific and industry-specific modifications to the regulations, where appropriate.

*D. Scope of Subpart X*

The Agency is proposing to regulate units that are not in any way covered by a subpart under Part 264 or 146. For example, units that do not fit the definitions of any of the units covered by the standards of Part 264 or 146 would be regulated as miscellaneous units. Specifically, if a new type of unit was developed that did not fit the definition of tank, container, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace or underground injection well, it would be regulated under Subpart X. An example of such a unit may be a thermal treatment unit, such as a wet-air oxidation device, that is not an incinerator or other Part 264 unit. Another example may be a long-term retrievable storage unit that is not a waste pile, landfill, or other Part 264 unit. With one exception, the Agency is not considering altering the jurisdiction of any other subpart in Part 264 or 146 and they will remain unaffected. The exception relates to some types of units that may currently fall within the definition of the term "landfill" in § 260.10. Under existing regulations, "landfill" is a broad category including many units not covered under other subparts of Part 264 or 146. It includes some, but not all, miscellaneous units proposed to be covered by this rule. The Agency is considering amending the definition of "landfill" so that it excludes these miscellaneous units. Issues pertaining to the redefinition of the terms "landfill" are discussed in Section V below.

Subpart X will not supersede or replace any specific restrictions on activities contained in another subpart or provide a vehicle for escaping from those restrictions. For example, 40 CFR 264.175 provides that container storage areas must have a secondary containment system to drain and remove leakage. Persons who do not wish to install a secondary containment system may not evade this requirement for a container storage facility by seeking a permit under Subpart X.

Likewise, miscellaneous units permitted under Subpart X that are also defined as "land disposal" under the land disposal restriction requirements of Part 268 (see proposed rule at 51 FR 1602) do not avoid the restrictions on land disposal of untreated or improperly treated hazardous waste. For example, although the use of an underground mine, cave, or formation for the placement of hazardous waste may, under some circumstances, be considered a miscellaneous unit, such a unit would also be subject to the Part 268 land disposal restrictions since it is defined as "land disposal" by RCRA. Therefore, any hazardous waste placed into a miscellaneous "land disposal" unit must be treated prior to land disposal in compliance with a treatment standard promulgated under Part 268 unless the owner or operator demonstrates, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the unit for as long as the waste remains hazardous. The remainder of this section describes units that are proposed to be covered under Subpart X and those that are not.

1. Units Proposed to Be Covered Under Subpart X

Because the Agency intends Subpart X to cover "miscellaneous" units, including future technologies, the Agency cannot provide a definitive list of the units that will be covered under the subpart. However, the Agency is aware of several types of units that may receive permits issued under Subpart X.

*a. Disposal of Hazardous Waste Underground.* Under certain circumstances, e.g., in underground mines under proper geologic conditions, persons may be able to safely and protectively dispose of containerized hazardous waste or bulk non-liquid hazardous waste. To the extent that these activities are underground injection in a well, they would be covered under RCRA by the UIC permit-by-rule (40 CFR 270.1(c)(1)(i)). Placement in underground mines that is not covered by a UIC permit could be subject to Subpart X standards.

*b. Deactivated Missile Silos.* Treatment, storage, and disposal of hazardous waste in deactivated missile silos that are not tanks, containers, underground injection wells, or landfills are not now covered under Part 264 standards. Such silos would, therefore, be considered miscellaneous units.

*c. Thermal Treatment Units Other Than Incinerators.* A number of different types of thermal treatment units, including combustion and noncombustion types, are in operation today and have potential application to hazardous waste treatment. In addition to incinerators and boilers, units employing processes such as molten-salt pyrolysis, calcination, wet-air oxidation, and microwave destruction are classified as thermal treatment units. In the case of incinerators, the Agency has determined performance capabilities and has established regulations requiring specific levels of performance in Subpart O of Parts 264 and 265. Many noncombustion-type thermal treatment units are not covered under Part 264 regulations and have not yet been evaluated by the Agency to determine their technological capabilities. Many of these units have not yet operated on a commercial scale, but owners of some of these units are expected to seek RCRA hazardous waste facility permits in the future for commercial operation. The criteria of Subpart X would provide an appropriate basis for permitting existing and new units of these types.

*d. Open Burning/Open Detonation of Explosive Wastes.* Hazardous waste units that conduct open burning or open detonation of waste explosives (as defined in § 265.382) are other types of miscellaneous units covered by today's proposal. These units are neither typical thermal treatment units, nor are they incinerators. The Agency promulgated interim status standards applicable to open burning and open detonation units in Subpart P of Part 265 (§ 265.382) on May 19, 1980 (45 FR 33251). These standards consist primarily of an environmental performance standard and a table of minimum safe distances from the property of others that must be maintained when waste explosives are disposed of by open burning or open detonation. Because such units are not now covered by Part 264, permitting these units under Subpart X is appropriate.

*e. Certain Chemical, Physical, and Biological Treatment Units.* Hazaroous waste management units that treat hazardous waste by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment units during interim status are covered under Subpart Q of Part 265. However, there are no regulations under Part 264 to cover existing or new units in this category. The proposed new Subpart X regulations will, therefore, be used to regulate these units.

*f. Disposal into or on Water.* It is conceivable that an owner or operator may want to dispose of hazardous waste by placing such wastes into or on

surface water, but the Agency currently lacks RCRA standards for such activity. Placement of hazardous waste into or on water is likely to be an industrial wastewater point source discharge, subject to regulation under section 402 of the Clean Water Act and subject to permitting under that Act. As such, they are not "solid wastes" under 40 CFR 261.4 (and, therefore, they are not "hazardous wastes" regulated under the RCRA regulations). Ocean disposal of hazardous waste and related operations are covered by a RCRA permit-by-rule (40 CFR 270.1(c)(1)(iii)). However, there may be some water disposal activities that are not covered by the exclusion or the permit-by-rule. Subpart X could be appropriate for such activities, if they can be conducted in a manner that is protective of human health and the environment.

*g. Research in Miscellaneous Units.* Like other subparts of Part 264, Subpart X could also apply to research in miscellaneous units. At present, research and development on processes or units covered under Part 264 (e.g., research on an experimental process in a standard tank or in an innovative tank) may be permitted, assuming that the experimental process or tank design was not so different as to render Part 264 standards inapplicable. Alternatively, the process or unit could be eligible for a permit under the Agency's new research authority under 40 CFR 270.65. The Agency believes that persons who want to conduct research in a unit not now covered by Part 264 standards, but who do not wish to be bound by the limitations of a permit issued under § 270.65 (e.g., a shorter permit term), may find Subpart X an attractive alternative.

2. Units Not Covered Under Subpart X or Units for Which Subpart X Permits Will Not Be Issued

*a. Treatment, Storage, and Disposal in Units Currently Regulated Under Parts 264 and 146.* Under today's proposal, treatment, storage, or disposal in units now regulated under Part 264 or 146 could not be permitted under Subpart X. Instead, these units must be permitted using the standards established under the applicable subparts of Part 264 or 146. For example, placement of hazardous waste in a tank or surface impoundment for treatment is covered under Subpart J or K, respectively, and must be permitted using those standards. In the future, however, the Agency may consider and apply, using the authority of section 3005(c)(3), the criteria for protection of human health and the environment contained in Subpart X in addition to the Subparts J and K requirements when issuing a permit for the treatment of hazardous waste in a tank or surface impoundment; that is, in issuing a Subpart J or K permit, the Regional Administrator (or State Director) may impose permit conditions on treatment activities based on the criteria for protection of human health and the environment proposed today. Similarly, the Agency may use its section 3005(c)(3) authority to apply these criteria in issuing permits for other types of treatment facilities.

*b. Open Burning of Non-Explosive Hazardous Waste.* Although, by its terms, Subpart X applies to all units not covered under Part 264, including open burning and open detonation of non-explosive hazardous waste, the Agency believes that open burning of such waste cannot be conducted in a manner that is protective of human health and the environment. The Agency made this finding in 1980 in promulgating the general ban on open burning of non-explosive hazardous waste (40 CFR 265.382), and has no new information to suggest that its conclusion should be revised. The Agency, therefore, intends to deny any permit applications it receives under Subpart X for such activities.

*c. Units Excluded from Permitting Under Parts 264 and 270.* Certain units are specifically excluded from permitting under the Part 264 and Part 270 standards. For example, publicly owned treatment works and ocean disposal activities are not permitted under Part 264 standards as they are covered by permits-by-rule (see 40 CFR 264.1 (c) and (e)). Another example is operation of a waste water treatment unit (40 CFR 264.1(g)(6)). These units continue to be excluded from Part 264 standards and would not be subject to other subparts of Part 264, including Subpart X.

The Agency requests comment on the scope of Subpart X and the types of activities and units that should be permitted under Subpart X.

## III. Alternative Approaches Considered

In developing Subpart X for miscellaneous waste management units, the Agency examined six alternative regulatory approaches. These included design and operating standards, technical performance standards, containment standards, facility-specific risk assessment, environmental performance standards, and a combination of these alternatives.

### *A. Design and Operating Standards*

Design and operating standards would require installation of specific equipment or use of particular processes. A major advantage of specific design and operating requirements is that they clearly define for the regulated community what is required for a specific type of waste management unit. However, this approach for Subpart X would require significant Agency time and resources and might omit newly developing technologies. To some extent, design and operating requirements tend to restrict and stifle technological advances and innovations. Because of these disadvantages, the Agency has decided not to propose specific design and operating standards for Subpart X. However, as the Agency's understanding of the technology, efficiency, and safety of each of the various classes of hazardous waste management units improves, and as some methods become widely utilized and accepted, the Agency may examine the possibility of using specific design or operating requirements for certain classes of these units.

### *B. Technical Performance Standards*

This regulatory approach would involve the establishment of specific engineering objectives and allow the permit applicant to develop a design or set of practices to achieve the objective. This approach would allow somewhat greater permitting flexibility and require fewer Agency resources than design and operating standards, however, it is likely that some new technologies could not be permitted under this approach because of the specificity of the engineering objectives.

### *C. Containment Standards*

Another approach the Agency considered was the development of performance standards that would require containment of hazardous waste within certain boundaries. A regulation based upon containment could specify a period of time within which hazardous constituents could not be released from a waste management unit into the surrounding environment. The goal of this standard is the containment of hazardous wastes within a confined area for a finite time. While such an approach may prevent environmental contamination under some hydrogeological conditions, the Agency is concerned that it may only delay contamination in others. In addition, total containment in all media may not always be necessary to protect human health and the environment. The use of this regulatory approach would be difficult, because of the variety of waste management units to be regulated under the proposed subpart; the problems of

defining surface and subsurface boundaries in a general rule that is applicable to all miscellaneous units (e.g., some thermal treatment units and deep mine excavations); and controversy over appropriate time periods. Therefore, the Agency is not proposing to use containment standards, alone; however, some permits issued under today's proposal may indeed be based on containment and include containment design and operation features such as liners, barriers, or a combination of containment features and geological siting considerations.

*D. Facility-specific Risk Assessment*

The Agency's evolving policy is to assess more explicitly the risks involved in its decisions—both regulatory and permitting. The Agency believes that the unique character and small number of miscellaneous units makes them excellent candidates for facility-specific risk assessments. Miscellaneous units may pose unique combinations of wastes, location, and technology that are not addressed by our existing regulations.

Under this regulatory approach the permit applicant would be required to perform fate and transport analyses and human health and environmental risk assessments based on the RCRA goal of protecting human health and the environment. The permit writer would determine the design and operating standards necessary to address the major risks identified at the site-specific unit.

Since the cost of such a risk analysis could be extremely high, the Agency is seeking detailed comments on the appropriate extensiveness of such an analysis. Approaches to risk analysis could be similar to the Exposure Assessments required under section 3019 of RCRA, to the demonstrations required for Alternate Concentration Limits (ACL) under Subpart F of Part 264, or the petition process for variances from land disposal bans, as proposed in the Federal Register on January 14, 1986 (51 FR 1759).

*E. Environmental Performance Standards*

Such performance standards seek to set either numerical health and environmental standards or non-numerical performance requirements. These standards may take the form of numerical exposure specifications (such as the allowable concentration of a chemical at the points of human exposure), pollutant limits in environmental media (that is, concentrations of chemicals permitted to be released to the environment), or general objectives or goals to serve as a guide for protecting human health and the environment.

*F. Combination of Approaches*

This approach would combine the appropriate elements of all five previously discussed alternatives, and apply them on a case-by-case basis. The miscellaneous units would be located, designed, constructed, operated, maintained, and closed in a manner that would assure protection of human health and the environment through the prevention of any releases that may have adverse effects on ground-water quality, surface-water quality, air quality, and on the surface or subsurface environment in the area surrounding the miscellaneous unit.

In the permitting process, selected features of design and operating, technical performance, containment, and environmental performance standards, as well as the risk-based approach, may be specified so that the overall objective of the protection of human health and the environment is satisfied. For example, for some units, liners may be specified in addition to limits on the concentrations of chemicals to be released to the environment on the basis of risk. Appropriate models may be used in some cases for such determinations.

## IV. The Agency's Proposed Approach

After evaluating various alternatives, the Agency has decided to propose regulations for miscellaneous units based upon the last approach described above: A combination of the above-discussed regulatory alternatives. Such standards would provide performance objectives for protecting human health and the environment and guide evaluation of permit applications. The performance objectives require permit applicants to evaluate potential environmental impacts of their facility, and demonstrate that the ground water, surface water, air, and the surface and subsurface environments will not be contaminated to the point of causing adverse effects on human health or the environment. As understanding of a particular hazardous waste management technology improves, the Agency may refine its regulations by issuing specific design and operating standards for a particular type of a unit. For example, the Agency may develop certain operating requirements for open burning and open detonation units, if the knowledge and experience with these units can be developed into unit-specific standards.

In addition, in the permit development and review process, specific design, operation, monitoring, or performance requirements may be included in the permit. Applicability of these requirements will be determined on a case-by-case basis and the rationale for their applicability will be provided in each permit. In certain cases, the design and operation of a Subpart X unit may resemble that of a specific type of unit now regulated under RCRA (e.g., an incinerator). To the extent that they are applicable, the requirements under the existing unit-specific subpart (e.g., Part 264, Subpart O, Incinerators) will be applied to the unit through the permit.

The regulatory scheme proposed by the Agency offers several distinct advantages. First, it allows the Agency to address a full range of environmental issues raised by a particular waste management situation without waiting to establish specific design and operating conditions or other standards. By identifying a set of general environmental objectives and specific factors to be considered, the Agency allows development of permits that are responsive to various ground-water, surface-water, and air quality concerns as well as complex natural processes in the surface and subsurface environments that may arise at each site. Second, general standards allow more flexibility in addressing the range of potential human health and environmental effects presented by various types of waste management units than an approach that relies on specific design and operating standards. A particular design or operating requirement may be inappropriate due to the special nature of a miscellaneous waste management unit. More importantly, such requirements may not be stringent enough in some cases to protect human health and the environment or may result in unnecessary over-control in other cases. Environmental performance standards allow the permit-issuing authority to tailor each permit to the particular circumstances and risks presented by a particular miscellaneous waste management unit, based on the nature of the technology and waste material, and site location or hydrogeologic characteristics.

In evaluating all relevant health and environmental impacts from a miscellaneous unit, the Agency will be able to ensure that the activities at the unit will protect human health and the environment. It is possible that the Agency may conclude that the management of hazardous waste in a particular unit will not adequately protect human health and the environment. In that case, the Agency

will issue a notice of intent to deny a Subpart X permit, explaining the reasons in detail. Permit procedures, including procedures for denying a permit, are covered by 40 CFR Part 124.

The major disadvantage of the proposed approach is that the bulk of the design, construction, operation, monitoring, and closure specifications will be developed and specified through the permit process. As discussed above, the Agency will review and adopt or modify relevant requirements from Subparts I through O of Part 264, as appropriate. As permitting or research experience and knowledge is gained, the Agency also plans to develop guidances for specific types of facilities (e.g., the Agency plans to issue guidance on open burning and open detonation of certain wastes, and on emplacement of wastes in certain massive geologic formations such as salt domes).

When units are permitted under Subpart X of Part 264, the Agency also proposes to require compliance with Subparts A through H, except Subpart F, for all units. Each applicant will be required to address the requirements of general facility standards, preparedness and prevention, contingency plan and emergency procedures, the manifest system, recordkeeping and reporting, closure and post-closure, and financial requirements. Comprehensive ground-water monitoring under Subpart F may not be necessary for all types of Subpart X units. Applicants should address the potential for ground-water contamination. Where such contamination is possible, the applicant must comply with the requirements of Subpart F. The applicant must demonstrate that the hazardous waste management unit's location, design, construction, operation, monitoring, maintenance, and closure enable the unit to meet the performance standards. In this way, the permit applicant will demonstrate that the unit will be protective of human health and the environment. In addition, the Director has discretion to determine which other subparts are generally applicable to a particular miscellaneous unit (e.g., Subpart J for tank-like units).

The Agency is developing other regulations that will affect permitting under Subpart X and other Subparts of Part 264. These include the land disposal ban regulations under section 3004 (b) through (m) (discussed earlier) and the corrective action requirements of section 3004 (u) and (v) of HSWA. The corrective action requirements apply to permitting Subpart X units by law. Because the corrective action requirements are broadly applicable and because miscellaneous units do not appear to present unique factors for implementation of these new regulations, the Agency expects that corrective action requirements will apply to Subpart X units and facilities in the same manner that they apply to other units and facilities.

The Agency seeks comments on the proposed permit procedure and on the type of information that applicants must submit. The Agency also seeks comments on the type of guidance that would be beneficial to the permit applicant and the permit writer. The Regional Administrator would be responsible for issuing the permit. The Agency would establish a special headquarters group to review initially the small number of highly technical applications likely to result. The review group would include specialists from headquarters, EPA laboratories, Regions, and States. The review process provides for a close consultation with the Regions and the States. There would also be special training courses for the permit writers in the Regions and States. The Agency believes that this is the most efficient way to use its own scarce, specialized personnel.

## V. Amendments to Part 260: Definitions

The Agency is proposing the addition of one definition, "miscellaneous unit", and requesting comments on the revision of the existing definition of "landfill" in § 260.10.

The Agency uses the term "miscellaneous unit" in the proposed regulation to refer to hazardous waste management units used to treat, store, or dispose of hazardous waste that do not fit the current definitions of container, tank, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, or underground injection well.

The Agency is also requesting comments on its proposal to clarify the definition of a landfill. The Agency is today proposing to amend the definition of landfill but is not today publishing a new proposed definition as regulatory language. As explained below, the amendment of the definition will be complicated, and the Agency is inviting comment on how the definition may be changed to reflect the ideas and goals discussed in this section. In section 264.10, the definition of a landfill constitutes a catch-all category for certain units that do not fit within the definition of other land disposal units. Landfill "means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well." (40 CFR 260.10). Because the Agency intends Subpart X to apply to miscellaneous units and not Subpart N, the Agency is today proposing to redefine "landfills" to apply to a discrete category of units. Miscellaneous units will therefore, become the "catch-all category".

Redefining landfill is complicated by the fact that Parts 264 and 265 have different applicability. Like Part 264, Part 265 provides standards for certain units that are relatively narrowly defined (e.g., tanks, containers, surface impoundments, and incinerators). However, Part 265 also contains standards for three categories of units that cover a wide variety of hazardous waste technologies. Thermal treatment standards (Subpart P of Part 265) cover units that thermally treat hazardous waste in devices other than incinerators. Subpart Q of Part 265 covers chemical, physical, or biological treatment in units other than tanks, surface impoundments, and land treatment facilities. Subpart N of Part 265 covers landfills (a broad term). Subparts N, P, and Q, therefore, serve as catch-all categories for Part 265. By contrast, Part 264 does not contain Subparts equivalent to P and Q; only Subpart N (Part 264) is a broad category, due to the definition of landfill. Therefore, one goal of the redefinition of landfill is to ensure that in Part 264, Subpart X and not Subpart N will apply to units that are now covered in Part 265 by Subparts P and Q. In other words, when an interim status unit now covered by Subparts P and Q is to receive a Part 264 permit, it should be governed by the permitting standards of Subpart X, and not by those that apply to landfills.

A second, complementary goal in redefining "landfill" is to ensure that landfills, as generally conceived, remain covered by Subpart N of Part 264 and are not inadvertently subjected to Subpart X standards. Landfills must remain subject to the standards of Subpart N for two practical reasons. First, the Agency promulgated the Subpart N standards specifically for landfills and believes that these standards are most appropriate for these units. Second, a change in the applicable standards would create significant and unnecessary administrative burdens for those persons who are in the process of writing a permit or who are preparing a permit application, or those persons who have already received a landfill permit.

Today, the Agency is proposing to redefine "landfill," consistent with the goals outlined above, in order to identify more precisely the types of waste management practices included within

this category. Instead of proposing specific regulatory language, the Agency is presenting several elements that would limit the existing definition of "landfill." Any or all of these alternatives could be added to the existing definition in order to make it more specific.

First, landfills generally use earthen materials for support. This characteristic distinguishes landfills from tanks, which are constructed primarily of non-earthen materials.

Second, landfills are used for disposal, rather than for treatment. Landfills should be distinguished from other, specialized types of waste management processes that are defined primarily by the type of treatment they provide, such as thermal treatment. The Agency realizes that the term "primarily" is not precise and could require that case-by-case judgments be made as to whether a particular unit should be viewed as a landfill. However, it would not be accurate to state that landfills are used only for disposal and not for treatment, in as much as the broad definition of "treatment" includes many activities that could take place in a landfill.

Third, landfills are used primarily to contain the waste placed in them. This distinguishes landfills from land treatment units and other treatment technologies (such as open burning) in which the wastes are not usually contained in a unit. However, one concern the Agency has regarding the concept of "containment" is that an owner or operator who wishes to avoid the technical requirements for landfills in Subpart N and section 3004(o)(1) of RCRA (such as double liner and leachate collection systems) could attempt to qualify under Subpart X merely by claiming that the unit did not, in fact, "contain" the waste. The Agency invites comment on how the provision could be drafted to avoid this result.

Finally, the Agency could expressly exclude from the definition of "landfill" any practices that should not be included as landfills, such as thermal treatment, or chemical or biological treatment. The Agency recognizes that some of these processes can occur in landfills. Therefore, because waste management practices at landfills are not uniform, it is difficult to develop a generic definition that is specific enough to exclude these units yet general enough to include the practices that commonly occur at landfills. A list of such practices would clearly eliminate some questions about the scope of the definition.

The Agency requests comments on the advantages and disadvantages of the alternatives discussed above, and on any other language that could serve to further refine the definition of "landfill". In addition, there may be cases where a unit appears to have most or all of the characteristics of a conventional landfill (or surface impoundment, tank, etc.) but there is some question about whether it fits within the technical definition. How should the Agency determine whether such a unit is covered by the other definitions, or is more appropriately classified as a miscellaneous unit. For example, should there be a presumption that a unit that arguably fits within the definition of "landfill" should be regulated as such? This would put the burden on the owner or operator to demonstrate that a particular process should not be regulated as a landfill. Or should the Agency allow such units to be regulated under Subpart X but draw heavily on the relevant subparts (such as Subpart N for landfills) when establishing standards for these units?

The Agency also requests comments on whether the new definition of "landfill" should be applicable only to Part 264. Currently, as noted above, Subparts P and Q of Part 265 establish standards for many of the processes that would be classified as miscellaneous units under Part 264. Arguably, then, a new definition of "landfill" is not needed for purposes of Part 265. However, if the new definition of landfill is applied to interim status landfills, the Agency requests comments on whether any interim status units that are "landfills" under the current definition and are regulated as landfills under Part 265 would continue to be regulated as landfills and not under Subpart P or Q or be excluded from Part 265 regulation altogether.

## VI. Amendments to Part 264: The Proposed Subpart X Regulation For Miscellaneous Units

The regulations proposed today under 40 CFR Part 264 apply to miscellaneous waste management units that are used to treat, store, or dispose of hazardous waste. Conforming changes to accommodate the addition of Subpart X are proposed for Part 264, Subparts B, E, G, and H. These changes merely serve to make the general requirements of Part 264 applicable to miscellaneous units.

The Agency intends the general facility requirements of Part 264, Subparts A through E, G, and H, to apply to miscellaneous units. These subparts now apply to the conventional types of hazardous waste management units already regulated under Part 264 that are covered under Subparts I through O. This approach contrasts with that of Part 264, Subpart F, Ground-water Protection Requirements. Subpart F now applies to only certain types of hazardous waste management units ("regulated units") that have a potential for migration of waste to ground water. The Agency will require miscellaneous units to comply with Subpart F (or sections of Subpart F) only when necessary to protect human health and the environment. In the case of miscellaneous units, Subpart F will apply to units that have a potential for contamination of ground water. This approach is implemented through the new § 264.602, which is explained below.

It should be noted that the term "Director" has been substituted for "Regional Administrator". Director means the Regional Administrator or the State Director in an authorized State, as the context requires. This change conforms to the terminology selected for use in other recent amendments to the hazardous waste management regulations.

The proposed standards for miscellaneous units are discussed below, section-by-section.

### *A. Section 264.600—Applicability*

This section limits the applicability of the regulations of Subpart X to owners and operators of miscellaneous hazardous waste management units. By use of the term "miscellaneous", this section incorporates the definition of miscellaneous unit from § 260.10.

### *B. Section 264.601—Environmental Performance Standards*

The most important features of the proposed regulations for new and existing miscellaneous waste management units are the environmental performance standards set forth in § 264.601. Section 3004 of RCRA requires that standards applicable to owners and operators of treatment, storage, and disposal facilities be those "necessary to protect human health and the environment." In § 264.601, the Agency has translated this overall goal into a set of objectives providing a guide for owners and operators of miscellaneous units and for permit writers. Under § 264.601, miscellaneous units managing hazardous waste must protect ground water, surface water, and air quality and limit surface and subsurface migration. These objectives represent the principal areas of human health and environmental concern, and are appropriate for guiding permit decisions.

The Agency does not view § 264.601 as a set of specifications that will directly apply to all owners and

operators of miscellaneous units. Rather, § 264.601 provides a general set of objectives that will guide the permit applicant (owner/operator), the Agency, and the public in evaluating the acceptability of each unit and the adequacy of the unit design and operation to mitigate risk. The permit applicant is expected to propose the specifications for location, design, construction, operation, monitoring, maintenance, closure, and, where appropriate, post-closure care. Detailed analysis of each factor in § 264.601 may not be necessary in a permit application, depending on its relevance to the type of unit under consideration. All of the factors identified in § 264.601, however, should be considered and their relevance addressed in the application. Based on the information about the environmental impacts, specific conditions beyond those suggested by the applicant may be included by the Agency in the permit. Once issued, the permit governs where a unit is to be located and how it is to be designed, constructed, operated, monitored, maintained, and closed. Each of the three groups of objectives are discussed in more detail below.

*1. Ground Water and Subsurface Migration.* Contamination of ground water and the subsurface environment is a major concern under RCRA. Section 264.601(a), therefore, provides for the prevention of any releases that may have adverse effects on ground-water quality and the subsurface environment due to the migration of contaminants. The regulation lists nine factors to be considered in assessing the potential for adverse effects on ground-water quality and the subsurface environment.

The first factor includes the volume and physical and chemical characteristics of the waste itself. The volume and concentration of the waste placed in the unit determines the maximum amount and concentration of waste that may enter the ground water. Physical and chemical characteristics determine (1) the toxicity of the waste; (2) the ability of the waste to be contained, immobilized, degraded, or attenuated or to migrate in various soils and materials; and (3) the probability of undesirable reactions taking place among wastes or between wastes and liners or other containment structures.

The second, third, and fourth factors are the hydrogeological characteristics of the unit and surrounding land, the regional land-use patterns, and the quantity and direction of ground-water flow, respectively. These three factors affect the movement of waste constituents in the environment and, thus, are of crucial importance in assessing the impact on human health and the environment. The hydrogeological factors determine the changes in water quality in the site area due to human activities. Land-use patterns can change hydrogeologic characteristics, which determine migration to and distribution of wastes in ground water.

The fifth factor is proximity to and withdrawal rates of current and potential ground-water users. While drinking water is probably the most crtical use, agricultural and industrial uses of ground water are also of concern. Clearly, water that is contaminated by hazardous waste leachate may be harmful regardless of the particular application. Current and potential uses should be considered, in addition to information on State ground-water planning and regulatory efforts. Additionally, any changes in ground-water withdrawal rates or patterns can alter the rates of ground-water movement, which influence the rates of migration of contaminants to exposure points.

The sixth factor focuses on the existing ground-water quality and sources of contamination other than the miscellaneous unit. This factor is relevant for predicting future ground-water uses and the incremental risk of the new unit.

The seventh and eighth factors are the potential for impacts on human health and damage to animals, plants, and physical structures caused by exposure to waste constituents, respectively. Potential adverse impacts on humans, plants, and animals depend on many factors including the concentration, quantity, toxicity, and transport of the waste constituents.

The ninth factor is movement of waste constituents in the subsurface. Subsurface migration of wastes is a type of environmental degradation apart from contamination of ground water. The Love Canal incident provides a classic example. There, waste constituents migrated from a landfill into the basements of nearby homes. Direct human exposure resulted from physical contact with waste and inhalation of volatile contaminants. The potential adverse effects of subsurface migration of waste constituents must be considered in addition to any direct effects on surface water and ground water. The same factors that influence ground-water protection are significant when considering subsurface migration.

Both the saturated and unsaturated zones must be considered in evaluating the potential for subsurface migration. This requires knowledge of the characteristics of the waste in the unit and the hydrogeology of the surrounding area. The patterns of land use in the area, including proximity to residential buildings, are particularly important here, as illustrated in the example above. In particular, the potential for migration of waste constituents into subsurface physical structures must be considered. This requirement is included in factor nine.

Also considered in factor nine is the migration of wastes to the soil root zone of food-chain crops and other vegetation. With such migration, phytotoxicity may occur, as in the case with heavy metals at high concentrations. More importantly, roots may absorb certain hazardous constituents that the plant may uptake and pass into the human food chain.

*2. Surface Water and Surface Soils.* The surface water ecosystem is easily polluted and difficult to cleanse. Improper disposal of hazardous wastes can have immediate, far-reaching, and long-term effects on both surface waters and surface soils. Therefore, § 264.601(b) addresses the prevention of any release that may have adverse effects on surface waters and surface soils. Many of the same factors that influence ground-water protection and minimize risk from subsurface migration of waste constituents are significant for the protection of surface water and surface soils. Therefore, the sections listed in § 264.601(b) are similar to those in § 264.601(a).

The volume and the characteristics of the waste in the units is the first factor to be evaluated. The volume of waste and its chemical and physical properties determines the potential for contamination of surface water and surface soils.

The effectiveness of containment structures should be considered in the second factor because surface waters and surface soils may be contaminated by ground-water migration and by overland flow of waste constituents. Precipitation run-on and run-off controls and subsurface structures should be considered, including liners, dikes, diversion ditches, and cut-off walls.

The third, fourth, fifth, and sixth factors require considerations of the hydrogeology and climate of the area, including evaluation of the topography, rainfall patterns, characteristics of ground-water flow, and the proximity of a unit to surface waters. These factors determine the distribution and degree of surface water and surface soil contamination.

The seventh, eighth, and ninth factors pertain to patterns of surface water and land use, existing surface water and surface soil quality, other sources of contamination, and water quality standards. Information on patterns of use, present quality, and other contamination will provide insight into the likelihood of health or environmental impacts. Water quality standards provide numerical and narrative criteria, tied to particular uses of water bodies, that should guide the Agency, permit applicants, and the public in evaluating the acceptability of managing waste in a particular unit.

Impacts on human health, animals, plants, and physical structures by waste constituents that enter surface waters must also be analyzed and addressed in the tenth and eleventh factors.

*3. Air.* Some waste management units may present a significant potential for adverse effects on air quality. Section 264.601(c) requires the prevention of any releases that may have adverse effects on air quality and lists various factors important in protecting air quality.

The first factor considers the volume and characteristics of the waste in the unit, and the potential to react or evaporate to form gaseous, aerosol, or particulate products that enter the atmosphere.

The second factor considers the effectiveness of systems and structures to prevent gaseous, aerosol, or particulate emissions.

The third factor considers the operating parameters of the unit that make air emissions likely and create a potential for toxic or explosive gases, aerosols, or particulates to be produced.

The fourth and fifth factors take into account the atmospheric, meteorologic, and topographic conditions of the site location, the existing air quality, and sources of contamination near the site.

The sixth and seventh factors assess the potential adverse impacts on human health, plants, animals, and physical structures. Of special concern is the inhalation of hazardous constituents by humans exposed to air emissions from these units.

*C. Section 264.602—Monitoring, Analysis, Inspection, Response, and Reporting*

Each miscellaneous waste management unit must have a monitoring program that includes, where appropriate, a ground-water, surface water, soils, and air quality monitoring system. (Alternatives to ambient air monitoring and analysis may include analysis of waste, emission measurements, and periodic monitoring with portable detectors.) A monitoring program must include procedures for sampling, analysis and evaluation of data, suitable response procedures, and a regular inspection schedule. This requirement is intended to ensure that the permit specifies all monitoring, inspection, and response activities and the frequency at which these activities are to be conducted. Including these specifications in the permit will enable the owner or operator to monitor in order to prevent violation of permit requirements and prevent damage, and will enable the oversight agency, through inspections and enforcement, to assess whether the unit is in compliance with the permit and, therefore, with the requirements of § 264.601.

Since each miscellaneous unit covered by this section may be distinctive in its design, operation, and location, the Agency is leaving the specifications, as well as the extent, of the monitoring, inspection, and response program to the evaluation of the permitting official. At a minimum, the monitoring program for a miscellaneous unit should be capable of determining the unit's impacts on ground water in the uppermost aquifer, surface water, and air quality, and the extent of surface and subsurface contaminant migration, to the extent monitoring in each media is necessary, to ensure compliance with § 264.601. The program should consider the following: (1) Depth and location of monitoring wells necessary to obtain representative samples of constituents in various media, (2) constituents to be monitored and the frequency of monitoring, (3) procedures to maintain the integrity of monitoring devices, (4) sample collection and preservation procedures, (5) analytical methods used for sampling and analysis, (6) appropriate procedures for the evaluation of data from the monitoring program, and (7) appropriate response procedures for cases where the monitoring program indicates that the unit is not in compliance with § 264.601.

The monitoring, inspection, and response program under a Subpart X permit will include requirements linking inspections and monitoring of the unit to the appropriate response. The Agency will consider the Part 264 Subpart F standards for ground-water monitoring, protection, and corrective action as guidelines for establishing a ground-water program at appropriate Subpart X units.

The owner or operator of each miscellaneous waste management unit covered by this section shall comply with biennial reporting requirements specified under § 264.75. These requirements are the same as those in effect for all hazardous waste treatment, storage, and disposal facilities that are specifically regulated under Part 264.

*D. Section 264.603—Post-closure Care*

Owners and operators of miscellaneous units permitted under Subpart X that dispose of hazardous wastes must, in addition to complying with the post-closure standards of Subpart G of Part 264, continue to meet the environmental performance standards of § 264.601 that applied in the operating period during the post-closure care period. This requirement is included to ensure that units used for disposal are maintained properly after closure. This requirement would also be applicable to treatment and storage units that cannot completely remove or decontaminate soils or ground water at closure. Maintaining the unit during this period must be based upon procedures that are specified in a written post-closure plan, as required in § 264.118. Where appropriate, the post-closure plan is to include monitoring, response, and maintenance procedures.

**VII. Amendments to Part 270: Permit Requirements**

*A. General Permit Requirements*

Application and review requirements for permitting hazardous waste management facilities under RCRA are contained in Part 270. All owners and operators of units that treat, store, or dispose of hazardous waste in miscellaneous units must obtain permits under the Part 270 regulations. Subpart X applicants must comply with the general application requirements, including the Part A permit requirements, the Part B general application requirements of § 270.10, and the Part B specific information requirements. Part 270 regulations specify what information owners and operators of facilities must submit in their permit applications to demonstrate compliance with the Part 264 standards (both the general standards in Subparts A through H, except F, and the specific standards in Subpart X). The general information requirements in Part 270 apply to all owners and operators of miscellaneous units.

*B. Specific Information Requirements for Miscellaneous Units*

The specific information requirements for miscellaneous units proposed to be included in § 270.23 are intended to clarify and define the type of unit that is being permitted. The applicant must describe the unit, its physical characteristics, materials of construction, and dimensions. The bulk of the application is expected to contain

detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected and closed to comply with the requirements of §§ 264.601 and 264.602. The plan should include a detailed process development-type plan. For certain treatment units, such as an enclosed thermal treatment process, the applicant may be required to perform trial burns, similar to the type of testing required of incinerators, to demonstrate the effectiveness of the treatment process. Where releases to air, surface water, or ground water are possible, the applicant is expected to provide detailed hydrologic, geologic, and meteorologic assessments and maps for the region surrounding the site. Applications for disposal units must contain a description of the plans to comply with post-closure requirements of § 264.603.

Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures must be contained in the permit application. In addition, for any treatment unit, any reports on demonstrations of the effectiveness of the treatment based on laboratory, bench-scale, pilot-scale, or field data should be submitted.

If the unit to be permitted involves a waste treatment process or technology that is to be demonstrated at a bench-scale or a pilotscale before constructing and operating the unit at full-scale, there are several options available to the permit applicant. If the demonstration is short-term and will be conducted in a unit that is not land-based, a Research, Development, and Demonstration permit may be appropriate. If the demonstration may be long-term (i.e., may eventually be used as a commercial-scale treatment process), or the unit is land-based, a permit may be obtained under Subpart X.

If a multi-stage demonstration project is to be permitted under Subpart X, there are two possible permitting strategies that are available. A single permit that covers the entire demonstration could be written. Alternatively, a series of permits could be issued corresponding to the various stages of development of the process. Each permit would terminate with the completion of the relevant stage, and a new permit issued for the succeeding stage, based upon an evaluation of the results of the concluded stage. The exact permitting strategy to be used would be determined by the permit writer, based upon the type of treatment process and the demonstration.

A detailed description of the unit should include more information than is required for units regulated by other Subparts of Part 264 because the nature of each miscellaneous unit can vary a great deal. Additional information may be required on how a unit's design, construction, location, operation, maintenance, inspection, and closure characteristics are developed to meet the requirements of the environmental performance standards. (See proposed § 270.23 (e).)

*C. Conforming Changes*

Conforming changes are being proposed in other sections of Part 270 to accommodate the new Subpart X regulations. The Agency is not proposing to make changes to the Part 124 permit processing procedures. Issuance of permits for miscellaneous units would be subject to Part 124 in the same manner as other hazardous waste permits.

## VIII. Solicitation of Public Comments

The Agency solicits comments on today's proposed regulations and the supporting rationale provided in the preamble. In addition to the overall approach of Subpart X, the areas on which the Agency specifically requests comments are as follows:

1. What types of units not addressed in Subparts I through O of Part 264 are currently in existence, or likely to be developed in the future? Which of these units are not appropriately addressed under the proposed Subpart X rules?

2. Are some types of miscellaneous units suitable for coverage under a special set of design and operating standards? If so, what special standards should apply and why?

3. Are the environmental performance standards of § 264.601 adequate to evaluate the protection of human health and the environment? Should all of these standards apply to all types of miscellaneous units?

## IX. Applicability to State Hazardous Waste Management Programs

*A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, the Agency 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, the Agency retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its own hazardous waste program rather than the Agency administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and the Agency could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged 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 section 3006(g) of RCRA, 42 U.S.C. 692(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. The Agency 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, HSWA applies in authorized States in the interim.

*B. Effect on State Authorizations*

Today's announcement proposes standards that are not effective in authorized States since the requirements are not being imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State Law.

The Agency is in the process of promulgating amendments to the requirements for State hazardous waste programs. The final rule specifies deadlines for State program modifications and makes other changes to the existing regulations to implement the state authorization provisions of HSWA.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. Under proposed changes to this regulation, the State program must be modified by July 1 of each year to reflect all changes to the Federal program occurring during

the 12 months preceding the previous July 1. These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once the Agency approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already 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 the Agency until the State program modification is submitted for Agency approval. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must modify its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in 40 CFR 271.21.

The Agency is precluded from issuing permits to new units in States authorized to implement RCRA in lieu of the Agency. However, 40 CFR 264.1(f)(2) provides an exception to this preclusion: the Agency may issue permits in authorized States if the unit was not regulated under RCRA at the time of the State's authorization and if standards for permitting the unit were promulgated *after* the State received final authorization. Thus, according to this provision, the Agency may issue a permit to a new facility under Subpart X in an authorized State. However, the Agency's permitting authority would cease once the State modified its program, in accordance with § 271.21(e), to reflect the Federal Subpart X standards.

If a unit has been operating in an authorized State under State interim status (granted as a result of a protective filing, for example), that facility would continue to operate under interim status until the State is authorized to implement Subpart X. In this instance, the Agency could not issue permits under Subpart X in the State.

## X. Regulatory Analyses

### *A. Executive Order 12291: Regulatory Impact Analysis*

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and, thus, subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because: the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency does not expect today's rule to be subject to a Regulatory Impact Analysis under the Executive Order.

The proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to consider the effects of their regulations on small entities, and examine alternatives that may reduce these effects. With respect to today's proposal, there is no means of anticipating exactly how many miscellaneous units, if any, will be owned and operated by small entities. In general, the Agency believes that the large amounts of capital required and technical complexity necessary to establish safe and secure miscellaneous units will mean that larger entities will predominate.

Consequently, the Agency certifies that this regulation will not have a significant impact on a substantial number of small entities.

### *C. 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.* Anyone interested in commenting on the information collection requirements should submit comments 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.

## XI. List of Subjects

*40 CFR Part 260*

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

*40 CFR Part 264*

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds. Waste treatment and disposal.

*40 CFR Part 270*

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: October 29, 1986.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Parts 260, 264, and 270 of Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended 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].

2. Section 260.10 is amended by adding the following definition in alphabetical order to read as follows:

**§ 260.10 Definitions.**

* * * * *

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, or underground injection well.

* * * * *

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 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, 6912(a), 6924, and 6925].

4. Section 264.10 is amended by revising paragraph (b) to read as follows:

**§ 264.10 Applicability.**

* * * * *

(b) Section 264.18(b) applies only to facilities subject to regulation under Subparts I through O and Subpart X of this part.

5. Section 264.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

**§ 264.15 General inspection requirements.**

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.253, 264.254, 264.303, 264.347, and 264.602, where applicable.

* * * * *

6. Section 264.18 is amended by revising the introductory text of paragraph (b)(1)(ii) to read as follows:

**§ 264.18 Location standards.**

* * * * *

(b) * * *

(i) * * *

(ii) For existinq surface impoundments, waste piles, land treatment units, landfills, and open burning/open detonation units, no adverse effects on human health or the environment will result if washout occurs, considering:

* * * * *

7. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

**§ 264.73 Operating record.**

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by Subpart F and §§ 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602;

* * * * *

8. Section 264.90 is amended by adding a new paragraph (d) to read as follows:

**§ 264.90 Applicability.**

* * * * *

(d) Regulations in this Subpart may apply to miscellaneous units when necessary to comply with §§ 264.601 through 264.603.

9. Section 264.111 is amended by revising paragraph (c) to read as follows:

**§ 264.111 Closure performance standard.**

* * * * *

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603.

10. Section 264.112 is amended by revising paragraph (a)(2) to read as follows:

**§ 264.112 Closure plan; amendment of plan.**

(a) * * *

(2) The Regional Administrator's approval of the plan must ensure that the approved closure plan is consistent with §§ 264.111 through 264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan and all approved revisions must be furnished to the Regional Administrator upon request, including request by mail.

* * * * *

11. Section 264.114 is amended by revising the first sentence to read as follows:

**§ 264.114 Disposal or decontamination of equipment, structures, and soils.**

During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.228, 264.258, 264.280, or 264.310, or under the authority of § 264.601 and § 264.603. * * *

12. Section 264.117 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

**§ 264.117 Post-closure care and use of property.**

(a) * * *

(1) * * *

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, N, and X of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X of this part.

* * * * *

13. Section 264.118 is amended by revising paragraphs (b)(1) and (b)(2)(i) and (b)(2)(ii) to read as follows:

**§ 264.118 Post-closure plan; amendment of plan.**

* * * * *

(b) * * *

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, N, and X of this part during the post-closure care period; and

(2) * * *

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, N, and X of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, N, and X of this part; and

* * * * *

14. Section 264.142 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 264.142 Cost estimate for closure.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603.

* * * * *

15. Section 264.144 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 264.144 Cost estimate for post-closure care.**

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117 through 264.120, 264.228, 264.258, 264.280, 264.310, and 264.603.

* * * * *

16. Section 264.147 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 264.147 Liability requirements.**

* * * * *

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, land treatment facility, or miscellaneous disposal unit which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. * * *

* * * * *

17. Part 264 is amended by adding Subpart X consisting of §§ 264.600 through 264.999 to read as follows:

**Subpart X—Miscellaneous Units**

Sec.
264.600 Applicability.
264.601 Environmental performance standards.
264.602 Monitoring, analysis, inspection, response, and reporting.
264.603 Post-closure care.
264.604 through 264.999 [Reserved]

## Subpart X—Miscellaneous Units

### § 264.600 Applicability.

The requirements in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as § 264.1 provides otherwise.

### § 264.601 Environmental performance standards.

A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Protection of human health and the environment includes, but is not limited to:

(a) Prevention of any releases that may have adverse effects on ground-water quality or that may have adverse effects due to migration of waste constituents in the subsurface environment considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

(2) The hydrologic and geologic characteristics of the unit and the surrounding area;

(3) The patterns of land use in the region;

(4) The quantity and directions of ground-water flow;

(5) The proximity to and withdrawal rates of current and potential ground-water users;

(6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;

(7) The potential for health risks caused by human exposure to waste constituents;

(8) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(9) The potential for deposition or migration of waste constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;

(b) Prevention of any release that may have adverse effects on surface water quality or that may have adverse effects due to migration of waste constituents onto the soil surface considering:

(1) The volume and physical and chemical characteristics of the waste in the unit;

(2) The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

(3) The hydrological characteristics of the unit and the surrounding area, including the topography of the land around the unit;

(4) The patterns of precipitation in the region;

(5) The quantity, quality, and directions of ground-water flow;

(6) The proximity of the unit to surface waters;

(7) The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;

(8) The existing quality of surface water and surface soils, including other sources of contamination and their cumulative impact on surface water and surface soils;

(9) The patterns of land use in the region;

(10) The potential for health risks caused by human exposure to waste constituents;

(11) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(c) Prevention of any releases that may have adverse effects on air quality considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission of gases, aerosols, and particulates, and their dispersal;

(2) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

(3) The operating characteristics of the unit;

(4) The atmospheric, meteorologic, and topographic characteristics of the unit and the surrounding area;

(5) The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

(6) The potential for health risks caused by human exposure to waste constituents;

(7) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

### § 264.602 Monitoring, analysis, inspection, response, and reporting.

Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies must ensure compliance with §§ 264.601, 264.15, 264.33, 264.75, 264.76, and 264.77.

### § 264.603 Post-closure care.

A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with § 264.601 during the post-closure care period. In addition, if a treatment and storage unit has contaminated soils or ground water that cannot be completely removed or decontaminated during closure, then that unit must also meet the requirements of § 264.601 during post-closure care. The post-closure plan under § 264.118 must specify the procedures that will be used to satisfy this requirement.

### §§ 264.604 through 264.999 [Reserved]

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

18. The authority citation for Part 270 continues to read as follows:

**Authority:** Secs. 1006, 2002, 3005, 3007, 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, 6925, 6927, 6939, and 6974).

19. Part 270 is amended by adding to the Table of Contents a listing in Subpart B for § 270.23 as follows:

**Subpart B—Permit Application**

* * * * *

270.23 Specific Part 8 information requirements for miscellaneous units.

20. Section 270.14 is amended by revising paragraphs (b)(5) and (b)(13) to read as follows:

### § 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include, where applicable, as part of the inspection schedule, specific

requirements in §§ 264.174, 264.194, 264.226, 264.254, 264.273, 264.303, and 264.602.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112 and 264.118. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.603.

* * * * *

21. Part 270 is amended by adding a new § 270.23 to read as follows:

**§ 270.23 Specific Part B information requirements for miscellaneous units.**

Except as otherwise provided in § 264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of §§ 264.601 and 264.602;

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of § 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and assure compliance of the unit with each factor in the environmental performance standards of § 264.601.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(e) Any additional information determined by the Director to be necessary for evaluation of compliance of the unit with the environmental performance standards of § 264.601.

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Part IX

# Department of the Interior

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation; Proposed Rule and Notice of Public Workshops and Hearings

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

## Acreage Limitation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rules revise the existing rules for the administration of the Reclamation Reform Act of 1982. The rules are being revised primarily to add provisions for administering section 203(b) of the act. Section 203(b) mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in excess of a landholding of 160 acres. The proposed rules also clarify and expand upon provisions in the existing rules.

**DATES:** Comments on the proposed rules must be submitted on or before January 6, 1987. Public hearings on the proposed rules are being scheduled and will be announced in the **Federal Register** once dates and places have been established.

**ADDRESSES:** Written comments on the proposed rules must be submitted to Phillip T. Doe, Chief, Acreage Limitation Branch; Bureau of Reclamation; E&R Center, Code D-410; P.O. Box 25007; Denver, CO 80225.

**FOR FURTHER INFORMATION CONTACT:** Phillip T. Doe; telephone (303) 236-8065.

**SUPPLEMENTARY INFORMATION:**

### Background

The Reclamation Reform Act of 1982 (RRA), title II, Pub. L. 97-293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The act is the culmination of an effort to modernize Reclamation law that began with the 95th Congress. The act makes a number of changes to prior Reclamation law but retains the basic principle of limiting the amount of land in ownership which may receive water deliveries from Relcamation projects. The act makes a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

### Current Rules

Final rules and regulations for implementing the Reclamation Reform Act were published in the **Federal Register** on December 6, 1983 (48 FR 54768). However, during that rulemaking process, the Department of the Interior (DOI) decided not to include provisions for implementing section 203(b) of the act. Section 203(b), commonly known as the "hammer clause," mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. DOI's decision to publish rules without provisions for implementing section 203(b) was made in response to concerns regarding the constitutionality of that section. During the rulemaking process, segments of the public voiced strong objection to section 203(b), maintaining that this provision jeopardized water districts' financing abilities and abrogated existing contracts between water districts and the United States. However, since Congress has not repealed section 203(b), it is necessary for the DOI to take actions to incorporate this provision of the law in the rules and regulations.

### Implementation of Section 203(b)

Since the RRA was enacted in 1982, considerable attention has focused on section 203(b), not only because of the question of constitutionality, but also because of the question of how that section should be implemented when it becomes effective in 1987. The main 203(b) issues that have been raised are: (1) Does the 160-acre full-cost pricing threshold apply to individuals and entities on a westwide or a district-by-district basis? and (2) At what point are a husband and wife subject to prior law required to pay the full-cost rate for irrigation water to leased land—when the landholding exceeds 160 acres or when it exceeds 320 acres?

In a June 12, 1986, opinion, the DOI Solicitor's Office concluded that the Secretary is required to apply section 203(b) on a westwide basis and to limit a husband and wife, as well as all other forms of holding under prior law, to a 160-acre full-cost pricing threshold for leased land. The proposed rules reflect these conclusions and add minor changes necessary for implementing section 203(b).

### Other Changes

In addition to adding changes for administering section 203(b), other changes have been made to reflect DOI Solicitor opinions and Bureau of Reclamation (Bureau) policies which have been developed since the current rules were published. The Bureau thinks it is important that these decisions be incorporated in the proposed rules so that all water users will be aware of the criteria and procedures that apply to the operation of their landholdings. For example, as a result of a recent policy decision, landholders have an additional 15 days after changing their landholdings in which to submit new reporting forms to their water districts. This, and all other changes made because of recently developed policies, have been so identified in the next subsection entitled "Specific Proposed Changes."

The Bureau is also proposing to make other changes for the purpose of clarifying, expanding upon, and correcting certain provisions in the current rules. The existing rules represent the first set of rules promulgated for implementing not only the RRA, but also prior Reclamation law dating back to 1902. Both the RRA and prior law encompass many different issues, a number of which are extremely complex. Based on the Bureau's experience with the Reclamation program since the current rules became effective, we recognize the need for providing a clearer understanding of the Bureau's policies and procedures regarding many of these issues. For that reason, we have added language to the proposed rules to reflect established practices, rewritten passages which have caused confusion or misunderstanding, and corrected errors that were first noticed after the current rules were published.

### Specific Proposed Changes

The following summary identifies the specific changes the Bureau proposes to make to the current rules. It also identifies those editorial changes which could be of more than passing interest to some parties.

*Section 426.4(e).*—In the definition of "discretionary provisions," the words "title II of" were added in front of the words "Pub. L. 97-293" to provide a more exact reference. Because of this change, it is redundant to include these words after every use of the term "discretionary provisions." Therefore, "of title II," as used with the term "discretionary provisions," has been deleted throughout the rules. A similar change has also been made to the definition of "nondiscretionary provisions" in § 426.4(u).

*Section 426.4(i).*—In the past, different terms have been used by the various interests both within and outside government to describe excess land which has gone from excess status to nonexcess status and which is burdened by a deed covenant. This has resulted in confusion and misunderstanding. To rectify this, we have coined the phrase "formerly excess land" and used it, where appropriate, in the proposed rules. Therefore, it is necessary for the term to appear in the definition section.

*Section 426.4(m).*—The wording in the definition of "irrigable land" was revised to make the term easier to understand.

*Section 426.4(n).*—In the past, some landholders have mistakenly thought that irrigable land was considered to be irrigation land only if it were actually being irrigated. To eliminate this misunderstanding, we have added clarifying language to the definition of irrigation land.

*Section 426.4(q).*—The definition of "landholding" has been revised so that it refers not only to qualified and limited recipients, but also to recipients subject to prior law. The last sentence of the definition, which states that attribution is not required if a landholder's interest is 4 percent or less, has been deleted because (1) the sentence does not really define "landholding" and (2) such land, in fact, is attributable to an individual or entity's holdings. The fact that the Bureau does not require landholders to report such holdings under certain circumstances is an issue that is not germane to the definition of landholding.

*Section 426.4(r).*—With implementation of section 203(b), the meaning of "lease," as differentiated from that of other types of farm operation agreements, will become very important to landholders. Therefore, we have included its definition, as already found in the text of § 426.7, in the definition section.

*Section 426.4(v).*—"Non-full-cost entitlement" is a new term which we propose to use throughout the rules to describe the maximum number of acres a landholder may irrigate with less than full-cost water. Therefore, this term has been included in the definition section.

*Section 426.4(w).*—In the current rules, the term "contract rate" is often used when, in fact, a rate higher than the contract rate must be paid in cases where (1) the land is held by an individual who has become subject to the discretionary provisions and (2) the district's contract rate does not cover full O&M costs. To cover such situations, we have replaced the term "contract rate," where appropriate, with the term "non-full-cost rate." Therefore, it was necessary to add this term to the definition section.

*Section 426.4(x).*—It is important that we establish a uniform meaning for the word "operator," as used throughout the rules. Therefore, a definition for this term has been added to the definition section.

*Section 426.4(z).*—For the sake of brevity and to provide a term parallel to "qualified recipient," the term "prior law recipient" has been added throughout the rules to replace the phrase "individuals or entities subject to prior law." Therefore, we have added this new term to the definition section.

*Section 426.5(a)(1).*—New language is necessary to specifically point out that landholders in districts subject to contracts in existence on October 12, 1982, may be required to pay higher water rates with implementation of section 203(b).

*Section 426.5(a)(2).*—The following six changes have been made in this paragraph: (1) To avoid redundancy in the first and second sentences, the first sentence in this section was deleted. (2) In the second sentence, the words "have an existing contract with the United States" were crossed out so that this requirement is stated more accurately. That is, districts which enter new contracts must became subject to the discretionary provisions. This is true even for those districts that had no previous contract with the United States. (3) We have added the cross reference "§ 425.5(a)(3)(ii)" in order to be complete in listing exceptions to the requirement that districts must become subject to the discretionary provisions upon entering a new contract. (4) The discretionary provisions apply to districts, not contracts; therefore, the wording in the third sentence was changed to reflect this fact. (5) In the past, there has been some confusion as to whether individual entity members become subject to the discretionary provisions when the entity holds land in a district which become subject to those provisions. To make it clear that such individuals are affected by the district's contract actions, we have added the words "including individual entity members" to the fourth sentence. For the same reason, we have also added this phrase to § 426.5(a)(3) (i) and (ii) (6) Some individuals and entities in districts which have become subject to the discretionary provisions may not be able to become qualified or limited recipients (for example, nonresident aliens and entities not established under States or Federal law.) New language was added to this section, and also § 426.5(a)(3) and 426.5(d)(1), to cover these instances.

*Section 426.5(a)(3) (i).*—Since all contractors are automatically subject to some provisions in Pub. L. 97-293, it is not accurate to say "contracts amended for conformance to Pub. L. 97-293." More accurately, contracts are amended to conform to only the discretionary provisions of Pub. L. 97-293. Thus, the first sentence of this section was revised to reflect this fact.

*Section 426.5(a)(3)(ii)(F).*—This provision, which addresses water transfers in relationship to additional and supplemental benefits, has been expanded to show that (1) the Bureau will not approve transfers if, in the final analysis, the transfer results in increased operating losses or any decrease in capital payment to the United States, and (2) the recipients of transferred water must pay a rate which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water. The first addition has been made so that the rules ensure adequate cost recovery to the United States. The latter addition simply emphasizes what is required by section 203(b), 205, and/or 208 of the RRA in the pricing of water.

*Section 426.5(d)(1).*—When the current rules were written, the Bureau assumed that an irrevocable election by an entity would also bind individual members of that entity. However, the Solicitor's opinion of February 27, 1984, concluded that an irrevocable election binds only the elector. Therefore, two sentences were added to the end of this section to reflect that opinion. Other provisions of the rules affected by the opinion have also been changed accordingly.

*Section 426.5(e).*—New language was added to the first paragraph to specifically point out that landholders in districts subject to contracts in existence on October 12, 1982, may be required, because of implementation of section 203(b), to pay higher water rates beginning April 12, 1987. The new language in this paragraph eliminates the need for the third paragraph in this section, so we propose to delete it.

*Section 426.6(b)(1).*—The current wording in example 2 gives the impression that the 160 acres Farmer X purchased when he was subject to prior law became ineligible to receive irrigation water after Farmer X became subject to the discretionary provisions. we have revised the language to correct this unintended meaning.

*Section 426.6(b)(1), example 3.*—The following two changes have been made in this paragraph: (1) Throughout this example and the rest of the rules, the working "land receiving irrigation water" has been changed to "irrigation land." This change has been made because in the past some readers have incorrectly interpreted the current wording to mean that irrigable land not being irrigated at any one particular instant does not count against a landowner's entitlement. (2) Example 3 has also been revised to make it clear that the reason Farmer Z, a nonresident

alien, is permitted to place his land under recordable contract and sell it at fair market value is because he owned that land before the district became subject to the discretionary provisions.

*Section 426.6(b)(2), example 1.*—Currently, the rules state that the husband and wife in this example are not eligible to receive irrigation water on any other owned land because they already receive water on 960 acres. However, under certain circumstances, the couple would be able to receive irrigation water on additional land; for example, land under recordable contract. We have revised the wording to allow for such circumstances.

*Section 426.6(b)(3).*—The following four changes have been made in this paragraph: (1) Currently, the rules provide that no member in a legal entity which is a qualified recipient may own more than 960 acres (640 acres for a limited recipient). However, in an entity which makes an irrevocable election, if an individual member remains subject to prior law, he may, in fact, receive irrigation water on no more than 160 acres. Language was revised to reflect this. See also the discussion for changes made in § 426.5(d)(1). (2) The word "westwide" was added to make it clear that a qualified recipient entity's ownership entitlement is applied on a westwide rather than district-by-district basis. (3) The last part of this paragraph was changed to make it clear that while, for obvious reason, the U.S. citizenship/U.S. residency requirements do not apply to a qualified recipient legal entity, they do apply to members of such an entity if the entity becomes subject to the discretionary provisions by virtue of a district contract action. (4) In the current rules, the requirement that a subsidiary's landholding counts against the parent corporation's entitlement is spelled out only in one of the examples under limited recipients. In the proposed rules, we have made the requirement more obvious by adding it to the main body of this section. Changes similar to those discussed in the four preceding items have also been made in § 426.6(c) which addresses ownership entitlements for limited recipients.

*Section 426.6(b)(3), example 1.*—In the current rules, this example is confusing because the reader cannot tell how the entity became a qualified recipient. If the reader assumes the district has amended its contract, the logically, but incorrectly, he could also assume from the present wording that part owners of legal entities are not affected when a district amends its contract. The example was revised to make it clear that entity members become subject to the discretionary provisions because of the district's contract amendment.

*Section 426.6(b)(3), example 2.*—Nonresident aliens in amending districts cannot meet the qualifications for becoming qualified recipients. The example was corrected to reflect this fact.

*Section 426.6(b)(3), examples 3 and 4.*—These new examples were added to illustrate: (1) The effect on a qualified recipient entity's ownership entitlement if some or all of the individual members remain subject to prior law, and (2) ownership entitlement determinations for qualified recipients in parent/subsidiary corporation situations.

*Sections 426.6 (b)(4) and (d)(6).*—During the past three years, there has been confusion and uncertainty regarding treatment of irrigation land held in trusts. To provide uniform treatment, the proposed rules spell out the Bureau's newly established policy for attribution of trust land.

*Section 426.6(b)(4), example 3.*—In the past, this example has caused some readers to misinterpret the rules of attribution in certain trust situations. The source of confusion stemmed from the fact that the example does not specify whether the landowner's daughter is a dependent or a nondependent. We have added language to make it clear that the daughter is a nondependent, and therefore, the trust land is counted against her ownership entitlement rather than her father's.

*Section 426.6(d)(1), example 2.*—The Bureau proposes to adopt a new policy whereby prior law recipients can make land purchased into excess status eligible, provided they become subject to the discretionary provisions within certain time frames. Therefore, we have revised this example to incorporate the proposed policy.

*Section 426.6(d)(2).*—We have added additional language to this section to make it clear that a husband and wife under prior law cannot receive irrigation water on 320 acres unless each holds equal interest in the land they own jointly. This requirement is new to the rules; however, it reflects Bureau policy established many years before enactment of the RRA.

*Section 426.6(d) (2), (3), (4), (5).*—The current rules contain no examples illustrating ownership entitlement situations for prior law recipients. To clarify this section and to be consistent with our treatment of qualified and limited recipients, examples were added to each of these subsections.

*Section 426.6(d) (3) and (4).*—Currently, these two paragraphs provide that no member of a prior law tenancy-in-common or partnership is eligible to receive irrigation water on more than 160 acres. That is not always correct. If individual members of such entities have become subject to the discretionary provisions, they may receive irrigation water on only 160 acres through their interest in the prior law entity; however, their overall entitlement is 960 rather than 160 acres. Language was added to reflect this fact.

*Section 426.6(d)(4).*—The current rules are silent as to the ownership entitlement for a prior law partnership in which the partners do not have separable interests and the right to alienate these interests. In response to questions we have received in this regard, the proposed rules spell out that in such arrangements the entire partnership may own and receive irrigation water on a maximum of 160 acres. This provision reflects the Bureau's long established policy for treatment of such partnerships.

*Section 426.6(d)(5).*—The current rules state that all prior law corporations have a 160-acre entitlement. However, that statement does not take into account the exception to that rule. That is, a subsidiary corporation does not have an entitlement separate from that of its parent corporation. Thus, a statement explaining the exception has been added to this subsection.

*Section 426.6(g).*—Changes were made to this paragraph to clarify how the discretionary provisions apply in cases of multidistrict ownerships.

*Section 426.6(h).*—Changes were needed here to clarify the present wording; i.e., landowners who purchase themselves into excess status cannot automatically make such land eligible through the redesignation process.

*Section 426.7(a).*—With implementation of section 203(b), it is particularly important for landholders to know whether or not a farm operation agreement will be considered a lease. Therefore, we have elaborated on the kind of operations that will not be considered leases; that is, legitimate custom farming operations and arrangements for nonreclamation dependent activities. All other farm operations will be considered leases unless the Secretary determines otherwise.

*Section 426.7(b).*—Additional language has been added to this section requiring all farm operation agreements to be in writing and to be made available for inspection at the Secretary's request. This is a new requirement which we think is warranted because the Bureau must have some means whereby it can

determine or not a farm operation agreement is, in reality, a lease.

*Section 426.7(c).*—We have expanded this paragraph to give a more detailed explanation of how to determine if land is subject to full-cost pricing. The revised explanation reflects the following new provisions: (1) The current rules provide that a landholder who exceeds his non-full-cost entitlement must first select his owned land for receipt of water at the contract rate before selecting leased land for contract rate water. In response to requests by water users, the Bureau requested the DOI Solicitor's Office to review and determine whether it is permissible, from a legal standpoint, for landholders to reverse the order of selection if they choose to do so. In a June 12, 1986, opinion, the Solicitor concluded that the Secretary may permit landholders increased flexibility in selecting that land which will be assessed the full-cost rate. The rules have been revised to reflect that conclusion. This means that a landholder may select his full-cost acres from any of the nonexempt eligible acreage in his holding. (2) The June 12, 1986, opinion also concluded, in contrast with the Bureau's current policy, that only that owned land which actually receives irrigation water must be counted when determining how many acres in a landholding are subject to the full-cost water rate. Since this conclusion revises our current policy, we have included it in the proposed rules. (3) We have also added that irrigation land will be counted toward a landholder's non-full-cost entitlement on a cumulative basis in any one water year. Without such a stipulation, landholders in districts that irrigate on a year-round basis would be able to receive Federal subsidies in excess of their non-full-cost entitlements. (4) Congress mandated that full-cost charges be collected from the parties to whom such charges are attributable rather than being averaged over the district. Language has been added to emphasize this point. (5) We have also added a provision that provides that irrigation water may be delivered at a non-full-cost rate to land in excess of a landholder's non-full-cost entitlement only if the landholder can demonstrate to the Secretary that such land should not be subject to full-cost pricing. We think that this provision is warranted because unless landholders are held responsible for providing proof in such cases, it would be almost impossible for the Bureau to determine if their landholdings are in compliance with the full-cost pricing provisions of the RRA.

*Section 426.7(c)(2).*—In order to accurately reflect the wording used in section 205(a)(3) of the RRA, the last part of the following phrase, "limited recipients who received irrigation water prior to October 1, 1981," has been changed throughout the rules to read, "on or before October 1, 1981."

*Section 426.7(c)(3) and examples 1–4.*—This paragraph and examples were added because of implementation of section 203(b). Based on the Solicitor's June 12, 1986, opinion, the new provisions apply section 203(b) on a westwide, rather than a district-by-district basis. The new provisions also limit a husband and wife, and all forms of holding under prior law, to the receipt of non-full-cost water on a total of no more than 160 acres of leased land. However, it should be noted that after the advent of section 203(b), a husband and wife will still be eligible to receive subsidized water on 320 acres of owned land. In fact, all owned land that was eligible under prior law for subsidized water, regardless of the form of ownership, remains eligible upon implementation of section 203(b), provided it is owner operated.

*Section 426.7(d) and example.*—In the past, some landholders did not realize that (1) they became subject to the discretionary provisions by virtue of the fact that they leased land in a district which had become subject to the discretionary provisions, and that (2) they remain subject to the discretionary provisions if they reenter farming in a reclamation district after disposing of their present ownership or leasehold interest in a district subject to the discretionary provisions. Additional language was added to clarify these two points.

*Section 426.7(e)(1)(i).*—Currently, the rules do not address the amortization period used for calculating full-cost rates in cases where water service rates are designed to completely repay applicable Federal expenditures in a specific time period. Therefore, we have added a sentence to this paragraph to reflect current practice in such situations. That is, in these cases, the specified time period may be used as the amortization period for full-cost calculations related to these expenditures; however, such an amortization period may not exceed the payback period authorized by Congress.

*Section 426.7 (f)(1)(ii) and (f)(2).*—The wording in both paragraphs has been revised so that it will accurately reflect the language in section 205 of the RRA for calculating interest rates for full cost. Section 203(b) requires that a higher interest rate be used when computing full cost for prior law recipients than for landholders who become qualified recipients before April 13, 1987. However, the Bureau has decided that prior law recipients will not be locked into the higher interest rate should they become subject to the discretionary provisions after April 12, 1987. This decision has been added to the rules.

*Section 426.7(g)(1).*—The following two changes have been made in this paragraph: (1) The current rules provide that a proportional rate scheme must be used in charging full cost in districts which levy water delivery charges on a per acre-foot basis. In response to requests received from water districts, we have revised this section so that use of the proportional rate scheme is now optional. If districts prefer, they are now permitted to assess full-cost and non-full-cost charges directly, based on each landholder's full-cost and non-full-cost acreage. However, when this method is used, assessments must be made based on the assumption that equal amounts of water per acre are being delivered to full-cost and non-full-cost land. Such a requirement is necessary to ensure that landholders do not irrigate land selected to pay full cost with non-full-cost water. This change is also reflected in paragraph (g)(3) of this section. (2) Because of implementation of section 203(b), districts will need to look at both reporting and certification forms to determine how much land should be assessed a full-cost rate. Therefore, it was necessary to add "reporting forms" to this section.

*Section 426.7(g)(2), example.*—Presently, it is not clear whether Operator Y in this example is subject to the discretionary provisions. Since this example would not be correct if the reader thinks the operator is a prior law recipient, we have added the words "qualified recipient" so that there can be no confusion about the applicability of this example.

*Section 426.8 (a) and (b).*—We have revised paragraph (a) and example 1 so that when a district amends its contract solely for the purpose of conforming to the discretionary provisions, any positive difference that exists between a district's overall contract rate and the O&M costs will be maintained during the term of a district's contract. Furthermore, this change means that the Bureau will continue its policy of reviewing all contract provisions (including the contract water rate) when districts become subject to the discretionary provisions because of an amendment which provides additional and supplemental benefits. Because of this revision, example 2 in paragraph (a)

of the current rules is no longer applicable, and therefore has been revised to illustrate how the contract rate would be adjusted in those cases where the amending district's current rate does not cover full O&M costs. Additions similar to those made in paragraph (a) have also been made in paragraph (b), which addresses payment of O&M costs for irrevocable electors.

*Section 426.8(c).*—The current rules state that districts which do not amend their contracts to become subject to the discretionary provisions are required to pay O&M charges in accordance with the terms of their existing contracts. However, that statement will no longer be accurate when section 203(b) becomes effective. That is, beginning April 13, 1987, prior law districts are required to collect full O&M costs for any land in their district which becomes subject to full cost. We have revised this section to reflect this fact.

*Section 426.9(b)(5), example.*—The current rules give the impression that Farmer X must dispose of any excess land which cannot be included in his entitlement through an equivalency determination. Revisions were made to show that Farmer X also has the option of keeping the excess land in his holding and not receiving irrigation water on it.

*Section 426.9(h).*—Additional language was added to emphasize the fact that land under recordable contract does not need to be sold at an approved price if it becomes part of a landowner's nonexcess designation as a result of an equivalency determination. In the past, there has been some confusion about this point.

*Section 426.10.*—Throughout this section, we have established the requirement that not only owners and lessees, but all farm operators, are subject to certification and reporting requirements. By requiring the declaration of all farm operation agreements, the Bureau will be aware of situations in which full-cost payments are potentially due, depending on whether the farm operation agreement is found to be, in fact, a lease. If, following the Bureau's review, a farm operation agreement is found *not* to be a lease, then none of the requirements of the RRA pertaining to leases, including full-cost, will apply.

*Section 426.10(b).*—We have received several comments since the current rules were published requesting the Bureau to revise the provision which requires prior law recipients to attest that they are in compliance with the ownership limitations of Reclamation law. These commentors maintain that, because of this requirement, landholders who are not totally knowledgeable about Reclamation law could become easy targets for accusations of perjury should information on their forms be found incorrect. We believe this is a valid concern, and therefore, have revised the wording so that landowners and operators are only required to provide information pertinent to their compliance with Reclamation law.

*Section 426.10(c).*—The following two changes have been made in this paragraph: (1) In the past, some landholders mistakenly thought that irrigable land was only to be reported on the forms if it were actually receiving irrigation water. To avoid this misunderstanding in the future, we have specified that landowners and operators must disclose information about all irrigable land, even if it is not being irrigated. (2) The current rules refer to only qualified and limited recipients when addressing the requirments for identifying members of a multiownership arrangement; however, these same requirements also apply to prior law recipients. Therefore we have revised this paragraph to include prior law recipients.

*Section 426.10(d).*—Based on comments received from water users, the Bureau recently established a policy to meliorate the reporting requirements for landowners and operators who change their landholdings in some way. By that policy, such landowners and operators are given an additional 15 days in which to submit new forms to their districts. This paragraph has been revised so that all owners and operators will be aware of this fact.

*Section 426.10(g).*—The current wording could easily be interpreted to mean that districts can destroy all certification and reporting forms after three years; however, that is not what was intended. In those cases where landholders file the much shorter verification form, the last fully completed certification or reporting form must also be kept on file, even if this form is more than three years old. Language has been revised to clarify this requirement.

*Section 426.10(j).*—The current rules provide that irrigation land becomes ineligible to receive irrigation water if a landowner or operator fails to submit the required certification or reporting forms. We propose to add a new provision requiring that a higher rate, which would be established by the Secretary, be paid should irrigation water be delivered despite this prohibition. It should be noted that all landholders are able to avoid the proposed penalty simply by completing the required forms. Furthermore, the penalty would not apply to those landholders who choose not to complete the forms, so long as no irrigation water is delivered to land in their holding. The Bureau believes this measure is necessary to ensure compliance with the requirements of law.

*Section 426.10(k).*—In the current rules, section 224(c) was inadvertently omitted when citing the sections of the RRA which refer to the collection of information necessary for administering the act. Therefore, we have added that section number to the proposed rules.

*Section 426.10(l).*—We have added an additional paragraph to reflect the Solicitor's conclusion that the certification and reporting forms are subject to the provisions of the Privacy Act.

*Section 426.11(a).*—We have revised the first and last sentences in this paragraph to clarify the fact that land in excess of the maximum ownership entitlements is not considered to be excess land if it has, for some reason, been exempted from acreage limitation.

*Section 426.11(b).*—Now that certification and reporting forms have been designed and are in place, nonexcess land designations are made, as a general rule, in accordance with instructions on the forms, not with provisions in district contracts. We have modified this paragraph to reflect this fact.

*Section 426.11(b)(3).*—The current rules do not give a detailed explanation of the redesignation process. This has resulted in confusion and misunderstanding. Therefore, we have added new language for clarification purposes.

*Section 426.11(b)(4).*—In 1976, the Commissioner established a policy wherein an individual may buy excess land, to be held as nonexcess, up to his full entitlement only once. We believe it is important for the Bureau to carry out this policy because it helps to ensure that the benefits of the program are distributed widely. Therefore, this continuing policy has been incorporated in the proposed rules.

*Section 426.11 (c) and (d).*—In the current rules, paragraph (c) describes how land can regain its eligibility to receive irrigation water in those cases where the land became ineligible prior to October 12, 1982. This forgiveness provision, however, becomes null and void on April 12, 1987. Therefore, we have deleted it. (Prior to April 12, 1987, all prior law districts will be given notice of the impending expiration date.) Paragraph (d) in the current rules, which addresses treatment of excess land not under recordable contract, has also been

deleted. This provision is now incorporated in the new paragraph (c).

Treatment of ineligible land is a complicated and confusing topic because such land can regain eligibility in several different ways depending on (1) whether a landowner is subject to the discretionary provisions or prior law, (2) whether the land was acquired before or after the district's first contract with the United States, and (3) how the land became ineligible. Therefore, we have replaced the current paragraphs (c) and (d) with two new paragraphs giving a detailed explanation under each of the various scenarios. The provisions contained in these two paragraphs, for the most part, represent the Bureau's current practice for treatment of ineligible land. However, § 426.11(c)(2)(i) does reflect one recent policy decision. Currently, land purchased in excess of a landowner's ownership entitlement cannot become eligible to receive irrigation water while in the holding of that landowner. However, the Bureau's new policy will permit land purchased into excess status to become eligible to receive irrigation water, provided the landowner becomes subject to the discretionary provisions within certain time frames. Section 426.11(f) has also been revised to conform with this new policy.

*Section 426.11(e).*—The following three changes were made in this paragraph: (1) The first sentence gives the impression that all excess land can become eligible to receive irrigation water as long as it is placed under recordable contract. However, that is not always the case. For example, a landowner is not permitted to purchase himself into excess status and then make that land eligible by placing it under recordable contract. Therefore, a proviso has been added to this sentence. (2) Qualified and limited recipients must pay full O&M costs for all land in their holding, including land under recordable contract. We have added language to emphasize this fact. (3) Based on the Solicitor's June 12, 1986, opinion, the Bureau is now permitting landholders to pay the full-cost rate for owned land before leased land. This means that, in most cases, a landowner may choose to pay full cost for land under recordable contract. Since this is a new concept, we have spelled it out in the proposed rules.

*Section 426.11(f).*—Some States permit water rights to be sold separately from the land. When the United States enters a recordable contract with a landowner in these States, the landowner may not be eligible to get project water because of district bylaws. Therefore, we have added provisions to protect the United States in such situations.

*Section 426.11(g).*—The following two changes were made in this paragraph: (1) A sentence has been added to clarify the fact that the 10-year deed covenant requiring Secretarial price approval no longer applies once a recordable contract is amended to take advantage of the increased ownership entitlements under the discretionary provisions. (2) Based on the wording in section 209(c) of the RRA, the Solicitor has determined that recordable contracts entered into after October 12, 1982, may not be amended to conform to the expanded ownership entitlements of the discretionary provisions. We have added language to this paragraph to reflect the Solicitor's opinion.

*Section 426.11(h).*—Since the current rules were published, the following issue has been the subject of many debates between banking interests and the Bureau: Does the 10-year deed covenant requiring Secretarial price approval for land acquired from excess status apply to lenders when such land is acquired through involuntary foreclosure? The Commissioner recently made a policy cut on this matter which we think will satisfy the concerns of both the lending institutions and the United States. That is, in the case of foreclosure or deed in lieu of foreclosure, the deed covenant remains in effect; however, with the approval of the Secretary, lenders may sell such land at a price exceeding the excess land value in those cases where an operational loan is outstanding on the date of foreclosure. This decision, which we propose to incorporate in this paragraph and paragraph (a) of § 426.16, allows landholders and lenders greater latitude in obtaining needed operational loans, but yet checks the potential for abuse by providing for Bureau oversight.

*Section 426.11(i)(4).*—The current rules provide that land held under extended recordable contract by a prior law recipient may continue to receive irrigation water at the contract water rate. However, when that provision was written, it did not take into account recordable contracts in districts with water rates which do not cover full O&M costs. In such districts, we propose that the full O&M rate must be paid for water deliveries to land under extended recordable contracts.

*Section 426.11(k).*—Because of questions we have received during the past 3 years regarding the applicability of this provision, we realize that the wording for the paragraph needs to be modified to clarify its intent. Therefore, we have added language to stress that land which becomes excess or ineligible because of westwide application or other requirements of the RRA, can be placed under recordable contract and sold without Secretarial price approval only if such land had been eligible to receive irrigation water under prior law. This provision does not apply to land which becomes excess or ineligible in a district which first becomes subject to Reclamation law by entering a contract after October 12, 1982.

*Section 426.12.*—The regulations for appraisals of excess land also apply to appraisals of formerly excess land. Therefore, the words "formerly excess" have been added, where appropriate, throughout § 426.12.

*Section 426.13(a)(2).*—We have added language to the first sentence of this paragraph so it is clear exactly which provisions of Reclamation law will no longer apply when districts pay out their construction charge obligation. The proposed wording reflects the language used in section 213 of the RRA.

*Section 426.13(a)(3).*—The first two sentences were revised so that they will accurately reflect the wording used in section 215 of the RRA to describe temporary water supplies which can be considered exempt from acreage limitation.

*Section 426.13(a)(4).*—The following two changes have been made in this paragraph: (1) With implementation of section 203(b), payment of full cost for isolated tracts will now apply to those landholders under prior law as well as to those under the discretionary provisions. The wording in this paragraph has been modified to reflect this fact. (2) The second to the last sentence in this paragraph has been corrected to show that full cost applies to tracts in excess of a landowner's non-full-cost entitlement, not ownership entitlement.

*Section 426.13(a)(5).*—The following two changes have been made in this paragraph: (1) We have added a sentence to reflect a policy decision issued after the current rules were published. That policy requires prior law districts with outstanding construction charge obligations to become subject to the discretionary provisions as a condition for receipt of a Rehabilitation and Betterment (R&B) loan. (2) The current rules do not address how a district is treated if it is not a beneficiary of a Reclamation project but wishes to receive an R&B loan. However, since this type of situation does occur, we have added a sentence to spell out the Bureau's policy in such cases. That is, such districts can only become eligible for an R&B loan if Congress authorizes the program and

the district agrees to become subject to the discretionary provisions.

*Section 426.15(a) and (b).*—When the current rules were written, the Bureau interpreted section 219 of the RRA to mean that religious and charitable organizations must meet the three criteria listed in that section in order to be eligible to receive irrigation water. However, in a May 14, 1985, opinion, the Solicitor interpreted section 219 somewhat differently. The Solicitor concluded that religious and charitable organizations are still eligible to receive irrigation water even if they cannot meet these criteria because of leasing. However, in such cases, the organization (including all its subdivisions) will be treated as any other prior law or limited recipient and will lose the rather generous ownership entitlement afforded in section 219. The Solicitor's conclusions have been incorporated in the proposed rules.

*Section 426.16(a).*—In addition to the changes which were discussed under section 426.11(h), language has been added to this paragraph to make it clear that during the 5-year grace period for receiving irrigation water, the full-cost rate must be paid for involuntarily acquired land if the land is part of a lessee's selection of full-cost land.

*Section 426.16(a)(3).*—The current rules do not address the treatment of land which was ineligible before it was involuntarily acquired by another party. However, because of the questions we have received in this regard, we have added provisions to spell out the treatment of such land. That is, such land remains ineligible unless (1) the new owner is or becomes subject to the discretionary provisions, (2) the land is nonexcess in the owner's holding, and (3) the deed to the land contains the 10-year deed requiring Secretarial sale price approval.

*Section 426.16(d).*—Several general rules apply to all involuntary acquisitions but were not included in § 426.16 of the current rules. We think it is important that readers be aware of these rules and so we have added a new paragraph which provides that (1) a landholder does not become subject to the discretionary provisions by virtue of the fact that he acquires irrigation land involuntarily from a landowner who had been subject to the discretionary provisions and (2) when land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water begins on the date of the devisor's death.

*Section 426.17 (a) and (b).*—The paragraphs which address irrigation land held by governmental agencies were meant to apply to all levels of government, including the Federal government. However, when the current rules were written, "Federal government" was inadvertently omitted from two of the paragraphs. This error has been corrected in the proposed rules.

*Section 426.17(c) and example 2.*—The following two changes have been made in this paragraph: (1) Some readers have incorrectly interpreted this provision to mean that a landholder has an entitlement for land leased from a governmental agency which is separate and distinct from his basic ownership entitlement. We have revised the language to clarify its intent. That is, land leased from a governmental agency plus land owned by a landholder must not exceed the landholder's basic ownership entitlement in order for the leased land to be eligible for irrigation water. (2) The current rules do not contain an example illustrating the leasing of Government-owned land to a prior law recipient; therefore, we have added such an example to the proposed rules.

*Section 426.18(a).*—In order to protect the United States, we have added a provision which states that commingling provisions in existing contracts shall remain in effect upon contract renewal only if the provisions are consistent with the Bureau's current rules and policies for commingling.

*Section 426.18(b).*—The words "Federally financed facilities" have been replaced with the words "Federally subsidized facilities" so that the Bureau will be able to permit the joint use of project facilities for project and nonproject water without imposing acreage limitation. That is, we can allow nonproject water to become free of acreage limitation if a district pays the actual cost, including interest, for its share of the distribution facilities. This new policy will not apply to Federal water—only non-Federal water in Federal facilities.

*Section 426.19.*—The following two changes have been made in this paragraph: (1) Because of the reference to the Water Supply Act in section 210(b) of the RRA, it is necessary for some districts to address M&I (Municipal and Industrial) water supply activities in their water conservation plans. Language has been added to the rules so that water districts will be aware of this requirement. (2) In the past, some water districts did not realize they were required to submit their water conservation plans to the Bureau because the submittal requirement is not specifically stated in the current rules. So that there will be no doubt about this requirement in the future, we have added it to the proposed rules.

*Section 426.21(d).*—The new language added to this paragraph reflects a policy decision issued since the current rules were published. By that decision, a prior law district that has not completed its construction charge obligation must become subject to the discretionary provisions as a condition for receipt of a Small Reclamation Projects Act (SRPA) loan.

*Section 426.21(e).*—We have added this new paragraph because it is important that water districts are aware that a contract under general Reclamation law is the controlling contract in those cases where districts have both an SRPA loan contract and a contract under general Reclamation law.

*Section 426.22.*—This paragraph was added in response to questions regarding the validity of Solicitors' decisions made prior to enactment of the RRA. That is, past legal opinions remain in force unless they have been superseded or modified by provisions in the RRA, the courts or subsequent legal opinions, or the rules or regulations for implementing the RRA.

*Section 426.23.*—A new section has been added to the rules to make concrete the Secretary's authority to determine whether proposed actions are within the intent of Reclamation law or are attempts to circumvent the law.

**Executive Order 12291**

The DOI has determined that the proposed rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

**National Environmental Policy Act Compliance**

A draft environmental assessment and draft FONSI (finding of no significant impact), which examine the environmental impacts of four alternative approaches for administering section 203(b) of the RRA, have been prepared and are available for public review. Copies of these documents may be obtained upon request from the Bureau offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Amarillo, Texas; Billings, Montana; Denver, Colorado; and Washington, DC. Comments on the assessment and FONSI may be incorporated with comments on the proposed rules. Decisions on the final disposition of these documents will be made following the public review process.

### Small Entity Flexibility Analysis

The proposed rules will not have a significant economic effect on a substantial number of small entities. The main economic impacts of the proposed rules will occur as a result of implementation of section 203(b). Section 203(b) applies only to landholders who remain subject to prior law and who lease land in excess of a landholding of 160 acres. Of the farms remaining subject to the provisions of prior Reclamation law, approximately 67 percent are small entities of 160 acres or less in size. Section 203(b) will not apply to these farms. Furthermore, it is expected that most farm operators will elect to come under the discretionary provisions of the RRA in 1987 in an effort to minimize the impacts of the full-cost pricing provisions of section 203(b). Upon electing, the provisions of section 203(b) will not be applicable to them.

### Paperwork Reduction Act

The information requirements contained in § 426.10 have been either approved by or submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq.

### Authors

Preparation of the proposed rules was coordinated by Phillip T. Doe and Dorothy Aho. The principal authors of the rules were Phillip T. Doe, Dorothy Aho, Gary Anderson, and Richard Rizzi of the Acreage Limitation Branch, Engineering and Research Center, Bureau of Reclamation, Denver, Colorado.

### Distribution Table

The following distribution table is provided to show where provisions from the current rules are located in the proposed rules.

| Old | New |
|---|---|
| 426.1 | 426.1. |
| 426.2 | 426.2. |
| 426.3 | 426.3. |
| 426.4(a) | 426.4(a). |
| 426.4(b) | 426.4(b). |
| 426.4(c) | 426.4(c). |
| 426.4(d) | 426.4(d). |
| 426.4(e) | 426.4(e). |
| 426.4(f) | 426.4(f). |
| 426.4(g) | 426.4(g). |
| 426.4(h) | 426.4(h). |
| New provision | 426.4(i). |
| 426.4(i) | 426.4(j). |
| 426.4(j) | 426.4(k). |
| 426.4(k) | 426.4(l). |
| 426.4(l) | 426.4(m). |
| 426.4(m) | 426.4(n). |
| 426.4(n) | 426.4(o). |
| 426.4(o) | 426.4(p). |
| 426.4(p) | 426.4(q). |
| New provision | 426.4(r) |
| 426.4(q) | 426.4(s). |
| 426.4(r) | 426.4(t). |
| 426.4(s) | 426.4(u). |
| New provision | 426.4(v). |
| New provision | 426.4(w). |
| New provision | 426.4(x). |
| 426.4(t) | 426.4(y). |
| New provision | 426.4(z). |
| 426.4(u) | 426.4(aa). |
| 426.4(v) | 426.4(bb). |
| 426.4(w) | 426.4(cc). |
| 426.4(x) | 426.4(dd). |
| 426.4(y) | 426.4(ee). |
| 426.4(z) | 426.4(ff). |
| 426.4(aa) | 426.4(gg). |
| 426.4(bb) | 426.4(hh). |
| 426.5(a) | 426.5(a). |
| 426.5(b) through (e)(2) | 426.5 (b) through (e)(2). |
| 426.5(e)(3) | Deleted. |
| 426.6 | 426.6. |
| 426.7(a) through (c)(2) | 426.79 (a) through (c)(2). |
| New provision | 426.7(c)(3). |
| 426.7(d) and (e) | 426.7(c). |
| 426.7(f) | Deleted. |
| 426.7(g) | 426.7(d). |
| 426.7(h) | 426.7(e). |
| 426.7(i) | 426.7(f). |
| 426.7(j)(1) | 426.7(g)(1). |
| 426.7(j)(2) | 426.7(g)(2). |
| New provision | 426.7(g)(3). |
| 426.7(k) | 426.7(h). |
| 426.8 | 426.8. |
| 426.9 | 426.9. |
| 426.10(a) through (k) | 426.10 (a) through (k). |
| New provision | 426.10(1). |
| 426.11(a) through (b)(3) | 426.11 (a) through (b)(3). |
| 426.11(b)(4) | 426.11 (c)(1) and (c)(2). |
| New provision | 426.11(b)(4) |
| 426.11(c) | Deleted. |
| New provisions | 426.11 (c), (c)(1), and (c)(2). |
| 426.11(d) | 426.11(c). |
| New provisions | 426.11 (d), (d)(1), (d)(2), and (d)(3). |
| 426.11(e) through (h)(1) | 426.11 (e) through (h)(1). |
| New provision | 426.11(h)(2). |
| 426.11(i),(j), and (k) | 426.11(i),(j), and (k). |
| 426.12 | 426.12. |
| 426.13 | 426.13. |
| 426.14 | 426.14. |
| 426.15 | 426.15. |
| 426.16(a) and (a)(1) | 426.16 (a) and (a)(1). |
| New provision | 426.16(a)(2). |
| New provision | 426.16(a)(3). |
| 426.16(b) and (c) | 426.16 (b) and (c). |
| New provision | 426.16(d). |
| 426.17 | 426.17. |
| 426.18 | 426.18. |
| 426.19 | 426.19. |
| 426.20 | 426.20. |
| 426.21(a),(b), and (c) | 426.21 (a), (b), and (c). |
| New provision | 426.21(d). |
| New provision | 426.21(e). |
| 426.22 | 426.22. |
| 426.23 | 426.24. |

### List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to amend Title 43, Chapter I, of the Code of Federal Regulations by revising Part 426 to read as set forth below.

Dated: November 3, 1986.

**Donald Paul Hodel,**

*Secretary, Department of the Interior.*

## PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

Sec.



**Authority:** Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97-293, title II, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388, (43 U.S.C. 371 35 et seq.).

### § 426.1 Objectives.

Reclamation law establishing terms and conditions pursuant to which project water may be supplied is designed:

(a) To provide viable farm opportunities on land receiving Reclamation project water.

(b) To distribute widely the benefits from the Reclamation program.

(c) To preclude the accrual of speculative gain in the disposition of excess land.

(d) To require reimbursement to the Federal government of the full cost of providing irrigation water to landholdings which exceed established limits.

### § 426.2 Applicability.

(a) These proposed regulations are published for public comment. These rules are effective 30 days from publication of the final rules.

(b) These regulations apply to all irrigation land subject to the acreage limitation and full-cost provisions of Reclamation law. (Included are excess land, whether under recordable contract or not, and nonexcess land.)

(c) Sections 426.5 through 426.12 of these regulations apply variously to all districts subject to the acreage limitation and full-cost provisions of Reclamation law. The way in which they apply depends upon whether the district has (1) a contract which was in force on October 12, 1982, (2) a contract which was amended after October 12, 1982, or (3) a contract which was entered into after October 12, 1982. Application of these sections will also vary depending upon whether an individual or entity

subject to Reclamation law has made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

(d) The remainder of these rules, §§ 426.13 through 426.23, may not apply to all districts, but if they do apply, they apply equally.

(e) In many cases, hypothetical examples illustrating the application of a specific rule have been provided. This approach is in direct response to the public's expressed need. The examples provided should not be construed, however, as being exclusive interpretations of a rule. They are provided only as an interpretative tool.

**§ 426.3 Authority.**

These rules and regulations are written under the authority vested in the Secretary by the Congress in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388 (43 U.S.C. 371, et seq.).

**§ 426.4 Definitions.**

As used in these rules:

(a) The term "arable land" means land which, when farmed in adequate size units for the prevailing climatic and economic setting and provided with essential onfarm improvements, will generate sufficient income under irrigation to pay farm production expenses; provided a return to the farm operation, labor, management, and capital; and at least pay the operation, maintenance, and replacement costs of related project irrigation and drainage facilities.

(b) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States normal operation, maintenance, and replacement costs pursuant to Federal Reclamation law. All water service and repayment contracts are considered contracts even if the contract does not specifically identify that portion of the payment which is to be attributed to operation and maintenance and that which is to be attributed to construction.

(c) The term "contract rate" means the repayment or water service rate that is set forth in a contract that is to be paid by a district to the United States.

(d) The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) as well as the regulations issued thereunder, as both read on October 12, 1982.

(e) The term "discretionary provisions" refers to sections 203 through 208 of Title II of Pub. L. 97–293.

(f) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water. This definition includes entities which contract for construction or improvement of water storage and/or delivery facilities.

(g) The term "excess land" means irrigation land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provision of Reclamation law.

(h) The term "exempt land" mans irrigation land in a district to which the acreage limitation and pricing provisions of Reclamation law do not apply.

(i) The term "formerly excess land" means that irrigation land which has gone from excess status to nonexcess status as the result of sale or some other legal means and which is burdened by a 10-year deed convenant requiring Secretarial sale price approval.

(j) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. When used in these regulations, the term "full-cost rate" means the foregoing "full-cost" charges plus actual operation, maintenance, and replacement costs required under Federal Reclamation law.

(k) The term "individual" means any natural person, including his or her spouse, and including other dependents as defined and interpreted in the Internal Revenue Code of 1954 (26 U.S.C. 152), as well as the regulations issued thereunder as both read on October 12, 1982; provided, that with respect to the ownership limitations established by prior law, the term individual does not include his or her spouse or dependents.

(l) The term "irrevocable election" means the legal instrument which landowner or lessee uses to make his or her owned and/or leased irrigation land subject to the discretionary provisions. The election is binding on the elector and the irrigation land in his or her holding, but will not be binding on a subsequent landholder of that land.

(m) The term "irrigable land" means arable land under a specific project plan for which a water supply is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided, or are planned to be provided. For the purpose of determining the areas to which acreage limitations are applicable, it is that acreage possessing permanent irrigated crop production potential, after excluding areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures, such as feedlots, equipment storage yards, and similar facilities, together with roads open for unrestricted use by the public. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the irrigable acreage.

(n) The term "irrigation land" means all irrigable land, regardless of whether it is receiving irrigation water, and other land receiving irrigation water.

(o) The term "irrigation water" means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary.

(p) The term "landholder" means a qualified, limited, or prior law recipient who owns and/or leases land subject to the acreage limitation and pricing provisions of Federal Reclamation law.

(q) The term "landholding" means all irrigation land owned and leased directly by a qualified, limited, or prior law recipient, and also any irrigation land held by the recipient through any legal entity, in proportion to the recipient's interest in the legal entity.

(r) The term "lease" means a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee) the use and/or possession of land (including, in some cases, associated building, machinery, etc.) for a specified time and for agreed upon payments (cash or other considerations), and by which the lessee assumes an economic interest in some part of the operation and management of the leased land.

(s) The term "legal entity" means any business or property ownership arrangement established under State or Federal law, including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

(t) The term "limited recipient" means any legal entity established under State

or Federal law benefiting more than 25 natural persons. In these rules, the term "limited recipient" does not include legal entities which are prior law recipients.

(u) The term "nondiscretionary provisions" refers to sections 209 through 230 of Title II of Pub. L. 97–293. These provisions of the law are of general application and became effective immediately upon enactment. These provisions apply to all individuals and districts regardless of whether they are subject to the discretionary provisions.

(v) The term "non-full-cost entitlement" means the maximum acreage a landholder may irrigate with less than full-cost irrigation water.

(w) The term "non-full-cost rate" means all water rates other than full-cost rates. Non-full-cost rates are paid for irrigation water made available to land in a landholder's non-full-cost entitlement.

(x) The term "operator" means a person who operates a farm by either doing or supervising the work and by making day-to-day operating decisions. Lessees are included within the meaning of the term "operator."

(y) The term "prior law" means the Act of June 17, 1902 (32 Stat. 388), and acts supplementary thereto and amendatory thereof which were in effect prior to the enactment of the Reclamation Reform Act of 1982, Pub. L. 97–293 (96 Stat. 1263) as that law is amended or supplemented by the Reclamation Reform Act of 1982 (Pub. L. 97–293).

(z) The term "prior law recipient" means individuals or entities which have not become subject to the discretionary provisions.

(aa) The term "project" means any Reclamation or irrigation project, including incidental features thereof, authorized by Federal Reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(bb) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits 25 natural persons or less. In these rules, the term "qualified recipient" does not include individuals or legal entities which are prior law recipients.

(cc) The term "Reclamation fund" means a special fund established by the Congress under the Reclamation Act of June 17, 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues. The Congress makes appropriations from this fund for the investigation, construction, operation, and administration of Bureau of Reclamation projects. Collections from water users for reimbursable costs of these projects are returned to the fund unless Congress has specified otherwise for specific projects.

(dd) The term "recordable contract" means a written contract between the Secretary and a landowner capable of being recorded under State law, providing for the sale or disposition of land held in excess of the ownership limitations of Federal Reclamation law.

(ee) The term "resident alien" means any natural person within the meaning of the term as defined in the Act of June 27, 1952 (66 Stat. 163).

(ff) The term "Secretary" means the Secretary of the Interior or his designee.

(gg) The term "title II" refers to sections 201 through 230 of Pub. L. 97–293, without differentiation between the discretionary and nondiscretionary provisions of that law.

(hh) The terms "westside" or "Reclamation wide" mean the 17 Western States in which Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

**§ 426.5 Contracts.**

(a) *In general.* Title II will be applied to repayment and water service contracts (hereafter contracts) by the following rules:

(1) *Contracts in force on October 12, 1982.* Contracts in force on October 12, 1982, which have not been amended to conform to the discretionary provisions shall continue in effect, provided, however, that full-cost rates for irrigation water may be applicable, as set forth in § 426.7(c)(3), to certain individuals and entities in these districts. In these rules, individuals or entities which have not become subject to the discretionary provisions are termed "prior law recipients."

(2) *New contracts.* Districts which enter into a new contract after October 12, 1982, shall be subject to all provisions of title II, except as provided in §§ 426.5(a)(3)(ii) and 426.13(a)(3). The execution date of the new contract determines the date upon which the discretionary provisions apply to the district. In these rules, individuals and entities (including individual entity members) who are subject to the provisions of new contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4(t) and (bb).

(3) *Amended contracts.* (i) Contracts amended for conformance to the discretionary provisions. Contracts which are amended at the request of the district to conform with the discretionary provisions need be amended only to the extent required for conformance with that title. A district shall be subject to the discretionary provisions from the date the district's request is submitted to the Secretary. The district's request to the Secretary must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, the action required by applicable State law to amend its contract. In these rules, individuals and entities (including individual entity members) subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4(t) and (bb).

(ii) Contracts amended to provide additional or supplemental benefits. All contracts which are amended after October 12, 1982, to provide a district supplemental or additional benefits, shall be amended at the same time to conform to the discretionary provisions. The date that the contract amendment is executed by the Secretary will establish the date for determining the application of the discretionary provisions. All contract actions will be construed as providing supplemental or additional benefits except those actions which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States. More specifically, the following shall not be considered to provide additional or supplemental benefits:

(A) The construction of those facilities for conveyance of irrigation water that were contracted for by the district on or before October 12, 1982;

(B) Minor drainage and construction work contracted for under a preexisting repayment contract;

(C) O&M (operation and maintenance) payments, excluding R&B (Rehabilitation and Betterment) loan payments;

(D) The deferral of payments, provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.13(a)(3);

(F) The transfer of water on an annual basis from one district to another, provided that (*1*) both districts have contracts with the United States, (*2*) the rate paid by the district receiving the transferred water is the higher of the applicable water rate for either district, and provided further that the rate paid does not result in any increased operating losses to the United States above those which would have existed in the absence of the transfer and the rate paid does not result in any decrease in capital repayment to the United States below that which would have existed in the absence of the transfer, (*3*) the existing contracts allow for such transfers, and (*4*) the recipients of the transferred water pay a rate for the water which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water; and

(G) Additional contract actions which the Secretary determines do not provide additional or supplemental benefits.

In these rules, individuals and entities (including individual entity members) subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4 (t) and (bb).

(b) *Standard article for contract amendments.* New contracts executed after October 12, 1982, or contracts which are amended to conform to the discretionary provisions shall contain the following provision:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

(c) *Master contract-subcontract arrangements.* In cases where contractual arrangements involve several districts and the United States in a master contract-subcontract type of arrangement, an amendment to a subdistrict contract to conform to the discretionary provisions will not affect the terms of the master contract or other subdistrict contracts in the contractuual agreement nor will it impose any of the requirements of the discretionary provisions on other contracting entities in that arrangement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* District A, along with six other irrigation districts, is a member of a water conservancy district which has entered into a master contract with the United States. District A also has a subcontract with the conservancy district to which the United States is a party. Given the foregoing conditions, District A may amend its subcontract to conform to the discretionary provisions without making it necessary for the conservancy district or other subcontracting entities within the conservancy district to so amend.

*Example (2).* The Riverside Water Conservancy District has a contract with the United States for the delivery of irrigation water. The district also has contracts with six subcontracting entities for the delivery of irrigation water. However, the United States is not a party to these subcontracts. Given these circumstances, only the conservancy district has the authority to amend its contract to conform to the discretionary provisions. If it so amends, all the subcontracting entities automatically become subject to the discretionary provisions.

(d) *Individual elections to conform to the discretionary provisions*—(1) *Individual election.* Landowners or lessees who meet the requirements for becoming either a qualified or limited recipient, as set forth in § 426.4 (t) and (bb), may elect to become subject to the discretionary provisions even if the district has not taken action to become subject to the discretionary provisions. The individual election is effected by executing an irrevocable election in a form provided by the Secretary. The landholder exercising the election shall be considered a qualified or limited recipient, as appropriate, and all irrigation land in the recipient's landholding shall be subject to the discretionary provisions. The election shall be binding on the elector and the irrigation land in his or her holding but will not be binding on a subsequent landholder of that land. The irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity. Similarly, an irrevocable election by a member of a legal entity binds only that member making the election and not the entity.

(2) *Disposition of irrevocable election forms.* The recipient's irrevocable election form shall be filed with the Bureau of Reclamation and shall be accompanied by a completed certification form, the contents of which are discussed in § 426.10. The Bureau shall forward the completed forms to each district in which the elector owns or leases land. Such forms shall be retained by the district(s).

(3) *District reliance on election information.* The district shall be entitled to rely on the information contained in the election form without being required to make an independent investigation of the information.

(e) *Time limits*—(1) *District amendments.* There are no time limits on when a district may request its contract be amended to conform to the discretionary provisions, provided, should a district not amend its contract to conform to the discretionary provisions by April 12, 1987, the full-cost rate must be paid by prior law recipients for irrigation water to land in excess of their 160-acre non-full-cost entitlement, as set forth in § 426.7(c)(3).

(2) *Individual elections.* There are also no time limits on when an individual landowner or lessee may make an irrevocable election.

**§ 426.6 Ownership entitlement.**

(a) *In general.* Ownership entitlement is determined by whether the landowner is a "qualified recipient," a "limited recipient," or a "prior law recipient." All irrigation land shall be considered in the ownership computations except as stipulated in paragraphs (e) and (f) of this section.

(b) *Qualified recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9 and 426.11, a qualified recipient is entitled to irrigate a maximum of 960 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All individual ownership and multiownership arrangements are qualified recipients provided they meet the following conditions:

(1) *Individual landowners.* All individual landowners are qualified recipients if they are citizens of the United States or resident aliens thereof and have met the contract requirements for a qualified recipient as set forth in § 426.5. As such, they are entitled to receive irrigation water for use on a maximum of 960 acres of owned land on a westwide basis and owned land under recordable contract for the term of that contract term.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X is a citizen of the United States and receives irrigation water on 160 acres owned in District A. District A amends its contract to conform to the discretionary provisions. Farmer X automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

*Example (2).* Farmer Y is a citizen of Germany, but has taken up permanent residency in the United States. Farmer Y owns 160 acres in District A and desires to

purchase an additional 800 acres. District A has not amended its contract to conform to the discretionary provisions. Farmer Y, however, decides to execute an irrevocable election. After the election, Farmer Y becomes eligible to receive irrigation water on 960 acres of owned land. This eligibility as a qualified recipient remains in force so long as Farmer Y, as a resident alien, maintains permanent residency in the United States. If Farmer Y were to become a United States citizen, his eligibility as a qualified recipient would, of course, remain in force.

*Example (3).* Farmer Z is a citizen and resident of Switzerland. Farmer Z owns 160 acres of irrigation land in District A. District A amends its contract to conform to the discretionary provisions. Because Farmer Z, as an individual nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient and because he owned the irrigation land prior to the district's contract amendment, Farmer Z may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer Z not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold to an eligible buyer or Farmer Z took up permanent residency in the United States.)

(2) *Husband and wife.* A husband and wife, and all dependents, are considered as one individual landowner. They are considered to be a qualified recipient and are entitled to irrigate a maximum of 960 acres of owned land on a westwide basis with irrigation water, provided, either husband or wife is a citizen of the United States or a resident alien thereof and the contract requirements as set forth in § 426.5 have been met.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of land eligible for irrigation water. They are in compliance with the ownership entitlement applicable to a qualified recipient.

*Example (2).* Farmer Y and Farmer Z are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer Y and Farmer Z have reached the limits of eligibility to receive irrigation water as a qualified recipient.

(3) *Multiownership arrangements.* All multiownership legal entities are considered to be qualified recipients, provided that: the ownership is a legal entity established under State or Federal law, the entity does not benefit more than 25 natural persons, and the entity has met the contract requirements for a qualified recipient as set forth in § 426.5. As a qualified recipient, the entity is eligible to receive irrigation water on a maximum of 960 acres of land owned westwide, provided no member of the entity through this or in combination with any other ownership arrangement receives irrigation water on land owned in excess of his or her individual ownership entitlement under Reclamation law. The requirement of U.S. citizenship or U.S. residency for aliens applies to individual members of a multiownership legal entity if the entity becomes subject to the discretionary provisions by virtue of district action as set forth in § 426.5 (a)(2) or (a)(3). However, if the entity becomes subject to the discretionary provisions through an irrevocable election, this requirement does not apply to those members who remain subject to prior law. Irrigation land held by a subsidiary is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

*Example* (1). XYZ Farms is a general partnership comprised of four individuals who own equal and separable interest in the 960-acre partnership. The district in which the partnership's land is located has amended its contract to become subject to the discretionary provisions. All other requirements as set forth in § 426.6(b)(3) have also been met. Therefore, XYZ Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership are also qualified recipients and each may receive irrigation water on 720 acres or less in some ownership or ownerships other than XYZ Farms.

*Example* (2). Six brothers who are citizens and residents of Canada are equal shareholders in a family corporation comprised of 160 acres of irrigation land. The district in which they own the land amends its contract to become subject to the discretionary provisions. As a result, the corporation's land is not eligible to receive irrigation water on a permanent basis because the partners are not U.S. citizens or resident aliens. However, because the land was eligible in the corporation's ownership before the district amended its contract, it may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. If the 160 acres had not been acquired prior to the district's amendment or if the land were not placed under recordable contract, it would be ineligible to receive irrigation water until such time as the brothers became residents of the United States or until the land was sold to an eligible buyer.

*Example* (3). Farmers X, Y, and Z, who are citizens of the United States, have formed a partnership in which each farmer holds an equal interest. The partnership presently owns 160 acres in District A and wishes to purchase an additional 800 acres in this same district. Since District A has not amended its contract to become subject to the discretionary provisions, the partnership executes an irrevocable election. Even though the partnership has made an election, Farmers X, Y, and Z remain subject to prior law and cannot exceed their individual entitlements of 160 acres. Therefore, assuming that none of the partners owns irrigation land outside his interest in the corporation, the maximum entitlement for the partnership is 480 acres. However, the partnership can realize the 960-acre entitlement under the discretionary provisions if the partners also make individual irrevocable elections or District A amends its contract to become subject to the discretionary provisions.

*Example* (4). Corporation P was established under California State law and has three stockholders—A, B, and C. The stockholders all own equal shares in Corporation P and all are citizens of the United States. Corporation S, which was also established under California State law, is a U.S. subsidiary wholly owned by parent Corporation P. Corporation S owns 160 acres in District A. The only irrigation land held by Corporation P is owned through its subsidiary, Corporation S. District A has not amended its contract to become subject to the discretionary provisions. Therefore, Corporation P, including its subsidiary, has reached the ownership entitlement limitation for receiving irrigation water. Subsequently, Corporation S wishes to purchase and receive irrigation water on an additional 800 acres. In order to be eligible, the corporation, its wholly owned subsidiary, and each of the stockholders must make an irrevocable election.

(4) *Trusts.* An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or full-cost pricing limitations imposed by title II nor any other provisions of Federal Reclamation law. However, the interest of each beneficiary (qualified or limited recipient) in trust land in combination with other land he or she may own shall not exceed the ownership entitlement of title II unless the land is under recordable contract. Irrigation land held in any form of trust will be attributed to the grantor in those cases where the trust arrangement has not been reviewed and approved by the Secretary. The following trust criteria will apply to those trusts that are reviewed: Irrigation land held in revocable or underwritten grantor trusts, grantor sprinkling trusts, or other forms of trusts not specifically identifying the interests of the trust beneficiaries shall be attributed to the landholding of the grantor. In the case of testamentary trusts, irrevocable grantor trusts, and any other form of irrevocable trusts, irrigation land shall be attributed to the landholding of the beneficiaries in

accord with the individual interests specified therein except that the interest of any beneficiary who in the previous tax year was a dependent, as specified in the Internal Revenue Code of 1954 (26 U.S.C. 152), will be attributed to the individual claiming such dependent. For the purpose of applying these rules, a conservatorship or other arrangement in which a fiduciary relationship is created, shall be considered to be a trust. The Secretary will not approve any trust arrangement until he has been provided with a copy of the trust agreement, a copy of the most recent Federal tax return of the grantor and each benficiary of the trust, and separate affidavits from the grantor and each beneficiary. In the affadavit, the form of which will be provided by the Secretary, the grantor and each beneficiary must affirm their dependency/nondependency status, and that if the terms of the trust should change for any reason, including Internal Revenue Service audit or review, the parties involved will notify the Secretary of the change.

(i) The application of this rule may be illustrated by the following:

*Example* (1). Bank X is the trustee for five trusts, each of which has more than one beneficiary. The trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the trusts is in districts which have amended their contracts to conform to the discretionary provisions. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts, all 4,080 acres in the five trusts are eligible to receive irrigation water at the contract rate. However, if a benficiary owned land or had other trust land which, when combined with his beneficiary interest in the subject trust, caused him to exceed the 960-acre ownership limitation, that beneficiary would be required to designate the nonexcess land for which irrigation water could be supplied.

*Example* (2). Farmer X, a qualified recipient, establishes a testamentary trust by placing 640 acres of this land receiving irrigation water in a trust for his minor child upon his death. Farmer X designates his brother as trustee for the trust. The land is located in a district which has amended its contract to come under the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns. Note: The land placed in the testamentary trust by Farmer X would be counted against his entitlement during his lifetime as long as the land remained in his ownership.

*Example (3).* Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water. He decides to place 160 acres of this land in a living trust with his daughter, who is not a dependent, as the life tenant. The 160 acres of trusted land shall be counted against the daughter's entitlement.

(c) *Limited recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9 and 426.11, a limited recipient is entitled to irrigate a maximum of 640 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All legal entities established under State or Federal law benefiting more than 25 persons are limited recipients provided they have met the contract requirements for a limited recipient as set forth in § 426.5. The requirement of U.S. citizenship or U.S. residency for aliens applies to members in a limited recipient if the member holds more than a 4 percent interest in the entity and if the entity owns irrigation land in a district(s) which becomes subject to the discretionary provisions as set forth in § 426.5 (a)(2) or (a)(3). In no case does this requirement apply to prior law recipients who are members in a limited recipient which becomes subject to the discretionary provisions by virtue of an irrevocable election. No member of a limited recipient, through his or her interest in such entity or in combination with any other ownership arrangement, shall receive irrigation water for use on land owned in excess of his or her individual ownership entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(1) The application of this rule may be illustrated by the following:

*Example (1).* ABC Fertilizer Company is a corporation registered in Nebraska and owns 640 acres in District A. District A has amended its contract to conform to the discretionary provisions. ABC Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient. Furthermore, since the company became subject to the discretionary provisions through a district contract action rather than through an irrevocable election, those individuals who hold interest in the company automatically become qualified recipients, provided they are U.S. citizens or resident aliens. As a limited recipient, all 640 acres of owned land in the corporation are eligible to receive irrigation water.

*Example (2).* XYZ Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District A. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby XYZ Land Company becomes a limited recipient and is entitled to receive irrigation water on a maximum of 640 acres of owned land. In this case, the individual stockholders are not required to also execute irrevocable elections in order for XYZ Land Company to realize its maximum entitlement because the acreage attributable to each stockholder's interest in the corporation does not exceed the stockholders' individual 160-acre entitlement under prior law.

*Example (3).* CDE Development Company is a corporation with more than 25 shareholders which chose to incorporate in the Greater Antilles. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, none of its land is eligible for irrigation water. Had CDE Development Company owned the 160 acres prior to the district's amendment, it could have received irrigation water on the land for 5 years, as set forth in § 426.11(k).

*Example (4).* Corporation X owns 640 acres in District A as does Corporation Y. Both are subsidiaries of Corporation Z. District A has amended its contract to conform to the discretionary provisions. The landholdings of Corporation X and Y, since they are subsidiaries of Corporation Z, are counted against the entitlement of the parent corporation, Corporation Z. Corporation Z is a limited recipient; therefore, only 640 acres of the 1,280 acres are eligible to receive irrigation water.

(d) *Prior law recipients*—(1) *Individuals.* Individuals are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer X owns land has amended its contract to conform to the discretionary provisions, and Farmer X held title to the land prior to December 6, 1979. Thus, Farmer X remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note.—If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land.

*Example (2).* Farmer Y owns 160 acres in each of two nonamending districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer Y owned the land prior to December 6, 1979. On January 1, 1983, Farmer Y purchases another 160 acres of Farmer Z's nonexcess land which is located in a third nonamending district. The land newly purchased in this district becomes ineligible for service until such time as it is sold to an eligible buyer at a price approved by the Secretary or Farmer Y becomes subject to the discretionary provisions as set forth in § 426.11(c)(2)(i).

(2) *Husband and wife.* A husband and wife, or surviving spouse until remarriage, and entitled to receive

irrigation water on a maximum of 320 acres of land jointly owned in each district; provided, each spouse holds an equal interest and provided further that the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for husband and wife) applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and his wife own 320 acres of irrigation land in District A and also 320 acres in District B. The couple purchased both parcels of land in 1976. Districts A and B remain subject to prior law, and Farmer X and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer X and his wife are entitled to receive irrigation water on all 320 acres in each district. The couple has reached the limit of their ownership entitlement for receiving irrigation water in these two districts.

(3) *Tenants-in-common.* Each individual in a tenancy-in-common subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the tenancy. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for a married couple) applies on a westwide basis to all land acquired after December 6, 1979. An individual subject to the discretionary provisions, through his or her interest in a prior law tenancy and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and Farmer Y have formed a tenancy-in-common in which each holds equal interest. The tenancy owns 320 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Both Farmers X and Y own irrigation land only through their interests in the tenancy; however, Farmer Y wishes to purchase additional land in the district so he makes an irrevocable election.

Since the tenancy remains subject to prior law, Farmers X and Y may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer X have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer Y may receive irrigation water on an additional 800 acres of land owned either as an individual or through other ownership arrangements.

(4) *Partnerships.* Each individual who is a partner in a partnership subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the partnership, provided each partner has a separable interest in the partnership and the right to alienate that interest. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres in each district, provided the land was acquired on or before December 6, 1979. A partner subject to the discretionary provisions, through his or her interest in the partnership and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide. A partnership in which each partner does not have a separable interest and the right to alienate that interest is entitled to receive irrigation water on a maximum of 160 acres of land owned by the partnership.

(i) The application of this rule may be illustrated by the following:

*Example.* XYZ Farms, a partnership comprised of four individuals who hold equal and separable interests in the partnership, owns 960 acres of irrigation land located in District A. District A has not amended its contract to become subject to the discretionary provisions. XYZ Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither XYZ Farms nor any of the partners own irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of XYZ Farms' 960 acres are entitled to receive irrigation water. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

(5) *Corporations.* All corporations, except subsidiaries of parent corporations, are considered to be individual entities and as such are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement applies on a westwide basis for all land acquired after December 6, 1979. No shareholder in a corporation through his or her interest in the corporation and any other ownership arrangement shall receive irrigation water on land owned in excess of his or her individual entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Two brothers are the sole stockholders and hold equal shares in Corporation XYZ. The corporation owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions and neither the brothers nor the corporation has made an irrevocable election. Thus, the corporation has reached its ownership entitlement for receiving irrigation water under prior law. Based on their 50 percent interests in the corporation, 80 acres will be counted against each of the two brothers' individual entitlements. Each brother may also purchase and receive irrigation water on another 80 acres outside the corporation to complete his individual 160-acre ownership entitlement.

*Example (2).* Corporation ABC owns 320 acres in District A. Corporation ABC's two shareholders, FArmer X and Farmer Y, hold equal interests in the corporation. Both District A and Farmer X are subject to prior law; however, Farmer Y is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation ABC's 320 acres are eligible to receive irrigation water. Eighty acres of the corporation's ownership is attributed to each shareholder. As a prior law recipient, Farmer X may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer Y may receive irrigation water on an additional 880 acres outside the corporation.

*Example (3).* Corporation P and Corporation S, which are established under Canadian law, each owns 160 acres of irrigation land in District A. Corporation S is a wholly owned subsidiary of Corporation P. District A has not amended its contract to become subject to the discretionary provisions. Since Corporation S is a subsidiary of Corporation P, its entitlement is counted against Corporation P. Therefore, only 160 acres of the 320 acres are eligible to receive irrigation water.

(6) *Trusts.* Land held by an individual or corporate trustee in a fiduciary capacity is not subject to the ownership limitations imposed by prior law. However, the interest of each beneficiary (prior law recipient) in the trust land in combination with other land he or she may own shall not exceed the ownership entitlement of prior law. The trust criteria set forth in paragraph (b)(4) of this section also apply to irrigation land held in trust by prior law recipients.

(e) *Exemptions from ownership limitation.* Irrigation land owned in districts which have been exempted,

§ 426.13(a) (1) and (2), will not be counted against ownership entitlement. Neither will isolated tracts, § 426.13(a)(4), be counted against ownership entitlement.

(f) *How ownership entitlement is to be computed.* With the exception of land under recordable contract, § 426.11(e), all designated nonexcess land, § 426.11(b), and all acreage receiving irrigation water on other than a temporary or short-term basis, as defined in § 426.13(a)(3), from a Reclamation project in a district which is subject to acreage limitation shall be counted against the appropriate ownership entitlement; i.e., qualified recipient, limited recipient, prior law recipient.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X, a qualified recipient, owns 1,400 acres in District A and has designated 960 acres as nonexcess and eligible to receive irrigation water. Even though Farmer X may not irrigate all 960 acres every year, all of the designated acreage is counted against his entitlement.

*Example (2).* Farmer Y, a qualified recipient, owns 640 acres of irrigation land in District A. Farmer Y also owns 320 acres which are not in a district, but Farmer Y has entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres of irrigation land must be counted for purposes of determining ownership entitlement.

*Example (3).* Farmer Z, a prior law recipient, owns 180 acres in District A. This acreage was classified as to its arability during project planning and only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer X installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of entitlement, all 160 acres must be counted.

(g) *Multidistrict ownerships.* Landowners may own irrigation land in more than one district (multidistrict ownerships). If any one of the districts in which a landowner owns land becomes subject to the discretionary provisions, the multidistrict landowner automatically becomes subject to the discretionary provisions. Thus, the irrigation land owned by that recipient in all districts becomes subject to the acreage entitlement of a qualified or limited recipient, provided the landowner can meet the requirement for being such a recipient. Similarly, if a landowner with multidistrict ownership makes an irrevocable election in one district, the irrigation land he or she owns in all districts becomes subject to the discretionary provisions. If all districts in which a prior law recipient holds irrigation land remain subject to prior law, the 160-acre ownership entitlement shall apply on a district-by-district basis, provided the land was acquired prior to December 6, 1979. If any of the owned land was acquired after December 6, 1979, its eligibility will be determined on a westwide basis.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landowner X is a U.S. citizen and owns 160 acres of irrigation land in each of Districts A, B, C, and D. District A amends its contract to conform to the discretionary provisions. Thereby, Landowner X automatically becomes a qualified recipient by virtue of the fact he is a U.S. citizen and is entitled to receive irrigation water on 960 acres owned westwide. Since, in this case, Landowner X's total present ownership is 640 acres, he would be entitled to receive irrigation water on another 320 acres owned.

*Example (2).* Landowner Y is a citizen of the United States and owns 160 acres of irrigation land in each of Districts A, B, C, D, E, and F. In the absence of district action, Landowner Y makes an irrevocable election in District A. By this action, Landowner Y automatically becomes a qualified recipient and all owned irrigation land in Districts B, C, D, E, and F must be included in his ownership entitlement. Since in this case the Landowner Y already owns 960 acres of irrigation land, he has reached his maximum ownership entitlement.

**Note:** For examples illustrating application of the multidistrict rule to prior law recipients, see examples 1 and 2 in paragraph (d)(1) of this section.

(h) *Loss of eligibility.* (1) An owner who presently owns irrigation land and acquires additional irrigation land shall lose eligibility on any newly purchased land that exceeds the owner's entitlement unless, in the case of land for which irrigation water is not available because facilities have not been constructed to provide such water, the land is placed under recordable contract when facilities become available. If irrigation facilities are available to land which is purchased in excess of an owner's entitlement, eligibility can be reestablished if the land is sold at a price approved by the Secretary to an eligible buyer or, if the land was eligible in the hands of the seller, the sale is canceled. If a prior law recipient purchases nonexcess land which becomes excess in his landholding, the land can regain eligibility if the landowner becomes subject to the discretionary provisions and redesignates such land up to his entitlement, as nonexcess, as set forth in § 426.11(c)(2)(i).

(i) The principles of this rule are illustrated by the following:

*Example.* Farmer X meets all of the criteria for a qualified recipient, as set forth in § 426.6(b)(1). Farmer X irrigates 960 acres of owned land in District A as he is entitled to do. Subsequent to his determination of eligibility, Farmer X buys, in District B, 320 acres of irrigation land which had been designated as nonexcess when held by the previous owner. All land purchased by Farmer X in District B thereby becomes ineligible for service until such time as the sale is canceled or Farmer X sells the farm in District B at a price approved by the Secretary. If the 320 acres which Farmer X purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer X could, as provided for in § 426.11(e), place the 320 acres under recordable contract when facilities became available to serve the land.

**§ 426.7 Leasing and full-cost pricing.**

(a) *What constitutes a lease.* A lease is a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee) the use and/or possession of land (including, in some cases, associated buildings, machinery, etc.) for a specified time and for agreed upon payments (cash or other consideration). The lessee assumes an economic interest in the operation and management of the leased land. All farming operations exceeding the full-cost acreage thresholds specified in paragraph (c) of this section will be considered to be leasing arrangements unless otherwise determined by the Secretary, with the following exceptions:

(1) *Legitimate custom farming operations.* Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis. A custom farming arrangement shall be considered a lease, unless the compensation for such work is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and the person or entity performing the custom farming has no interest, directly or indirectly in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, or granting or guaranteeing the financing of the crop.

(2) *Nonreclamation dependent activities.* A contract arrangement for nonreclamation dependent activities which allows for limited use of the land shall not be considered a lease. Examples of such activities are incidental grazing or use of crop residue from irrigated crops grown on the land. Land which is subleased (the lessee transfers his or her interest to a sublessee) will be attributed to the landholding of the sublessee.

(b) *The form and provisions of a lease*—(1) *Present leases.* All leases and agreements concerning the operation of a farm must be in writing and be made available by the leaseholders or operators to the Secretary for inspection at the Secretary's request. The term of the lease may not exceed 10 years, including any exercisable option, except in the case of a lease of land for the production of perennial crops having an average life of more than 10 years. In that case, the lease may be for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(2) *Written leases in existence prior to October 12, 1982.* Land under written leases which were in existence prior to October 12, 1982, and which have a remaining term of longer than 10 years will become ineligible to receive irrigation water after October 12, 1992, unless the leased land is used for the production of perennial crops having an average life of more than 10 years. In that case, the leased land may be eligible for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(c) *Full-cost acreage thresholds.* There is a limit on the amount of land for which a landholder may receive irrigation water at a non-full-cost rate. The maximum acreage a landholder may irrigate with less-than-full-cost irrigation water is called the landholder's non-full-cost entitlement. All owned or leased land receiving irrigation water counts against a landholder's non-full-cost entitlement, with the following exceptions: exempt land, except for isolated tracts, as provided in § 426.13(a)(4); and land acquired through involuntary processes, as provided in § 426.16. All land counted against a landholder's non-full-cost entitlement shall be counted on a cumulative basis during any one water year. A landholder in excess of the non-full-cost entitlement may select, from nonexempt eligible land in the holding, that land which will be subject to the full-cost rate. That selection may include owned land, leased land, land under recordable contract, or a combination of all three. However, land under recordable contract may not be selected as land subject to the full-cost rate if such land is already subject to full-cost pricing under an extended recordable contract as provided in § 426.11(i)(4). Once a landholder reaches the limits of his or her non-full-cost entitlement during a water year, the selection of non-full-cost land is binding for the remainder of that water year. Land subject to full-cost pricing due to the status of either the owner or the lessee can receive irrigation water only at full cost. Irrigation water may be delivered at a non-full-cost rate to land held in excess of a landholder's non-full-cost entitlement only if the landholder can demonstrate to the Secretary that such land should not be subject to full-cost charges. If such claims are made based on the belief that applicable farm operation agreements do not constitute leases, the parties involved must provide the Secretary with the documentation he deems necessary to substantiate that the operation exists as claimed and is thereby exempted from full cost. Districts shall collect full-cost rates from those landholders to whom such costs are attributable rather than averaging the costs over the entire district.

(1) *Non-full-cost entitlement for qualified recipients.* The non-full-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a qualified recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated as follows:

*Example (1).* Farmer X, a qualified recipient, receives irrigation water on 900 of the 960 acres of irrigation land in his ownership in District A. Farmer X leases and receives irrigation water on another 320 acres in District B. Since Farmer X receives water on 260 acres in excess of his non-full-cost entitlement, he must select 260 acres—whether owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

*Example (2).* Farmer Y, a qualified recipient, owns and receives irrigation water on 960 acres in District A. Farmer Y decides to lease all 960 acres to another qualified recipient, Farmer Z. Farmer Z, however, already farms 960 acres receiving irrigation water. Therefore, the full-cost rate would have to be paid for irrigation water delivered to 960 acres of Farmer Z's landholding.

*Example (3).* Landholder X, a qualified recipient, owns 500 acres of irrigation land in District A which receives irrigation water and which he leases to another farmer. Landholder X also leases and receives irrigation water on another 960 acres in District B. Thus, there are 500 acres in Landholder X's total landholding which receive irrigation water in excess of his 960-acre non-full-cost entitlement and for which a full-cost rate must be paid.

*Example (4).* Landholder Y, a qualified recipient, receives irrigation water on 960 acres owned in District A and 800 acres leased in District B. At the beginning of the water year, Landholder Y selects 360 owned acres plus 600 leased acres to receive irrigation water at the non-full-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder Y terminates the lease on the 600 acres of leased land which are part of his non-full-cost entitlement. However, since non-full-cost acreage is counted against one's entitlement on a cumulative basis during any one water year, Landholder X has already reached the limits of his non-full-cost entitlement for this water year. Therefore, Landholder Y may not replace those 600 non-full-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder Y must pay the full-cost rate for irrigation water delivered to any other land he irrigates during that water year.

*Example (5).* Landholder Z, a qualified recipient, owns and irrigates 1,120 acres, 160 of which are subject to a non-extended recordable contract. Landholder Z also irrigates 160 acres leased from another party. All of Landholder Z's landholding, a total of 1,280 acres, counts against his non-full-cost entitlement; therefore, he is in excess of his non-full-cost entitlement by 320 acres. However, the 160 acres under recordable contract are technically not subject to full-cost pricing, so Landholder Z need select only 160 acres from his total landholding for full-cost pricing.

(2) *Non-full-cost entitlement for limited recipients.* The non-full-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The non-full-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a limited recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(c) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* ABC Farms is a limited recipient which owns and was receiving irrigation water on 640 acres in District A prior to October 1, 1981. Of the total, 480 acres were and continue to be under a nonextended recordable contract. ABC Farms may continue to receive irrigation water at the non-full-cost rate on the 640 acres until the end of the recordable contract period. It may also amend the recordable contract to allow it to own and receive irrigation water on 640 acres owned without termination of its benefits. If it amends the recordable contract,

it will be allowed to receive irrigation water at the non-full-cost rate on 320 acres, but it must pay the full-cost rate on the additional 320 acres owned.

*Example (2).* XYZ Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and XYZ Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for XYZ Farms to receive irrigation water for any eligible land, it must pay the full-cost rate for that water.

*Example (3).* FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District A. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the non-full-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre non-full-cost entitlement.

*Example (4).* The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the non-full-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another, the full-cost rate would still apply.

(3) *Non-full-cost entitlement for prior law recipients.* There is no full-cost pricing requirement until April 13, 1987, for prior law recipients, unless their land becomes subject to full-cost pricing through leasing to or from a party subject to the discretionary provisions. However, as of April 13, 1987, the non-full-cost entitlement for prior law recipients is 160 acres westwide. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a prior law recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); (iii) land acquired through involuntary processes, as provided in § 426.16; and (iv) owned land held as nonexcess under § 426.6(d). However, in lieu of leased land, a prior law recipient may pay full cost for any owned land in his landholding, provided it is eligible and nonexempt.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X and his wife receive irrigation water on 160 owned acres of irrigation land and on 40 leased acres in District A. District A has not amended its contract to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since Farmer X and his wife receive irrigation water on 40 acres in excess of their 160-acre non-full-cost entitlement, the couple must select 40 acres in their landholding and, beginning April 13, 1987, pay the full-cost-rate for water delivered to that land. If Farmer X and his wife make an irrevocable election or if District A amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a non-full-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer X and his wife would be able to receive irrigation water at the non-full-cost rate on all 200 acres.

*Example (2).* Farmer X and his wife own 320 acres of irrigation land in District A. They also lease 320 acres of irrigable land in District A and another 640 acres of irrigable land in District B. Districts A and B have not amended their contracts to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. The couple receives irrigation water on all land in their landholding. In order to determine the number of full-cost acres in their landholding, Farmer X and his wife must count all of their owned land plus all of their leased land, for a total of 1,280 acres. At first glance, it appears that there are 1,120 acres in excess of the couple's non-full-cost entitlement. However, since 160 of those acres are within the couple's ownership entitlement as prior law recipients, the number of full-cost acres is actually 960 (1,120 − 160). Therefore, Farmer X and his wife must select 960 acres in their landholding and, beginning April 13, 1987, pay the full-cost rate for water delivered to that land.

*Example (3).* Four brothers hold equal and separable interests in a partnership they have formed. The partnership owns 160 acres of irrigation land in District A and also leases another 320 acres from Farmer Y in District B. All land in the partnership's landholding receives irrigation water. The partnership and Districts A and B remain subject to prior law. Unless the partnership becomes subject to the discretionary provisions prior to April 13, 1987, as of that date, the full-cost rate must be paid for irrigation water delivered to 320 acres in its landholding.

*Example (4).* Farmer X, a prior law recipient, owns 5,000 acres of irrigation land in District A, 4,840 of which are under recordable contract. He receives irrigation water on all this land and also on another 320 acres which he leases in this same district. Beginning on April 13, 1987, Farmer X will be receiving irrigation water on 5,160 acres (5,320 − 160) in excess of his non-full-cost entitlement. However, his recordable contract land is technically not subject to full-cost pricing; therefore, Farmer X must select 320 acres (5,160 − 4,840) for full-cost pricing. Although his recordable contract land is technically not subject to full-cost pricing, Farmer X may, at his option, select part or all of the 320 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

(d) *Multidistrict landholding.* If a landholder has multidistrict landholdings and any one of those districts becomes subject to the discretionary provisions, the landholder automatically becomes a qualified or limited recipient and irrigation land owned or leased in all districts and receiving water must be included in determining the landholder's non-full-cost entitlement. Furthermore, a qualified or limited recipient remains such a recipient even after he disposes of his ownership or leasehold interest in land within a district(s) subject to the discretionary provisions. In no case, however, shall a prior law recipient become a qualified or limited recipient by virtue of leasing irrigation land from a lessor who has made an irrevocable election.

(1) The application of this rule may be illustrated by the following:

*Example.* In District A, Farmer X owns 160 acres receiving irrigation water. In District B he receives irrigation water on another 800 acres leased from Farmer Y. District A is subject to prior law; however, District B has amended its contract to become subject to the discretionary provisions. Because Farmer X leases land in a district subject to the discretionary provisions and because he is a U.S. citizen, he becomes a qualified recipient. On the other hand, if Farmer Y had become subject to the discretionary provisions by virtue of an irrevocable election and District B had remained subject to prior law, Farmer X would have also remained subject to prior law. Under this second set of circumstances, Farmer X would have been required to pay, beginning April 13, 1987, the full-cost rate for irrigation water deliveries to 800 acres of land in his holding.

(e) *Calculating full cost*—(1) *What constitutes full cost.* As set forth in § 426.4, the term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs rising subsequent to October 12, 1982. Operation, maintenance, and replacement charges required under Federal Reclamation law shall be collected in addition to the full-cost payment.

(i) *Amortization period.* The amortization period for calculating the full-cost rate shall be the remaining balance of the repayment period for the district as specified in its repayment contract. However, in those cases, such as in water service contracts, where payment by a district through its

existing contract term will not fully discharge its obligation for repayment of construction costs and where, in accordance with the project authorization the district must renew its water service contract, the district may extend the amortization period for the calculation of full costs by renegotiating its current water service contract at the time it amends its contract to conform to the discretionary provisions. The amortization period may extend up to the expiration date of the new contract, and the term of the new contract cannot exceed the payback period authorized by Congress. In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures. Such an amortization period may not exceed the payback period authorized by Congress.

(ii) *Allocable construction expenditures.* For determining full cost, the construction costs properly allocable to irrigation are those Federal project costs which have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as planning, design, land, rights-of-way, water-rights acquisitions, construction expenditures, interest during construction, and when appropriate, transfer costs associated with services provided from other projects.

(iii) *Facilities in service (irrigation).* Facilities in service are those facilities which are in operation and providing irrigation services.

(iv) *Operation and maintenance deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation which have been federally funded and which have not been paid by the irrigation contracting entity.

(v) *Payments.* In calculating the payments which have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Reclamation law, policy, and applicable contract provisions shall be considered. These may include:

(A) Direct repayment contract revenues,

(B) Net water service contract income,

(C) Contributions,

(D) Ad valorem taxes, and

(E) Other miscellaneous revenues and credits excluding power and M&I (municipal and industrial) revenues.

(vi) *Unpaid balance.* The unpaid balance is the irrigation allocated construction cost plus cumulative federally funded O&M deficits, less payments.

(2) *Calculating the full-cost rate.* The Secretary will calculate a district's full-cost rate using accepted accounting procedures. The definition of "full cost" contained in title II does not recover interest charges retroactively before October 12, 1982, but interest charges on the unpaid full cost do accrue from the date of the act. The full-cost rate for amended contracts will be determined as of the date of enactment. The full-cost rate for districts which enter into contracts after the date of enactment will be determined at the time the new contract is executed. For repayment contracts, the full-cost rate will fix equal payments over the amortization period. For water service contracts, the full-cost rate will fix equal payments per acre-foot of projected water deliveries over the amortization period. If there are additional construction expenditures or the cost allocated to irrigation changes, then a new full-cost rate will be determined. The Secretary will notify the respective districts of changes in the full-cost rate at the time he notifies the district of other payments due the United States.

(i) The application of this rule may be illustrated by the following:

*Example (1).* District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 million. As of October 12, 1982, the district's accumulated repayments are $174 million, the unpaid obligation on District A's repayment contract is $66 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization tables and is equivalent to the annual payment necessary to retire a debt of $733.33 at a 7½ percent rate of interest over 11 years. This rate will apply regardless of when District A amends its contract.

*Example (2).* District B has a water service contract which establishes a rate of $6.50 an acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1.00 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5.00 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date. As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million less $15.5 million), and the applicable interest rate is determined to be 7½ percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost rate of $1,384,016, or $15.38 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Bureau policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost rate would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost rate would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

*Example (3).* District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

(f) *Interest rate calculations for full cost.* Indetermining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) *Qualified recipients and limited recipients who were receiving irrigation water on or before October 1, 1981.* (i) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7–1/2 percent per annum or the weighted average yield of all

interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(ii) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) *Limited recipients not receiving irrigation water on or before October 1, 1981 and all recipients subject to prior law after April 12, 1987.* The interest rate shall be determined as of the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (i) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (ii) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

Note.—Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section.

(g) *Proportional charges for full-cost water.* (1) For those water delivery charges levied by a district per acre-foot of irrigation water delivered, as compared to per acre of land, the district must, except as provided in § 426.7(g)(3), levy a proportional charge for water delivered to a landholding in that district which reflects the relative amounts of non-full-cost and full-cost water rate land in the farm operation. The proportional rate will be equal to the weighted average of the non-full-cost rate and the full-cost rate in proportion, respectively, to the acres of land which receive irrigation water at the non-full-cost rate and the acres of land which receive irrigation water at full cost. Such a district shall calculate the proportional rate for each water user based upon the information provided in the certification or reporting forms furnished to the district pursuant to § 426.10. The district shall make no adjustment in the proportional rate applicable to any landholding unless the cumulative acreage receiving irrigation water during any water year changes, or the acreage receiving irrigation water changes between water years.

(2) Use of the proportional rate removes the necessity of separately assigning irrigation water amounts to those portions of landholdings that are eligible to receive water at the non-full-cost and full-cost rate. Water bills or other district records will set forth the non-full-cost rate, the full-cost water rate, and the amount of acreage to which each applies, as well as the proportional rate.

(i) The application of this rule may be illustrated by the following:

*Example.* District A has a water service contract which specifies a rate of $4.00 per acre-foot for irrigation water. The full-cost rate plus annual O&M costs is determined to be $16.00. If Operator Y, a qualified recipient, has a landholding of 1,000 acres, he will pay a proportional rate for water of $4.48 per acre-foot of water delivered anywhere in his landholding (96 percent of $4.00 plus 4 percent of $16.00). This rate is equal to the weighted average of the previous contract rate and the full-cost rate, where the weights are the respective acreages of land eligible to receive water at the contract rate and at full cost. If Operator Y uses 3 acre-feet of water per acre, total water charges will be $13,440 per year (1,000×3×$4.48). If Operator Y reduces the size of his operation by 30 acres, then the proportional water charge will be $4.12, and his total water charges for using 3 acre-feet per acre will be $12,000, or $1,440 less than with the 1,000-acre operation. This reduction in water charges is equal to the full-cost rate of $16.00×3×30.

(3) In lieu of the proportional rate scheme set forth in paragraphs (g) (1) and (2) of this section, districts levying water charges on a per-acre foot basis may, at their option, assess full-cost and non-full-cost charges to landholders directly, based on each landholder's full-cost and non-full-cost acreage; provided, that if the proportional rate is not used in such cases, assessments to any landholder must be based on the assumption that equal amounts of water have been or will be delivered per acre to full-cost and non-full-cost land.

(i) The application of this rule may be illustrated by the following:

*Example.* District B, a water service contractor, has a contract rate for irrigation water of $4.00 per acre-foot, and a full-cost rate of $16.00 per acre-foot. Farmer X, a qualified recipient, owns and irrigates 960 acres in District B, and leases 40 acres served with irrigation water from another party. A total of 3,000 acre-feet or irrigation water are delivered to Farmer X's operation in a certain year. District B has chosen not to use a proportional rate to assess full-cost charges and must, therefore, assume that 3 acre-feet of irrigation water per acre were delivered to Farmer X's entire 1,000-acre operation. The total charges assessed to Farmer X are given by (960×3×$4.00) + (40×3×$16.00), for a total assessment of $13,440.

(h) *Disposition of revenues obtained through full-cost rates.* The interest and full-cost revenues, less the appropriate non-full-cost rate, shall be credited to the Reclamation fund unless otherwise provided by law. The portion of the full-cost rate, which would have been collected if the land had not been subject to full cost, shall be credited to the annual payments due under contractual obligation from the district.

**§ 426.8 Operation and maintenance charges.**

(a) *Districts with new or amended contracts.* A district which becomes subject to the discretionary provisions as set forth in § 426.5(a)(2) and (a)(3), will be required to pay annually the actual O&M costs chargeable to the districts. They are to be paid to the United States on a schedule that is acceptable to the Secretary. O&M costs shall include minor replacement costs for facilities funded during the year. Each year the Secretary shall estimate and advise the district of its O&M charges, and the price of irrigation water will be modified, if necessary, to reflect any changes in O&M costs. The difference between the estimated and actual O&M costs, as determined at the end of the annual period, will be reflected through adjustment of the following year's O&M charges. One effect of this provision is that if a district's contract rate, less the O&M costs of delivering water, is positive at the time a district amends its contract solely for the purpose of becoming subject to the discretionary provisions, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract. Major replacement costs, such as those caused by disaster, obsolescence, or otherwise will be capitalized under regular Bureau accounting practices.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a rate of $3.50 per acre-foot for water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's

amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

*Example (2).* A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

*Example (3).* A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract it is already paying its full O&M costs on an annual basis.

**Note:** Although the district's contract repayment rate would not change, it would be further obligated because of the amendment to conform to the discretionary provisions to collect full-cost payments from landholders whose holdings make them subject to such payments.

(b) *Landholders who make irrevocable elections.* Landholders who make an irrevocable election (thereby becoming limited or qualified recipients) must pay their portion of the full O&M costs annually for land in their landholding. The district(s) in which the recipient's landholding is situated shall be required to collect from the recipient his or her portion of the full O&M charges due and to forward such collections to the United States. If the district's contract rate, less the O&M costs of delivering water, is positive at the time of the election, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract.

(c) *Districts remaining under prior law.* Beginning April 13, 1987, districts remaining subjects to prior law, in addition to collecting full cost for water delivered to land subject to full cost as set forth in § 426.7(c)(3), must also collect the full O&M rate for such land.

**§ 426.9 Class 1 equivalency.**

(a) *In general.* Upon the request of any district having a contract which conforms to the discretionary provisions, or as provided in paragraph (g) of this section, the Bureau of Reclamation shall make a class 1 equivalency determination for that district. This determination will establish for the district the acreage of land with lower productive potential (classes 2, 3, and 4) that would be necessary to be equivalent in productive potential to the most suitable land in the local agricultural economic setting (class 1). Once these determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to an increased acreage entitlement equivalent in productive potential to 960 acres of class 1 land, in the case of a qualified recipient, or 640 acres of class 1 land, in the case of a limited recipient.

(b) *Data requirements and use.* Class 1 land and land in lower classes shall be identified on a district basis by the Bureau of Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors shall then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they shall be developed using standard procedures as set forth in Reclamation Instructions Series 110, Part 115, Land Resources Investigations; and Series 510, Land Classification Techniques and Standards. Economic data will be developed using procedures found in Reclamation Instructions Series 110, Part 116, Economic Investigations.

(1) *Definition of class 1 land.* Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting which: (i) Most completely meets the various parameters and specifications established for irrigable land classes; (ii) has the relatively highest level of suitability for continuous, successful irrigation farming; and (iii) is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The objective is to establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land. All land that has not been classified will be considered class 1 land for the purposes of determining acreage entitlement under these rules until such time as the land has actually been classified.

(2) *How land classes are determined.* The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by the Bureau of Reclamation, taking into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors include, but are not limited to: the physical and chemical characteristics of the soil, topography, drainage status, costs of production, land development costs, water quality and adequacy, elevation, crop adaptability, and length of growing season and their effect on agricultural practices.

(3) *Level of detail.* Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations for a given district shall be evaluated on the basis of the physical and agricultural economic characteristics of the area. In areas for which no current classification exists or the existing classification is unacceptable, the level of detail of the land classification to be made will never be greater than that required to make class 1 equivalency determinations where the sole purpose of the classification is such a determination.

(4) *Economic studies.* The economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district. Net farm income shall be determined by the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land after all fixed and variable costs of production, including costs of irrigation service, are accounted for. Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(5) *Equivalency factors.* Equivalency factors shall be determined by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(i) The principles of this rule may be illustrated by the following:

*Example.* Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have

been determined to be: class 1=1.0, class 2=1.20, and class 3=1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply:

Class 1 800 acres divided by 1.0=800 acres class 1 equivalent
Class 2 300 acres divided by 1.2=250 acres class 1 equivalent
Class 3 200 acres divided by 1.5=133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any of several ways. If Farmer X desires to maximize his actual acreage, he declares 223 acres of class 1 land as excess and designates 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in production capacity. Or he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2=160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

(6) *Special considerations.* For equivalency purposes, all irrigable land will be classified as either class 1, class 2, or class 3; no other classifications are permissible. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(c) *Scheduling.* District requests for equivalency determinations will be scheduled by region, with the Regional Director of each of the six regions of the Bureau of Reclamation having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(d) *Land classification costs.* The Bureau of Reclamation has provided basic land classification data as part of the project development process since 1924. Where the Secretary determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and where the provision of these data was the responsibility of the Bureau of Reclamation during the project development process, such data will be made available at Bureau of Reclamation expense. Districts in projects authorized for construction prior to 1924 must pay one-half the costs of new land classification studies required to make accurate equivalency determinations.

(e) *Economic study cost.* The cost of performing new or additional economic studies and computations inherent in the equivalency process shall be the responsibility of the requesting district.

(f) *Appeals.* When basic land classification data are available for a district, but the district does not agree with its accuracy or asserts that the data have become outdated, the district may request, and the Bureau of Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (Pub. L. 76–260). The requesting district shall pay for one-half of the cost of performing such reclassifications and the full cost of all other studies inherent in the equivalency process.

(g) *Individual requests.* Individual requests for class 1 equivalency determinations will be accepted if the individual landowner, in the absence of district action, has made an irrevocable election to come under the discretionary provisions and if the district agrees to pay for the determination for the entire district. (The arrangement between the landowner and the district to pay the cost of the equivalency determination does not involve or concern the United States.) Requests for equivalency must be made by or through the district. Equivalency will be applied only to that land which is the subject of an individual election for which equivalency has been requested.

(1) The application of this rule may be illustrated by the following:

*Example (1).* A district with an existing contract decides not to amend its contract to come under the discretionary provisions. However, an individual landowner within the district may make an irrevocable election to come under these provisions. The landowner can request equivalency through the district, and the district may request the Secretary to make the equivalency determinations for the entire district. The district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landowner and the district would be a district matter. The application of equivalency would be available only to the landowner(s) who exercise an irrevocable election.

*Example (2).* A district decides to amend its contract to come under the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and the Bureau of Reclamation has acted upon that request.

(h) *Excess land.* Until a final determination has been made by the Bureau of Reclamation on the district's request for equivalency, all land exceeding the basic ownership entitlement for qualified or limited recipients must be under recordable contract in order to be eligible for irrigation water. Once the determination has been made, the qualified recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 960 acres of class 1 land, and the limited recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 640 acres of class 1 land. The requirement that land under recordable contract be sold at a price approved by the Secretary does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess land as a result of an equivalency determination.

(1) *Protection during classification.* The Bureau of Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under § 426.9 of these rules.

(2) *Protection during appeal.* In cases of equivalency determination appeals, the Secretary will not undertake the sale of the reasonable increment of the excess land under matured recordable contract which could be affected by a reclassification as long as that appeal is determined by the Secretary not to be an attempt to thwart the sale of excess land.

(i) *Full-cost charges.* Once the Bureau of Reclamation has acted upon the district's request and made a final equivalency determination, the full-cost water pricing structure would not come into effect until the total landholding westwide exceeds the qualified or limited recipient's non-full-cost entitlement with equivalency. During the time when the determinations were being made, however, the full-cost rate would be assessed on land receiving water in excess of the qualified or limited recipient's non-full-cost entitlement without equivalency. If the qualified or limited recipient's basic entitlement is increased because of the equivalency determination, he or she shall be reimbursed any overcharges which were paid during the period between the time of the request for an equivalency determination and the

Bureau of Reclamation's final determination.

(1) The principles of this paragraph may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of classes 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus the basic 960-acre non-full-cost entitlement) if he elected to continue to receive irrigation water on that land. Once the equivalency determinations had been completed, Landowner X would be entitled to lease the equivalent of 960 acres of class 1 land at the non-full-cost rate (something greater than 960 acres). Landowner X would also be reimbursed for full-cost payments made for land which became nonexcess as a result of the equivalency determination.

*Example (2).* Landholder Y is a limited recipient who owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Landholder Y was not receiving project water on or before October 1, 1981. Thus, even with equivalency, he would be required to pay the full-cost water rate for all land served in his landholding. (If landholder Y had been receiving project water on or before October 1, 1981, he would have been entitled to receive water on the equivalent of 320 acres of class 1 land at the non-full-cost rate. Deliveries on the remaining 440 acres or less, would be at the full-cost rate.)

(j) *Multidistrict landholdings.* A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives an equivalency determination. From the equivalency determination, Landholder X is shown to own the equivalent of 240 acres of class 1 land in District A. Landholder X is therefore entitled to buy and receive irrigation water on an additional 80 acres of irrigation land in some other district or he could lease 80 acres in some other district and receive irrigation water for it at the non-full-cost rate. In District A itself, Landholder X could buy an additional 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land. If Landholder X preferred to lease in District A, he could lease 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land and receive irrigation water for that leased land at the non-full-cost rate.

*Example (2).* Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and put the 400 acres of excess land under recordable contract so that it can be irrigated while still in his ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract to take advantage of the equivalency determination in District A. Landholder Y, when able to show good cause, may even redesignate the nonexcess land under recordable contract, § 426.11(b), if an appraisal of the excess land has not already been requested and performed. The maturity date as determined in the original contract, however, would not change.

(k) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

**§ 426.10 Certification and reporting requirements.**

(a) *Certification.* Landowners and operators within a district which has a contract that conforms to all provisions of title II shall furnish the district, in a form provided by the Bureau of Reclamation, a certificate declaring the irrigation land that they own and operate and providing other information pertinent to their compliance with Reclamation law.

(1) *Irrevocable electors.* Landowners or lessees who, in the absence of district action, have made an irrevocable election to be subject to title II must also certify through the nonamending district that they are in compliance. In districts where landholders pay less than full O&M costs, electors shall also file a statement signed by any lessor or lessee from whom or to whom the elector leases irrigation land. The statement shall establish the lessor's or lessee's concurrence with the inclusion of his or her irrigation land in the elector's landholding which will be subject to the discretionary provisions and, therefore, payment of full O&M costs.

(b) *Reporting.* Prior law landowners and operators must report through the district on the irrigation land in their ownership and the extent and conditions of any leases or farm operation agreements. They must declare the irrigation land that they own and operate, and provide other information pertinent to their compliance with Reclamation law. The reporting form will be provided to the district by the Bureau of Reclamation.

(c) *Certification and reporting from data requirements.* (1) Certification and reporting forms will require a full disclosure of irrigation land owned and operated in all districts, regardless of whether it is receiving irrigation water; the identification of the operator or operators of that land; the number of acres leased; the terms of any lease; and in the case of certification forms, certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require the parties to any lease or farm operation agreement to submit to him or her a complete copy of that lease or farm operation agreement.

(2) All members of an entity composed of 25 or fewer individuals must be identified on the certification or reporting form. An entity composed of more than 25 individuals, however, is not required to identify its participants or shareholders, provided no participant owns more than 4 percent of the recipiency. If a participant owns more than 4 percent of an entity composed of more than 25 individuals, he or she must be identified on the certification or reporting form.

(d) *Schedule for completing certification and reporting forms.* Certification and reporting forms will be required as a condition for the receipt of irrigation water except as provided in paragraph (f) of this section. They will be required on an annual basis. If a landholder's ownership or operation arrangements change in some way, the landholder shall notify the district office, either verbally or in writing, within 15 days of the change and submit new certification or reporting forms within 30 days of the change.

(e) *Short form availability.* If no change has occurred in a landownership or operation arrangement between annual certification and reporting dates, a short verification form will be available for completion to satisfy the certification or reporting requirement. This form will make it possible for the landowner or operator to simply validate that the information contained on the last fully completed form is still accurate.

(f) *Exemptions.* Landowners and operators whose total irrigation land westwide is 40 acres or less are exempt from the certification and reporting requirements.

(g) *District participation.* Each district shall be required to make the necessary blank certification and/or reporting forms available to district landowners and operators and to keep the current certification and reporting forms on file and available for Bureau of Reclamation inspection. All superseded certificates and reports shall be retained by the

district for 3 years and thereafter may be destroyed by the district, except that the last fully completed certification and reporting form (other than the verification form) must always be kept on file with the current verification form so that all the landowners' and operators' land may be identified. Additionally, each district will be required to summarize the information contained on these documents and submit the summary to the Bureau of Reclamation annually. The summary form to be used by the district will be provided by the Bureau of Reclamation. The district shall notify the Bureau of Reclamation of any discrepancies in the certification and reporting forms.

(h) *Auditing.* The Secretary may conduct filed audits, as necessary, to ensure compliance with title II.

(i) *False statements.* The following statement will be included in all certification and reporting forms:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

False statement by the landowner or operator will result also in loss of eligibility. Eligibility could only be regained upon the approval of the Secretary.

(j) *Failure to report.* Failure to submit the required certification or reporting form to the district will result in loss of eligibility to receive irrigation water by the individual landowner or operator. Eligibility will be regained once the required form is submitted to the district. Furthermore, should for any reason, any irrigation water be delivered despite the above prohibition, landholders shall be subject to such penalties as may be prescribed by the Secretary and shall be required to pay a Secretarially established rate for such water.

(k) *OMB approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0004, 1006–0005, 1006–0006. The information is being collected to comply with sections 206, 224(c), and 228 of the act. These sections require that, as a condition to the receipt of irrigation water, each landowner and lessee in a contracting entity which is subject to the acreage limitation provisions of Reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Reclamation law. The information collected on each landholding will be summarized by the district and submitted to the Bureau in a form prescribed by the Secretary. Completion of these forms is required to obtain the benefit of irrigation water.

(l) *Application of Privacy Act of 1974.* The information submitted in accordance with the certification and reporting requirement is subject to the provisions of the Privacy Act of 1974. As a condition to the execution of a contract, the Secretary shall require the inclusion of a standard contract article providing that the district agrees to comply with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

**§ 426.11 Excess land.**

(a) *In general.* As set forth in § 426.4(g), "excess land" means irrigation land, other than exempt land, owned in excess of the maximum allowable acreage under Reclamation law. In determining excess land, all irrigation land in all districts held by any landowner shall be considered. Delivery of irrigation water to excess lands is allowed only if any one of the following conditions applies:

(1) The excess land has been placed under recordable contract by the landowner, or

(2) The land was involuntarily acquired into excess status through inheritance, foreclosure, or other similar involuntary process.

(b) *Designation of nonexcess land.* The owner of excess land shall designate that portion of his or her irrigation land that is to be considered nonexcess, in accordance with the instructions on the certification and reporting forms. If a landowner does not make a designation on these forms, designation shall be in accordance with provisions in the district's repayment or water service contract, provided designation procedures are specified in the contract and the entire landholding is in one district.

(1) *Designation procedures when not established by contract.* If designation provisions are not specified in the district contract, the landowner must designate that portion of the land in the ownership which is to constitute the nonexcess entitlement within 30 days of a Secretarial notification to the district and that landowner. The designation will take into account all irrigation land owned by the landowner. If the landowner fails to make the nonexcess designation within 30 days, the district shall make the designation within 30 days thereafter. If the district does not make the required designation, the Secretary shall then make the designation.

(2) *Designation procedures if land is owned in more than one district.* If the land in the ownership is situated in more than one district, the landowner has 60 days from the date of notification to the district and the landowner to make the designation. The Secretary shall make the designation for the landowner if designation is not made within 60 days.

(3) *Status of nonexcess land and redesignation.* The nonexcess designation, whether made by the landowner, the district, or the Secretary, will be binding on the land and will be filed with the district and the Bureau of Reclamation. These regulations governing excess land will apply to the excess land resulting from that designation. A landowner may redesignate his or her nonexcess land from excess land in the ownership in accordance with the following procedures: Redesignations may be made without the approval of the Secretary in those cases where (i) the excess land becomes eligible to receive irrigation water as a result of a landowner becoming subject to the discretionary provisions as set forth in paragraphs (c)(1) and (c)(2) of this section, (ii) recordable contracts are amended to conform to the expanded acreage limitations of the discretionary provisions as set forth in paragraph (g) of this section, or (iii) the excess land becomes eligible to receive irrigation water as a result of equivalency determinations, § 426.9. All other situations involving redesignation of nonexcess land from excess land must be approved by the Secretary. A redesignation appeal will not be approved if it is being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation law. Except in those cases where a landowner becomes subject to the discretionary provisions as described in paragraph (c)(2) of this section, land purchased into excess status cannot be made eligible to receive irrigation water through the redesignation process. Furthermore, excess land in an ownership may not be designated as nonexcess once an owner sells some or all of the land in his or her current nonexcess designation. When a redesignation involves an exchange of nonexcess land for excess land, a landowner who is not eligible for equivalency must make an equal exchange of acreage through the

redesignation. If the landowner is eligible for equivalency, the redesignation may be made on the basis of equivalent acres.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Landowner X owns 1,200 acres of irrigation land in District A. He purchased this land before the district entered its first repayment contract with the United States. Landowner X becomes a qualified recipient by virtue of an irrevocable election and designates 960 of his 1,200 acres as nonexcess. Because Landowner X purchased the 1,200 acres before the district entered a contract for an irrigation water supply, he is not considered as having purchased himself into excess status. Therefore, with the approval of the Secretary, Landowner X may redesignate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

*Example (2).* Landowner Y is a U.S. citizen and a qualified recipient by virtue of District A's contract amendment to conform to the discretionary provisions. Landowner Y purchased 1,400 acres of irrigation land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's amendment, Landowner X designates 960 acres of this land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner Y's land is class 3 land, and in District A, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner Y may irrigate 1,344 acres of class 3 land in District A. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner Y sells some of his 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

(4) *Acquisition of excess land.* A landowner may purchase or otherwise acquire excess and formerly excess land at a Secretarially approved price, to be held as nonexcess, up to his or her ownership entitlement and resell such land at fair market value only once. Once a landowner has reached this limit, any additional land acquired from excess or formerly excess status becomes ineligible to receive irrigation water until it is sold to an eligible buyer at a Secretarially approved price as set forth in § 426.12.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer Y, who owns irrigation land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer X, a qualified recipient, at a Secretarially approved price. Farmer X owns no other irrigation land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer X sells the 960 acres at fair market value and purchases another 960 acres of irrigation land located in yet another district. Farmer X purchases the latter parcel at a Secretarially approved price because the land was excess in the seller's holding. However, since Farmer X has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Secretarially approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Secretarially approved price. Farmer X may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

(c) *Treatment of land ineligible under prior law.* Irrigation land ineligible under prior law will be treated as follows:

(1) *Irrigation land owned on the date of a district's first repayment or water service contract.* Irrigation land owned on the date of the district's first water service or repayment contract and which becomes ineligible for service because it is in excess of the ownership limitations under prior law may be made eligible as follows: The landowner can become subject to the discretionary provisions through either an irrevocable election or a contract amendment by the district and may designate the excess land, up to his or her entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can be made eligible by placing it under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired. The excess land can also be sold to an eligible buyer at a Secretarially approved price, as set forth in § 426.12, or redesignated as nonexcess with the approval of the Secretary, as set forth in paragraph (b)(3) of this section.

(i) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 480 acres of irrigation land in District A. Landowner Z has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District A amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner Z satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

*Example (2).* Landowner Y and his wife own 1,200 acres of irrigation land in District B which is subject to prior law. They owned this land even before District B entered into a repayment contract with the United States. Landowner Y and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired.

Landowner Y makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner Y becomes a qualified recipient, and is entitled to own and receive irrigation water on 960 acres. Landowner Y's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of the Secretary, as nonexcess.

(2) *Irrigation land acquired after the date of a district's first repayment or water service contract.* Irrigation land acquired by a landowner after the date of a district's first repayment or water service contract and which is ineligible for service under prior law may become eligible as follows:

(i) *Nonexcess land purchased into excess.* Land which is ineligible because it was purchased from nonexcess status into excess status during an irrigation season may become eligible to receive irrigation water if the landowner becomes subject to the discretionary provisions within 60 days from the date of purchase and redesignates the land, up to his entitlement, as nonexcess. If nonexcess land is purchased into excess status during the nonirrigation season, the landowner has 30 days after the start of the next irrigation season to make the land eligible by becoming subject to the discretionary provisions. In either case, the excess land does not become eligible until after the landowner becomes subject to the discretionary provisions. Once these time limits have expired, eligibility can be regained through conformance to the discretionary provisions only with the approval of the Secretary. If the landowner does not become subject to the discretionary provisions in accordance with these procedures, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can regain eligibility as follows: Irrigation land acquired from nonexcess status into excess status after irrigation water was available to the land can regain eligibility if either the sale is canceled or the land is sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary. If the land was acquired into excess before irrigation water was available to it, the land can be placed under recordable contract when the water supply becomes available.

(ii) *Excess land acquired without price approval and other ineligible land.* Land which is ineligible because it was

acquired from excess status without Secretarial price approval or because the landowner did not comply with some other requirements of law as determined by the Secretary can regain eligibility if it is sold to an eligible buyer at a price approved by the Secretary. Land purchased without Secretarial price approval can also regain eligibility if the sale price is reformed to conform to the excess land value.

(A) The principle of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. During the current irrigation season, Landowner Z purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner Z has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner Z makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions within 60 days after he purchased himself into excess, Landowner Z may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

*Example (2).* In 1986, Landowner X bought 160 acres of irrigation land from excess status in District A. Landowner X, however, failed to get sale price approval from the Secretary. This land is ineligible for service in his holding unless the seller is willing to reform the sale price to conform to the excess land value. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Secretarially approved price in order to be eligible for irrigation water.

(d) *Irrigation land which becomes ineligible under the discretionary provisions.* Irrigation land which becomes ineligible under the discretionary provisions shall be treated as follows:

(1) In a district which first becomes subject to Reclamation law because it enters a repayment or water service contract after October 12, 1982, irrigation land owned on the date of the district's contract and which is in excess of the ownership limitations under the discretionary provisions can be made eligible if it is: (i) Placed under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired; (ii) sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary; or (iii) redesignated as nonexcess with the approval of the Secretary as set forth in paragraph (b)(3) of this section.

(2) In a district which first becomes subject to the ownership limitations of Reclamation law after October 12, 1982, if irrigation land for which a water supply is available is acquired from nonexcess status into excess status after the date of the district's contract, it shall remain ineligible until the sale is canceled or the land is sold to an eligible buyer at a price and on terms approved by the Secretary. If irrigation water was not available to such land at the time of purchase, the land can be placed under recordable contract when the water becomes available. In such districts, if land is ineligible because it was purchased from excess status without price approval, eligibility can be regained if the sale price is reformed to conform to a Secretarially approved price or if the land is sold to an eligible buyer at a price approved by the Secretary.

(3) In a district which was once subject to prior law but which has become subject to the discretionary provisions, irrigation land which becomes ineligible after the discretionary provisions are applicable, can be made eligible in the same ways described in the preceding paragraph, § 426.1(d)(2).

(i) The principle of these rules may be illustrated by the following:

*Example.* In 1980, Landowner X, a U.S. citizen, buys 1,920 acres of land in District A. In addition to its own water supply, District A wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, the landowners in the district become subject to the discretionary provisions. As a qualified recipient, Landowner X may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner X places the land under recordable contract, sells it to an eligible buyer at a price approved by the Secretary, or receives Secretarial approval to redesignate the land as nonexcess.

If Landowner X had purchased the 1,920 acres in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Secretarially approved price. The excess acres could not have been placed under recordable contract unless irrigation water had not been available when the land was purchased.

(e) *Recordable contracts.* Excess land may become eligible to receive irrigation water if the owner enters into a recordable contract with the Secretary, provided such excess land is eligible to be placed under recordable contract. The excess owner must agree to dispose of the excess land, excluding mineral rights and easements, to an eligible owner under terms and conditions and at a sale price approved by the Secretary in accordance with § 426.12. The period allowed for the disposition of excess land under recordable contracts executed after October 12, 1982, may not exceed 5 years from the date the recordable contract is executed by the Secretary (except for the Central Arizona Project where the disposition period provided will be 10 years from the date water becomes available to the land). Water deliveries may begin on the date the Secretary receives a written request from the landowner to execute a recordable contract. The landowner has 20 working days from that date to execute the recordable contract unless the Secretary waives the 20-day limitation. Land placed under recordable contract may receive irrigation water at the rate specified in the contract of the district so long as it is in the landholding of the landowner, and in the case of qualified and limited recipients, the contract rate covers at least the annual O&M costs. However, land under recordable contract which is leased to another may become subject to the full-cost provisions because the lessee's landholding exceeds the specified non-full-cost entitlement. Furthermore, if a landowner with land under recordable contract exceeds his or her non-full-cost entitlement, nothing precludes the landowner from selecting land under recordable contract as the land for which the full-cost rate must be paid, unless such land is already subject to full-cost pricing under an extended recordable contract as set forth in § 426.11(i)(4).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner X is a qualified recipient and owns 1,400 acres of irrigation land in District A. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the non-full-cost rate on all owned land in the district. Subsequently, Landowner X leases the 440 acres under recordable contract to Landholder Y who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder Y does not affect other terms of the recordable contract.

*Example (2).* Farmer X owns 1,280 acres of irrigation land in District A. District A, which is subject to prior law, has a fixed-rate water service contract which no longer covers actual O&M costs. Farmer X has designated 160 acres of his land as nonexcess and has placed the remaining 1,120 acres under recordable contract. This means that Farmer X is able to receive irrigation water at the contract rate on all his owned land.

Subsequently, District A amends its contract to become subject to the discretionary provisions. As provided in § 426.11(g), Farmer X withdraws 800 acres from under recordable contract and redesignates that land as part of his 960-acre entitlement as a qualified recipient. Since Farmer X is now a qualified recipient, full O&M costs must be paid for all land in his landholding, including the 320 acres remaining under recordable contract.

(f) *Restriction on placing excess land under recordable contract*—(1) *Land acquired into excess.* Except as provided in § 426.6(h), if a landowner acquires irrigation land for which irrigation water is available and by so doing places himself or herself in excess status, the landowner shall not be permitted to place the land so acquired under recordable contract. Such excess land can only regain eligible status as described in paragraphs (c)(2) and (d)(2) and (3) of this section.

(2) *Water rights separated from land.* In those cases where the Bureau provides a supplemental water supply to districts located in States which permit water rights to be separated from the land to which it has been historically applied, excess land cannot be placed under recordable contract if the applicable water rights have been sold separately from the land. If the applicable water rights remain with the excess land, the land may be placed under recordable contract. However, in these cases, the recordable contract shall provide that if, in the future, the water rights are sold separately from the land, the United States will terminate the recordable contract, the subject land will become ineligible for irrigation water, and the United States will be under no obligation to sell, appraise, or administer this land. In addition, such recordable contracts shall stipulate that the delivery of irrigation water is subject to applicable State, local, or other regulations.

(g) *Recordable contracts in effect prior to October 12, 1982.* Recordable contracts executed prior to October 12, 1982, will continue in effect. However, landowners with such existing recordable contracts may request that their contracts be amended to conform to the expanded ownership limitations contained in title II. The Secretary shall amend those contracts accordingly if (1) the district enters into a new or amended contract which conforms to the discretionary provisions or (2) the excess landowner makes an individual election. The disposition period for such amended recordable contracts shall not be extended except as provided in paragraph (i) of this section. If a landowner becomes subject to the discretionary provisions and amends his or her nonexcess designation to include land that had been under recordable contract, such land shall not be subject to the 10-year deed covenant requiring Secretarial sale price approval as set forth in paragraph (h) of this section. Recordable contracts entered into after October 12, 1982, may not be amended to conform to the expanded ownership entitlements of the discretionary provisions.

(h) *Price approval on excess or formerly excess land*—(1) *Deed covenant.* In order for land acquired from excess status, whether under recordable contract or not, to be eligible to receive irrigation water, the following covenant controlling the sale price of such land must be placed in the deed transferring the land to the purchaser, except as provided in paragraphs (j) and (k) of this section.

For a period of 10 years from the date of this deed, sale by the landowner and his or her assigns of these lands for any value that exceeds the sums of the value of newly added improvements plus the value of the land as increased by market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water. This covenant is to satisfy the requirements in section 209(f)(2) of Pub. L. 97-293.

(2) *Operational loans for formerly excess land.* The Secretary may approve sales of formerly excess land for an amount exceeding the value authorized by the deed covenant only for the limited purpose of allowing recovery of any operational loans outstanding on the date of foreclosure. This provision shall apply only if (i) the formerly excess land had been used by the owner/operator to secure an operational loan and (ii) the sole purpose of such loan was to provide operating farm capital for the owner/operator.

(i) *Extension of disposition periods for recordable contracts.* Owners of excess land under recordable contract who were prevented from selling their excess land because of Secretarial moratorium or court order shall be allowed an additional period of time to sell their excess land under recordable contract.

(1) *Westlands Water District, California.* After the order of the court in National Land for People v. Andrus or any similar court order, if any, is lifted and the Secretary again commences processing the sales of excess land under recordable contract, landowners with such land in the Westlands Water District, California, will be allowed a period of time equal to the time remaining on that recordable contract on August 13, 1976, to sell land under recordable contract. The Secretary will notify the affected landowners as to applicable dates.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in the Westlands Water District entered into a recordable contract on October 13, 1972. The recordable contract provided for a 10-year disposition period which would end on October 13, 1982. On August 13, 1976 (the date of the court-ordered moratorium on processing sales of excess land in the Westlands District), there were 6 years and 2 months remaining in the disposition period. Assuming the court-ordered moratorium is lifted and the Secretary commences processing sales of excess land in the Westlands Water District on January 1, 1984, the disposition period for the recordable contract will be extended for 6 years and 2 months from that date or to March 1, 1990. The contract will mature at that time and the Secretary's power-of-attorney to sell the land will vest.

(2) *All other districts.* A moratorium on processing sales of excess land was issued by the Secretary on June 27, 1977. This moratorium applied to all landowners with recordable contracts in all districts other than the Westlands Water District. The Commissioner of Reclamation delayed sales by other directives. Landowners affected by these actions will be given an additional period of time to dispose of their land. The extension shall be calculated from the date that processing sales of excess land is resumed and shall be equal to the time remaining on the recordable contract when the moratorium was imposed. The resumption date shall be determined by the Secretary, and he shall notify all affected landowners.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in District A entered into a recordable contract on June 27, 1975. The recordable contract provided for a 10-year disposition period which would end June 27, 1985. The landowner was prevented from selling the land under recordable contract by the Secretarial moratorium of June 27, 1977. At that date, the recordable contract had a remaining disposition period of 8 years. The disposition period for the recordable contract will be extended 8 years from the date processing sales is resumed. The resumption date shall be determined by the Secretary.

(3) *How extensions of recordable contracts are to be accomplished.* The Secretary shall prepare and execute amendatory agreements to extend recordable contracts for the appropriate period of time. The amendatory agreement will establish the new maturity date for the recordable contract and will be recorded by the Secretary in the official records of the county in which the land covered by the

recordable contract is located. A copy of the amendatory agreement will also be sent to the affected landowner by the Secretary.

(4) *Water rates for land under extended recordable contracts.* Land under recordable contract which is held by a water user not subject to the discretionary provisions may continue to receive irrigation water at the higher of the contract water rate or the full O&M rate for the extended term of the contract, except as provided in § 426.11(e). Land under recordable contract which is held by a qualified or limited recipient may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The water rate for land under recordable contract held by a qualified or limited recipient during an extended contract period shall be determined as follows: The non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess land sales, water deliveries shall be made at the full-cost rate for the duration of the extended contract period.

(i) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under recordable contract beginning 18 months from the date the moratorium is lifted.

*Example (2).* Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions on January 1, 1983. The Secretary resumes the processing of the excess land sale on January 1, 1984. The original disposition period of the recordable contract expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on January 1, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

(j) *Sale of excess land under recordable contract by the Secretary.* All recordable contracts shall provide that a power-of-attorney shall vest in the Secretary to sell the land under recordable contract if the landowner does not dispose of the excess land within the period specified. The land shall be deemed "disposed of" for this purpose if the landowner has complied with all requirements for the sale of excess land under these rules within the period specified, whether the Secretary gives his final approval of the sale within that period or thereafter. The Secretary shall conduct such excess land sales, once the power-of-attorney has vested. The Secretary shall use the following procedures:

(1) *Surveys.* A qualified surveyor shall make a land survey when determined necessary by the Secretary. The cost of the survey initially will be paid by the United States and added to the sale price for the land. The cost shall be reimbursed to the United States from the proceeds of the sale.

(2) *Appraisals.* The Secretary shall appraise the excess land to determine the approvable sale price. The cost of the appraisal shall be paid by the United States. Such cost shall be added to the approved sale price and shall be reimbursed to the United States out of the proceeds of the sale.

(3) *Advertising.* The Secretary shall advertise the sale of the property in the newspapers within the county in which the land lies, in farm journals, in other similar publications, and by other public notices he determines advisable. The notices shall state (i) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising), (ii) that the land will be sold by auction for cash or on terms acceptable to the landowner to the highest bidder whose bid equals or exceeds the minimum acceptable sale price, and (iii) the date for such sale (which shall not exceed 90 days from date of the advertisement). The advertisement costs for the sale will be added to the sale price for the land and reimbursed to the United States from the sale proceeds.

(4) *Distribution of proceeds.* The proceeds from the sale of the land shall be paid first, to the landowner in the amount of appraised value; second, to costs due the United States for costs of the survey, appraisal, advertising, etc.; and third, to the United States any remaining proceeds, which will be credited to the Reclamation fund or other funds as prescribed by law.

(5) *Closing.* The sale of the excess land shall be closed by the Secretary when all sale arrangements have been completed. The Secretary shall execute a deed conveying the land to the purchaser. There shall be no requirement for a covenant in the deed, paragraph (h) of this section, restricting the resale of the land.

(6) *Water deliveries.* Excess land under matured recordable contracts will be eligible to continue to receive irrigation water at the current applicable rate until the land is sold by the Secretary.

(k) *Land which becomes excess or ineligible because of westwide application or enforcement of other requirements of law.* Irrigation land which was subject to prior law and which was nonexcess and eligible to receive irrigation water under that law may become either (1) excess because of the westwide application of acreage limitation for qualified or limited recipients or (2) ineligible because of the restriction on delivery of water to nonresident aliens and entities not established under State or Federal law. To remain eligible for water, such land, up to the amount which was nonexcess and eligible under prior law, must be placed under recordable contract as provided in paragraph (e) of this section. The recordable contract in such situations shall be modified to permit the landowner to sell the excess land to an eligible purchaser without price approval by the Secretary. The deed conveying the excess land shall not contain the standard covenant, as set forth in paragraph (h) of this section, requiring price approval by the Secretary for a period of 10 years following initial sale. The land shall be sold in accordance with the procedures established in paragraph (j) of this section if the Secretary's power-of-attorney to sell the land vests. In these situations, the excess or ineligible land shall also become eligible to receive irrigation water if it is sold to an eligible buyer. Those acres which were held as nonexcess and eligible under prior law may be sold at fair market value. The provisions in this paragraph do not apply to land in districts which first entered a contract with the United States after October 12, 1982. In such districts, excess land can only gain eligibility as described in paragraphs

(d)(1) and (d)(2) of this section. Land that becomes ineligible in these districts because it is owned by nonresident aliens or by an entity not established under state or Federal law can be placed under a recordable contract requiring Secretarial price approval, as set forth in paragraph (e) of this section, only if the land was acquired before the date of the district's contract. If the land was acquired after the date of the district's contract, it must be sold to an eligible buyer at an approved price in order to regain eligibility.

(l) This rule may be illustrated by the following:

*Example (1).* Landowner X and his wife are U.S. citizens, and own 320 acres of irrigation land designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner X purchased an additional 280 acres in District E. District A amends its contract to conform to title II. Landowner X and his wife automatically and without benefit of choice become a qualified recipient and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price. The remaining 320 excess acres, however, had been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner X sells it to an eligible buyer or places the land under recordable contract. In either case, Landowner X could sell the land at fair market value.

*Example (2).* Corporation X, which was established under the laws of Switzerland, is owned by two shareholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District A and has designated 160 acres as nonexcess and eligible to receive irrigation water. District A amends its contract to conform to the discretionary provisions. Thereby, Corporation X becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law and because its shareholders are citizens and residents of Switzerland. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

*Example (3).* Corporation W, which is owned by two shareholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered its first contract with the United States, thereby becoming subject to the discretionary provision. Corporation W, however, is not eligible to receive irrigation water as a qualified recipient because its shareholders are not U.S. citizens or resident aliens. Since Corporation W's land had never been subject to prior law, it does not come under the purview of § 426.11(k). However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water on a temporary basis by placing the land under recordable contract requiring Secretarial sale price approval. In order for the land to become eligible to receive irrigation water on a permanent basis, the shareholders must become citizens or residents of the United States or Corporation W must sell the land to an eligible buyer at an approved price.

**§ 426.12 Excess land appraisals.**

(a) *In general.* The following regulations shall apply to all appraisals of excess land and formerly excess land except when the excess land is subject to a recordable contract and/or a contract which was in force on October 12, 1982, and these regulations are inconsistent with the provisions of those contracts.

(1) All appraisals of excess land and formerly excess land will be based on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Standard appraisal procedures including the income, comparable sales, and cost methods shall be used as applicable. Nonproject water supply factors as provided in paragraph (a)(3) of this section shall be considered as appropriate.

(2) Improvements shall be appraised on the basis of their contributory fair market value as of the date of appraisal, using standard appraisal procedures.

(3) The nonproject water supply factors of: (i) Ground-water pumping lift, (ii) surface water supply, (iii) water quality, and (iv) trends associated with paragraph (a)(3)(i), (ii) and (iii) of this section shall be considered by the appraiser where appropriate. The Bureau of Reclamation, in conjunction with the district, if it so desires, shall develop the water supply and trend information. Landowners who own excess land or formerly excess land and prospective buyers may submit information relevant to these determinations to the district or the Bureau of Reclamation. The Bureau of Reclamation may also conduct public meetings and forums and solicit input from other sources to obtain data that may be considered in developing the ground-water trend information. Data submitted may include historic geological data, changing crops and cropping patterns, and other factors associated with the nonproject water supply. If the Bureau of Reclamation and the district cannot reach agreement on the data within 60 days, the Secretary shall review and update the trend information as he deems necessary and make all final determinations considering the data provided by the Bureau of Reclamation and the district. These data will be provided to appraisers and shall be considered in the appraisal process. Ecah appraisal will clearly explain how the data were used in the valuation of the land.

(4) The date of appraisal shall be the date of last inspection by the appraiser(s) unless there is an existing signed instrument such as an option, contract for sale, agreement for sale, etc., affecting the property, in which case the date of appraisal will be the date of such instrument.

(b) *When appraisals are to be made.* Appraisals of excess land or formerly excess land shall be made upon request of the landowner(s) or when required by the Secretary. If a request for an appraisal is not received from the landowner(s) within 6 months of the maturity date of the recordable contract, the Secretary may initiate the appraisal.

(c) *Appraiser selection and appraisal cost.* Each appraisal of excess land or formerly excess land shall be made by a qualified appraiser selected by the Secretary except as provided in paragraph (d) of this section. The cost of the first appraisal shall be paid by the United States. When the excess land or formerly excess land is sold, the cost of the first appraisal shall be added to the sale price and reimbursed to the United States by the purchaser of that land. Any costs associated with additional appraisals requested by an owner of such land shall be paid by that landowner, provided the value of the land established by a reappraisal does not exceed the value established in the first appraisal by more than 10 percent. However, if the difference in the appraisal values exceeds 10 percent, the United States will pay for the reappraisal.

(d) *Appeals.* A landowner who owns excess or formerly excess land may request a second appraisal if the landowner disagrees with the first appraisal. The second appraisal shall be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. This appraisal shall be binding on both parties after review and approval as provided in paragraph (e) of this section. As such, it fixes the maximum sale price of the land.

(e) *Review process.* All appraisals of excess land and formerly excess land

shall be reviewed by the Bureau of Reclamation for technical accuracy and compliance with these rules and regulations, applicable portions of Uniform Appraisal Standard for Federal Land Acquisition—Interagency Land Acquisition Conference 1973, Reclamation Instructions, and any detailed instructions provided by the Secretary setting conditions applicable to an individual appraisal.

**§ 426.13 Exemptions.**

(a) *In general.* The following are exempt from acreage limitation, pricing, and other provisions of Federal Reclamation law as indicated:

(1) *Corps of Engineers projects.* Land receiving an agricultural water supply from Corps of Engineers projects is exempt from title II and other provisions of Reclamation law unless it has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal Reclamation project or the Secretary has provided project works for the control or conveyance of an agricultural water supply from the Corps project to the subject land. This exemption does not relieve district agricultural water users from obligations, pursuant to contracts with the Secretary, to repay their share of construction, O&M, and contract administration costs of the Corps project allocated to conservation or irrigation storage. The Secretary shall determine the exemption status for land receiving an agricultural water supply from Corps of Engineers projects. He shall notify affected districts of the exemption status of that land. District repayment or water service contracts containing provisions imposing acreage limitation for those lands served from Corps projects which are exempt will be amended to delete those provisions at the request of the district.

(2) *Reclamation projects.* Land in districts shall be exempt from the ownership and full-cost pricing provisions of Reclamation law when the district has repaid all obligated construction costs for project facilities for that land in accordance with the terms of the district's contract with the United States. Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payment allowed in the district's contract, shall qualify the district or individual for exemption. An individual landowner will be exempt upon repayment of construction charges allocated to that owner's land, if provided for in a contract with the United States. When a district has discharged its obligation to repay construction costs for project facilities, the Secretary shall notify the district that it is exempt from acreage limitation and the full-cost provisions of law; however, such an exemption shall not relieve a district or individual from paying, on an annual basis, the O&M costs chargeable to that district or individual. At the request of an owner of a landholding for which repayment has occurred, the Secretary shall provide a certificate to that owner acknowledging the landholding is free of the ownership and full-cost pricing limitations of Federal Reclamation law. The certification and reporting requirements for acreage limitation and full-cost pricing will no longer apply to districts or landholders for exempt land. The continuation of the exemption will be considered on a case-by-case basis if additional construction funds for the project are requested.

(3) *Temporary supplies of water.* Supplies of water made possible as a result of an unusually large water supply not otherwise storable for project purposes or infrequent and otherwise unmanaged floodflows of short duration can be made available to land without regard to the acreage limitation and full-cost provisions of Federal Reclamation law for a temporary period not to exceed 1 year in the following manner: Such water supplies can be made available by the Secretary as temporary supplies to excess land. The Secretary shall announce the availability of such temporary supplies to districts. Districts desiring deliveries of such temporary water supplies to excess land shall request the Secretary to make such deliveries. Upon approval by the Secretary, the district shall be notified of the availability of the temporary supply and the conditions for its use. The temporary supply of water shall be delivered under contracts not to exceed 1 year in accordance with existing policies and priorities. Such deliveries must not have any adverse effect on other authorized project purposes. The Secretary shall determine the price, if any, a district is to be charged and other conditions that may apply for such temporary water deliveries.

(4) *Isolated tracts.* Isolated tracts which can be farmed economically only if included in a larger farming operation shall not be subject to the ownership limitations of Federal Reclamation law. However, full cost shall apply to water deliveries to isolated tracts that are in excess of the landowner's non-full-cost entitlement. Isolated tract determinations shall be made by the Secretary at the request of the landowner.

(5) *Rehabilitation and Betterment Programs.* R&B (Rehabilitation and Betterment) loans, pursuant to the R&B Act of October 7, 1949, as amended, are not considered loans for construction, but rather loans for maintenance, including replacements which cannot be financed currently; provided, that the project for which the loan is requested or made is a project authorized under Federal Reclamation law prior to the submittal of the request for an R&B loan to the Bureau of Reclamation by or for the district. Because funds advanced for R&B loans do not constitute construction charges, they are not to be considered in determining whether the obligation of a district for the repayment of the construction costs of project facilities used to make project water available for delivery to such land has been discharged by the district. A loan for an R&B program shall not be the basis for reinstating acreage limitation in a district which has completed payment of its construction obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district. However, if a district subject to prior law has not completed payment of its construction cost obligation and enters into an R&B loan repayment contract after October 12, 1982, the district shall become subject to the discretionary provisions. If a district which is not the beneficiary of a water supply from a Federal project seeks an R&B loan, it can only become eligible for such a loan if Congress authorizes the program and the district agrees to become subject to all provisions of title II.

**§ 426.14 Residency.**

(a) Residency is not a requirement for the delivery of irrigation water from Reclamation project facilities. Existing recordable contracts and certificates containing provisions requiring the purchaser of excess land to be a resident or agree to become a resident within a specified time period shall be revised to delete this requirement.

**§ 426.15 Religious and charitable organizations.**

(a) *Ownership entitlement under the discretionary provisions.* Each parish, congregation, school, ward, or similar organization of a religious or charitable organization which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, and owns or operates landholdings in Federal Reclamation projects, will be treated as a qualified recipient: Provided, (1) that either the district in

which the land is situated enters into a new or amended contract, or the religious or charitable organization or its subdivision owning or operating land in the district elects to come under the discretionary provisions; (2) that the agricultural produce and the proceeds of sales of such produce are used only for charitable purposes; (3) that the land is operated by the individual religious or charitable entity or organization (or subdivisions); and (4) that no part of the net earnings of the religious or charitable entity or organization (or subdivision) shall accrue to the benefit of any private shareholder or individual. If a religious or charitable organization subject to the discretionary provisions does not meet the last three criteria in this paragraph, the entire organization, including all of its subdivisions, will be treated as one limited recipient as set forth in § 426.6(c).

(b) *Ownership entitlement under prior law.* The provisions of the prior law will apply if neither the district nor the religious or charitable organization or its subdivision elects to conform to the discretionary provisions. Each parish, ward, congregation, or other subdivision of the organization shall be considered an individual under prior law, provided it meets the last three criteria set forth in paragraph (a) of this section. If the organization does not meet those three criteria, the entire organization, including all of its subdivisions, will be treated as one corporation subject to prior law as set forth in § 426.6(d)(5).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A charitable organization which meets the requirements of title II has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land.

*Example (2).* A religious organization which meets the requirements of title II has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are entitled to own or operate 960 acres of irrigation land. Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions contained in the prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land.

(c) *Affiliated farm management.* A religious or charitable organization or its subdivision which elects to conform to the discretionary provisions or owns or operates land in a district which enters into a new or amended contract may retain its status as a qualified recipient and still affiliate with a more central organization of the same faith in farm operation and management. Affiliated farm management shall be permitted regardless of whether the subdivision is the owner of record of the land being operated.

(1) The principles of this rule may be illustrated by the following:

*Example.* A religious organization holds title to 1,280 acres in District A and 1,280 acres in District B. The acreage in District A is operated jointly by two subdivisions and the acreage in District B is operated by three subdivisions in separate farms of 300, 300, and 680 acres. Farm operations are coordinated by the religious organization through managers at each farm. Each subdivision is a qualified recipient and entitled to operate 960 acres of irrigation land. The religious organization is entitled to own the acreage being operated by its affiliated subdivisions in each district.

(d) *Leasing.* The full-cost provisions dealing with leased land shall apply to religious or charitable organizations or their subdivisions.

(1) The principles of this rule may be illustrated by the following:

*Example.* A charitable organization has subdivisions in each of Districts A, B, C, and D. Each of these districts has amended its contract to conform to the discretionary provisions. Each subdivision in Districts A, B, and C owns and operates 800 acres of irrigation land. The subdivision in District D owns and operates 960 acres and leases another 160 acres, all of which are receiving irrigation water. The subdivision in District D is obligated to pay the full cost for irrigation water delivered to 160 acres in its landholding.

**§ 426.16 Involuntary acquisition of land.**

(a) *Nonexcess land.* Nonexcess land acquired involuntarily will be treated as follows:

(1) *Land not subject to deed covenant.* Nonexcess land which is not subject to a 10-year deed covenant requiring Secretarial sale price approval and which becomes excess because it is acquired through involuntary foreclosure (or similar involuntary process) in satisfaction of a debt, by gift, or through inheritance is eligible to receive irrigation water in the new ownership for a period of 5 years. The new owner will be required during the 5-year period to pay a rate for the water which is equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. Although land acquired from nonexcess status involuntarily may be sold at any time by the new owner without approval by the Secretary, it will become ineligible to receive irrigation water after 5 years and will remain ineligible until it has been sold to an eligible owner. Such land may not be placed under recordable contract by the new owner.

(i) The application of this rule can be illustrated by the following:

*Example.* Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B through settlement of his uncle's estate. District B has amended its contract to become subject to the discretionary provisions. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in his uncle's ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs, and if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his non-full-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (d) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject to the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. If he chooses this option, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

(2) *Land subject to deed covenant*—(i) *Eligibility.* Formerly excess land, as defined in § 426.4(i), which becomes excess because it is acquired through bona fide involuntary foreclosure (or similar involuntary process) in satisfaction of a debt, by gift, or through inheritance is eligible to receive irrigation water for 5 years at a rate equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. After 5 years, the land will become ineligible to receive irrigation water until it has been sold to an eligible buyer. However, formerly excess land does not become eligible to receive irrigation water for 5 years if the land is involuntarily acquired through foreclosure or in satisfaction of a debt by the party which originally sold the land from excess status or by any other party which was previously subject to the deed covenant requiring sale price approval. Except to allow for the maturing of a planted crop, if any, the land in these cases becomes ineligible when returned to the seller's

ownerhsip, unless otherwise determined by the Secretary.

(ii) *Application of deed covenant.* Formerly excess land which is acquired involuntarily, whether it becomes excess or nonexcess in the new owner's holding, remains subject to the 10-year deed covenant requiring sale price approval. Such land may be sold at a price exceeding its excess land value without affecting its eligibility to receive irrigation water only if the land had been used to secure an operational loan as set forth in § 426.11(h)(2). Formerly excess land acquired involuntarily may not be placed under recordable contract. (Also see § 426.11(h).)

(A) The application of this rule can be illustrated by the following:

*Example (1).* Farmer X, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Farmer Y. Farmer X designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Secretarial sale price approval. Farmer X finances this purchase through Bank ABC. In addition, Farmer X uses the value of the newly purchased land as collateral in securing a loan to obtain operating capital. Subsequently, Bank ABC forecloses on Farmer X's 160 acres. The bank may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer X, unless the land becomes subject to full-cost pricing through leasing. In addition, with the Secretary's approval, the bank may sell the land at a value equal to the excess land value plus the outstanding balance on the operational loan without affecting the land's eligibility to receive irrigation water. However, the deed covenant remains in effect and applies to subsequent purchasers of this land.

*Example (2).* Farmer X owns 160 acres of excess irrigation land in District A. He decides to sell this land to his neighbor, Farmer Y, an eligible buyer. Farmer X provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of formerly excess land becomes eligible to receive irrigation water in Farmer Y's ownership. Subsequent to the purchase, Farmer Y fails to meet his financial obligation to Farmer X. Consequently, the land once again becomes part of Farmer X's ownership by foreclosure. Since this land was excess and ineligible while in Farmer X's ownership, it remains ineligible when involuntarily reacquired by him unless a crop has already been planted. In that case, the land may receive irrigation water until the crop matures. Furthermore, the deed covenant requiring price approval remains in effect if Farmer X decides to resell the land.

(3) *Ineligible land.* Irrigation land which is involuntarily acquired and which was ineligible in the holding of the former owner remains ineligible to receive irrigation water in the holding of the new owner, unless (i) the new owner is or becomes a qualified or limited recipient, (ii) the land becomes nonexcess in the new ownership, and (iii) the deed to the land contains the 10-year covenant requiring Secretarial price approval, commencing when the land becomes eligible to receive irrigation water. If all these conditions are not met, the land remains ineligible until sold to an eligible buyer at an approved price and the 10-year covenant requiring Secretarial price approval must be placed in the deed transferring the land to the buyer.

(i) The principle of this rule can be illustrated by the following:

*Example (1).* Farmer X owns 860 acres of irrigation land in District A. District A has amended its contract to become subject to the discretionary provisions. Farmer X's Father dies and Farmer X inherits another 160 acres of irrigation land through settlement of his father's estate. While in his father's ownership, these 160 acres were not eligible for irrigation water because they had been purchased from excess without Secretarial price approval. However, since Farmer X is subject to the discretionary provisions and has not realized his 960-acre ownership entitlement as a qualified recipient, he may designate 100 acres of the inherited land as nonexcess and eligible for water deliveries. The deed to this land must contain the 10-year covenant requiring sale price approval. The remaining 60 inherited acres are excess and ineligible in Farmer X's ownership. To regain eligibility, this land must be sold to an eligible buyer at an approved price.

*Example (2).* Farmer X, who is subject to prior law, owns 2,880 acres of irrigation land, 320 acres of which he has designated as nonexcess and eligible to receive irrigation water (husband and wife entitlement). The remaining 2,560 acres are excess and have not been placed under recordable contract. Farmer X makes an irrevocable election and designates 640 of his excess acres as nonexcess. Subsequently, Farmer X gift deeds the remaining 1,920 excess acres to his 2 nondependent sons—960 acres to each. Since neither of these sons owns any other irrigation land and were nondependents prior to the gift transfer, the land becomes nonexcess in their ownership. However, before the land can become eligible to receive irrigation water, each of the sons must make an irrevocable election to become subject to the discretionary provisions and the deed to the land must contain a 10-year covenant requiring Secretarial price approval.

(b) *Excess land under recordable contract.* Excess land which is under recordable contract and which is acquired by involuntary foreclosure or other involuntary process may continue to receive irrigation water under the terms of the recordable contract. However, the new owner must agree to assume the recordable contract and execute an assumption agreement provided by the Secretary. Such land will be eligible to receive irrigation water for 5 years from the date it was acquired involuntarily or for the remainder of the recordable contract period, whichever is longer. The sale of such land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by the Secretary.

(1) The application of this rule can be illustrated by the following:

*Example.* Landowner X, a qualified recipient, owns 960 acres of irrigation land in District A. Landowner X inherits 640 acres of land in District B from his grandfather. The inherited land was placed under a 10-year recordable contract by his grandfather 7 years ago. Landowner X signs an agreement to assume his grandfather's recordable contract; however, even though the original recordable contract term expires in 3 years, since the land was involuntarily acquired, it remains eligible to receive irrigation water for an additional 2 years in Farmer X's ownership. Within that 5-year period, however, Farmer X must sell the land at a Secretarially approved price.

(c) *Mortgaged land.* Mortgaged land which changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of the mortgage, (1) is eligible to receive irrigation water in the new ownership for a period of 5 years or until transferred to an eligible landowner, whichever occurs first, and (2) may be sold at its fair market value. During the 5-year period the water rate will be the same as it was for the former owner, unless the land becomes subject to full-cost pricing through leasing.

(d) *Other.* A party acquiring irrigation land involuntarily shall not become subject to the discretionary provisions by virtue of the fact that the former owner had been subject to the discretionary provisions. When irrigation land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water on the newly acquired land begins on the date of the devisor's death.

**§ 426.17 Land held by governmental agencies.**

(a) *Acreage limitation.* Irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, which are farmed primarily for a nonrevenue producing function, as determined by the Secretary, shall not be subject to the acreage limitation and full-cost provisions of Federal Reclamation law.

(b) *Sales.* Irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, may be sold without price approval. Once sold, such land will be eligible to receive irrigation water provided the purchaser meets the eligibility requirements to own land and receive irrigation water.

(c) *Leasing.* States, political subdivisions or agencies thereof, and agencies of the Federal Government may lease irrigation land they own or control to an eligible landholder, provided that the irrigation land leased from such entities plus any irrigation land owned by the landholder does not exceed the landholder's basic entitlement under Federal Reclamation law (960 acres for a qualified recipient, 640 acres for a limited recipient, or 160 acres for a prior law recipient, unless otherwise provided by law).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X is a qualified recipient in the State of Colorado and owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmer X's basic entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at full cost provided that additional acreage is not owned by a governmental agency.

*Example (2).* In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Colorado. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the basic 160-acre entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by the district or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a governmental agency.

**§ 426.18 Commingling.**

(a) *Existing commingling provisions in contracts.* Provisions in repayment and water service contracts entered into prior to October 1, 1981, which define project and nonproject water or describe the delivery of project water through nonproject facilities or nonproject water through project facilities, shall continue in effect. They shall apply to renewed contracts the district enters into with the United States as well, provided they are consistent with the provisions in paragraph (b) of this section.

(b) *Establishment of commingling provisions in contracts.* (1) New, amended, or renewed contracts may provide that irrigation water may be commingled with agricultural water from other sources in nonfederally subsidized facilities when standards can reasonably be established to assure on a volumetric basis that the water requirements of eligible lands are sufficient to utilize the full supply of irrigation water. The provisions of Federal Reclamation law and these regulations will be applicable only to the irrigation water under these circumstances.

(2) Commingling irrigation water and water from other sources in federally subsidized facilities will make the water from other sources subject to Federal Reclamation law and these regulations unless otherwise provided by the Secretary.

(3) Acquisition of irrigation water from federally subsidized facilities by exchange shall not subject such water to Federal Reclamation law and these regulations if no material benefit results from the exchange.

(i) The principles of this rule may be illustrated by the following:

*Example.* District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility. District B is located immediately adjacent to the river but several miles from the Federal facility. Rather than construct several miles of conveyance facility, District B contracts with District A to allow its water rights water to flow down the river for use by District B. Water from the federally subsidized facility is in turn delivered to District A. District A is not subject to Federal Reclamation law and these regulations by virtue of this exchange. District B, however, is subject to Federal Reclamation law and these regulations since it is the beneficiary of the exchange; i.e., a water supply.

**§ 426.19 Water conservation.**

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and M&I (municipal and industrial) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal Reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

**§ 426.20 Public participation.**

(a) *In general.* The Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that he contract action may or will have "significant" environmental effects.

(1) Each public notice or news release shall include, as appropriate, (i) a brief description of the proposed contract terms and conditions being negotiated; (ii) date, time, and place of meeting or hearings; (iii) the address and telephone number of a Bureau employee to address inquiries and comments; and (iv) the period of time in which comments will be accepted.

(2) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(3) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written

request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(4) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act [80 Stat. 383], as amended.

(5) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(6) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(7) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(8) In the event modifications are made in the form of proposed contracts, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

**§ 426.21 Small reclamation projects.**

(a) Small Reclamation Projects Act (SRPA) loan contracts entered into after October 12, 1982, shall be subject to the provisions of the Act of August 6, 1956 (43 U.S.C. 422e) as amended by section 223 of Pub. L. 97–293.

(b) SRPA loans which were entered into prior to October 12, 1982, shall continue to be subject to the provisions of that loan contract, provided that the loan contract may be amended at the request of the non–Federal party to conform to the Act of August 6, 1956, as amended by section 223 of Pub. L. 97–293, and provided further that no other provision of the loan contract shall be altered, modified, or amended without the consent of the non-Federal party.

(c) No other section of these regulations shall be deemed applicable to SRPA loans.

(d) In districts which have a water service or repayment contract in addition to an SRPA contract, the SRPA loan is not to be considered in determining whether the district has discharged its construction cost obligation for project facilities. Neither shall an SRPA loan be the basis for reinstating acreage limitation in a district which has completed payment of its construction cost obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district. However, if a district subject to prior law has not completed payment of its construction cost obligation and applies for an SRPA loan after October 12, 1982, the district shall be required to become subject to the discretionary provisions as a condition for receipt of an SRPA loan.

(e) In a district which has both an SRPA loan contract and a contract as defined in § 426.4(b), [(for example, a repayment contract, a water service contract, or a distribution system loan contract (Pub. L. 84–130)], the requirements applicable to such contracts are not superseded by the SRPA contract.

(1) The application of this rule can be illustrated by the following:

*Example.* District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to section 223 of title II in order to increase its threshold for noninterest-bearing water deliveries for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though its SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary provisions, it may not deliver irrigation water to land in an ownership in excess of 160 acres (320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract, allow nonproject water to be delivered to excess land, see § 426.18.

**§ 426.22 Decisions and appeals.**

Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such determination may appeal in writing to the Commissioner of the Bureau of Reclamation within 30 days of receipt of the Regional Director's determination. The time for appeal may be extended by the Secretary. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief or memorandum to the Commissioner. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision. Legal opinions which address excess land issues and which were in effect prior to enactment of title II remain in force unless they were (a) superseded by specific provisions in title II, (b) reversed or modified by the courts or subsequent legal opinions, or (c) are not consistent with specific provisions in these rules and regulations.

Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW., Washington DC 20240

Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise ID 83724

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento CA 95825

Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City NV 89005

Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City UT 84147

Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Amarillo TX 79101

Regional Director, Missouri Basin Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings MT 59103

**§ 426.23 Scheme or device.**

If a person adopts or participates in adopting any scheme or device which is designed to evade or which has the effect of evading these rules and regulations, the person's entitlement will be recast to reflect the true situation and such person may be subject to penalties deemed appropriate by the Secretary.

**§ 426.24 Severability.**

If any provision of these rules or the applicability thereof to any person or circumstances is held invalid, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby

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**43 CFR Part 426**

## Acreage Limitation Rules and Regulations; Notice of Public Workshops and Hearings on Proposed Rulemaking

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public workshops and hearings.

**SUMMARY:** Notice is hereby given that the Bureau of Reclamation will conduct public hearings to receive testimony on the proposed rules and regulations on acreage limitation. Workshops to review the changes made to the existing rules and regulations will be held at each hearing location the evening preceding the hearing, with the exception of Washington, DC. These rules are being revised to implement section 203(b) of the Reclamation Reform Act of 1982 and for other reasons.

**DATES:** See **SUPPLEMENTARY INFORMATION** section below.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Phillip T. Doe; telephone (303) 236–8065.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation, Department of the Interior, published rules and regulations for acreage limitation in the December 6, 1983, **Federal Register.** These rules are being revised to implement section 203(b) of the RRA and for other reasons. Notice is hereby given that the Bureau of Reclamation will conduct public hearings to receive testimony on the proposed rules and regulations. The testimony received at these hearings will be considered in preparing the revised rules for acreage limitation.

Comments are due on or before January 6, 1987. Workshops to review the changes made to the existing rules and regulations will be held at each hearing location the evening preceding the hearing, with the exception of Washington, DC. The dates and locations are shown below. All workshops will begin at 7 p.m. and all hearings will begin at 9 a.m. The workshops will continue until all issues have been aired, and the hearings will continue until all testimony has been heard.

The workshops and hearings will be held at the locations shown below.

Workshops and hearings will be held at each location. Workshops will be held the evening preceding the hearings at the locations shown below:

Grand Junction, Colorado—Mesa College, William Campbell College Center, Boettcher Room, 12th and Elm, Grand Junction, Colorado—workshop, November 19—hearing, November 20.

Salt Lake City, Utah—Shilo Inn, 206 SW Temple, Salt Lake City, Utah—workshop, November 20—hearing, November 21.

Richland, Washington—Hanford House, 802 George Washington Way, Richland, Washington—workshop, November 21—hearing, November 22.

Bend, Oregon—River House Motor Inn, 3075 NW Highway 97, Bend, Oregon—workshop, November 23—hearing, November 24.

Boise, Idaho—The Red Lion Motor Inn—Riverside, 29th and Chinben, Boise (Garden City), Idaho—workshop, November 24—hearing, November 25.

Albuquerque, New Mexico—Holiday Inn Mid-town, 2020 Menaul Blvd., Atrium Rooms 1 and 2, Albuquerque, New Mexico—workshop, December 3—hearing, December 4.

Amarillo, Texas—Fifth Season Inn West, Amarillo Room, 6801 I–40 West, Amarillo, Texas—workshop, December 4—hearing, December 5.

Phoenix, Arizona—Fiesta Inn, Galleria "C" Conference Room, 20100 S. Priest, Tempe, Arizona—workshop, December 8—hearing, December 9.

Yuma, Arizona—Yuma Airport Travel Lodge, 711 E. 32nd Street, Yuma, Arizona—workshop, December 9—hearing, December 10.

Visalia, California—Visalia Convention Center, Kaweah Room, 303 E. Acequia Street, Visalia, California—workshop, December 10—hearing, December 11.

Sacramento, California—Beverly Garland, Theater Room, 1780 Tribute Road, Sacramento, California—workshop, December 11—hearing, December 12.

Willows, California—Memorial Hall, 525 W. Sycamore, Willows, California—workshop, December 12—hearing, December 13.

Billings, Montana—Northern Hotel, Rimrock Room, N. 28th Street (Broadway) and 1st Avenue N., Billings, Montana—workshop, December 15—hearing, December 16.

North Platte, Nebraska—Holiday Inn, Buffalo Room, Intersection of I–80 and Hwy. 83, North Platte, Nebraska—workshop, December 16—hearing, December 17.

Washington, DC.—Department of the Interior, Room 7000A, Main Interior Building, 18th and C Street NW., Washington, DC.—hearing—December 19.

Open and free discussions will be allowed at the workshops each evening preceding the hearings. However, at the hearings, oral statements will be limited to 10 minutes. Hearing speakers will not be permitted to trade their time to obtain a longer oral presentation; however, the hearings officer may allow any person additional time after all other comments have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled after all the scheduled speakers have been heard. Speaker requests will be scheduled up to 2 working days preceding the hearings and any subsequent request will be handled on a first-come-first-served basis following the scheduled presentations.

Individuals or organizations wishing to speak at the hearings or desiring additional information should contact the appropriate office listed below:

*Hearing:* Richland, Washington; Bend, Oregon; and Boise, Idaho.

*Contact:* Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, (208) 334–1160.

*Hearing*: Visalia, Sacramento, and Willows, California.

*Contact*: Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, (916) 978–5040.

*Hearing*: Phoenix and Yuma, Arizona.

*Contact*: Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, Box 427, Boulder City, Nevada, (702) 293–7651.

*Hearing*: Salt Lake City, Utah and Grand Junction, Colorado.

*Contact*: Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 S. State Street, Box 11568, Salt Lake City, Utah, (801) 524–5438.

*Hearing*: Albuquerque, New Mexico and Amarillo, Texas.

*Contact*: Regional Director, Southwest Region, Bureau of Reclamation, Commerce Building, 714 S. Tyler, Suite 201, Amarillo, Texas, (806) 378–5426.

*Hearing*: Billings, Montana and North Platte, Nebraska.

*Contact*: Regional Director, Missouri Basin Region, 316 North 26th Street, Box 2553, Billings, Montana, (406) 657–6411.

*Hearing*: Washington, DC.

*Contact*: Commissioner, Bureau of Reclamation, Attention: Code 420, 18th and C Streets, NW, Washington, DC 20240, (202) 343–5204.

Those wishing to supplement their testimony with a written statement or preferring to submit testimony should address their statements to: Phillip Doe, Bureau of Reclamation, E&R Center, Code D–410, PO Box 25007, Denver, Colorado 80225.

Dated: November 4, 1986.

**C. Dale Duvall,**

*Commissioner.*

[FR Doc. 86–25313 Filed 11–6–86; 8:45 am]

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federal register

Friday
November 7, 1986

Part X

# Department of Agriculture

## Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling; Final Rule

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

**[Navel Orange Reg. 633]**

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 633 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 7 through 13, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

**DATE:** Regulation 633 (§ 907.933) is effective for the period November 7 through 13, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–1987 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 4, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 10 to 1, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand is good for large-sized oranges and weak for small-sized oranges.

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

### List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (Navel).

### PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.933 Navel Orange Regulation 633 is hereby added to read:

**§ 907.933 Navel Orange Regulation 633.**

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 7 through November 13, 1986, are established as follows:

(a) District 1: 1,200,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

Dated: November 5, 1986.

Joseph A. Gribbin,

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

[FR Doc. 86–25407 Filed 11–6–86; 8:45 am]

BILLING CODE 3410–02–M

### 7 CFR Part 910

**[Lemon Regulation 534]**

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 534 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period November 9 through November 15, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 534 (§ 910.834) is effective for the period November 9 through November 15, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action

will tend to effectuate the declared policy of the act.

This regulation is consistent with the marketing policy for 1986–1987. The committee met publicly on November 4, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 13 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons has slowed down.

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

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, and Lemons.

**PART 910—[AMENDED]**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.834 is added to read as follows:

**§ 910.834 Lemon Regulation 534.**

The quantity of lemons grown in California and Arizona which may be handled during the period November 9 through November 15, 1986, is established at 260,000 cartons.

Dated: November 5, 1986.

**Joseph A. Gribbin,**

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

[FR Doc. 86–25406 Filed 11–6–86; 8:45 am]

BILLING CODE 3410-02-M

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