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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations of the United States Department of Agriculture (Department) that implement the Equal Access To Justice Act (Act) (Pub. L. No. 96–481, as amended by Pub. L. No. 99–80, and Pub. L. No. 99–509). The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings. These revised regulations, which reflect the changes in the law made by Pub. L. No. 99–80, and Pub. L. No. 99–509, establish procedures for the submission and consideration of applications for such awards.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, USDA (202) 447–6035.

SUPPLEMENTARY INFORMATION: On May 3, 1988 (53 FR 15685), the USDA proposed to amend its Equal Access to Justice Act regulations to conform them, with few exceptions, to the revised model rules issued by the Administrative Conference of the United States. No comments were received during the comment period that terminated on June 2, 1988. This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

Accordingly, 7 CFR, Subtitle A, Part 1, Subpart J is revised to read as follows:

PART 1—[AMENDED]

* * * * *

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

Authority: 5 U.S.C. 504(c)(1).

General provisions

§ 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 1.132 of this part) are incorporated into and made applicable to this subpart.

(b) "Adjudicative Officer" means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by the Act.

(c) "Agency" means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) "Agency counsel" means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) "Days" means calendar days.

(f) "Department" means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Department will use to make awards.

§ 1.182 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which shall be effective on or after October 21, 1986. It also applies to any adversary adjudication commenced on or after October 1, 1984, and disposed of finally before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and

other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1.183 Proceedings covered.

(a)(1) These rules apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of this Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which this Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The proceedings covered are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Act (21 U.S.C. 104)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Quarantine Act (7 U.S.C. 163)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of this Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligiblity set out in §§ 1.181 through 1.186 and in §§ 1.190 through 1.193 of this subpart.

(b) The types of eligible applicants are as follows:

(1) an individual with a net worth of not more than $2 million;

(2) the sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) a charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for renumeration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduiy or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), this Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with this Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of this Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation. Unless the applicant is an individual, the application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organizatiion described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes this Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5

U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be sereved on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of this Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication

for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145(b) through (i) and 1.146(b) of this part.

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Date: September 19, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc 88-21687 Filed 9-22-88; 8:45 am]

BILLING CODE 3410-14-M

Agricultural Marketing Service

7 CFR Part 967

[FV-88-109]

Celery Grown in Florida; 1988-89 Marketing Year Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of Florida celery which handlers may market fresh during the 1988-89 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This final rule would encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery sold in fresh markets, since actual shipments are anticipated to be less than the allotment. This action was recommended by the Florida Celery Committee, the agency responsible for local administration of the order.

EFFECTIVE DATES: August 1, 1988, through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-2491.

SUPPLEMENTARY INFORMATION: This final rule is issued under the marketing agreement and Marketing Order No. 967 (7 CFR Part 967), as amended, regulating the handling of celery grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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 (AMS) has considered the economic impact of this action on 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 Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of celery who are subject to regulation under the marketing order for Florida celery during the course of the current season, and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Florida celery may be classified as small entities.

This final rule is based upon the recommendation and information submitted by the Florida Celery Committee (Committee) and upon other

available information. The Committee met on June 9, 1988, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1988–89 marketing year beginning August 1, 1988. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1988–89 supplies and prospective market demand.

This final rule will limit the quantity of fresh Florida celery which handlers may purchase from producers and ship to fresh markets during the 1988–89 season to 6,789,738 crates. This marketable quantity is identical to the 1987–88 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982–83 through 1986–87 seasons. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1988–89 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict sales or shipments of Florida celery.

This final rule could encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery sold in fresh markets, since actual shipments are anticipated to be less than the allotment.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent of the 1988–89 total base quantities is authorized for new producers and for increases by existing producers for the 1988–89 season. However, there were no applications for new or additional base submitted for the 1988–89 season.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This action was proposed in the July 29, 1988, issue of the **Federal Register** (53 FR 28651). Comments on the proposed rule were invited from interested persons until August 29, 1988. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action applies to all Florida celery handled by handlers during the 1988–89 crop year, which began August 1, 1988, and (2) handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 967 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

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

Subpart—Rules and Regulations

2. A new § 967.324 is added to read as follows:

§ 967.324 Handling regulation, marketable quantity, and uniform percentage for the 1988–89 season beginning August 1, 1988.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of 6 percent of the total base quantities is hereby authorized for: (1) New producers; and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 20, 1988.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 88–21849 Filed 9–22–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1864 and 1956

Processing Debt Settlement Actions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation on debt settlement for Farmer Programs (FP) and Single Family Housing (SFH) loans by revising and renumbering Form FmHA 456–2. The change is required so that the form may accurately reflect the current regulation. The intended effect is to permit the use of short form to debt settle its Single Family Housing cases.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Betty Thorne, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC. 20250, Telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only matters involving management, making publication for comment unnecessary and impractical.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410-Low Income Housing Loans and No. 10.417–Very Low Income Housing Repair Loans and Grants.

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the National

Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1864

Claims, Loan programs—Agriculture, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70

§§ 1864.2, 1864.5, 1864.10, 1864.12, 1864.16, 1864.17, 1864.19 and Exhibit B [Amended]

2. The reference "Form FmHA 456–2" is changed to read "Form FmHA 1956–2" in the following sections:

§ 1864.2 (c), (f) and (j)
§ 1864.5
§ 1864.10(1)(i) and (2)
§ 1864.12 (2)
§ 1864.16 title, introductory text and (b) (4 places)
§ 1864.17 (a)
§ 1864.19 (c)
Exhibit B, under column heading "Form Used" (5 places)

PART 1956—DEBT SETTLEMENT

3. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Debt Settlement—Farmer Programs and Single Family Housing

§§ 1956.57, 1956.70 and 1956.75 [Amended]

4. The reference, "Form FmHA 456–2" is changed to read "Form FmHA 1956–2" in the following sections:

§ 1956.57 (j)(3) (two places),
§ 1956.70 (b)(2) and (b)(3),
§ 1956.75 (a) introducing text and (b) introductory text.

Date: July 22, 1988.

Vance L. Clark,

Administrator Farmers Home Administration.

[FR Doc. 88–21636 Filed 9–22–88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Low-Power Testing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to establish more clearly what emergency planning and preparedness requirements are needed for fuel loading and low power testing of nuclear power plants. The rule itself will now require NRC findings on the licensee's emergency plans for dealing with accidents that could affect persons on site. The Commission's prior practice of considering certain offsite elements of licensee's plans has been modified and codified in this regard to provide that NRC findings will be required before fuel loading or low power testing in coordination with offsite personnel and agencies so that necessary resources can be applied on site for mitigating and containing accidents, and so that offsite agencies may be kept informed of plant events. The rule will also change the prior practice, never included in the prior rule itself, of reviewing plans for prompt public notification in the event of an accident. This practice of reviewing an offsite element of licensee emergency plans that has no onsite application is being discontinued as not necessary for public safety. The rule does not change the emergency planning requirements that must be satisfied before full power operation can be authorized. No new requirements are being imposed by the rule beyond those that have been previously required by rule and by prior NRC practice. The rule makes clear that no offsite elements of the applicant's emergency plan, other than those set forth in this revised rule, need be considered in connection with low power licensing.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1632, or Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–3918.

SUPPLEMENTARY INFORMATION:

I. Background

On May 9, 1988, the Commission published in the **Federal Register** (53 FR 16435) a notice of proposed rulemaking which would establish more clearly what emergency planning and preparedness requirements are needed for fuel loading and low power testing of nuclear power plants. As detailed in the notice of proposed rulemaking, 10 CFR 50.47(d) as promulgated on July 13, 1982 (47 FR 30232) provided that only a finding as to the adequacy of an applicant's onsite emergency planning and preparedness is required for low power. However, the provision in the Statement of Considerations that systems for prompt notice to the public in the event of an accident would also be reviewed before low power focused on protection of persons *off site*. The Statement of Considerations for the 1982 rule change gave no clear and consistent rationale for why the particular element dealing with public notification should be included. The foundation for that rulemaking was the Commission's determination, described in more detail below, that the degree of emergency planning and preparedness necessary to provide adequate protection of the public health and safety is significantly less than that required for full power operation in light of the significantly lower risks associated with even low likelihood accidents at that stage (47 FR 30233 and note 1). Thus, the stated rationale for the 1982 rule would seem to undercut the need for any prompt public notification requirement.

The Commission indicated in 1982 that, although at low power plant operators typically have less experience and there is a greater potential for undiscovered defects, the risk to public health and safety at low power is significantly lower than at full power as a result of several factors. Those reasons were stated by the Commission as follows: First, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full power operation.

Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means that operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the

additional time available (at least 10 hours), even for a postulated low likelihood sequence which could eventually result in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site (47 FR 30233).

The safety basis for the 1982 rule was reviewed as a necessary part of the instant proposed rulemaking. The Commission reexamined the need at low power to review those aspects of applicants' onsite plans that seem relevant only to offsite protective measures that might be needed if there were an accident with offsite dose effects (53 FR 16436–7). The proposed rule indicated that the Commission saw no need to review those aspects of applicants' plans that did not have a direct relationship to onsite dose effects in light of the significantly less risk to offsite persons presented by fuel loading and low power testing as contrasted with full power operation. On reexamination in light of public comment, the Commission has reaffirmed the safety conclusion that the safety risk to the public from low power testing is significantly less than the risk to the public from full power operation. Accordingly, the rule is being issued in final form substantially as proposed. However, a number of changes have been made in the rule in response to public comments.

II. Analysis of Public Comments

Nearly 1700 comments were received on the proposed rulemaking. The overwhelming majority were from private citizens, mostly in the New England area. Comments also came from utilities, industry groups, State and local government agencies and officials, members of Congress, one Federal agency and several local and national environmental groups. The comments ran approximately two to one in favor of promulgation of the proposed rule. Of those opposed, approximately 500 were form letters from residents of the area surrounding the Seabrook nuclear power plant. The remaining 60 to 70 comments in opposition were from private citizens, State and local government officials and environmental groups. The comments in favor came primarily from private citizens, with a sprinkling from utilities, nuclear industry organizations, one local government official and one Federal agency.

Because of the large volume of comments received, it would be impractical to discuss each individually. The great majority of comments, both for and against the proposed rule, turned on the commenter's opinion on the impact of the rule on licensing the Seabrook facility. Most of the individuals who wrote in support of the rule expressed the opinion that the facility was ready to be licensed, that the power the facility would generate was needed, and that licensing should not be allowed to be held up by political forces. Most commenters in favor of the rule also expressed the opinion that the risks to the public from low power testing were considerably less than those from full power operation, and that prompt emergency notification to the general public should not be necessary at low power.

The significant comments against the rule fall within the scope of fifteen separate major comments. These major comments and the Commission's response to them are set forth below.

Comment 1. The risk assessments upon which the rule is based are based on operation over a short time frame. However, there is no time limit for low power testing.

Response. For many years, Commission policy has been to issue separate "low power" licenses which allow a plant to load fuel and perform testing and operator training at power levels up to 5 percent whenever to do so would expedite the licensing process without prejudicing the rights of any intervening parties. The purpose of the low power test program is to demonstrate that the overall plant performance conforms to the established design criteria and to confirm the operability of plant systems and design features that could not be completely tested during the preoperational test phase. Tests that are performed during the program are specific to the type of light-water reactor (boiling water reactor versus pressurized water reactor), but typically include determination of in-core flux distribution, moderator temperature coefficients, control rod worths and adequacy of neutron instrumentation and associated protective functions. Also, during this time operators obtain some valuable additional training manipulating the controls of the reactor at low power levels. In practice, many of these tests and manipulations are performed with the reactor at less than 1 percent of rated power, and those tests and manipulations which are performed with the reactor at "peak" low power (typically 3 percent to 4 percent of rated power) are completed within a day or two. Based on experience with U.S. commercial power plant startup test programs, the period over which a reactor would actually operate at or near 5 percent power during the low power test program is expected to be at most a few weeks; likewise, operation at 5 percent power beyond these few weeks would not be economically feasible. The safety evaluation supporting this rule assumes that operation under the rule would be consistent with this prior history and practice. To further clarify this point, low power licenses issued under this rule will be for purposes of fuel loading and low power testing and operator training only: steady-state operation at or near 5 percent for the full license term would not be authorized.

Comment 2. The technical basis for both the current rule and the 1982 rule is flawed in that, at 5 percent power, substantial inventories of biologically significant fission products will be developed in from eight to forty days. Thus, while the inventory of all radionuclides developed during low power testing is reduced compared to full power operation, the inventory of radionuclides with public health significance still poses a substantial prompt public health hazard. In addition, the inexperience of the operators during low power testing and the newness of the system create a greater potential for undiscovered defects and incidents.

Response. Yes, there are some biologically significant fission products generated in the reactor core during the low power operation contemplated by this rule. But, although during low power testing plant operators typically have less experience and there is a greater potential for undiscovered defects, the risk at low power is still sufficiently low to provide reasonable assurance that public health and safety is protected even in the absence of the requirement for a prompt notification system and other purely offsite elements of emergency plans. This is a result of three factors, which were stated earlier by the Commission and which the Commission reaffirms in this rulemaking as follows: First, the fission product inventory during initial low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation at this power level. The available inventory of fission products that are significant contributors to public health consequences would be reduced by about a factor of 20 for continuous operation at 5 percent power compared to continuous full power operation. However, as explained above, based on experience with commercial nuclear power plant startup test programs, operation at or near 5

percent power is only expected for a maximum of a few weeks. This would result in a further reduction in available fission product inventory. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full power operation. For example, the coolant flow required to dissipate decay heat at 10 hours following a loss of coolant accident in a typical pressurized water reactor would be less than 10 gallons per minute, which is well within the capacity of normal make-up systems. Most of the regulatory requirements for safety systems during reactor power operation, including containment integrity, emergency core cooling, and redundant power supplies, are the same for 5 percent power operation as they are for 100 percent power. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring.

The above safety evaluation makes no assumptions about the time that would be needed to notify the public off site and to implement an offsite emergency response if one would assume hypothetically that an offsite release would occur: it is based solely on an analysis of the likelihood that an offsite release could occur and of the possible magnitude of that release. However, as an additional, separate consideration, the Commission also believes that, in the worst case, the additional time available (at least 10 hours), even for a postulated low likelihood sequence which could eventually result in release of the fission products accumulated at low power into the containment, would allow notification of both onsite and offsite emergency response organizations. These organizations would likely have adequate time to implement some offsite response should that be necessary. Without a prompt public notification system in place and an approved and tested offsite emergency plan, there obviously cannot be the same kind of reasonable assurance of offsite protective measures that there would be with a fully reviewed and tested offsite emergency plan should there be an offsite release at low power. However, given the extremely low likelihood of any accident resulting in significant offsite releases, the requirements for procedures to notify emergency response organizations and the additional time that will likely be available would provide sufficient time for the emergency response organizations to implement some form of public notification and to carry out some reasonably effective offsite emergency response, even if such a release were to eventually occur.

Comment 3. Testing at low power is riskier than full power operation because it involves deliberately defeating safety systems.

Response. While some selected safety systems may be disabled during low power testing, the heat load and fission product inventory are significantly less than at full power. There are a number of methods available to remove this very low heat load generated at low power. In addition, special procedures are developed and followed for these tests, which are closely monitored by plant personnel. Therefore, because of the reduced heat load, small fission product inventory and special attention by plant operators, testing at low power does not place the plant at greater risk and presents a significantly lesser risk than does full power operation.

Comment 4. The Chernobyl accident occurred while the reactor was at low power. Why does the NRC still say that the risk of low power testing is low?

Response. The reactor physics characteristics of U.S. light-water reactors are very different from those of the graphite-moderated RBMK type of reactor at Chernobyl. Positive void (and moderator temperature) coefficients, which played a central role in the accident at Chernobyl, are generally absent in U.S. reactors. Where they are present, they have a limited reactivity insertion potential, which precludes their causing any significant reactivity transient and power level increase. Substantial required shutdown reactivity margins in conjunction with fast automatic insertion of control rods on signals indicative of unsafe conditions provide protection against the occurrence of reactivity excursions, such as that which took place at Chernobyl, in commercial U.S. reactors. U.S. light-water reactors do not have the inherent potential to rapidly elevate their reactor power to levels at which plant risk becomes significant. Additionally, the Chernobyl reactor operated at full power prior to its accident. Therefore, the buildup of fission product inventory was much higher than the buildup of fission product inventory at U.S. reactor operating under a fuel loading or low power testing license.

Comment 5. Low power licensing fails the cost-benefit analysis required by NEPA.

Response. This issue falls outside the scope of this rulemaking, which is only designed to address the requirements under the Atomic Energy Act for emergency planning at fuel loading and low power. The establishment of these safety requirements does not have a significant environmental impact under NEPA. The question of the correct NEPA analysis to be done in support of a low power license for any specific facility is made by case-by-case determination, and is not the subject of this rulemaking.

Comment 6. A low power license should not be issued where it is not certain that a full power license will ever be granted. The Shoreham reactor was irradiated unnecessarily.

Response. This again is an issue that is not the subject of this generic rulemaking. In the past the Commission has addressed this issue in individual adjudicatory opinions, *e.g., Long Island Lighting Company* (Shoreham Nuclear Power Station), CLI–85–12, 21 NRC 1587 (1985), and does not believe that the issue warrants resolution generically by rulemaking.

Comment 7. The proposed rule states that the safety analysis performed in 1982 is still valid. After performing that analysis, the NRC decided to require that certain offsite aspects of emergency plans be in place prior to low power licensing. The NRC has given no rationale for changing the rule, while admitting that the previous analysis is valid.

Response. One reason for this rule change is to clarify language in the rule itself that can easily be read to suggest that *no* offsite emergency planning elements need to be reviewed prior to fuel loading or low power testing. The 1982 safety analysis supported the proposition that those offsite aspects of emergency planning which are pertinent to protecting persons on site need be considered prior to low power. This rule change will incorporate this important safety consideration.

The provision in the 1982 rulemaking which is being reconsidered is the provision in the Supplemental Information that systems for prompt notification of the public in the event of an accident should be in place and reviewed at low power. However, this change is consistent with the 1982 safety analysis. Plans will still be required for notification of offsite planning and response agencies so that these agencies and licensees may, as appropriate, keep the media and the public informed. But given the relatively low risk to the

public from low power operation, a requirement for prompt notification of the public is far in excess of what is reasonably needed. Nothing in the 1982 rulemaking logically supports the contrary.

Comment 8. The NRC has previously stated that review of the licensee's onsite response mechanism will necessarily include aspects of some offsite elements. Why is the NRC changing this position?

Response. See the Response to Concern 7. The NRC is not changing its expert conclusion as to the lower level of risk from low power operation. However, this rulemaking is a more logical result of this expert conclusion than the positions stated in the 1982 Supplemental Information.

Comment 9. The new rule does not address the risk of a terrorist attack or sabotage at low power.

Response. Prior to receiving a low power license, a licensee must fully meet the requirements of 10 CFR 73.55. These requirements assure the implementation of an acceptable security plan around a nuclear power plant. These are the same security requirements that a licensee must meet prior to receiving a full power license. While the risk from terrorism or sabotage cannot be quantified, it is the Commission's judgment that compliance with § 73.55 will reasonably assure that the risk from terrorism or sabotage at low power is sufficiently low so as not to undercut the conclusion that low power safety risks to the offsite public are relatively low.

Comment 10. The risks of an accident at low power are not confined to those onsite. If an accident were to occur at low power, public panic could ensue.

Response. The Commission responded to a similar comment in promulgating the 1982 rule. *See* Issue 6, 47 FR at 30234. The Commission is not unmindful that, regardless of the objective lack of danger, members of the public may be made uneasy and could panic unnecessarily if an accident were to occur at low power. It was in response to this comment that the Commission agreed to review, and will continue to review, certain offsite notification elements of emergency plans prior to low power testing. In particular, prior to low power, means to keep state and local response organizations informed in the event of an onsite accident will be reviewed and approved. These organizations, through. normal communication mechanisms, have the capability to inform the public, if needed, in order to avert panic. However, the Commission has found that the immediate direct notification of the public called for by the language in the 1982 rule preamble is far in excess of what is necessary to keep the public informed.

Comment 11. The change in proposed § 50.47(d)(5) to modify the requirement for provisions for monitoring offsite consequences from "in use" to "available" will create unacceptable delay in the identification of an actual or potential hazard to the public stemming from a radiological emergency.

Response. The final rule will retain the phrase "in use". The wording change in the proposed rule was not intended to change current NRC staff practice of reviewing licensee onsite plans to assure they meet the intent of § 50.47(b)(9) and Planning Standard I of NUREG–0654 prior to issuance of an operating license limited to fuel loading and low power testing. While the safety evaluation which supports the elimination of the prompt public notification requirement for low power suggests that an offsite release is extremely unlikely, the Commission still considers it prudent to have release monitoring equipment in use on site so that, at a minimum, the licensee is in a position to verify objectively that no release has occurred.

Comment 12. The original rule justified retention of emergency planning for research reactors, but not for commercial reactors, since research reactors were perceived to be located in areas of high population density. This contradicts the Commission's current posture that the relatively lower risks of low power testing justify elimination of offsite safety measures, since it concedes that there is an accident risk at low power serious enough that a research reactor (much smaller than a power reactor) needs a full emergency plan.

Response. The premise for the comment that research reactors with power levels approximating those of commercial nuclear power plants operating at 5 percent of full power are required to have approved offsite emergency plans is incorrect. Rather than requiring a "full emergency plan" for research reactors, the Commission's regulations (10 CFR Part 50, Appendix E, 10 CFR 50.47(c), 10 CFR 50.54(q)) provide that emergency plan requirements will be determined on a case-by-case basis. In making this determination the guidance of NRC Regulatory Guide 2.6 and American National Standards Institute/American Nuclear Society 15.16 is used. In accordance with this guidance, and based on the relatively small risks posed by typical research reactors, (i.e., less than 50 megawatts) emergency planning involving offsite state and local plans and public notification has not been required. The guidance does, however, provide for consideration of more extensive planning, including all or a portion of the requirements listed in section IV of 10 CFR Part 50, Appendix E for research reactors with power levels greater than 50 megawatts. This graded approach to required emergency planning is consistent with the current rule.

Comment 13. The Atomic Energy Act prohibits authorization of low power testing prior to completion of public hearings on all issues material to full power licensing.

Response. This comment is more properly addressed to § 50.57(c), which provides for low power licenses and which is not being amended here. That section provides that a hearing is required prior to low power on those contentions "relevant to the activity to be authorized"—that is, low power testing, as opposed to full power operation.

Comment 14. The proposed rule was designed to allow the Seabrook facility to receive its low power license. The Commission should promulgate a rule to promote the public health and safety and not one designed to license a specific facility. The issue should be addressed in the pending Seabrook adjudication, not in a rulemaking.

Response. In the proposed rule, the Commission stated that its attention was focused on the emergency planning requirements for low power testing because of an Appeal Board decision in the Seabrook operating license proceeding, ALAB–883. And, for the near term, the only reasonably foreseeable effect of the rule change will be on the Seabrook low power application. But this does not make the use of rulemaking inappropriate. As the Commission explained, the rule change was proposed to correct a possible discrepancy between the language of the 1982 rule and the language of the Statement of Considerations which potentially affects all license applicants, not just the applicants for Seabrook. Also, the questions involved in the proposed rule are generic safety questions and the Commission preferred to obtain (and, in fact, did obtain) a broad spectrum of public comment, rather than just the comments of the litigants in the Seabrook proceeding.

The Commission is free to address a generic issue generically, even if the rule change may currently apply only to one facility. *See, e.g., Siegel v. Atomic Energy Commission,* 400 F.2d 778 (D.C. Cir. 1968). *Also see Securities and*

Exchange Commission v. Chenery, 332 U.S. 194, 202 (1947) (choice of how to proceed lies within the informed discretion of the agency).

The rule is not intended to overrule *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), CLI-87-2, 25 NRC 267 or CLI-87-3, 25 NRC 875 (1987).

Comment 15. Members of the public may need immediate medical attention in the event of an accident at low power. The new rule does not provide that arrangements for medical services will be in place for those off site.

Response. The purpose for the requirement in 10 CFR 50.47(b)(12) that arrangements for medical services be made was described in the "SUMMARY" section of the Commission's policy statement on medical services (51 FR 32904) dated September 17, 1986, as follows:

> The Nuclear Regulatory Commission ("NRC" or "Commission") believes that 10 CFR 50.47(b)(12) ("planning standard (b)(12)") requires pre-accident arrangements for medical services (beyond the maintenance of a list of treatment facilities) for individuals who might be severely exposed to dangerous levels of offsite radiation following an accident at a nuclear power plant.

However, it is highly unlikely that members of the general public would be exposed to dangerous levels of radiation following an accident at low power. Therefore, the safety premise for the full power requirement that arrangements be made for medical services does not apply to fuel loading or low power testing.

Conclusion

As indicated in the responses to the comments, the Commission has decided to proceed with the proposed rule change with some clarifications and modifications. The rule reconciles a discrepancy between the language of the Commission's 1982 emergency planning rule change and the language of the Supplemental Information and provides an interpretation of that rule which appears to be fully consistent with the Commission's goals and safety conclusions in 1982. The majority of the public, as expressed in the comments, supports the rule. The comments opposing the rule have given no sound reasons for the Commission to alter its basic course.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final 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, 2120 L Street NW., Washington, DC. Single copies of the analysis may be obtained from Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-3918.

Regulatory Flexibility Certification

This final rule will not have a significant impact on a substantial number of small entities. The final rule will reduce or at least postpone the burden on NRC licensees by reducing the process required before a low power license may be granted. Nuclear power plant licensees do not fall within the definition of small businesses in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR Part 121, or the Commission's Size Standards published at 50 FR 50241 (Dec. 9, 1985). Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

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

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. 552 and 553, the Commission is adopting the following amendments to Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.47, paragraph (d) is revised to read as follows:

§ 50.47 Emergency plans.

* * * * *

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, and except as specified by this

paragraph, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local or utility offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading or low power testing and training (up to 5 percent of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power testing and training may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's onsite emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E. Review of applicant's emergency plans will include the following standards with offsite aspects:

(1) Arrangements for requesting and effectively using offsite assistance on site have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned onsite response have been identified.

(2) Procedures have been established for licensee communications with State and local response organizations, including initial notification of the declaration of emergency and periodic provision of plant and response status reports.

(3) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(4) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(5) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use onsite.

(6) Arrangements are made for medical services for contaminated and injured onsite individuals.

(7) Radiological emergency response training has been made available to those offsite who may be called to assist in an emergency onsite.

Dated at Rockville, MD, this 20th day of September 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-21809 Filed 9-22-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Nuclear Energy

10 CFR Part 730

Petitions Requesting Disposal Capacity for Unusual or Unexpected Volumes of Low-Level Radioactive Waste; Submission and Evaluation Requirements

AGENCY: Office of Remedial Action and Waste Technology, Office of Nuclear Energy (NE), Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing regulations for implementing its responsibilities under section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) (Pub. L. 99-240). This section of the Act authorizes DOE to grant to commercial nuclear power reactors allocations of disposal capacity for low-level radioactive waste resulting from unusual or unexpected operation or maintenance activities (referred to herein as unusual volume allocations). The regulation sets forth the information required in petitions for unusual volume allocations and the criteria DOE will use to evaluate such petitions.

EFFECTIVE DATE: September 23, 1988. The effective date for information collections contained in this rule is October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Coleman, NE-24, Department of Energy, Washington, DC 20545, Telephone 301-353-4728.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 1987, DOE published in the **Federal Register** (52 FR 2792) a Notice of Inquiry soliciting public comment on issues that DOE considered central to its management of section 5(c)(5) of the Act, the unusual volume allocations provision. After consideration of the comments received on the Notice, DOE, on January 20, 1988, issued a Notice of Proposed Rulemaking in the **Federal Register** (53 FR 1594). The notice responded to comments received on the earlier notice and set forth proposed regulations for nuclear power reactors to use to petition DOE for unusual volume allocations, and for DOE to use to evaluate such requests. A 60-day public comment period on the Notice of Proposed Rulemaking ended March 21, and a public hearing on the proposed rules was held in Washington, DC, on February 25, 1988.

II. Summary of Comments and DOE Responses

The Edison Electric Institute's Utility Nuclear Waste Management Group (EEI) was the only entity to provide oral testimony at the public hearing and to submit written comments. Yankee Atomic Electric Company provided DOE written endorsement of EEI's comments. In general, EEI's comments were supportive of the proposed regulations. However, the comments raised issues in two specific areas: (1) The proposed illustrative list of unusual activities, set forth in the definition of "Unusual or Unexpected Activities" at § 730.2 of the proposed rules, and (2) the methodology for determining the volume to be granted in response to a particular request, at § 730.7. These comments and DOE's responses are discussed below.

A. Definition of "Unusual or Unexpected Activity"

The definition of "Unusual or Unexpected Activity" in the proposed regulation, under § 730.2, included a list of reactor operating and maintenance activities illustrative of the kinds of activities that would be eligible for unusual volume allocations. The Notice of Proposed Rulemaking emphasized that the activities listed in the definition are intended to be non-exclusive guidance as to the kinds of activities eligible for unusual volume allocations, and that DOE would also consider other activities not typically associated with day-to-day plant operations.

EEI recommended that the list of activities in the definition be amended to include "decommissioning activities," noting that the examples in the definition only included activities associated with an operating reactor, or activities undertaken during a shut-down phase to make the reactor operational again. In evaluating this recommendation, DOE has noted that the Act does not distinguish between operational and decommissioning phases in the methodology for calculating "regular allocations" under section 5(c) (1) through (4). Moreover, the Report of the House Committee on Energy and Commerce (H. Rep. No. 99-314, pt. 2, Dec. 4, 1985, p. 31) states that "Commercial reactors which have received their full power licenses but are not longer in operation, and including reactors undergoing decommissioning, are entitled to the same allocations

available to reactors which are in operation and have received their full power licenses." It appears, then, that Congress did not consider decommissioning to be a discrete activity apart from those activities for which utilities receive regular allocations. Therefore, DOE does not believe that decommissioning, itself, without further description of the particular activities involved in the undertaking, would qualify as an activity eligible for an unusual volume allocation.

At the same time, however, Congress developed the methodology for calculating regular allocations from statistics reflecting average low-level waste generation rates for commercial power reactors during several years prior to the Act. These statistics were developed by the Electrical Power Research Institute, and are detailed in the report, "Identification of Radwaste Sources and Reduction Techniques," EPRI NP-3370, January 1984. The broad range of activities that made up the aggregate volumes of low-level waste from power reactors during these years did not include activities uniquely associated with decommissioning, although some activities undertaken in a decommissioning project may be similar to activities employed in day-to-day operation and maintenance of a reactor. Because of this, DOE believes that many individual activities that may be undertaken during decommissioning may deviate from "normal day-to-day plant operations," as envisioned by Congress. Therefore, particular activities that are uniquely associated with a decommissioning effort may be eligible for unusual volume allocations.

In addition to those activities uniquely associated with decommissioning, DOE believes that other activities undertaken during decommissioning, including activities that might also be performed during normal operating conditions, may be considered unusual activities, if, collectively, the number or frequency of the activities would be significantly increased during decommissioning. However, in requesting an unusual volume allocation, the petitioner would be required to describe the constituent activities that are planned, since there is no standard convention for decommissioning at this time.

Within the limitations of the factors cited above, DOE agrees with the recommendation of the commenter, that decommissioning activities be eligible for unusual volume allocations. However, because the definition of "unusual or unexpected activities" in the proposed rule is non-exclusive, DOE does not believe that it is necessary to alter the list of illustrative activities set forth in the proposed rules. Therefore, the definition in the final rule has not been changed.

Reactors that plan to initiate decommissioning projects before the end of the interim access period may petition DOE for unusual volume allocations in accordance with the regulations contained in this Notice. Because no decommissioning activities are currently planned to begin before 1993, DOE does not believe that the provision will significantly affect the disposal capacity available for unusual volume allocations.

B. Volume Determination

Section 730.7 of the proposed rule described the methodology DOE proposed to use to calculate volumes granted in response to eligible petitions. DOE may reduce the volume granted, as described in § 730.7(b), (c) and (d), if the total volume of disposal capacity available to DOE for distribution as unusual volume allocations becomes reduced. Such reductions could result from departures from current trends in disposal of low-level waste from commercial power reactors, or from inordinate demand for unusual volume allocations during a calendar year. These conditions are detailed in § 730.8.

The unusual volume allocation granted in response to a petition may also be reduced if the petitioning reactor already has allocation volume in excess of that needed for its ongoing operating and maintenance activities through the rest of the period. In determining this, DOE would consider both allocation volume received through the regular allocation process, section 5(c) (1) through (3) of the Act, and any volume received from another low-level waste generator through the provision of the Act allowing the transfer of allocations at any time, section 5(c)(4). Then, to calculate whether any of the volume is in excess of that needed, the volume projected for that need is subtracted from the remainder of the volume available for the period. Any excess volume can be applied toward the unusual activity, and the unusual volume allocation granted by DOE would be reduced accordingly.

EEI recommended that the formula described in § 730.7 of the proposed rules be adjusted so that any disposal allocation volume that a reactor has transferred to another waste generator also be subtracted from the volume that may be applied toward disposal of low-level waste from the unusual activity. Because the proposed rule already required petitioners to factor in the volume of disposal allocation they had received through a transfer, the recommended change to the proposed rule would result in consistent treatment of transfers to and transfers from the petitioning reactor.

DOE agrees with the recommendation, and has altered the formula for calculating unusual volume allocations by adding § 730.7(a)(5). The new provision adds the following category to the disposal allocation commitments that may be subtracted from the total allocation that a reactor has received: "Any portion of the reactor's regular allocation volume that has been transferred to another entity under the provisions of section 5(c)(4) of the Act." The new provision also requires that "the petitioner shall provide DOE a copy of the allocation transfer documentation described in this section of the Act."

DOE does not believe that this change to the proposed rules will have a significant effect. The new provision will be invoked only in those cases where the allocation that a petitioner has received (1) exceeds what is needed to dispose of waste from activities other than the one for which the petition is submitted, and (2) the petitioner had transferred allocation prior to submitting the unusual volume petition to DOE.

III. 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 rule and has determined that it is not a major rule because: Issuing Unusual Volume allocations, as proposed in this rule will not have an annual effect on the economy of $100 million or more; 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 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 the rule will affect only electrical utilities that own nuclear power reactors, and will not affect small entities.

C. National Environmental Policy Act

Issuing Unusual Volume allocations under this rule will not result in any effect on the quality of the human environment because (1) the total capacity for disposal of low-level waste from commerical power reactors is limited to 11,900,000 cubic feet, irrespective of Unusual Volume allocations; (2) each disposal facility may limit the volume of waste disposed, regardless of the availability of reactor allocations; and (3) the types of waste for which Unusual Volume allocations are granted must be suitable for disposal at one of the currently operating disposal facilities.

Therefore, DOE has concluded that the rule is not a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of an environmental assessment or an environmental impact statement is not required. However, petitions that meet eligibility requirements will be subject to review under the National Environmental Policy Act.

D. Paperwork Reduction Act

The information collections contained in this rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act of 1980, as amended. Unless otherwise noted in the **Federal Register**, the effective date for these information collections is October 24, 1988.

List of Subjects in 10 CFR Part 730

Nuclear power plants and reactors, waste treatment and disposal. Issued in Washington, DC on July 27, 1988.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology Office of Nuclear Energy.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below. Part 730 is added as set forth below.

PART 730—UNUSUAL VOLUMES ALLOCATION PETITION PROCEDURES

Subpart A—General Provisions

Sec.

Subpart B—Allocation Petitions

Authority: Section 5(c)(5), Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b–j).

Subpart A—General Provisions

§ 730.1 Purpose and scope.

(a) The regulations in this part establish procedures for submitting petitions and for allocating disposal capacity under section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, and prescribe criteria for determining eligibility for such allocations. The regulations in this part apply to all operators of commercial nuclear power reactor units possessing a full-power operating license (pursuant to 10 CFR Part 50).

§ 730.2 Definitions.

As used in this part:

"Act" means the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240);

"Department" means the U.S. Department of Energy;

"Interim Access Period" means the 7-year period beginning January 1, 1986 and ending December 31, 1992;

"Licensing Period" means the 3-year period within the interim access period beginning January 1, 1990 and ending December 31, 1992;

"Regular Activity" means an event at a commercial nuclear power reactor associated with day-to-day plant operations;

"Regular Allocation" means the issuance of a specific volume of low-level radioactive waste disposal capacity made to each commercial nuclear power reactor based on the formula in section 5(c) (1) and (2) of the Act for use at any of the currently operating commercial disposal sites;

"Transition Period" means the 4-year period within the interim access period beginning January 1, 1986 and ending December 31, 1989;

"Unusual or Unexpected Activity" means an event at a commercial nuclear reactor not typically associated with day-to-day plant operations, including but not limited to steam generator repair, primary coolant recirculation pipe repair or replacement, operation as a "dry site" reactor within off-site radioactive liquid discharge, major equipment or hardware repair, removal, modification, or replacement, major equipment modification under the Nuclear Regulatory Commission's backfit rule (10 CFR 50.109), and activities designed to increase the capacity for spent nuclear fuel storage at power reactors.

"Unusual Volume Allocation" means an issuance of a specific volume of low-level radioactive waste disposal capacity to a commercial nuclear power reactor by the Secretary of Energy under section 5(d)(5) of the Act for disposal of waste from unusual or unexpected activities.

"Yearly Base Volume" is the total of Unusual Volume capacity in cubic feet that may be allocated by the Department for any calendar year.

§ 730.3 Communications.

Any communication or report concerning the regulation in this part and any petition filed under these regulations may be submitted to the Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy, Washington, DC 20545.

Subpart B—Allocation Petitions

§ 730.4 Filing.

(a) Petitions for Unusual Volume allocations shall be filed in triplicate with the Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy, Washington, DC 20545. Written notification will be provided to the petitioner acknowledging receipt of the petition.

(b) Petitions may be filed as needed, i.e., before, during or after the activity for which the request is made.

(c) No Unusual Volume allocation will be made earlier than 6 months before the start of the unusual or unexpected activity for which an allocation is requested.

(d) A petition may be submitted for additional capacity for disposal of waste resulting from an unusual or unexpected activity for which an Unusual Volume allocation has already been made.

(e) Petitions are granted conditionally upon use of the volume allocated for the activity stated in the grant. Within 30 days after all waste resulting from such activity has been disposed, the recipient of an Unusual Volume allocation report to the Department the volume of waste resulting from the activity that has been disposed. The excess of any Unusual Volume capacity allocated for the activity will thereupon revert to DOE.

§ 730.5 Contents of petitions.

(a) Each petition for an Unusual Volume allocation shall contain the following information:

(1) Name, address and telephone number of point of contact;

(2) Name of the reactor and utility requesting an allocation;

(3) Detailed description of the activity generating the waste;

(4) Dates during which the activity occurred or will occur;

(5) Estimated dates (months and years) during which the waste will be shipped for disposal;

(6) Explanation of the need for the Unusual Volume allocation. This explanation shall include:

(i) The reactor's regular allocation for the period in which the unusual or unexpected activity occurred or will occur;

(ii) The volume of waste generated or estimated to be generated by the unusual or unexpected activity;

(iii) Explanation of the extent to which the reactor's regular allocation for the period in which the unusual or unexpected activity occurred or will occur can accommodate the waste generated by the unusual or unexpected activity;

(iv) The volume of disposal capacity requested, expressed in cubic feet.

(7) Statement that the petitioner has not applied to the Nuclear Regulatory Commission for emergency access under section 6 of the Act;

(8) Statement that the waste for which the petition is submitted is suitable for disposal at at least one of the operating disposal sites identified in the Act.

(9) Any other information the petitioner believes will assist in evaluating the petition.

(b) After the petition has been submitted, the Department may seek additional information from the petitioner in order to enable the Department to determine eligibility for an allocation, or to determine the capacity to be allocated.

§ 730.6 Eligibility criteria.

The Department will use the following criteria to determine whether a petition is eligible for an allocation.

(a) The activity for which the petition is submitted should be an unusual or unexpected activity, as defined in §.730.2.

(b) The petition should demonstrate that the balance of a reactor's regular allocation at the time the unusual or unexpected activity occurred or will occur, plus the balance of any Unusual Volume allocation the reactor has received, will not exceed the sum of the volume that will be needed for regular activities during the transition period or the licensing period, as applicable, and the volume that is needed during the period for the unusual or unexpected activity.

(c) The waste resulting from the activity for which the petition is submitted should be suitable for disposal at at least one of the operating disposal sites identified in the Act.

§ 730.7 Volume determination.

(a) Except as adjusted under paragraphs (b), (c) or (d) of this section, the allocation issued in response to a petition shall be the difference between the volume that the Department determines to be required to dispose of waste from the unusual or unexpected activity, and that portion of total allocations received by the reactor (regular and Unusual Volume allocations) that will be available for application toward disposal of waste from the activity. The allocation volume that will be available for disposal of this waste is the difference between the total allocation volume that the reactor has received, and the sum of:

(1) The reactor's regular allocation volume already used for disposal of waste from regular activities;

(2) The reactor's regular allocation volume that is expected to be required for disposal of waste from regular activities through the remainder of the transition period or licensing period, as applicable;

(3) Any portion of the reactor's regular allocation volume that will have been used at the time the Unusual Volume allocation is issued to dispose of waste from the activity for which the petition is submitted;

(4) Any portion of any previous Unusual Volume allocation that will have been used at the time the Unusual Volume allocation is issued to dispose of waste from the activity for which the petition is submitted; and

(5) Any portion of the reactor's regular allocation volume that has been transferred to another entity under the provisions of section 5(c)(4) of the Act. The petitioner shall provide DOE a copy of the allocation transfer documentation described in this section of the Act.

(b) Except as provided in § 730.8, if the Department determines that the total Unusual Volume awarded for any year, as determined under paragraph (a) of this section, may exceed the yearly base volume for that year, as determined under § 730.8, the Department shall reduce pending and subsequent allocations for that year so that the sum of the volumes awarded does not exceed the yearly base volume.

(c) The capacity allocated to any single reactor shall not exceed 25 percent of the yearly base volume, as determined under § 730.8, during the year for which the allocation is made.

(d) If the Department determines that licensing of new reactors will result in the sum of regular reactor allocations and Unusual Volume allocations exceeding 11,900,000 cubic feet, then pending and subsequent allocations will be reduced so that the sum of all allocations does not exceed 11,900,000 cubic feet.

§ 730.8 Schedule for distributing allocations.

(a) The yearly base volume that is available for disbursement by the Department during a calendar year in response to Unusual Volume petitions shall be determined as follows: The 800,000 cubic feet of capacity available shall be divided equally among the 7 years. Any capacity not allocated in a year shall be distributed in equal portions among subsequent years.

(b) Any excess disposal capacity conveyed to the Department under § 730.4(e) shall be distributed in equal portions to the yearly base volumes for subsequent years.

(c) The Department shall not allocate more than the yearly base volume in any year, unless it determines that:

(1)(i) The volume capacity to be issued does not significantly exceed the yearly base volume, and

(ii) A significant number of petitions would be affected by so limiting allocations; or

(2) It is substantially likely that the Unusual Volume capacity available for the remainder of the interim access period will exceed the capacity for which petitions will be submitted.

[FR Doc. 88-21859 Filed 9-22-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects § 324.2(a)(3), as published on page 22133 of the June 14, 1988 issue of the **Federal Register** (53 FR 22133).

FOR FURTHER INFORMATION CONTACT: William C. Crothers, (202) 898-6906.

Accordingly:

§ 324.2 [Corrected]

Paragraph (a)(3) is corrected to read as follows:

(a) * * *

(3) Which has total assets of $100 million or less as of the most recent Report of Condition; and

Dated: September 19, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-21861 Filed 9-22-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-127-AD; Amdt. 39-6029]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which currently requires inspection of the rear fuselage lap joints for cracks, and repair, if necessary. This amendment revises the identification of the areas to be inspected. This condition, if not corrected, could result in cracking of the rear fuselage skin at lap joint rivet holes, which could lead to a reduced ability of the fuselage structure to withstand design loads.

EFFECTIVE DATE: October 13, 1988.

ADDRESES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On June 23, 1988, the FAA issued AD 88-14-08, Amendment 39-5972 (53 FR 25137; July 5, 1988) to require inspection of the rear fuselage lap joints on British Aerospace Model BAe 146 series airplanes. That AD identified the areas required to be inspected as stringer 2, 10, and 19 between fuselage stations 541.0 and 672.04. That AD was prompted by reports of improper bonding of rear fuselage lap joints. This condition, if not corrected, could result in cracking of the rear fuselage skin at lap joints rivet holes, which could lead to a reduced ability of the fuselage structure to withstand design loads.

Subsequent to the issuance of AD 88-14-08, the FAA was notified by the manufacturer and the United Kingdom Civil Aviation Authority (CAA) that the area that must be inspected at those stringers is different for the British Aerospace Model BAe 146 200 series airplanes, in order to adequately detect cracking. This condition, if not corrected, could lead to a reduced ability of the fuselage structure to withstand expected loading conditions in service.

British Aerospace has issued Service Bulletin 53-70, Revision 1, dated July 15, 1988, which describes eddy current inspections to detect cracking of the inner and outer fuselage skin, and repair, if necessary. This service bulletin identifies the area to be inspected for the Model BAe-146 100 series airplanes as the area between station 541.0 and 672.04 at stringer 10; and the area to be inspected for the Model BAe-146 200 series airplanes as stringers 2, 10, and 19, between fuselage stations 635.36 and 766.40. The United Kingdom CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 88-14-08 to require eddy current inspections for cracks of the inner and outer fuselage skins, and repair prior to further flight, if necessary, in accordance with the revised service bulletin previously mentioned.

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

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, if is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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 (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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.

§ 39.13 [Amended]

2. By superseding AD 88-14-08, Amendment 39-5972 (53 FR 25137; July 5, 1988), with the following new airworthiness directive:

British Aerospace: Applies to certain British Aerospace (BAe) Model 146 series airplanes, as listed in BAe 146 Service Bulletin 53-70, Revision 1, dated July 15, 1988 (hereinafter referred to as SB 53-70), certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the rear fuselage skin, accomplish the following:

A. For Model BAe 146 200 and 200A series airplanes listed in paragraph 1.A(1)(c) of SB 53-70: Prior to the accumulation of 18,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings, inspect the lap joint at stringer 2 left, between fuselage stations 635.36 and 766.40, for cracks, in accordance with SB 53-70. If cracks are found which exceed the limits specified in SB 53-70, repair before further flight, in accordance with that service bulletin.

B. For Model BAe 146 100, 100A, 200, and 200A series airplanes listed in paragraphs 1.A(1)(a), 1.A(1)(b), and 1.A(1)(c) of SB 53-70:

Prior to the accumulation of 12,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 9,000 landings, inspect lap joints at stringer 10 left and right between fuselage stations 541.0 and 672.04 for the Model BAe 146 100 series, and 635.36 and 766.40 for the Model BAe 146 200 series, for cracks, in accordance with SB 53-70. If cracks are found which exceed the specified limits specified in SB 53-70, repair before further flight, in accordance with that service bulletin.

Note.—BAe 146-100 and -100A series airplanes that have previously complied with paragraph B. of AD 88-14-08, Amendment 39-5972, are considered to have complied with the initial inspection requirements of paragraph B. of this AD. The inspection is to be repeated in accordance with this AD at intervals not to exceed 9,000 landings, as indicated.

C. For Model BAe 146 200 and 200A series airplanes listed in paragraph 1.A.(1)(c) of SB 53-70: Prior to the accumulation of 12,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 9,000 landings, inspect the lap joint at stringer 19 left, between fuselage stations 635.36 and 766.40, for cracks, in accordance with SB 53-70. If cracks are found which exceed the limits specified in SB 53-70, repair before further flight, in accordance with that service bulletin.

D. An alternate means of compliance or adjustment of the 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.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. 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 the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 88-14-08, Amendment 39-5972.

This amendment become effective October 13, 1988.

Issued in Seattle, Washington, on September 15, 1988.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-21708 Filed 9-22-88; 8:45 a.m.]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-135-AD; Amdt. 39-6030]

Airworthiness Directives; Gulfstream Aerospace Corporation Model G-IV Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Gulfstream Model G-IV airplanes, which prohibits flight into known or forecasted icing conditions until a modification to the crew alerting system and anti-icing system is installed. This amendment is prompted by design deficiency identified in the anti-icing system, where a single electrical or mechanical failure in the bleed air valve would cause loss of the engine nose cowl anti-ice (NCAI) system, without any warning to the flight crew. This condition, if not corrected, could result in loss of engine power to the affected engine while flying in icing conditions.

EFFECTIVE DATE: October 13, 1988.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, Systems and Equipment Branch (ACE-130A), FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: A recent post-audit review of the engine nose cowl anti-ice (NCAI) system on Gulfstream Model G-IV airplanes has revealed a design deficiency in that system. It has been determined that a single electrical or mechanical failure in the bleed air valve would cause loss of the NCAI system on one engine, without any warning to the flight crew. This condition, if not corrected, could lead to loss of engine power from the affected engine while flying in icing conditions.

The FAA has reviewed and approved Gulfstream Aircraft Service Change ASC-51A, dated May 12, 1988, which describes a software change to provide a crew alerting system (CAS) alert, aural tone, and master caution signal whenever a malfunction occurs in either the left or right engine NCAI system. This Service Change also provides instructions for installation of a pneumatic switch, three lines in each engine cowling, two switches in the cockpit overhead panel, and associated wiring from the cockpit to both engine cowlings. A fault warning computer, Part Number (P/N) 7007484-903 C, must also be installed concurrent with this installation. Accomplishment of these modifications will eliminate the unsafe condition addressed by this AD.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the FAA-approved Airplane Flight Manual to prohibit flight into known or forecast icing conditions, and the installation of placards in the cockpit stating this. This AD also requires, prior to flight into known or forecast icing conditions, modification of the crew alerting system and the anti-ice system, in accordance with the service change previously mentioned. Once this modification is accomplished, the AFM limitation and placards may be removed.

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

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have a significant federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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 (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Gulfstream Aerospace Corporation: Applies to Model G–IV airplanes, serial numbers 1000 through 1059, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of engine power while flying in icing conditions, accomplish the following:

A. Within 48 hours after the effective date of this AD, insert the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) and alert flight crews. They may be accomplished by inserting a copy of this AD in the AFM: "Flight into known or forecast icing conditions not approved."

B. Within 48 hours after the effective date of this AD, install placards in front of each pilot's station and in clear view, stating: "FLIGHT INTO KNOWN OR FORECAST ICING CONDITIONS NOT APPROVED."

Note.—The placards may be fabricated of suitable material, with ⅛" minimum height lettering.

C. Prior to flight into known or forecast icing conditions, modify the crew alerting system and the anti-ice system, in accordance with Gulfstream Aircraft Service Change ASC–51A, dated May 12, 1988. When this is accomplished, the AFM limitation and placards required by paragraph A., above, may be removed.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request for alternate means of compliance should be forwarded through an FAA Principal Operations Inspector (POI) or Principal Maintenance Inspector (PMI), as appropriate, who may add any comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective October 13, 1988.

Issued in Seattle, Washington, on September 15, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–21709 Filed 9–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ANE–26]

Amend the Lebanon, New Hampshire Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of extension date.

SUMMARY: This action amends the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for instrument flight rules aircraft executing a new instrument landing system (ILS) Standard Instrument Approach Procedure (SIAP) to runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

EFFECTIVE DATE: 0901 u.t.c., November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park; Burlington, Massachusetts 01803 017–270–2428.

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985 the FAA published in the **Federal Register** Document 84–33906 (50 FR 90) a proposal to amend the description of the Lebanon, New Hampshire control zone so as to provide protected airspace for aircraft executing a new Instrument Landing system (ILS) Standard Instrument Approach Procedure (SIAP) to runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

Federal Register Document 85–11458, Published on May 13, 1985, gave this rule an effective date of July 2, 1985.

Federal Register Document 85–14791, published on June 20, 1985, suspended the effective date of the rule until further notice pending equipment certification.

The FAA has determined that certification of the equipment will take place prior to November 17, 1988, therefore November 17, 1988 is established as the effective date for this rule.

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, Control zone.

Adoption of the Effective Date

Accordingly, pursuant to the authority delegated to me, The **Federal Register** Document 85–11458, as published in the **Federal Register** on May 13, 1985 [50 FR 19909] is effective as of 0901 u.t.c., November 17, 1988.

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The Authority citation of part 71 continues to read as follows:

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

Issued in Burlington, Massachusetts on September 15, 1988.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc. 88-21707 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25706; Amdt. No. 1383]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

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

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

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

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

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

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

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS,

ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 15, 1988

Bermuda Dunes, CA—Bermuda Dunes, VOR RWY 28, Orig.
Palm Springs, CA—Palm Springs Regional, VOR-B, Amdt. 1
Thermal, CA—Thermal, VOR/DME RWY 30, Amdt. 3
Thermal, CA—Thermal, VOR-A, Amdt. 3
Marianna, FL—Marianna Muni, VOR/DME-B Amdt. 2
Marianna, FL—Marianna Muni, NDB-C, Amdt. 1
Kahului, HI—Kahului, VOR or TACAN RWY 2, Amdt. 7, CANCELLED
Portland, OR—Portland Intl, VOR RWY 28R, Amdt. 1
Portland, OR—Portland Intl, VOR-A, Amdt. 9
Portland, OR—Portland Intl, VOR-B, Amdt. 1
Portland, OR—Portland Intl, LOC BC RWY 10L, Amdt. 13
Portland, OR—Portland Intl, LOC/DME RWY 20, Amdt. 7
Portland, OR—Portland Intl, NDB RWY 28L, Amdt. 3
Portland, OR—Portland Intl, NDB RWY 28R, Amdt. 10
Portland, OR—Portland Intl, ILS RWY 10R, Amdt. 29
Portland, OR—Portland Intl, ILS RWY 28R, Amdt. 12

. . . Effective November 17, 1988

Gunnison, CO—Gunnison County, LOC RWY 6, Amdt. 2
Panama City, FL—Panama City-Bay County, RADAR-1, Orig., CANCELLED
Pensacola, FL—Pensacola Regional, LOC BC RWY 34, Amdt. 10, CANCELLED
Sebring, FL—Sebring Regional, NDB RWY 36, Amdt. 4
Decatur, IL—Decatur, VOR RWY 36, Amdt. 13
Decatur, IL—Decatur, LOC BC RWY 24, Amdt. 8
Decatur, IL—Decatur, NDB RWY 6, Amdt. 3
Decatur, IL—Decatur, ILS RWY 6, Amdt. 10
Ames, IA—Ames Muni, VOR RWY 31, Amdt. 8
Ames, IA—Ames Muni, LOC RWY 31, Amdt. 5
Ames, IA—Ames Muni, NDB RWY 13, Amdt. 3
Ames, IA—Ames Muni, NDB RWY 31, Amdt. 9
Ames, IA—Ames Muni, RNAV RWY 31, Amdt. 5
Clinton, IA—Clinton Muni, VOR RWY 3, Amdt. 12
Clinton, IA—Clinton Muni, VOR/DME RWY 21, Amdt. 7
Clinton, IA—Clinton Muni, NDB RWY 3, Amdt. 4
Clinton, IA—Clinton Muni, NDB RWY 14, Amdt. 2
Clinton, IA—Clinton Muni, ILS RWY 3, Amdt. 1
Meridian, MS—Key Field, VOR-A, Amdt. 14
Selmer, TN—Rober Sibley, NDB RWY 16, Amdt. 4

. . . Effective October 20, 1988

Rehoboth Beach, DE—Rehoboth Aircrafters, VOR-A, Amdt. 6, CANCELLED
South Bend, IN—Michiana Regional, VOR RWY 18, Amdt. 5
South Bend, IN—Michiana Regional, NDB RWY 27, Amdt. 26
South Bend, IN—Michiana Regional, ILS RWY 9, Amdt. 4
South Bend, IN—Michiana Regional, ILS RWY 27, Amdt. 32
South Bend, IN—Michiana Regional, RADAR-1, Amdt. 7

. . . Effective September 9, 1988

Bakersfield, CA—Meadows Field, VOR RWY 12L, Amdt. 5
Bakersfield, CA—Meadows Field, VOR RWY 30R, Amdt. 6
Bakersfield, CA—Meadows Field, LOC BC RWY 12L, Amdt. 9
Bakersfield, CA—Meadows Field, NDB RWY 30R, Amdt. 5
Bakersfield, CA—Meadows Field, ILS RWY 30R, Amdt. 26

The FAA published an Amendment in Docket No. 25681, Amdt. No. 1781 to Part 97 of the Federal Aviation Regulations (Vol. 53 FR No. 171 Page 34039; dated Friday, September 2, 1988) under Part 97 effective 20 October 1988, which is hereby amended as follows:

Greensboro, NC—Piedmont Triad International, VOR RWY 5, Amdt. 11
Greensboro, NC—Piedmont Triad International, ILS RWY 5, Amdt. 3
Laurens, SC—Laurens County, NDB RWY 7, Amdt. 1

Effective dates should read 15 DEC 88 vice 20 OCT 88.

The FAA published an Amendment in Docket No. 25695, Amdt. No. 1382 to Part 97 of the Federal Aviation Regulations (Vol 53 FR No. 177 Page 35311; dated Tuesday, September 13, 1988) under § 97.31 effective 20 October 1988, which is hereby amended as follows:

Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton, Intl, RADAR-1, Amdt. 11 should read Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, RADAR-1, Amdt. 11, CANCELLED.

[FR Doc. 88-21706 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

32 CFR Part 298b

[DIS Regulation 01-12]

Defense Investigative Service; Freedom of Information Practices

AGENCY: Defense Investigative Service, DoD.

ACTION: Final rule.

SUMMARY: This document establishes the policy and updates the procedure by which the public may request information from the Defense Investigative Service under the amended Freedom of Information Act. The disclosure of information to the general public enables them to grasp a better understanding of the DIS mission.

EFFECTIVE DATE: December 10, 1987.

FOR FURTHER INFORMATION CONTACT: Dale L. Hartig, Chief, Office of Information and Public Affairs, Defense Investigative Service, 1900 Half Street SW., Washington, DC 20324-1700, telephone (202) 475-1062.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 298b

Freedom of Information.

Accordingly, Title 32, Chapter I is amended by adding Part 298b as follows:

PART 298b—DEFENSE INVESTIGATIVE SERVICE, FREEDOM OF INFORMATION PRACTICES

Authority: 5 U.S.C. 552, as amended by Pub. L. 93-502.

§ 298b.1 Purpose.

The purpose of this part is to establish the policy and set forth procedures for the public to obtain information from the Defense Investigative Service (DIS).

§ 298b.2 Organization.

(a) The organization of DIS includes a DIS Headquarters located in Washington, DC, eight Regions with approximately 400 subordinate operating locations throughout the Continental United States (CONUS), Alaska, Hawaii, and Puerto Rico; the Defense Industrial Security Clearance Office (DISCO) Columbus, Ohio; the Personnel Investigations Center (PIC) Baltimore, Maryland; the Office of Industrial Security, International Europe (OISI-E), located in Brussels, Belgium with a subordinate office in Mannheim, West Germany; and the Office of Industrial Security International Far East (OISI-FE) located in Yokohama, Japan with a subordinate office in Seoul, Korea.

(b) A copy of the DIS Mailing List showing the addresses of all offices, is available to the public upon request, and may be obtained by following the procedures outlined in § 298b.4.

§ 298b.3 Records Maintained by DIS.

It is the policy of DIS to make publicly available all information which may be released under the Freedom of Information Act (FOIA), with due regard to protecting individual privacy. DIS maintains the following records which may be of interest to the public.

(a) DIS maintains the Defense Central Index of Investigations (DCII), which contains references to investigative records created and held by DoD Components. The records indexed are primarily those prepared by the investigative agencies of the DoD, covering criminal, fraud, counterintelligence, and personnel security information. This index also includes adjudication determinations made by the Army, Air Force, and the Directorate for Industrial Security Clearance Review, Defense Legal Services Agency. Information in the DCII is not usually available to the general public, since general release would violate the privacy of individuals whose names are indexed therein.

(b) Records required by 32 CFR Part 361, including personnel security and law enforcement investigative records and industrial security records.

(c) Publications listed in DIS Regulation 00-1, "Indexes of Defense Investigative Service Publications." While this regulation will be provided for the convenience of possible users of the materials, such release does not constitute a determination that all or any of the publications listed affect the public or have been cleared for public release.

§ 298b.4 Procedure for Release of DIS Records.

The following procedures are applicable to requests for records by the public.

(a) All requests will be submitted in writing and addressed to: Defense Investigative Service, Office of Information and Public Affairs (V0020), 1900 Half Street SW., Washington, DC 20324-1700. Requests directed to Headquarters or field elements will be forwarded to the Office of Information and Public Affairs.

(b) All requests shall contain the following information:

(1) As complete an identification as possible of the desired material, including to the extent known, the title, description, and date. Reference does not authorize "fishing expeditions." When DIS receives a request which is not "reasonably described," (see 32 CFR Part 286) the requester will be notified of the defect.

(2) The request must contain the first name, middle name or initial, surname, date and place of birth, social security number of the individual concerned, and, if applicable, military service number with respect to material concerning investigations of an individual.

(3) A statement as to whether the requester wishes to inspect the record or obtain a copy of it.

(4) A statement that all cost for search, duplication and review (in the case of commercial requester), will be borne by the requester even if no records, or no releasable records, are found, if appropriate.

(5) The full address (including ZIP code) of the requester.

(c) A notarized request by an individual requesting investigative or other personal records may be required to avoid the risk of invasion of privacy. Requesters will be notified and furnished appropriate forms if this requirement is deemed necessary.

(d) When a request is incomplete or fails to include all of the information required, the requester will be contacted for additional information prior to beginning release procedures.

(e) DIS will dispatch responses to requests within 10 working days after receipt by the Office of Information and Public Affairs, unless an extension is required and the requester is notified in writing.

(f) When the release of information has been approved, a statement of estimated costs computed in accordance with the DoD Fee Schedule (32 CFR Part 286), or a statement waiving the fee, will be included in the notification of approval. Records approved for release will generally be mailed immediately following the receipt of fees. Fees may be waived or reduced in accordance with paragraph 6-103, DoD 5400.7-R (32 CFR Part 286). Remittances should be in the form of a personal check, bank draft, or postal money order. Remittances are to be made payable to the Treasurer of the United States. Certified documents may be requested for an official government or legal function, and will be provided at a rate established by DoD 5400.7-R (32 CFR Part 286) for each authentication.

(g) When requests are denied in whole or in part, the requester will be advised of the identity of the official making the denial, the reason for the denial, the right of appeal of the decision, and the identity of the person to whom an appeal may be addressed.

(h) Facilities for the review or reproduction of records following approval of the request or appeal are available at the Defense Investigative Service, Office of Information and Public Affairs, Room 5222, 1900 Half Street, SW., Washington, DC 20324. All other transactions will be conducted by mail.

(i) Appeal of Denial of DIS Records and Information:

(1) All appeals will be submitted in writing and addressed to: Director, Defense Investigative Service (VOOOO), 1900 Half Street, SW., Washington, DC 20324-1700.

(2) All appeals will contain at least the same identification of the records requested as the original request, and a copy of the letter denying the request, if available.

(3) All appeals will be reviewed by the Director, DIS or the Special Assistant to the Director, DIS. Responses to appeals will be dispatched within 20 working days after receipt, unless an extension is required and the appellant is notified. When a request is approved on appeal, the procedures set forth in 298b.4(f) will be followed.

§ 298b.5 Information Requirements.

The Office of Information and Public Affairs will be responsible for preparation of the annual "Freedom of Information Act Statistical Reports" and the triannual "Freedom of Information Act Cost Reports." Both reports have been assigned report control symbol PA (TRA & AN) 1365. No forms or publications are required by this part.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88-21793 Filed 9-22-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP New Orleans, LA Regulation 88-03; Safety Zone Regulations; Lower Mississippi River Mile 507-233.8

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Mississippi River from mile 507 to mile 233.8. The safety zone is needed to protect commercial vessels from a safety hazard associated with record low water conditions which has resulted in excessive shoaling and low water in the navigational channel. This low water has made normal navigation on this section of the Mississippi River extremely hazardous. During the safety zone, the Captain of the Port in New

Orleans, Louisiana may be required to issue various tow size and draft limitations on vessels which transit this waterway. Tow sizes and draft limitations will vary because of the constantly changing water conditions on the Mississippi River. Also the Captain of the Port may be required to close sections of the Mississippi River in order for the U.S. Army Corps of Engineers to conduct emergency dredging operations. Because of constantly changing conditions, information regarding the requirements of this safety zone will be specified in the daily Coast Guard Local Notice to Mariners broadcast. Entry of vessels and tows into the zone not meeting the specific restrictions of the safety zone are prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 18 July 1988 at 0900. It will terminate at 12:00 noon, 30 October 1988, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG Richard J. Berard at (504) 589-4219.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage and/or unnecessary delays to the vessels involved.

Drafting Information

The drafters of this regulation are LTJG Richard J. Berard, Project Officer for the Captain of the Port, and CDR John A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The hazards requiring this regulation are extreme low water conditions on the Lower Mississippi River. This low water has lead to numerous shoaling conditions and a restricted navigational channel. In order to continue the movement of commerce and to prevent potentially hazardous groundings of vessels and tows on this waterway, the Captain of the Port may be required to impose various tow and draft size limitations to insure safe navigation of the Lower Mississippi River. Also, emergency dredging operations by the U.S. Army Corps of Engineers to maintain the navigational channel may require additional channel closures and restrictions of vessel navigation on the Lower Mississippi River. The Captain of the Port will continuously publish any navigation requirements via the Coast Local Notice to Mariner broadcasts to allow for timely actions in this emergency situation.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T840 is added to read as follows:

§ 165.T840 Safety Zone: Mississippi River from Mile 507 to Mile 233.8

(a) *Location.* The following area is a safety zone: From mile 507 to mile 233.8 on the Mississippi River.

(b) *Effective date.* This regulation becomes effective on 18 July 1988 at 0900. It terminates on 30 October 1988 at 1200 noon, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New Orleans, LA.

(2) This safety zone is in effect from 0900, 18 July 1988 until 12:00 noon, 30 October 1988.

Dated: July 18, 1988.

J.W. Klotz,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 88-21713 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 183

[CGD 87-009]
RIN 2115-AC73

Electrical System Standard and Incorporations by Reference

AGENCY: Coast Guard, DOT.

ACTION: Final Rule and Editorial Changes.

SUMMARY: This rule amends the regulations on electrical systems for new recreational boats by incorporating Underwriters Laboratories (UL) Standard 1426—Cables for Boats—in lieu of a general reference to independent testing laboratories that is no longer considered useful, and by deleting UL Standard 83—Thermoplastic-Insulated Wires and Cables. The purpose of these amendments is to add the UL listed boat cable standard which is now widely used for marine cable installed in recreational boats. Additionally, editorial changes to the list of other standards incorporated by reference in Part 183, not involving any substantive changes, reflect current publication dates and a change to the address of one organization.

DATES: Effective March 22, 1989. The incorporation by reference of UL 1426 in Subpart I of Part 183 of Title 33, Code of Federal Regulations is approved by the Director of the Federal Register as of March 22, 1989. The incorporations by reference of UL 1114, NFPA 70, SAE J378, IEEE 45 and ASTM D-1622 in Subparts I and J of Part 183 of Title 33, Code of Federal Regulations are approved by the Director of the Federal Register as of September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Marine Safety, Security and Environmental Protection, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0981, between 8 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the **Federal Register** on November 23, 1987 [52 FR 44918] covering the incorporation by reference of UL Standard 1426 and the deletion of UL Standard 83. Interested persons were invited to participate in this rulemaking by submitting relevant comments. The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-NAB), U.S. Coast Guard, Washington, DC 20593-0001.

This rule amends the Electrical System Standard in Subpart I of Part 183 by replacing a general reference to

conductors listed by independent testing laboratories with Underwriters Laboratories (UL) Standard 1426 and deleting the reference to UL Standard 83. Additional editorial changes amend the Electrical and Fuel Systems Standards in Subparts I and J of Part 183 with the adoption of the most recent versions of American Society for Testing and Materials (ASTM) Standard D-1622, Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 45, Society of Automotive Engineers (SAE) Standard J378 and UL Standard 1114. Another editorial change reflects the current address for the Institute of Electrical and Electronics Engineers, Inc. (IEEE). The Coast Guard originally planned to issue two separate final rules: (1) the first covering the removal of the general reference to conductors listed by independent testing laboratories, the removal of UL 83 and the addition of UL 1426, and (2) the second covering the editorial changes to other incorporations by reference. Since both final rules would have involved changes to §§ 183.5 and 183.435, these two projects have been combined and both are complete with the publication of this final rule [CGB 87-009].

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting these amendments are Mr. Alston Colihan, Project Manager, and Christena Green, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

No comments were received on the proposal to add Underwriters Laboratories (UL) Standard 1426 and to delete UL Standard 83.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Neither the proposal to change the incorporation by reference in the Electrical Standard to add UL Standard 1426 and delete UL Standard 83, nor the proposal to change the dates of other standards incorporated by reference in the Electrical and Fuel Systems Standards would result in any increased costs per boat. There is no specific boat cable complying only with the UL 83 specifications set out in § 183.435(a)(5), and in practice, the industry is already using cable meeting UL 1426 or one of the other standards published in this subsection.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects for 33 CFR Part 183

Marine safety, Incorporation by Reference.

For the reasons set out in the preamble, Title 33, Chapter I, Part 183 of the Code of Federal Regulations is amended as follows:

PART 183—BOATS AND ASSOCIATED EQUIPMENT

1. The authority citation for Part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Section 183.5 is revised to read as follows:

§ 183.5 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the United States Coast Guard Recreational Boating Product Assurance Branch, Washington, DC 20593-0001, and is available from the sources listed in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

Air Movement and Control Association, 30 W. University Drive, Arlington Heights, IL 60004:	
AMCA 210-74: Laboratory Methods of Testing Fans for Ratings—1974.	§ 183.610
American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103:	
ASTM D-471 Rubber Property—Effect of Liquids—1979.	§§ 183.114; 183.516; 183.620
ASTM D-1621 Compressive Strength of Rigid Cellular Plastics—1979.	§ 183.516
ASTM D-1622 Apparent Density, of Rigid Cellular Plastics—1983.	§ 183.516
ASTM D-2842 Water Absorption of Rigid Cellular Plastics—1975.	§ 183.114
Institute of Electrical and Electronics, Engineers, Inc., 3435 East 47th Street, New York, NY 10017:	
IEEE 45 IEEE Recommended Practice for Electrical Installations on Shipboard—1983. Cable Construction.	§ 183.435
National Fire Protection Association, Batterymarch Park, Quincy, MA 02269:	
NFPA No. 70 National Electrical Code—1987. Articles 310 & 400.	§ 183.435
Naval Publications Forms Center, Customer Service—Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120:	
MILSPEC-P-21929B Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid—1970.	§ 183.516
Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096:	
SAE J378 Marine Engine Wiring—1984.	§ 183.430
SAE J557 High Tension Ignition Cable—1968.	§ 183.440
SAE J1127 Battery Cable—1980	§ 183.430
SAE J1128 Low Tension Primary Cable—1975.	§ 183.430
SAE J1527DEC85 Marine Fuel Hoses—1985.	§ 183.540
Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062:	
UL 1114 Marine (USCG Type A) Flexible Fuel Line Hose—1987.	§ 183.540
UL 1128 Marine Blowers—1977	§ 183.610
UL 1426 Cables for Boats—1987.	§ 183.435

3. Section 183.430 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 183.430 Conductors in circuits of less than 50 volts.

(a) * * *

(2) * * *

(i) The insulating material temperature rating requirements of SAE Standard J378; and

* * * * *

4. Section 183.435 is amended by removing paragraph (a)(5) and by revising paragraphs (a) (3) and (4) to read as follows:

§ 183.435 Conductors in circuits of 50 volts or more.

(a) * * *

(3) A conductor that meets IEEE Standard 45.

(4) A conductor that meets UL Standard 1426.

* * * * *

Dated: August 10, 1988.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-21714 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3449-9]

National Emission Standards for Hazardous Air Pollutants Subparts and Test Methods; Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Corrections to a final rule.

SUMMARY: EPA is correcting errors in the subparts and test methods of 40 CFR Part 61 in the Code of Federal Regulations. Errors in the subparts and test methods that have been overlooked over the years are corrected by this action.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Candace B. Sorrell or Roger T. Shigehara at (919) 541-1064.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 61

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Glass manufacturing, Primary copper smelters, Equipment leaks, and Elemental phosphorous plants.

Date: September 12, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made in 40 CFR Part 61 as published in the Code of Federal Regulations.

1. The authority for 40 CFR Part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301, Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

§ 61.54 [Amended]

2. In § 61.54(d), a conversion factor is added to the nomenclature to read as follows:

1000 = Conversion factor, kg $\mu g/g^2$.

§ 61.60 [Amended]

3. In § 61.60(c), the figure "1100" is revised to read "1075".

§ 61.64 [Amended]

4. In § 61.64(a)(2), the words "and (f)(2)" are removed and the word "paragraphs" is revised to read "paragraph".

§ 61.65 [Amended]

5. In § 61.65(c), the figure "1,250" is revised to read "1255".

§ 61.70 [Amended]

6. In § 61.70(c)(2)(v), the term in the nomenclature "A" is revised to read "A_T", "Q" is revised to read "Q_T", "M" is revised to read "M_{Gi}", and "P" is revised to read "M".

7. In § 61.70(c)(4)(iv), the term in the nomenclature "A" is revised to read "A_T", "Q" is revised to read "Q_T", "C" is revised to read "C_{Gi}", and "P" is revised to read "P_{Gi}".

§ 61.153 [Amended]

8. In § 61.153(b)(1), the figure "330 feet" is revised to read "328 ft".

§ 61.245 [Amended]

9. In § 61.245(b)(1), the sentence is revised to read "Monitoring shall comply with Method 21 of Appendix A of 40 CFR Part 60."

10. In § 61.245(e)(1), the beginning of the sentence is revised to read "Method 22 of Appendix A of 40 CFR Part 60 shall be".

Appendix B [Amended]

11. Appendix B, Table of Contents is amended as follows:

(a) Revise first entry to read as follows:

Method 101—Determination of particulate and gaseous mercury emissions from chlor-alkali plants—air streams.

(b) Revise fifth entry to read as follows:

Method 104—Determination of beryllium emissions from stationary sources.

(c) Revise sixth entry to read as follows:

Method 105—Determination of mercury in wastewater treatment plant sewage sludges.

(d) By adding two entries between the ninth and tenth entry to read as follows:

Method 108—Determination of particulate and gaseous arsenic emissions.

Method 108A—Determination of arsenic content in ore samples from nonferrous smelters.

12. Appendix B, Method 101, section 9.5, nomenclature, sixth term (K) is amended by revising the figure "17.65" to read "17.64" and by adding three terms to read as follows:

v_s = Average gas velocity, m/sec (ft/sec).

$V_{m(std)}$ = Dry gas sample volume at standard conditions, scm (scf).

$V_{w(std)}$ = Volume of water vapor at standard conditions, scm (scf).

13. Appendix B, Method 101A is amended as follows:

(a) In section 5.1.2, by revising the figure "15°C" to read "14°C".

(b) In section 7.4, by revising "to 8.4" to read "and 8.2".

14. Appendix B, Method 102, section 2.4.1.2 is amended by revising "20±4" to read "29±4" and by adding a term to the nomenclature to read as follows:

0.00154 = (in. H_2O) (°R)

15. Appendix B, Method 104, Title is amended by removing the words "REFERENCE METHOD FOR".

16. Appendix B, Method 105, section 5.4 is amended by adding the words "before blending but," between "(" and "after" to read "(before blending but, after . . .".

17. Appendix B, Method 106 is amended as follows:

(a) In section 8.1, by adding the heading "Sample Peak Area." between the section number "8.1" and the word "Determine" to read "8.1 Sample Peak Area. Determine . . .".

(b) In section 8.2, nomenclature, by adding two terms before the term "P_r" to read as follows:

C_b = Concentration of vinyl chloride in the bag, ppm.

C_c = Concentration of vinyl chloride in the standard sample, ppm.

(c) In section 8.2, nomenclature, fifth term (B_{wb}) by adding the words "volume fraction" after the word "analyzed" to read "analyzed, volume fraction."

18. Appendix B, Method 107, is amended as follows:

(a) In section 10.1, after Equation 107-1, by adding the nomenclature to read as follows:

where:

R_s = Response factor, area counts/ppm.

A_s = Chromatogram area counts of vinyl chloride for the sample, area counts.

C_c = Concentration of vinyl chloride in the standard sample, ppm.

(b) In section 10.2, nomenclature, by revising the sixth term (V_g) to read as follows:

V_v = Volume of vapor phase, cm^3.

$$= V_v - \frac{m(TS)}{1.36} - \frac{m(1-TS)}{0.9653}$$

19. Appendix B, Method 107A is amended as follows:

(a) In section 10.1, after Equation 107A-1, by adding the nomenclature to read as follows:

where:

R_f = Chromatograph response factor, ppm/mm.

C_c = Concentration of vinyl chloride in the standard sample, ppm.

H_c = Peak height of the standard sample, mm.

(b) In section 10.2, nomenclature, by adding a term before "H_s" to read as follows:

C_{rvc} = Concentration of residual vinyl chloride monomer, ppm.

(c) In section 10.3, after Equation 107A-3, by adding the nomenclature to read as follows:

where:

TS = Total solids in the sample, weight fraction.

(d) In section 10.4, by revising the term "C_{vc}" to read "C_{rvc}".

20. Appendix B, Method 108 is amended as follows:

(a) In section 3.3.1, by revising "3.1.2" to read "3.1.3".

(b) In section 5.1, last line of first paragraph, by revising "(Section 4.5)" to read "(Section 4.5.1)".

21. Appendix B, Method 108A, section 5.1, nomenclature, third term (W) is amended by adding the units "mg" after the word "analyzed" to read "analyzed, mg." and by revising the fourth term (5) to read as follows:

5 = (50 ml sample × 100)/10^3 μg/mg).

[FR Doc. 88-21393 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 63

National Flood Insurance Program; Erosion Benefits

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule contains provisions for the implementation of section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This interim rule establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This interim rule also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

EFFECTIVE DATE: September 23, 1988.

COMMENT DATE: November 22, 1988.

ADDRESS: Send comments or inquiries to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended section 1306 of the National Flood Insurance Act of 1968 to provide payments for demolition or relocation under the National Flood Insurance Program (NFIP) Standard Flood Insurance Policy for insured structures "subject to imminent collapse or subsidence as a result of erosion or subsidence caused by waves or currents of water exceeding anticipated cyclical levels." Such structures must be located on land along the shore of a lake or other body of water.

Public Law 100-242 further provides that where a claim for such benefits has been paid, subsequent flood insurance coverage and certain assistance under the Disaster Relief Act of 1974 shall not be available unless the structure is constructed or relocated behind a 30-year setback for one to four dwelling unit structures and behind a 60-year setback for all other structures. Additionally, structures relocated under the provisions of section 1306 of the Act must comply with the floodplain management criteria set forth in § 60.3 of the NFIP regulations.

Public Law 100-242 directs FEMA to issue regulations establishing uniform standards and procedures for certifications of structures subject to imminent collapse by State or local authorities. In the meantime, the statute provides for valid claims to be paid, provided that the structure is first condemned under State or local law, a process which varies among jurisdictions.

FEMA wishes to conduct a scientific assessment of available erosion rate data and methodologies prior to establishing standards and procedures for making certifications. However, there is a need to make the certification option available, as soon as possible, to those States which have well established programs of shoreline erosion assessment and management. Certification of structures subject to imminent collapse by such States would avoid the idiosyncrasies of local condemnation laws and processes which may not adequately address the hazards of shoreline erosion. A certification process which directly addresses the erosion hazard, and which is performed by experienced State agencies using an established high quality data base, would assure accuracy and consistency in determinations of imminent collapse and assure that such determinations were made in a timely manner. Further, early certification of such structures would encourage use of the less costly relocation option, whereas the condemnation process may not be invoked in some jurisdictions until erosion has progressed to the point where relocation would be expensive or unfeasible.

There is also a need to clarify, by regulation, FEMA's implementation of other aspects of this legislation as soon as possible so that the public can be better informed of the criteria and processes for submitting claims and the coverage available. Therefore, FEMA has determined that sufficient cause exists for making this rule effective immediately and that delaying the effective date until after a comment period would be impracticable and

contrary to the public interest. Comments, however, are requested and will be considered before further regulations are issued.

This interim rule provides clarification on matters relating to Pub. L. 100–242 such as condemnation in lieu of certification, allowable relocation costs, certain limitations on benefits, and the effect of not complying with the setback requirements. In addition, this interim rule provides procedures and standards for State certification of structures subject to imminent collapse.

Although Pub. L. 100–242 provides for the eventual certification of imminent collapse by both State and local authorities, this interim rule only allows for State certification to be made by States that meet the qualification criteria defined in the rule. Furthermore, because riverine erosion data is generally not available, nor is the criteria of imminent collapse defined in this rule applicable to riverine areas, certifications by approved States is restricted to coastal areas, including the Great Lakes. Claims for benefits in riverine areas will continue to be evaluated on the basis of condemnation. These limitations are necessary while FEMA addresses the need for, and availability of, detailed erosion rate data and evaluates methods for implementing erosion risk identification and erosion loss reduction standards consistent with the NFIP.

FEMA has contracted with the National Academy of Sciences (NAS) for a comprehensive study of approaches for erosion zone management. In the course of the study, the NAS will examine existing State erosion management programs, data and methodologies. The NAS will also provide guidance on options for implementing coastal erosion hazard mitigation standards, criteria for determining whether a structure is subject to imminent collapse, and criteria for establishing annual long-term erosion rates. Upon completion of the study, FEMA may promulgate regulations to establish: (1) Erosion zone management provisions; (2) criteria for identifying erosion risk zones; and, (3) erosion rate data for coastal areas throughout the United States. Additionally, rules establishing criteria by which local government agencies would be eligible to certify structures subject to imminent collapse would then be published.

The primary interim criteria for State qualification to perform certifications of structures subject to imminent collapse require that States provide evidence that they have adopted statutes requiring a setback for location of new construction or relocated structures along coastal shorelines and that such requirements are uniformly enforced throughout the State's shorelines. The setback must be based in whole or in part on some multiple of the mean annual erosion rate. Such States maintain current and accurate erosion rate data and are, therefore, qualified to certify structures threatened by erosion. Also, when the relocation option is selected by the property owner, such State programs ensure that relocated structures will be properly sited beyond the specified setback.

The application process requires that copies of applicable State statutes and regulations, as described above, be submitted to FEMA by the Governor or other duly authorized official of the State together with other information identified in the rule.

Once approved to make certifications of imminent collapse, and when requested by an insured to make such a certification, the State will be required to establish that the structure is within an area experiencing erosion adjacent to the shoreline of an ocean, bay or lake. For purposes of this interim rule, a structure will be considered within the zone of imminent collapse if it is within an area defined as 10 feet plus 5 times the average annual long-term erosion rate at the site. The limits of this zone is determined by measurement from a reference feature which is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified. These criteria take into account erosion that would be expected to occur within a three-year period and include an expected storm induced erosion component that is equated to a multiple of the mean annual rate. The criteria also include recognition of the space needed for the equipment used in structure relocation projects.

In the event that a structure is not situated within a zone of imminent collapse using the criteria described above, the State may also submit scientific and technical information that would tend to support a determination of imminent collapse by FEMA. This information should be in the form of a technical report containing an analysis of conditions at the site demonstrating that there are unusual erosive or stability factors that render the site subject to imminent failure.

Public Law 100–242 includes a provision that FEMA verify that the State has followed certification procedures and criteria established by this rule and that the final determination of imminent collapse rests with the Director, FEMA, who has delegated this authority to the Administrator, Federal Insurance Administration.

In filing a claim for insurance benefits under § 1306(c), the insured would include the State certification and the other information described above as part of the claim documentation. The insured and the State agency will be notified of the Administrator's decision. If the Administrator determines that the State's certification and supporting data do not meet the "imminent collapse" procedures and criteria established by this rule, then the insurance benefits will be denied. Where the Administrator determines that the imminent collapse certification procedures and criteria have been met, and an otherwise valid claim has been submitted, then the insurance benefits will be paid subject to the provisions of Pub. L. 100–242.

FEMA has determined, based upon an Environmental Assessment, that this interim rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This interim rule will not have a significant economic impact on a substantial number of small entities and has not undergone a regulatory flexibility analysis.

This interim rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

The information collection requirements in this interim rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention Desk Officer for FEMA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 44 CFR Parts 59 and 63

Flood insurance, Flood plains, Claims.

Accordingly, 44 CFR Chapter I, Subchapter B is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By adding alphabetically, a definition of "30-year setback" to read as follows:

* * * * *

"30-year setback" means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

* * * * *

b. By adding alphabetically, a definition of "60-year setback" to read as follows:

* * * * *

"60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

* * * * *

c. By adding alphabetically, a definition of "reference feature" to read as follows:

* * * * *

"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

* * * * *

d. By adding, alphabetically, a definition of "zone or imminent collapse" to read as follows:

* * * * *

"Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

* * * * *

3. Part 63 is added to 44 CFR Chapter I, Subchapter B to read as follows:

PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Subpart A—General

Subpart B—State Certification of Structures Subject to Imminent Collapse

Authority: 42 USC 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—General

§ 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

§ 63.2 Condemnation in lieu of certification.

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property owner of an unsafe condition, or unsanitary condition, or other deficiency at the property address, coupled with a statement that the property owner must vacate the property if the condition giving rise to the condemnation notice is not cured by repair, removal, or demolition of the building by a date certain.

(c) In addition to a condemnation in accordance with paragraphs (a) and (b) of this section, a structure must be found by the Administrator to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels to be eligible for benefits under section 1306(c) of the Act.

§ 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.

The requirement in section 1306(c)(4)(C)(i) of the Act that a structure be "covered by a contract for flood insurance under this title—(i) on or before June 1, 1988" was met if presentation of the appropriate premium and a properly completed flood insurance application form was made to the National Flood Insurance Program or a Write Your Own (WYO) Company on or before June 1, 1988.

§ 63.4 Property not covered.

Benefits under section 1306(c) of the Act do not include compensation for items excluded under the provisions of the Standard Flood Insurance Policy (SFIP).

§ 63.5 Coverage for contents removal.

Whenever a structure is subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels and otherwise meets the requirements of section 1306(c) of the Act so that benefits are payable under those provisions, the coverage in the definition of "Direct Physical Loss by or from Flood" in the SFIP for the expense of removing contents, up to the minimum

deductible of $500.00, to protect and preserve them from flood or from the imminent danger of flood, applies if contents coverage is in effect.

§ 63.6 Reimbursable relocation costs.

In addition to the coverage described in § 63.5 of this part, relocation costs for which benefits are payable under section 1306(c) of the Act include the costs of:

(a) Removing the structure from the site,

(b) Site cleanup,

(c) Debris removal,

(d) Moving the structure to a new site, and

(e) At the new site, a new foundation and related grading, including elevating the structure as required by local flood plain management ordinances, and sewer, septic, electric, gas, telephone, and water connections at the building.

§ 63.7 Amount of coverage and deductible on effective date of condemnation or certification.

The amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act are what was in effect on the date of condemnation or certification.

§ 63.8 Limitation on amount of benefits.

(a) In section 1306(c)(3)(C) of the Act, the phrase "under the flood insurance contract issued pursuant to this title" means the value of the structure under section 1306(c)(3)(C) of the Act is limited to the amount of building coverage provided by the insured's policy.

(b) Where the amount payable under section 1306(c)(1)(A)(ii) of the Act for the cost of demolition, together with the amount payable under section 1306(c)(1)(A) of the Act for the value of the structure under the demolition option, exceeds the amount of building coverage provided by the insured's policy, such amounts will be paid beyond the amount of that building coverage, even if this payment exceeds the limits of coverage otherwise authorized by section 1306(a) of the Act for the particular class of property.

§ 63.9 Sale while claim pending.

If a claimant sells a structure prior to its demolition or relocation, no benefits are payable to that claimant under section 1306(c) of the Act, and any payments which may have been made under those provisions shall be reimbursed to the insurer making them.

§ 63.10 Demolition or relocation contractor to be joint payee.

If a demolition or relocation contractor is used, the instrument of payment for benefits under section 1306(c) of the Act for the fee of that contractor, shall include that contractor as a joint payee, unless that contractor has already been paid when the instrument of payment is issued.

§ 63.11 Requirement for a commitment before October 1, 1989.

The requirement in section 1306(c)(7) of the Act that a commitment be made on or before September 30, 1989 as a necessary condition to making any payments after September 30, 1989, is met if before October 1, 1989,

(a) There is either a condemnation in accordance with § 63.2 of this part or a certification in accordance with subpart B of this part, and

(b) a policyholder's notice of claim for benefits under section 1306(c) of the Act is received by the insurer.

§ 63.12 Setback and community flood plain management requirements.

(a) Where benefits have been paid under section 1306(c) of the Act, the setback requirements in section 1306(c)(5) of the Act, which if not met result in a prohibition against subsequently providing flood insurance or assistance under the Disaster Relief Act of 1974, shall apply:

(1) To the structure involved wherever it is located, and

(2) To any other structure subsequently constructed on or moved to the parcel of land on which the structure involved was located when the claim under section 1306(c) of the Act arose.

(b) In addition, any structures relocated under section 1306 of the Act must comply with the flood plain management criteria set forth in § 60.3 of this chapter.

Subpart B—State Certification of Structures Subject to Imminent Collapse

§ 63.13 Purpose of subpart.

The purpose of this subpart is to establish criteria under the provisions of section 1306(c) of the National Flood Insurance Act of 1968, as amended, by which States can obtain approval from the Administrator to certify that structures are subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. The subpart also sets forth the procedures and data requirements to be utilized by those States in certifying structures as subject to imminent collapse. The State certification procedure represents an option to the use of the procedure whereby a structure is condemned by a State or local authority as a prerequisite to consideration for imminent collapse insurance benefits.

§ 63.14 Criteria for State qualification to perform imminent collapse certifications.

In order to qualify under this subpart, the State must be administering a coastal zone management program which includes the following components, as a minimum:

(a) A state-wide requirement that prohibits new construction and the relocation of structures seaward of an adopted erosion setback. Such setback must be based in whole or in part on some multiple of the local mean annual erosion (recession) rate; and

(b) An established, complete and functional data base of mean annual erosion rates for all reaches of coastal shorelines subject to erosion in the State, which is used as the basis to enforce these setback requirements.

§ 63.15 State application for eligibility to certify structures subject to imminent collapse.

(a) Application pursuant to this part shall be made by the Governor or other duly authorized official of the State.

(b) The application must be submitted to the Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472.

(c) Documents to be included in the application are as follows:

(1) Copies of all applicable State statutes and regulations verifying the existence of a coastal zone management program including setback requirements for new and relocated construction which are based in whole or in part on mean annual erosion rates established for the State's shorelines.

(2) A copy of the State's mean annual erosion rate data base, if not already provided, showing such rates for all reaches of coastal shorelines subject to erosion within the State.

(3) The title, address and phone number of a contact person within the State agency having authority for administering the coastal zone management program.

(4) A statement that adequate resources are available to carry out the certification services, and that certifications will be performed in accordance with the procedures described in § 63.17.

§ 63.16 Review of State application by the Administrator.

(a) The Administrator may return the application for eligibility upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the

adequacy of the coastal zone management program and erosion rate data base.

(b) Upon determining that the State's program and/or data base does not meet the criteria set forth in § 63.14, the Administrator shall in writing reject the application for eligibility and indicate in what respects the State program and/or data base fails to comply with the criteria.

(c) Upon determining that the State program and data base meets the criteria set forth in § 63.14, the Administrator shall approve the State as eligible to certify structures subject to imminent collapse. Such approval, however, is in all cases provisional. The Administrator shall review the State program and data base for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the program and/or data base is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his approval.

§ 63.17 Procedures and data requirements for imminent collapse certifications by States.

Any State that has been determined to be eligible by the Administrator may certify that a coastal structure is subject to imminent collapse. Such certification requires that the State collect scientific or technical information relative to the structure and its site and provide such information to the insured to be filed with a claim for insurance benefits under Section 1306 of the National Flood Insurance Act of 1968, as amended. The information which is provided to the insured shall include, but is not limited to, the following:

(a) Certification from the State agency that the structure is subject to imminent collapse. The certification shall cite the property address, legal description (e.g., lot, block), the date of, and basis for the certification, and

(b) Supporting scientific and technical data to substantiate the certification consisting of the following:

(1) Photographs of the structure in relation to the obvious peril. All photographs should be labeled with the location, direction, date and time from which they were taken. The collection of photographs should adequately display the following:

(i) Any evidence of existing damage. The damage can include loss or erosion of soil near or around the foundation or structural damage to the foundation components.

(ii) Structure and waterbody. These photographs shall show both the structure and the waterbody that presents the peril. If the structure is on a high bluff or dune and not accessible from the water side, the top edge of the bluff or dune will be sufficient. These will usually be taken from one or both sides of the structure.

(iii) Physical reference features used in the measurements discussed below. The reference feature shall be in or near the area affected by normal tides, when applicable. If a reference is not clearly distinguishable on the photograph, it should be annotated to identify the feature. If possible, all reference features described below should be photographed showing their relationship to the site of the threatened structure.

(2) Identification and selection of reference features. The following reference features are presented according to priority. If the first feature is not present, the next feature shall be located and photographed, and so forth.

(i) Top edge of bluff (cliff top).

(ii) Top edge of escarpment on an eroding dune (i.e., a nearly vertical erosional cut at the seaward face of the dune). The normal high tide should be near the toe of the dune and there should be indications that the dune is actively eroding.

(iii) The normal high tide limit may be indicated by one of the following:

(A) Vegetation line (the seaward most edge of permanent vegetation).

(B) Beach scarp (erosion line on beach, usually a sharp, nearly vertical drop of 0.5 to 3.0 feet at the upper limit of high tide).

(C) Debris line deposited by the normal high tide, not by a recent storm.

(D) Upper limit of wet sand.

(3) Distance measurements from the threatened structure to the nearest points on the reference features. These measurements should be taken from all photographed reference features to the closest point on the supporting foundation. For purposes of making this measurement, decks, stairs, and other exterior attachments that do not contribute to the structural support of the building are not considered part of the structure. The measurements shall be taken horizontally with a tape and recorded to the nearest foot. The date and time of the measurement shall be noted. The location of the measurements (i.e., reference feature and closest structural member) shall be identified on the appropriate photograph or sketch of the site. If some or all of the reference features coincide, this shall also be noted and identified on the photographs. Reference features landward of the structure need not be measured, but shall be noted on the photographs.

(4) A determination of the average annual erosion rate at the site and a copy of the pertinent section of the reference document used to obtain the annual erosion rate at the site.

(5) Copy of the effective Flood Insurance Rate Map panel annotated with the location of the threatened structure.

(6) In the event that a structure is not situated within a "zone of imminent collapse" using the criteria and procedures in § 63.17(b) (1) through (5), then the State may submit other scientific and technical data, in addition to the information described in § 63.17(b) (1) through (5), that would reveal unusual erosive or stability conditions at the site. Such data must include engineering analyses or reports performed on the structure or site which evaluates local rates of erosion, or the condition or stability of the structure's foundation including supporting soil.

(c) In the case of structures planned to be relocated, a certification as to whether the proposed relocation site is outside the 30-year setback for 1–4 family residential structures, or outside the 60-year setback for all other structures, must also be submitted by the State.

§ 63.18 Review of State certification by the Administrator.

The Administrator, after a claim has been filed by the property owner, will review the certification and data prepared by the State. Upon completion of the review, the State will be notified that:

(a) The structure has been determined to be subject to imminent collapse, or

(b) The structure has not been determined to be subject to imminent collapse and the basis for such determination, or

(c) Additional data are needed to verify that the procedures and criteria for imminent collapse certification have been met.

Dated: September 16, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-21766 Filed 9-22-88; 8:45 am]

BILLING CODE 6718-05-M

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44 CFR Part 64

[Docket No. FEMA 6808]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and community name	County	Community No.	Effective date
Alabama:			
Muscle Shoals, city of	Colbert	010047	Sept. 30, 1988.
Rainsville, town of	Dekalb	010368	Do.
Florida:			
Unincorporated areas	Hernando	120333	Do.
Layton, city of	Monroe	120169	Do.
Pembroke Pines, city of	Broward	120053	Do.
Sebastian, city of	Indian River	120123	Do.
Unincorporated areas	Seminole	120294	Do.
St. Cloud, city of	Osceola	120191	Do.
Tamarac, city of	Broward	120058	Do.
Georgia: Camilla, city of	Mitchell	130137	Do.
Kentucky:			
California, city of	Campbell	210036	Do.
Calvert City, city of	Marshall	210164	Do.
Unincorporated areas	Carter	210050	Do.
Evarts, city of	Harlan	210101	Do.
Mississippi:			
Ruleville, town of	Sunflower	280167	Do.
Satartia, town of	Yazoo	280205	Do.
North Carolina:			
Bladenboro, town of	Bladen	370020	Do.
Unincorporated areas	Bladen	370293	Do.
Clinton, city of	Sampson	370263	Do.

State and community name	County	Community No.	Effective date
Unincorporated areas	Lee	370331	Do.
Unincorporated areas	Orange	370342	Do.
Tennessee:			
Franklin, city of	Williamson	470206	Do.
Germantown, city of	Shelby	470353	Do.
Goodlettsville, city of	Davidson/Sumner	470287	Do.
Alabama:			
Tuskegee, city of	Macon	010150	Oct. 18, 1988.
Unincorporated areas	Walker	010301	Do.
Florida:			
Longwood, city of	Seminole	120292	Do.
Malabar, town of	Brevard	120024	Do.
Mary Esther, city of	Okaloosa	120337	Do.
Melbourne Beach, town of	Brevard	125128	Do.
Melbourne Village, town of	Brevard	120329	Do.
Treasure Island, city of	Pinellas	125153	Do.
Unincorporated areas	Wakulla	120315	Do.
West Melbourne, city of	Brevard	120335	Do.
Kentucky:			
Unincorporated areas	Magoffin	210159	Do.
Melbourne, city of	Campbell	210250	Do.
Mentor, city of	Campbell	210275	Do.
Maryland: Unincorporated areas	Worcester	240083	Do.
North Carolina:			
Creedmoor, city of	Granville	370107	Do.
Unincorporated areas	Durham	370085	Do.
Durham, city of	Durham	370086	Do.
Hobgood, town of	Halifax	370116	Do.
Wendell, town of	Wake	370245	Do.
South Carolina:			
Isle of Palms, city of	Charleston	455416	Do.
Lake City, city of	Florence	450079	Do.
Mount Pleasant, town of	Charleston	455417	Do.
Tennessee:			
Kingston Springs, city of	Cheatham	470289	Do.
Oliver Springs, town of	Roane	470005	Do.
Paris, city of	Henry	470090	Do.
Pigeon Forge, city of	Sevier	475442	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 19, 1988.

[FR Doc. 88-21767 Filed 9-22-88; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 6807]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fourth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and community name	County	Community No.	Effective date
North Carolina:			
Fuquay-Varina, town of	Wake	370239	July 4, 1988, suspension withdrawn.
Rocky Mount, city of	Edgecombe and Nash	370092	Do.
Severn, town of	Northampton	370422	Do.
Whitakers, town of	Edgecombe and Nash	370095	Do.
Woodland, town of	Northampton	370177	Do.
California:			
Atascadero, city of	San Louis Obispo	060700	Aug. 4, 1988, suspension withdrawn.
Avalon, city of	Los Angeles	060098	Do.
Barstow, city of	San Bernardino	060271	Do.
Cloverdale, city of	Sonoma	060376	Do.
Corona, city of	Riverside	060250	Do.
Crescent City, city of	Del Norte	060039	Do.
Danville, city of	Contra Costa	060707	Do.
Del Mar, city of	San Diego	060288	Do.
Fort Jones, city of	Siskiyou	060365	Do.
Fountain Valley, city of	Orange	060218	Do.
Fremont, city of	Alameda	065028	Do.
Fresno, city of	Fresno	065029	Do.
Unincorporated areas	Humboldt	060060	Do.
Unincorporated areas	Imperial	060065	Do.
Imperial Beach, city of	San Diego	060291	Do.
Lafayette, city of	Contra Costa	065037	Do.
Los Angeles, city of	Los Angeles	060137	Do.
Lynnwood, city of	Los Angeles	060635	Do.
Unincorporated areas	Nevada	060210	Do.
Newark, city of	Alameda	060009	Do.
Unincorporated areas	Placer	060239	Do.
Unincorporated areas	Plumas	060244	Do.
Portola Valley, city of	San Mateo	065052	Do.
Unincorporated areas	Sacramento	060262	Do.
San Dimas, city of	Los Angeles	060154	Do.
Santa Barbara, city of	Santa Barbara	060335	Do.
Unincorporated areas	Solano	060631	Do.
Sonoma, city of	Sonoma	060383	Do.
Tehachapi, city of	Kern	060084	Do.
Whittier, city of	Los Angeles	060169	Do.
Oklahoma:			
Alderson, town of	Pittsburg	400257	Do.
Arkoma, town of	LaFlore	400343	Do.
Canton, town of	Blaine	400012	Do.
Cleo Springs, town of	Major	400280	Do.
Coyle, town of	Logan	400097	Do.
Crescent, town of	Logan	400098	Do.
Hartshorne, city of	Pittsburg	400387	Do.
Lehigh, town of	Coal	400299	Do.
Lone Grove, town of	Carter	400395	Do.
Moffett, town of	Sequoyah	400196	Do.
Oakland, town of	Marshall	400313	Do.
Ralston, town of	Pawnee	400164	Do.
Randlett, town of	Cotton	400318	Do.
Roff, town of	Pontotoc	400176	Do.
Sasakwa, town of	Seminole	400191	Do.
Unincorporated areas	Seminole	400497	Do.
Shidler, town of	Osage	400401	Do.
South Coffeyville, town of	Nowata	400411	Do.
Arkansas:			
Unincorporated areas	Baxter	050010	Aug. 16, 1988.
Buckner, city of	Lafayette	050115	Do.
Gillham, city of	Sevier	050244	Do.
Knobel, town of	Clay	050032	Do.
Lynn, town of	Lawrence	050263	Do.
Midland, town of	Sebastian	050203	Do.
Ola, city of	Yell	050357	Do.
Prattsville, town of	Grant	050279	Do.
Tyronza, city of	Poinsett	050371	Do.

State and community name	County	Community No.	Effective date
California:			
Alturas, city of	Modoc	060193	Do.
Brisbane, city of	San Mateo	060314	Do.
Calexico, city of	Imperial	060067	Do.
California City, city of	Kern	060440	Do.
East Palo Alto, city of	San Mateo	060708	Do.
Fairfax, city of	Marin	060175	Do.
Fillmore, city of	Ventura	060415	Do.
Holtville, city of	Imperial	060070	Do.
Laguna Beach, city of	Orange	060223	Do.
Milbrae, city of	San Mateo	065045	Do.
Moorpark, city of	Ventura	060712	Do.
Unincorporated areas	Napa	060205	Do.
Oakdale, city of	Stanislaus	060389	Do.
Pacifica, city of	San Mateo	060323	Aug. 16, 1988, suspension withdrawn.
Placerville, city of	El Dorado	060041	Do.
Pleasanton, city of	Alameda	060012	Do.
Redondo Beach, city of	Los Angeles	060150	Do.
Redwood City, city of	San Mateo	060325	Do.
St. Helena, city of	Napa	060208	Do.
San Carlos, city of	San Mateo	060327	Do.
Sanger, city of	Fresno	060054	Do.
San Juan Bautista, city of	San Benito	060269	Do.
San Leandro, city of	Alameda	060013	Do.
San Marcos, city of	San Diego	060296	Do.
Unincorporated areas	Santa Clara	060337	Do.
Santa Maria, city of	Santa Barbara	060336	Do.
Scotts Valley, city of	Santa Cruz	060356	Do.
Seaside, city of	Monterey	060203	Do.
Unincorporated areas	Shasta	060358	Do.
Tiburon, city of	Marin	060430	Do.
Walnut Creek, city of	Contra Costa	065070	Do.
Unincorporated areas	Yolo	060423	Do.
Idaho: Malta, town of	Cassia	160197	Do.
Guam: Guam, territory of		660001	Do.
Hawaii:			
Unincorporated areas	Hawaii	155166	Do.
Unincorporated areas	Maui	150003	Do.
Louisiana:			
Unincorporated areas	* Beauregard	220026	Do.
Benton, town of	* Bossier	220032	Do.
Cankton, village of	* St. Landry	220167	Do.
Elizabeth, town of	* Allen	220324	Do.
Jeanerette, city of	* Iberia	220080	Do.
Mansura, town of	* Avoyelles	220255	Do.
Montpelier, village of	* St. Helena	220300	Do.
Mound, village of	* Madison	220124	Do.
Pollock, town of	* Grant	220305	Do.
Tickfaw, city of	* Tangipahoa	220214	Do.
Youngsville, village of	* Lafayette	220358	Do.
New Mexico:			
Clayton, town of	Union	350084	Do.
Logan, village of	Quay	350105	Do.
Los Ranchos de Albuquerque	Bernalillo	350123	Do.
Texas:			
Alto, city of	Cherokee	480740	Do.
Alvarado, city of	Johnson	480397	Do.
Anton, city of	Hockley	480353	Do.
Balmorhea, city of	Reeves	480537	Do.
Bartlett, city of	Bell	480707	Do.
Bayview, town of	Cameron	480102	Do.
Brackettville, city of	Kinney	480422	Do.
Unincorporated areas	Brooks	481196	Do.
Cameron, city of	Milam	480478	Do.
Clifton, city of	Bosque	480052	Do.
Daisetta, town of	Liberty	481101	Do.
Dublin, city of	Erath	480219	Do.
Unincorporated areas	Duval	480202	Do.
Edcouch, city of	Hidalgo	480337	Do.
Ferris, city of	Ellis	481076	Do.
Friona, city of	Parmer	480523	Do.
Unincorporated areas	Haskell	480851	Do.
Hebron, city of	Denton	481495	Do.
Hidalgo, town of	Hidalgo	480334	Do.
Holliday, city of	Archer	480699	Do.

* Parish.

Issued: September 19, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-21768 Filed 9-22-88; 8:45 am]

BILLING CODE 6718-21-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board.

ACTION: Final rules with request for comments.

SUMMARY: By this revision, the National Transportation Safety Board (Board) requires certain operators of public aircraft to submit reports to the Board on accidents involving public aircraft. This revision will provide the Board with information to enable it to fulfill the recent legislative requirement that the Board submit a report to Congress on public aircraft accidents and incidents.

DATES: *Effective Date* October 24, 1988. *Comments by:* November 22, 1988.

ADDRESSES: Comments should be sent in triplicate to the General Counsel, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594. This final rule may be amended in light of comments received.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: Section 311 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223 (December 30, 1987) amended section 304 (a)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(a)(6)) to empower the Board to establish regulations requiring persons to report accidents and aviation incidents involving public aircraft other than aircraft of the Armed Forces and the Intelligence Agencies. Section 311 required the Board within 18 months of its enactment to report to the Congress the Board's findings on public aircraft accidents and incidents.

Section 830.1 regarding the applicability of Part 830 is being amended to reflect the expanded coverage of the rule to include the reporting of accidents and incidents involving public aircraft. Former paragraph (b) of § 830.1 is redesignated as paragraph (c) and a new paragraph (b) is added for the reporting of public aircraft accidents and incidents.

Civil aircraft and public aircraft are defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301, and the statutory definitions of these terms are being added to § 830.2. It should be noted that section 207 of the Airport and Airway Safety and Capacity Expansion Act of 1987 amended the definition of public aircraft by adding a new sentence expressing the meaning of the phrase "used exclusively in the service of". The definition of public aircraft which is being added to § 830.2 includes the foregoing amendment.

A new Subpart E (§ 830.20) is being added to Part 830, and it requires operators of public aircraft except the Armed Forces and Intelligence Agencies to report accidents and covered incidents. Under § 830.20, the operator of the public aircraft must file a report of the accident or listed incident within 10 days which is the same filing period as the one for accidents involving civil aircraft. The report is to be filed on a preprinted form which is available from any of the Board's field offices in Anchorage, AK; Atlanta, GA; Chicago, IL; Denver, CO; Fort Worth, TX; Kansas City, MO; Los Angeles, CA; Miami, FL; New York, NY; and Seattle, WA, the National Transportation Safety Board, Washington, DC 20594; and the Federal Aviation Administration, Flight Standards District Offices. This reporting provision will enable the Board to obtain the requisite data to comply with the legislative directive to report to Congress on public aircraft accidents and incidents.

The Board's statutory mandate to investigate aircraft accidents is confined to accidents involving civil aircraft, and this regulatory revision does not authorize the Board to investigate public aircrat accidents. Nor does this revision, as would be the case for civil aircraft, require the immediate notification of public aircraft accidents or the preservation of wreckage, cargo, etc. Instead, the revision to Part 830 only requires the reporting of accidents and incidents concerning certain public aircraft.

The changes made in this revision merely provide the mechanism for the Board to obtain the information essential to comply with the legislative directive that the Board submit a report to Congress on public aircraft. Since the revision embodies a straightforward implementation of the Board's new authority to require the reporting of public aircraft accidents and incidents, public comment on this revision before its adoption is not likely to be helpful. In addition, public comment would postpone the receipt of information on public aircraft accidents and incidents which would reduce the data available for the Board's report to the Congress. Therefore, the Board has decided to dispense with a notice of proposed rulemaking. The Board welcomes and will carefully consider comments that are received, and any required changes in the rule will be made.

Under the criteria of the Regulatory Flexibility Act, the Board has determined that this revision will not have a significant economic impact on a substantial number of small entities particularly because the costs of reporting will be minimal.

List of Subjects in 49 CFR Part 830

Aviation safety, Postal service, Reporting and recordkeeping requirements.

Accordingly, 49 CFR Part 830 of the Board's rules is revised to read as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

Authority: 49 U.S.C. 1441 and 1901 et seq.

Subpart A—General

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Notification and reporting aircraft accidents and incidents and certain other occurrences in the operation of aircraft when they involve civil aircraft of the United States wherever they

occur, or foreign civil aircraft when such events occur in the United States, its territories or possessions.

(b) Reporting aircraft accidents and listed incidents in the operation of aircraft when they involve certain public aircraft.

(c) Preservation of aircraft wreckage, mail, cargo, and records involving all civil aircraft in the United States, its territories or possessions.

§ 830.2 Definitions.

As used in this part the following words or phrases are defined as follows:

"Aircraft accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

"Civil aircraft" means any aircraft other than a public aircraft.

"Fatal injury" means any injury which results in death within 30 days of the accident.

"Incident" means an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations.

"Operator" means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft.

"Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes. For purposes of this section "used exclusively in the service of" means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days.

"Serious injury" means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

"Substantial damage" means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of this part.

Subpart B—Initial Notification of Aircraft Accidents, Incidents, and Overdue Aircraft

§ 830.5 Immediate notification.

The operator of an aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board), field office [1] when:

(a) An aircraft accident or any of the following listed incidents occur:

(1) Flight control system malfunction or failure;

(2) Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness;

(3) Failure of structural components of a turbine engine excluding compressor and turbine blades and vanes;

(4) In-flight fire; or

(5) Aircraft collide in flight.

(6) Damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.

(7) For large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight):

(i) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;

(ii) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;

(iii) Sustained loss of the power or thrust produced by two or more engines; and

(iv) An evacuation of an aircraft in which an emergency egress system is utilized.

(b) An aircraft is overdue and is believed to have been involved in an accident.

§ 830.6 Information to be given in notification.

The notification required in § 830.5 shall contain the following information, if available:

(a) Type, nationality, and registration marks of the aircraft;

(b) Name of owner, and operator of the aircraft;

(c) Name of the pilot-in-command;

(d) Date and time of the accident;

(e) Last point of departure and point of intended landing of the aircraft;

(f) Position of the aircraft with reference to some easily defined geographical point;

(g) Number of persons aboard, number killed, and number seriously injured;

(h) Nature of the accident, the weather and the extent of damage to the aircraft, so far as is known; and

(i) A description of any explosives, radioactive materials, or other dangerous articles carried.

Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Records

§ 830.10 Preservation of aircraft wreckage, mail, cargo, and records.

(a) The operator of an aircraft involved in an accident or incident for which notification must be given is responsible for preserving to the extent possible any aircraft wreckage, cargo, and mail aboard the aircraft, and all records, including all recording mediums of flight, maintenance, and voice recorders, pertaining to the operation and maintenance of the aircraft and to the airmen until the Board takes custody thereof or a release is granted pursuant to § 831.12(b) of this chapter.

(b) Prior to the time the Board or its authorized representative takes custody of aircraft wreckage, mail, or cargo, such wreckage, mail, or cargo may not be disturbed or moved except to the extent necessary:

(1) To remove persons injured or trapped;

(2) To protect the wreckage from further damage; or

(3) To protect the public from injury.

(c) Where it is necessary to move aircraft wreckage, mail or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks.

[1] The National Transportation Safety Board field offices are listed under U.S. Government in the telephone directories in the following cities: Anchorage, Alaska; Atlanta, Ga.; Chicago, Ill.; Denver, Colo.; Fort Worth, Tex.; Kansas City, Mo.; Los Angeles, Calif.; Miami, Fla.; New York, N.Y.; Seattle, Wash.

(d) The operator of an aircraft involved in an accident or incident shall retain all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the Board to the contrary.

Subpart D—Reporting of Aircraft Accidents, Incidents, and Overdue Aircraft

§ 830.15 Reports and statements to be filed.

(a) *Reports.* The operator of an aircraft shall file a report on Board Form 6120.1 (OMB No. 3147–005) or Board Form 7120.2 (OMB No. 3147–0001) [2] within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

(b) *Crewmember statement.* Each crewmember, if physically able at the time the report is submitted, shall attach a statement setting forth the facts, conditions, and circumstances relating to the accident or incident as they appear to him. If the crewmember is incapacitated, he shall submit the statement as soon as he is physically able.

[2] Forms are obtainable from the Board field offices (see footnote 1), the National Transportation Safety Board, Washington, DC 20594, and the Federal Aviation Administration, Flight Standards District Office.

(c) *Where to file the reports.* The operator of an aircraft shall file any report with the field office of the Board nearest the accident or incident.

Subpart E—Reporting of Public Aircraft Accidents and Incidents

§ 830.20 Reports to be filed.

The operator of a public aircraft other than an aircraft of the Armed Forces or Intelligence Agencies shall file a report on NTSB Form 6120.1 (OMB No. 3147–001) [3] within 10 days after an accident or incident listed in § 830.5(a). The operator shall file the report with the field office of the Board nearest the accident or incident.[4]

Signed at Washington, DC, on this 16th day of September 1988.

James L. Kolstad,

Acting Chairman.

[FR Doc. 88–21705 Filed 9–22–88; 8:45 am]

BILLING CODE 7533-01-M

[3] To obtain this form, see footnote 2.

[4] The locations of the Board's field offices are set forth in footnote 1.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

Surety Bonds and Policies of Insurance; Technical Amendment

AGENCY: Interstate Commerce Commission.

ACTION: Technical Amendment.

SUMMARY: In § 1043.2 the numbering of paragraphs in (b)(1) is not correct. This notice corrects that numbering.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass, (202) 275–6796.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

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

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.2 (amended)

2. In § 1043.2 paragraphs (b)(1)(a) and (b)(1)(b) are corrected by revising paragraph "(b)(1)(a)" to read "(b)(1)(i)" and "(b)(1)(b)" to read "(b)(1)(ii)".

Noreta R. McGee,

Secretary.

[FR Doc. 88–21806 Filed 9–22–88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 185
Friday, September 23, 1988

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 406

[Doc. No. 5776S]

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring nursery crops in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Nursery Crop policy of insurance in 7 CFR Part 406 in the Code of Federal Regulations.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 24, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is June 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years, to provide the provisions for insuring nursery crops. This proposed rule offers insurance directly through FCIC which previously had been available only through an FCIC reinsured company.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR 406

Crop insurance, Nursery crop.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to add a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 406—Nursery Crop Insurance Regulations, effective for the 1989 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS

Subpart: Regulations for the 1989 and Succeeding Crop Years

Sec.

Authority: 7 U.S.C. 1506, 1516.

§ 406.1 Availability of nursery crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter "Reinsured companies") offer contracts contained substantially the same terms and conditions as the contract set out in this part.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the

Corporation or insured by a Reinsured company.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corportation that the multiple contract insurance was inadvertent and without the fault of the insured.

(e) If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the current for delinquent premiums.

(g) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.

(a) The Manager shall establish premium rates, amounts of insurance, and coverage levels, for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level from among those contained in the actuarial table for the crop year.

§ 406.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 406.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 406.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the nursery insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation (the Manager in cases involving not more than ($100,000) or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation or a Reinsured company in writing.

§ 406.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company and payment of the premium due. The contract shall cover the nursery crop as provided in the policy. The contract shall consist of the application, the policy and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity will be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 406.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the nursery crop as owner if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1989 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Nursery Crop Insurance Policy for the 1989 and succeeding crop years are as follows:

Federal Crop Insurance Corporation

Nursery Crop Insurance

(This is a continuous contract. Refer to Section 15.)

Note: This is a contract with the Federal Crop Insurance Corporation, a United States Government Agency. The terms of the contract are published in the **Federal Register** under the provisions of the Federal Register Act (44 U.S.C. 1501), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with *ALL* provisions of the crop insurance contract.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

1. *Insured Crops.*

a. The crops insured will be all nursery crops grown in the county in standard nursery containers which are listed on the eligible plant listing located in the actuarial table.

b. We do not insure any nursery crops which:

(1) Are not grown in standard nursery containers;

(2) Are not classified as woody, herbaceous, or foliage landscape plants;

(3) Produce citrus fruit or other edible fruits or berries;

(4) Are grown in the field;

(5) Are not listed on the eligible plant listing located in the actuarial table;

(6) Have not been inspected prior to submission of your application;

(7) Are inspected by us and determined to be unacceptable;

(8) Are not grown in a hardiness zone listed on the eligible plant listing for those crops; or

(9) Are not grown in accordance with the production practices for which premium rates have been established.

2. *Causes of Loss.*

a. The insurance provided is against unavoidable damage resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table.

b. We do not insure against any loss caused by:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(2) The failure to follow recognized good production practices for nursery crops;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Flooding on any unit subject to a flood or water flowage easement;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Failure to carry out a good irrigation practice for the nursery crops;

(7) The inability to market the nursery crop as a direct result of quarantine, boycott or refusal of an entity to accept production;

(8) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled; or

(9) Any cause not specified in this policy as an insured cause of loss.

c. Your must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on the insured crops. More than one policy will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

d. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. *Nursery Crop Report.*

a. You must submit an annual crop report to us of all of your eligible nursery crops in the county by unit, type, container size, number of plants and wholesale price of plants for each month of the crop year. This report must be submitted on or before September 30 preceding the crop year.

b. Your crop report may be revised only with our consent.

c. We may determine all losses on the basis of information on your crop report or the inventory as determined by us.

d. You must designate separately any inventory which is not insurable. Your annual crop report will be used as the basis to determine your premium and the amount of insurance for each unit. If you do not submit the report by the reporting date, we may elect to determine the inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of adjusting a loss.

4. *Amount of Insurance and Coverage Level.*

a. The amount of insurance and coverage levels are contained in the actuarial table and must be elected on or before September 30 prior to the crop year.

b. You may change the amount of insurance and the coverage level on or before the sales closing date for that crop year.

5. *Annual Premium.*

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective.

b. Coverage will not begin if the premium due under this policy is not paid when due and payable.

c. The annual premium amount of each unit is computed in accordance with these subsections:

(1) Develop an inventory of all eligible containerized crops, by type of crop and container size, for each month of the proposed policy period.

(2) Apply market values to these inventory numbers using your wholesale price list. If you discount prices published in your wholesale price list, the discounted prices must be used in calculating market values. Record these monthly values by type of crop on your insurance application.

(3) Add the total monthly market values separately for each type of crop and divide that monthly total for each crop by the number of months in the crop year to get the "Average Monthly Market Value".

(4) Add that Average Monthly Market Value for each of the eligible crops in the unit to get the "Yearly Average".

(5) Multiply the Yearly Average by 90% to obtain the "Field Market Value".

(6) Multiply Field Market Value by the coverage level.

(7) Multiply this result by the applicable premium rate contained in the actuarial table.

6. *Amounts Due Us.*

a. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid balance due us. Interest will start on the date that notice is issued to you for the collection of any amount determined to be due. Interest, penalties and costs will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717 (e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud or misrepresentation will start on the date you received the amount with the penalty beginning 90 days after the notice of amount due is issued to you.

c. All amounts paid will be applied first to costs and penalties, second to accrued interest, and then to reduction of the principal balance.

d. If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest, penalties or principal.

e. Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies and from any amounts due you form any other United States Government Agency.

7. *Insurance Period.*

Insurance attaches on October 1 and ends for each unit at the earliest of:

a. Sale or disposal of all or a portion of the crop;

b. Final adjustment of the loss on the part of the insured crop damaged; or

c. September 30 of the crop year.

8. *Notice of Damage or Loss.*

In case of damage or probable loss you must:

a. Provide sufficient care to protect the crop from further damage;

b. Provide us with written notice within 72 hours of your discovery of the loss and obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any crop that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured crop; and

c. Upon our request, provide complete copies of your nursery crop wholesale price list for the 12 month period immediately preceding the loss and your marketing records for the same period.

9. *Claim for Indemnity.*

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Your loss; or

(2) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the value of the insured crop on the unit and that any loss of value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The production to count (containers) will be all plants eligible for insurance in a unit.

d. The indemnity will not exceed the lesser of:

(1) The amount of insurance applicable to the unit less 90% of the value of said damaged crop which is marketable at any time after the loss; or

(2) The amount, calculated for each unit as follows:

(a) Subtract field market value B from field market value A (see section 17) to determine the total amount of loss; and

(b) Subtract therefrom the annual loss deductible.

e. Annual Loss Deductible amounts will be applied on an annual aggregate loss deductible bais for each individual unit insured for the crop year. Individual insured losses occurring on the same unit during the crop year may be accumulated (but each loss must be reported and valued by us). The total amount of insured losses on a unit during the crop year, less the annual aggreate loss deductible applicable to that unit, is the amount payable under this policy for that unit during the crop year, as limited by the amount of insurance for that unit.

f. The value of production of any insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI–78 or FCI–78–A, "Request To Exclude Hail And Fire."

h. You must not abandon any part of the insured crop to us.

i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contracts.) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semianually on or about January 1 and July 1 of each year and will vary with each publication.

l. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire).

10. *Concealment or Fraud.*

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. *Transfer of Right to Indemnity on Insured Share.*

If you transfer any part of your share during the crop year, you may trnasfer your right to the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. *Assignment of Indemnity.*

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. *Subrogation (Recovery of loss from a third party).*

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. *Access to Nursery.*

Any person designated by us will have access to the nursery for purposes related to the contract.

15. *Contract Term, Cancellation and Termination Dates.*

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year after insurance attaches. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this seciton or unless the premium is not paid.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before September 30 preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before September 30 preceding such crop year for the contract on which the amount is due.

d. [Reserved]

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for three consecutive years.

16. *Contract Changes.*

We may change any terms and provisions of the contract from year to year. The date by which contract changes will be available in your service office is June 30 preceding the crop year.

17. *Meaning of Terms.*

a. *"Actuarial table"* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, and related information regarding crop insurance in the county.

b. *"Amount of insurance"* means the value computed by:

(1) Multiplying the Yearly Average by .9 to equal field market value; and

(2) Multiplying the result by the coverage level.

c. *"Annual loss deductible"* means the value computed by subtracting the maximum limit of liability from the Field Market Value for that unit.

d. *"County"* means the county shown on the application and any additional land

located in a local producing area bordering on the county as shown by the actuarial table.

e. *"Crop year"* means the period beginning October 1 and extending through September 30 of the next calendar year and is designated by the year in which the crop year ends. (The 1988 crop year would be from October 1, 1987 through September 30, 1988)

f. *"Field Market Value "A"* means the total market value of the insured crop for the unit involved (prior to the loss occurrence) had the crop been sold in your markets for the values which would have been reasonably expected in the month which the loss occurred, less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

g. *"Field Market Value "B"* means the total market value of the insured crop for the unit involved in the loss (following the loss occurrence) less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

h. *"Insured"* means the person who submitted the application accepted by us and does not extend to any other person unless specifically indicated on the application and accepted by us.

i. *"Insured crops"* means the crops insured under the provisions of this policy.

j. *"Loss ratio"* means the ratio of indemnity to premium.

k. *"Person"* means a partnerhsip, association, corporation, state, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

l. *"Service office"* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. *"Tenant"* means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

n. *"Unit"* means all growing locations within a five mile radius of the named insured location designated on your crop report. Growing locations outside of the named insured location but within the county must be designated in the unit or they will be included in the closest unit listed.

18. *Descriptive Headings.*

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. *Determinations.*

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR Part 400, Subpart J).

20. *Notices.*

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. *Dates, Reports, and Notices.*

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of this requirement to comply with the terms of this contract.

a. *"Application"*—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) for the first crop year for which an insurance policy is requested by the insured.

b. *"Assignment of indemnity"*—A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any part of your choice for the crop year.

c. *"Claim for indemnity"* (See: section 9)—A claim made by the insured for damage or loss to the insured crop.

d. *"Contract change date"*—The date by which FCIC makes any contract changes available for inspection in the service office (See: section 16).

e. *"Crop report"*—A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all inventory of nursery crops in the county whether insurable or uninsurable and must be filed on or before September 30 prior to the crop year.

f. *"Damage, notice of"*—(See: Probable loss, Notice of).

g. *"End of insurance period, Date of"*—The date upon which the insured's crop insurance coverage ceases (See: section 7).

h. *"Insurance attaches, Date"*—October 1 of the crop year.

i. *"Intent to abandon, Notice of"*—The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for the crop.

j. *"Probable loss, Notice of"*—A written notice required to be filed in the service office whenever an insured believes that the nursery crops have been damaged to the extent that a loss is probable (See: section 8).

k. *"Reporting date"*—The crop reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable inventory in the county in which you have a share at the time insurance attaches.

l. *"Sales closing date"*—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed. The sales closing date of this policy is September 30.

Done in Washington, DC, on September 19, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-21641 Filed 9-22-88; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June, of 1988. The agenda is issued to provide the public with information about NRC's rulemaking activities. Each issue of the agenda includes information for one quarter of the calendar year. The agenda briefly describes and gives the status for each rule that the NRC is considering, has proposed, or has published with an effective date and for each petition for rulemaking that the NRC is considering.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 7, No. 2, is available for inspection and copying at a cost of ten cents per page at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275-2060 or (202) 275-2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Service, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-8926, toll free number (800) 368-5642.

Dated at Bethesda, Maryland, this 20th day of September 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management.

[FR Doc. 88-21810 Filed 9-22-88; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Size Standard for Refuse and Garbage Collection Services

AGENCY: Small Business Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 15, 1988, SBA published in the **Federal Register** (52 FR 30691) a proposed rule which would establish a size standard of $1.5 million for "Refuse and Garbage Collection Services" within Standard Industrial Classification (SIC) code 4212 (Local Trucking, Without Storage and SIC code 4953 (Refuse Systems). Because of the degree of interest shown in this proposed revision, SBA is extending the comment period an additional 30 days beyond the original date of September 14, 1988.

DATES: Comments due on or before October 14, 1988.

ADDRESSES: All comments to: Monika Edwards Harrison, Chairperson, Size Policy Board, 1441 L Street, NW.—Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653-6373.

SUPPLEMENTARY INFORMATION: SBA size standard regulations directly affect the eligibility of firms for SBA's assistance. Revision in the size standards can have a major impact on firms whose eligibility is affected by the change. A number of firms active in the refuse collection activity of SIC code 4212 (Local Trucking, Without Storage) and SIC code 4953 (Refuse Systems) have indicated that they need an extension of 30 days to properly respond to the proposed revision in the size standard for refuse and garbage collection firms. SBA recognizes the importance of firms being able to properly respond to its size revisions and is, therefore, extending the comment period associated with this proposed rule an additional 30 days.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 88-21828 Filed 9-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-32; Notice No. SC-88-6-NM]

Special Conditions; Boeing 747-400, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747-400 airplane. This airplane will have novel or unusual design features associated with a number of high technology avionic systems including cathode ray tube engine and flight information displays, full authority digital engine controls, and electrical flap actuator systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of lighting and the susceptibility to external radio frequency (RF) energy sources. This notice contains safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the 747-400 are maintained.

DATE: Comments must be received on or before November 7, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-32, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-32. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions 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 will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-32." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124-2207, submitted an application to amend Type Certificate A20WE to include the Boeing Model 747-400 series airplane. This airplane is a derivative version of the existing Model 747-300 series airplane. The 747-400 will be delivered with PW4000, CF6-80C2, or RB211-524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Carbon brakes with digital anti-skid will be incorporated. Scheduled completion date for certification is December 1988.

Lightning Protection

The Boeing Model 747-400 airplane will be certificated with a number of high technology avionic systems including cathode ray displays of engine and flight instruments, full authority digital engine controls, and electrical flap actuator systems. These electronic systems may be vulnerable to lighting induced transients (indirect effects) that could be generated by a lightning strike to, or in the vicinity of, the airplane.

These systems, which may be designed to perform critical as well as essential functions, may be susceptible

to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being proposed which requires that the critical and essential system functions be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning. To provide a means of compliance with this proposed special condition, a clarification of the threat for lightning is needed.

Discussion

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the lightning protection special condition. It is based on SAE Report AE4L–87–3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation,

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equations:

$i(t)=1_0\,(e^{-at}-e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
1_0, amp	=218,810	109,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics;				
i_{peak}	=200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec)	$=1.4\times10^{11}$ =@t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	$=1.0\times10^{11}$ =@t=.5 us	1.0×10^{11} @t=.25 us	0.5×10^{11} @t=.25 us	
Action integral (amp^2 sec)	$=2.0\times10^{6}$	0.25×10^{6}	$.0625\times10^{6}$	

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy, and

coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraph 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2 GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747-400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR), Special Federal Aviation Regulation (SFAR), No. 27-6, and Part 25 of the FAR as amended by Amendments 25-1 through 25-59, with the following exceptions: § 25.571 of Amendment 25-9; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 of Amendment 25-22; § 25.1401 of Amendment 25-26; §§ 25.787 and 25.812 of Amendment 25-31; § 25.675 of Amendment 25-37; § 25.1438 of Amendment 25-40; §§ 25.107, 25.109 and 25.149 of Amendment 25-41; §§ 25.331, 25.351, 25.789, and 25.809 of Amendment 25-45; § 25.772 of Amendment 25-46; and § 25.785 of Amendment 25-50 and §§ 25.365 and 25.783 of Amendment 25-53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: §§ 25.631, 25,832, 25,858, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the model 747-300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion: This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Boeing Model 747-400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2) 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Lightning Protection.* Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the airplane is exposed to lightning.

Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* The airplane attitude information displayed by the Integrated Display System, the Electrical Flap Actuator System, and the Full Authority Digital Engine Control System must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

Issued in Seattle, Washington, on September 14, 1988.

Darrell M. Pederson,

Manager, Acting Transport Airplane Directorate, Aircraft Certification Service, Northwest Mountain Region.

[FR Doc. 88-21844 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-25-AD]

Airworthiness Directives; Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series 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 certain Beech 33,

T34, 35, 36, T42, 55, 56, and 95 Series airplanes which would require repetitive inspections of the magnesium elevator control fittings for cracks and replacement of any found cracked with an aluminum fitting. The FAA has received serveral reports of these fittings cracking in service. Cracking of the magnesium fittings, if allowed to go uncorrected, may result in vibration, loss of elevator control, and possible loss of the airplane.

DATES: Comments must be received on or before November 25, 1988.

ADDRESSES: Beech Service Bulletin Number 2242, Revision 1, dated August 1988, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-25-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. Larry Engler, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

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 triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. 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. 88-CE-25-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Inspection of the elevator magnesium control fittings on Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series airplanes revealed several that were cracked in the vicinity of the four holes used to attach the fitting to the elevator and in areas around the fitting lightening holes. There has been one report of an in-flight failure of this fitting which resulted in the loss of elevator control and severe vibrations. Failure of this fitting could result in the loss of the airplane. As a result, Beech has developed Service Bulletin Number 2242 Revision 1, dated August 1988, that defines procedures to inspect these fittings, and if found cracked, replacement with an aluminum alloy casting.

Since the condition described is likely to exist or develop in other Beech Models of the same design, the proposed AD would require compliance with the Beech service bulletin on Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series airplanes.

The FAA has determined there are approximately 15,000 airplanes affected by the proposed AD. The cost of labor and parts in the proposed AD is estimated to be $1120 per airplane. The total cost is estimated to be $16,800,000 to the private sector. The cost of compliance with the proposed AD is so small that it would be necessary that a small entity own four or more of the affected airplanes for there to be a significant financial impact on these entities. Few, if any, small entities will own this many of the affected airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviatioin Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

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, positive or negative, 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, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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:

PART 39—[AMENDED]

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.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to the airplanes listed below, certificated in any category:

Models	Serial Nos.
35-33, 35-A33, 35-B33, 35-C33, E33.	CD-1 through CD-1234.
35-C33A, E33A	CE-1 through CE-289.
E33C	CJ-1 through CJ-25.
35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35-TC, V35A, V35A-TC.	D-1 through D-9068, D-15001 and D-15002.
36	E-1 through E-184.
95-55, 95-A55, 95-B55, 95-B55A.	TC-1 through TC-1287.
95-C55, 95-C55A, D55, D55A.	TE-1 through TE-767.
56TC	TG-2 through TG-83.
95, B95, B95A, D95A, E95	TD-2 through TD-721.

This AD also applies to any of the following military airplanes which have been modified for civil certification as described on the applicable Federal Aviation Administration Type Certificate Data Sheet or Aviation Specification:

T34A, T34B (Commercial Model 45 Series)
T42A (Commercial Model 95-B55B)

Note.—The magnesium fittings may have been installed as original equipment or as replacement spares.

Compliance: Required as indicated, unless already accomplished.

To prevent the failure of the magnesium elevator control fittings, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, determine the composition of the elevator control fittings in accordance with the instructions contained in Beech Service Bulletin No. 2242, Revision 1, dated August 1988.

(1) If the fittings are determined to be aluminum, no futher action is required by this AD.

(2) If the fittings are determined to be magnesium, accomplish the actions specified below.

(b) At the time of the inspection per paragraph (a) above, and every 100 hours TIS thereafter, visually inspect each magnesium elevator control fitting for cracks in accordance with the above referenced Service Bulletin.

(c) If any fitting is found to be cracked, prior to further flight replace the cracked fitting with an aluminum fitting as described in the above referenced Service Bulletin.

(d) The above inspections are no longer required when aluminum fittings have been installed on both elevators.

(e) Airplances may be flown in accordance with FAR 21.197 to a location where this AD may be accomplish.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beechcraft Aero and Aviation Centers; Beech Aircraft Corporation, Commerical Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201-0085, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1988.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-21710 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-60-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require the installation of a spoiler position sensing and indication system, and a "spoiler deployed" annunciation takeoff inhibit feature on certain McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes; and would require installation of a "spoiler deployed" annunciation takeoff inhibit feature on certain McDonnell Douglas Model DC-9-81, DC-9-82, and DC-9-83 series airplanes. This proposal is prompted by reports of inadvertent airplane lateral roll during takeoff. This condition, if not corrected, could lead to severe lateral control dificulties immediately after liftoff.

DATES: Comments must be received no later than November 18, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-60-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5343.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-60-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Recently, the FAA was advised that an operator of Model DC-9 series airplanes, who had voluntarily installed a spoiler position sensing and indication system, was currently de-activating or removing that system from his DC-9 fleet because the DC-9 Master Minimum Equipment List (MMEL) prohibits the dispatch of a Model DC-9 airplane with an inoperative spoiler position sensing and indication system installed. This operator reported experiencing erroneous spoiler deployed indications and other system anomalies, which had rendered the system inoperative; the operator determined that, since the system was voluntarily installed as an optional action, in accordance with the manufacturer's recommendation, the system could be removed without causing degradation to air safety. The Air Line Pilots Association (ALPA) disagrees with this operator's action and has recommended that the spoiler position sensing and indication system be required for installation on the Model DC-9 fleet.

Six operators of DC-9 series airplanes have reported instances of inadvertent airplane lateral roll during takeoff. Investigation of those reported instances revealed that a spoiler panel apparently remained extended after the flight crew had completed ground check of the flight control system, causing the inadvertent airplane roll after liftoff. McDonnell Douglas previously issued a number of service bulletins concerning this subject, which contain procedures intended to improve the overall reliability of the spoiler flight control system and prevent spoiler panel's from failing in their extended positions.

Additionally, the FAA has received reports of airplanes returning to their departure gate prior to takeoff because the flight crew were advised by an outside observer that a spoiler panel appeared in its extended position.

In light of the foregoing, the FAA has re-evaluated the need for a spoiler position sensing and indication system. Reassessment of system criticalness by

the FAA, and review of the preponderance of evidence produced by the manufacturer, the Air Transport Association (ATA), and ALPA, has led FAA to determine that a spoiler position sensing and indication system is essential to the safety of flight.

The FAA has also reviewed the need for a "spoiler deployed" annunciation takeoff inhibit feature. Three of the six operators who have incorporated the spoiler position sensing and indication system in accordance with McDonnell Douglas Model DC-9 Service Bulletin 27-173, subsequently reported that, during crosswind takeoffs, sufficient aileron input may be required to command the flight spoilers beyond 10 degrees, which results in activation of the "spoiler deployed" annunciator. This occurrence, if improperly recognized, prompts unwarranted aborted takeoffs and creates an unsafe condition during high speed rejected takeoffs.

One Model DC-9-80 series airplane operator, who has the spoiler position sensing/indication system and takeoff inhibit feature as a standard installation, indicated that, with appropriate training, the flight crew may be able to avoid those unwarranted aborted takeoffs. Additionally, this operator stated that the "spoiler deployed" annunciation should be continuously available; this operator is presently deactivating the factory-installed takeoff inhibit feature from its Model DC-9-80 fleet.

The FAA disagrees with the actions of this operator in deactivating the takeoff inhibit feature; the FAA has determined that the "spoiler deployed" annunication/takeoff inhibit feature is necessary for the safety of the flight in order to prevent the occurrence of unwarranted aborted takeoffs caused by non-critical failure and pilot intentional inputs which cause "spoiler deployed" indications.

The FAA has reviewed and approved McDonnell Douglas Model DC-9 Service Bulletin 27-173, Revision 1, dated May 20, 1982, which describes the installation of a spoiler position sensing and indication system to provide a visual alert to the flight crew whenever spoiler panels remain in their extended position; and McDonnell Douglas Service Bulletin 27-257, Revision 1, dated June 20, 1988, which describes a modification to the spoiler position sensing and indication system to inhibit the "spoiler deployed" annunciation after throttles have been advanced to takeoff power, to minimize nuisance annunciations.

Since these conditions are likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require installation of a spoiler position sensing and indication system and/or spoiler deployed annunciation takeoff inhibit feature, in accordance with the service bulletins previously mentioned.

It is estimated that 435 Model DC-9 series airplanes and 186 Model DC-9-80 series airplanes of U.S. registry would be affected by this AD. It would take approximately 78 manhours per Model DC-9 series airplane and 8.5 manhours per Model DC-9-80 series airplane to accomplish the required actions, at an average labor cost of $40 per manhour. It is also estimated the material/parts cost would be $2,700 for each Model DC-9 series airplane and $200 for each Model DC-9-80 series airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,632,140.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) imvolves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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.

§ 39.13 [Amended]

2. By adding the following airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes, certified in any category, with effectivity as listed in McDonnell Douglas Model DC-9 Service Bulletins 27-173, Revision 1, dated May 20, 1982, and 27-257, Revision 1, dated June 20, 1988. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate lateral control difficulties after liftoff during takeoff, accomplish the following:

A. For McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes, identified in McDonnell Douglas Model DC-9 Service Bulletins 27-173, Revision 1, dated May 20, 1982, and 27-257, Revision 1, dated June 20, 1988: Install the spoiler position sensing and indication system and spoiler deployed annunciation takeoff inhibit feature in accordance with the accomplishment instructions of those service bulletins.

B. For McDonnell Douglas Model DC-9-81, DC-9-82, and DC-9-83 series airplanes identified in McDonnell Douglas Model DC-9 Service Bulletin 27-257, Revision 1, dated June 20, 1988: Install and spoiler deployed annunciation takeoff inhibit feature in accordance with the accomplishment instructions of that service bulletin.

C. For all McDonnell Douglas Model DC-9-81, DC-9-82, and DC-9-83 airplanes with the production equivalent of McDonnell Douglas Model DC-9 Service Bulletin, 27-257, Revision 1, dated June 20, 1988, incorporated but presently de-activated: Re-activate the spoiler deployed annunciation takeoff inhibit feature in accordance with the airplane type design configuration.

D. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be used in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas

Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on September 15, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-21711 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 88-AWP-13]

Proposed Alteration of Jet Route J-5, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the description of Jet Route J-5 located in the vicinity of Los Angeles, CA. The current alignment of J-5 in this area is not used because it conflicts with J-5 and J-65 southeast of Shafter, CA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). This change would align a portion of J-5 via J-50 and J-65 to the new LANDO intersection and then proceed direct to Los Angeles. This action would improve flight planning.

DATES: Comments must be received on or before November 7, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88-AWP-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-5 between Los Angeles, CA, and Shafter, CA. The current alignment of J-5 in this area is not used due to conflictions in the Shafter area. This action would improve flight planning. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-5 [Revised]

From Los Angeles, CA; INT Los Angeles 352°T(337°M) and Shafter, CA, 140°T(126°M) radials; Shafter; Mustang, NV; Lakeview, OR; Seattle, WA; to Vancouver, BC. The airspace within Canada is excluded.

Issued in Washington, DC, on September 13, 1988.

Robert G. Burns,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-21712 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 382

[Docket 45657; Notice 88-14]

RIN 2105-AA18

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of extension of comment period concerning proposed rule on nondiscrimination on the basis of handicap in air travel.

SUMMARY: In response to requests from disability and airline industry groups, the Department is extending the comment period on its proposed rule to implement the Air Carrier Access Act of 1986. The proposed rule would prohibit discrimination by air carriers on the basis of handicap consistent with the safe carriage of all passengers. The proposed rule would also establish enforcement procedures for the rule's provisions. The comment period is being extended for an additional 90 days, with a 30-day reply period to follow the end of the comment period.

DATES: Comments should be received by December 19, 1988. Reply comments should be filed by January 18, 1989. Late-filed comments and reply comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 45657, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9:00 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION: The Department of Transportation published its notice of proposed rulemaking (NPRM) to implement the Air Carrier Access Act of 1986 on June 22, 1988 (53 FR 23574), with a 90-day comment period ending September 20, 1988. Recently, the Department received a request from the Consortium for Citizens with Developmental Disabilities (CCDD) for a 90-day extension of the comment period. The CCDD request was on behalf of 25 disability groups, several of which had participated in the regulatory negotiation leading to the NPRM.

Subsequently, the Department received a letter from the Air Transport Association (ATA), which represents many major air carriers and which also was a regulatory negotiation participant. In addition to supporting a 90-day extension of the comment period, the ATA also requested a 30-day reply period following the end of the comment period. The purpose of the reply period would be to allow persons to respond to information or arguments made in comments received during the coment period proper.

In the interest of allowing commenters more time to prepare thorough, well-considered comments on the complex proposals of the NPRM, the Department is granting these requests. Consequently, the comment period is being extended 90 days, closing on December 19, 1988. The 30-day reply period will then begin, ending on January 18, 1989.

The reply period is intended only for responses to information and arguments made in comments received during the comment period. The reply period is not intended to be used to raise new issues or present new information not responsive to issues, information or arguments in comments docketed during the comment period.

In order to make the reply period meaningful, commenters are requested to ensure that their comments are provided to the Department by the December 19 closing date for the comment period. With the extension granted by this notice, commenters will have had 180 days to prepare their comments; consequently, it should be possible for all interested parties to meet this deadline.

The Department has also been requested to provide the text of the NPRM in a form readily usable by blind persons. The Department has prepared a cassette tape version of the NPRM for this purpose. Copies may be obtained by calling or writing the **"FOR FURTHER INFORMATION CONTACT"** person listed above.

Issued this 20th day of September, 1988, at Washington, DC.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-21936 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-62-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 275

[Release No. IA-1140; File No. S7-19-88]

Exemption From Registration as an Investment Adviser for Certain Small Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for public comment two proposed rules that would expand the "intrastate" and "small adviser" exemptions from registration under the Investment Advisers Act for investment advisers who are registered in each state in which they do business. The Commission is also publishing for public comment amendments to five rules under the Act to relieve advisers exempt under these proposed rules from the Act's recordkeeping rule, advertising rule, cash solicitation rule, disciplinary disclosure rule, and restrictions on principal and agency cross transactions. These exemptions would significantly reduce federal regulation for certain small advisory businesses that are regulated at the state level.

DATE: Comments must be received on or before November 22, 1988.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments should refer to File No. S7-19-88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Dorothy M. Donohue, Attorney, or Thomas S. Harman, Chief, Office of Disclosure and Adviser Regulation (202) 275-2107, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-2, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for public comment two new rules, rules 203(b)(1)-1 and 203(b)(3)-2, and amendments to several rules under the Investment Advisers Act of 1940 ("Act") (15 U.S.C. 80b-1 *et seq.*). The proposed rule and rules amendments would:

(1) Exempt certain small advisers from federal registration under the Act if registered in each state in which they do business;

(2) Amend rule 204-2 (17 CFR 275.204-2), the Act's recordkeeping rule so as not

to apply to "exempt advisers" (advisers exempt from registration under the proposed rules that do not voluntarily register under the Act);

(3) Amend rule 206(4)–1 (17 CFR 275.206(4)–1), the advertising rule, and rule 206(4)–4 (17 CFR 275.206(4)–4), the disciplinary disclosure rule, to relieve exempt advisers from complying with their requirements; and amend rule 206(4)–3 (17 CFR 275.206(4)–3), the cash solicitation rule, to make clear that the rule does not apply to exempt advisers; and

(4) Amend rule 206(3)–1 (17 CFR 275.206(3)–1), the rule that provides exemptions for certain advisers from the principal and agency cross transaction provision of the Act, to relieve these exempt advisers from the Act's restrictions on principal and agency cross transactions.

Advisers exempt from federal registration would still be subject to the Act's antifraud provision. The exemptions are not mandatory; an adviser meeting the conditions of either exemption may elect to register or remain registered under the Act.

Background

Representatives of the North American Securities Administrators Association ("NASAA") and the Commission staff meet at least annually to discuss current securities regulation issues as directed by section 19(c) of the Securities Act of 1933,[1] enacted as part of the Small Business Investment Incentive Act of 1980.[2] Recently, this state-federal dialogue has included a discussion by representatives of NASAA and the Commission staff of the concept of exempting certain investment advisers from registration under the Act. These discussions resulted in the endorsement of draft rule proposals by the Board of Directors of NASAA which are substantively identical to the exemptions being proposed today.

The proposed exemptions should significantly diminish the costs and paperwork associated with dual federal and state regulation of small advisory businesses, thus furthering the goals of the Small Business Investment Incentive Act[3] which recognizes that federal regulation is often more burdensome to small than to large businesses.[4] While retaining the applicability of the federal antifraud provisions, the proposed rules would rely on the states to assume responsibility for the detailed type of regulation that, at the federal level, would no longer be applicable to small advisers exempt under these rules.

Since the adoption of the Investment Advisers Act in 1940, state governments have become much more active in the reuglation of investment advisers. Together with NASAA, state regulators have drafted a model state act governing investment advisers and an accompanying set of rules that provide a comprehensive framework for regulating advisers which may be modified to suit the needs of each state.[5] The rules proposed today recognize and would enhance the important role states play in the regulation of investment advisers. The Commission has therefore determined to propose to create new thresholds for federal registration.[6]

Discussion

1. The Statutory Scheme

The Act generally defines an investment adviser as any person who, for compensation, engages in the business of advising others with respect to securities or issuing reports about securities.[7] Section 203(b) (15 U.S.C. 80b–3(b)) of the Act exempts three types of advisers from registration.[8] The first exemption, the "intrastate" exemption, exempts any adviser whose clients are all residents of the state within which the adviser maintains its place of business, and who does not furnish advice or issue reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange. The second exemption, the "insurance company" exemption, exempts any adviser whose only clients are insurance companies. The third exemption, the "small adviser" exemption, exempts any adviser who, among other things, does not hold itself out generally to the public as an adviser and during the course of the preceding twelve months had fewer than fifteen clients.[9]

The statutory exemptions from registration are narrow in scope. The "intrastate" exemption under the Act cannot be relied upon by many advisers whose business is wholly intrastate, because of the prohibition against recommendations of exchange-traded securities. The "insurance company" exemption under the Act is not available to an adviser with clients other than insurance companies. The "small adviser" exemption under the Act contains a threshold level, fewer than fifteen clients in a twelve-month period, and a "holding out" prohibition [10] that in practice subjects many adivsers with very little business to the registration requirements of the Act.[11] The proposed

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[1] 15 U.S.C. 77s(c). NASAA members include representatives of state governments whose primary assignment is the regulation of the securities business within those states.

[2] Pub. L. No. 96–477, 94 Stat. 2275 (1980).

[3] Pub. L. No. 96–477, 94 Stat. 2275 (1980). Section 19(c)(2)(D).

[4] A reduction in compliance costs should further the policy expressed in section 19(c)(2)(D) of greater federal and state cooperation in securities matters including a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small businesses.

[5] NASAA adopted Model Amendments to the Investment Advisory Section of the Uniform Securities Act of 1956 ("Model Act") on November 20, 1986. NASAA adopted "Uniform Rules pursuant to the Model Amendments to the Investment Advisory Section of the Uniform Securities Act of 1956" ("Model Rules") on September 3, 1987. The Model Rules, which closely follow the rules under the Act, have been wholly or largely adopted by four states—Virginia, South Dakota, Georgia, and North Carolina—and are being considered by several other states.

[6] These new exemptive rules are being proposed pursuant to rulemaking authority granted the Commission in Section 206A (15 U.S.C. 80b–6A) of the Act. That section gives the Commission authority to conditionally or unconditionally exmept any person or persons or any class or classes of persons from any or all provisions of the Act if the Commission finds such exemptions to be in the public interest and consistent with the protection of investors and the purposes of the Act.

[7] Section 202(a)(11) (15 U.S.C. 80b–2(a)(11)).

[8] The Act also excludes certain persons from the definition of "investment adviser" including any bank; any lawyer, accountant, engineer, or teacher who provide investment advice solely incidental to the practice of their respective professions; any broker-dealer who provides investment advice solely incidental to the conduct of its brokerage business and receives no special compensation for the investment advice; any publisher of any bona fide newspaper or financial publication of general and regular circulation; and any person who only provides advice concerning government securities. Section 202(a)(11)(A)–(E) (15 U.S.C. 80b–2(a)(11)(A)–(e)). The proposed exemptions, of course, would not affect advisers excluded from the definition of "investment adviser."

[9] While the "small adviser" exemption was modified by the 1970 amendments of the Act, it has always contained a fewer-than-fifteen clients requirement. (Pub. L. No. 768, 76th Cong., 3d Sess. (1940)). One rule has been adopted under Section 203, rule 203(b)(3)–1 (17 CFR 275.203(b)(3)–1), which specifies certain circumstances in which a limited partership, rather than each of its individual limited partners, would be counted as a "client" of a general partner or other person acting as an investment adviser to the partership for purposes of the fewer-than-fifteen clients requirement of section 203(b)(3).

[10] The Commission staff has interpreted "holding itself out as an adviser" to include situations where an adviser advertises, uses the label, "investment adviser" on a business card or stationery, or lists itself as an adviser in a telephone, business, or building directory. Dale M. Mueller (pub. avail. Feb. 20, 1984). The Commission staff has also interpreted "holding itself out as an adviser" to include the situation where an adviser lets it be known generally by word of mouth that it is available to accept new clients. Peter H. Jacobs (pub. avail. Feb. 7, 1979); Richard W. Blanz (pub. avail. Jan. 28, 1985).

[11] Uniform Form ADV (17 CFR 279.1), the adviser registration form jointly developed by the Commission and NASAA, is used for registering advisers in thirty-one states and is accepted in eight other states.

rules, if adopted, would expand the availability of the statutory "intrastate" and "small adviser" exemptions. The Commission estimates that approximately one half of all advisers currently registered with the Commission would be eligible for exemption under either of the two rules and requests information on the percentage of advisers likely to take advantage of the new rules if they are adopted.

2. The Proposed Rules

a. Distinctions Between the Proposed Exemptive Rules

The proposed rules would qualify more advisers for exemption from registration by focusing primarily on the number of clients, the funds under management, and state registration.

The proposed intrastate exemption would permit the recommendation of exchange-traded securities (unlike the statutory intrastate exemption) by an adviser who operates solely in one state and who, among other things, had not more than fifty clients during the course of the preceding twelve months and managed securities portfolios with an aggregate fair market value of not more than ten million dollars at the end of the adviser's last fiscal year.[12] The Commission seeks specific comment on whether either rule should include, as a condition of exemption, dollar limits on funds under management and, if so, whether the dollar limits proposed are appropriate.

The proposed small adviser exemption, rather than prohibiting an adviser from holding itself out as an adviser like the statutory "small adviser" exemption, would be available to an adviser who, among other things, had no more than twenty-five clients during the course of the preceding twelve months and managed securities portfolios with an aggregate fair market value of not more than one million dollars at the end of the adviser's last fiscal year.[13] The Commission seeks specific comment on whether the proposed limit on the number of clients is appropriate. Both proposed exemptions, like Section 203(b)(3) of the Act, require an adviser to count clients on a "rolling" basis: the adviser must include any clients it has had over the course of the preceding twelve months to determine whether it has had no more than the number of clients permissible to qualify for the exemptions. The Commission also seeks comment on alternative methods of counting clients.

While the amount of funds under management of advisers with discretionary authority can be determined with relative certainty, it may be more difficult to quantify the amount of funds under management for other advisers. The Commission expects that many advisers who would be eligible for the proposed exemptions will not have discretionary authority over client funds. Therefore, the Commission proposes two alternatives to quantify the amount of funds under management for advisers that do not have discretionary authority—(1) the amount of funds invested by clients in financial products based on advisory services provided, and (2) the value of securities recommended.[14] The Commission also seeks specific comment on other alternative methods to quantify the funds under management for advisers who do not have discretionary authoity.

b. Conditions Common to the Proposed Exemptive Rules

Both of the proposed exemptions would be subject to three conditions. First, the adviser would have to be registered in each state in which the adviser conducts business; of course, an adviser relying on the intrastate exemption would only be registered in one state. With respect to the proposed rule exempting small advisers, the Commission seeks specified comment on whether it should define the phrase "does business" in paragraph (a) of that rule and, if so, how that phrase should be defined. Second, the adviser could not act as an adviser to any investment company registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–1 *et seq.*) or a business development company ("BDC") that has elected to be regulated as such under the Investment Company Act.[15] Third, the adviser could not have custody of client funds or securities. The Commission seeks specific comment on whether the proposed exemptions [16] should be revised to prohibit an exempt adviser from having custody of other client assets, *e.g.*, deeds to real estate, art work, or insurance policies, in addition to client funds and securities.[17]

3. Particular Provisions of the Act as They Affect Exempt Advisers Under the Proposed Rules

If the proposed rules are adopted, exempt advisers would still have to comply with the antifraud provision of the Act.[18]

In addition, exempt advisers would generally be subject to the antifraud provisions under other federal securities law and state law.[19]

a. Applicability of General Antifraud Provisions

Exempt advisers still would be advisers (as defined by the Act) subject to the Act's general antifraud provision, Section 206, which makes it unlawful for any adviser, using the facilities of interstate commerce, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.[20] However, as discussed below, the Commission is proposing rule amendments that would make the rules adopted under Section 2065 inapplicable to exempt advisers.

b. Inapplicability of Certain Provisions

Several of the Act's provisions, which by their terms apply only to advisers registered or required to be registered under the Act, would not apply to advisers exempted by either of the proposed rules. As more fully discussed below, exempt advisers would not be subject to the Commission's "brochure rule" [21] or the Act's restrictions on

[12] Of course, the exemptions under sections 203(b)(1) or (3) (15 U.S.C. 80b–3 (b)(1), (3)) would still be available for an adviser meeting all the conditions of either provision.

[13] As the proposed rules suggest, an adviser would determine whether it meets the proposed limitation on the permissible dollars under management once—at the end of its fiscal year.

[14] These alternatives are patterned after Items 20.B and 21 in Part I of Form ADV.

[15] A BDC is a closed-end investment company whose prinicipal activity consists of investing in, and providing managerial assistance to, small and growing businesses. *See* 15 U.S.C. 80a–2(a)(48).

[16] Paragraph (a)(4) of both proposed rules.

[17] Paragraph (b) of both proposed rules defines custody to include situations where the adviser holds clients' funds or securities directly or indirectly, has any authority to obtain possession of them, or has the ability to appropriate them.

[18] Conversely, any adviser exempt from registration who chooses to voluntarily register (or to remain registered) under the Act would be subject to all of its provisions.

[19] The antifraud provisions of some state statutes would apply to any person receiving consideration from another person for rendering investment advice even if the person rendering the investment advice is technically excluded from the statutes' definitions of investment adviser.

[20] Section 206 (15 U.S.C. 80b–6). The 1960 amendments to the Act made the antifraud provision applicable to all advisers, whether registered or not. S. Rep. No. 1760, 86th Cong., 2d Sess. 7 (1960). To enforce these provisions, the Commission has the power to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any relevant documents. *See* Section 209 (15 U.S.C. 80b–9).

[21] Rule 204–3 (17 CFR 275.204–3).

charging performance fees.[22] In addition, as proposed, exempt advisers would not be required to comply with the Act's recordkeeping rule.[23] As discussed in more detail below, the Commission is also proposing amendments to the advertising rule,[24] the disciplinary disclosure rule,[25] and the cash solicitation rule [26] to relieve exempt advisers from these rules. Finally, the Commission is proposing rule amendments that would make the provisions of the Act that restrict an adviser's ability to engage in principal and agency cross transactions with clients inapplicable to exempt advisers.[27] The Commission seeks specific comment on whether it is appropriate to relieve exempt advisers from the advertising rule, the disciplinary disclosure rule, and the Act's restrictions on principal and agency cross transactions.

1. The "Brochure Rule"

Exempt advisers would not be subject to the "brochure rule" which, by its terms, only applies to registered advisers.[28] The brochure rule requires registered advisers to provide to clients the same information required in Part II of Form ADV. Part II of Form ADV requires disclosure of, among other things, the types of advisory services provided; the advisory fees charged; the adviser's affiliations with other securities professionals; the adviser's participation in client transactions; whether the adviser has discretionary brokerage arrangements; and a description of the adviser's education and business background. Of course, an adviser would be required to make many of these same disclosures under state law.[29]

2. Performance Fees

An exempt adviser would not be subject to the Act's restrictions on the charging of a performance fee. A performance fee ties the adviser's compensation to the capital gains or appreciation of a client's funds. Section 205 of the Act,[30] and the rules adopted thereunder,[31] allow an adviser registered under the Act to charge a performance fee only in accordance with certain conditions.[32]

3. Recordkeeping and Inspection

The Commission is proposing an amendment to rule 204–2 stating that advisers exempt from registration under the Act by proposed rules 203(b)(1)–1 and 203(b)(3)–2 would not be subject to the Act's recordkeeping provision. Most states require registered advisers to maintain books and records similar to those required to be kept under the Act's recordkeeping rule, and the Commission believes that, if rules 203(b)(1)–1 and 203(b)(3)–2 are adopted, it may be more appropriate for states to assume sole responsibility for setting recordkeeping requirements with respect to exempt advisers.[33] The Commission does not intend to conduct periodic routine inspections of exempt advisers.

4. Antifraud Rules

The Commission is proposing amendments to three rules under Section 206(4) (15 U.S.C. 80b–6(4)) that would make those rules inapplicable to exempt advisers.[34] Although section 206, which contains the Act's general antifraud provisions, would continue to apply, it would seem more appropriate for states to have the responsibility for the detailed regulation provided by the antifraud rules if rules 203(b)(1)–1 and 203(b)(3)–2 are adopted.

Rule 206(4)–1, the advertising rule, restates the general antifraud prohibition of Section 206(4),[35] and sets forth four types of advertising practices that are prohibited.[36] Rule 2.6(4)–3, the cash solicitation rule, specifies the manner in which advisers may pay cash solicitation fees. The rule prohibits an adviser required to be registered under Section 203 from paying a cash fee to a solicitor unless the adviser is registered under the Act [37] and complies with the rule's disclosure [38] and recordkeeping requirements.[39] The Commission is proposing to add a note to the rule clarifying that since exempt advisers are not required to be registered under the Act, they are not subject to the rule although restrictions on solicitation arrangements may be imposed by state law.[40] Rule 206(4)–4 requires certain

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[22] Section 205 (15 U.S.C. 80b–5).

[23] Section 204 (15 U.S.C. 80b–4) and rule 204–2 require registered advisers to keep certain books and records for prescribed periods.

[24] Rule 206(4)–1.

[25] Rule 206(4)–4.

[26] Rule 206(4)–3.

[27] Section 206(3) (15 U.S.C. 80b–6(3)).

[28] Rule 204–3(a) (17 CFR 275.204–3(a)).

[29] Rule 203(b)–1 of the Model Rules requires advisers to make the same disclosures required by the "brochure rule." The Model Rules require advisers registered or required to be registered pursuant to the Model Act to send a brochure containing at least the information in Part II of Form ADV to all clients and prospective clients.

[30] Section 205(a) of the Act (15 U.S.C. 80b–5(a)) excludes from its coverage advisers exempt from registration pursuant to Section 203(b) of the Act (15 U.S.C. 80b–3(b)). The Commission believes that this exclusion would include advisers exempt under rules adopted under Section 203(b) who do not register.

[31] Rule 205–1 (17 CFR 275.205–1); Rule 205–2 (17 CFR 275.205–2); and Rule 205–3 (17 CFR 275.205–3).

[32] The Act allows a registered adviser to charge a performance fee, known as a "fulcrum fee," to a registered investment company or those with $1 million or more in assets under management. These fees are based on the asset value of the managed fund averaged over a specified period, and must increase or decrease proportionately with the investment performance of the managed funds in relation to an appropriate index of securities prices. A registered adviser also may charge a performance fee in accordance with rule 205–3 under the Act. Rule 205–3 allows a performance fee if: the client has at least $500,000 under management or a net worth that exceeds $1 million; compensation is based on a formula including capital gains less losses in the client's account for a period of at least one year; the adviser reasonably believes that the contract represents an arm's length arrangement with the client; the adviser reasonably believes that the client understands the risks involved; and specified disclosures are made. While the Model Act prohibits performance fees, except as allowed by rule, the Model Rules provide an exception to the prohibition substantively indentical to rule 205–3. Model Rule 102(f)–3. The Model Rules do not contain a separate exemption for "fulcrum fees."

[33] The recordkeeping requirements in Model Rule 203(a)(1) are similar to the Act's recordkeeping provision.

[34] Section 206(4), and three of the rules adopted thereunder, apply to both registered and unregistered investment advisers. Therefore, unless rules 206(4)–1 and 206(4)–4 are amended they would apply to exempt advisers.

[35] Rule 206(4)–1(a)(5).

[36] The rule prohibits use of testimonials, past profitable recommendations (unless a list of all the past year's recommendations are included), representations that a graph, chart, or formula can in and of itself be used to determine which securities to buy and sell, and representations that investment advice or any service will be provided free unless it is free. Model Rule 102(a)(4)–1(13) makes in an unethical practice to publish an advertisement that does not comply with rule 206(4)–1.

[37] Rule 206(4)–3(a)(1)(i).

[38] The rule requires the solicitor to provide the client with a current copy of the adviser's written disclosure statement and a separate disclosure document which must include, among other things, a discussion of the nature of the relationship between the solicitor and the adviser, the terms of the compensation arrangement between the adviser and the solicitor, and the amount that the client will be charged for the cost of its solicitation.

[39] The rule requires registered advisers to maintain a copy of each written agreement with a solicitor, a copy of each solicitor disclosure document, and a copy of each acknowledgement from a client acknowledging receipt of the adviser's written disclosure statement and the solicitor's written disclosure statement.

[40] Section 102(b) of the Model Act makes it unlawful for any person, in the solicitation of advisory clients, to make any untrue statement of material fact or to omit to state a fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The Model Act includes solicitors within its definition of "investment adviser representative" and requires investment adviser representatives to register under the Model Act. Section 401(g); section 201(c) respectively. A solicitor that is a registered investment advisor representative is subject to several of the Model Act's provisions, including the antifraud provision. The Model Rules require a registered adviser, but not an investment adviser representative, to keep, as part of its books and records, its written agreement with a solicitor. Model Rule 203(a)–1(a)(10).

advisers to disclose to clients any "precarious" financial condition which is reasonably likely to impair their ability to meet contractual commitments to clients, and to disclose any disciplinary event material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.[41] Each of these antifraud rules would be inapplicable to exempt advisers if the proposed rule amendments are adopted.

5. Prinicipal and Agency Cross Transactions

Section 206(3) of the Act (15 U.S.C. 80b-6(3)) prohibits principal and agency cross transactions unless the adviser discloses to the client in writing before each transaction the capacity in which the adviser is acting and the client consents to each transaction before it is completed.[42] A principal transaction occurs when an adviser sells securities it owns to a client or buys them from a client for its own account. An agency cross transaction occurs when the adviser acts as broker to both an advisory client and the opposite party to the transaction.[43] The Commission is proposing an amendment to Rule 206(3)-1 under the Act to make the restrictions of section 206(3) inapplicable to exempt advisers.[44] Like the rules under Section 206(4), it seems to be more appropriate for states to assume responsibility for the detailed regulations regarding principal and agency cross transactions with respect to exempt advisors if rule 203(b)(1)-1 and 203(b)(3)-2 are adopted.[45]

Statutory Basis

Rules 203(b)(1)-1 and 203(b)(3)-2 are being proposed under sections 206A and 211 of the Act, as is the amendment to rule 206(3)-1. The amendments to the cash solicitation rule, the advertising rule, and the disciplinary disclosure rule are being proposed under section 206A of the Act and section 206(4) of the Act. The clarifying amendment to the recordkeeping rule, rule 204-2, is being proposed under section 204 of the Act.

Cost Benefit of Proposal

The rules proposed today would neither require disclosure of new information nor impose any significant costs. Rather, the proposed exemptive rules would simply permit an adviser meeting the conditions of the exemptions to forego registration (or withdraw its registration), thus eliminating virtually all costs associated with registration, reporting, recordkeeping, and disclosure to clients imposed under the Act. In addition, the rule amendments proposed today would relieve exempt advisers from specific rule restrictions at the federal level with respect to cash solicitation fees, advertising, disclosure of disciplinary events and adverse financial conditions, and from the Act's restrictions on engaging in principal and agency cross transactions. The Commission invites specific comment on its assessment of the costs and benefits with respect to today's proposals, including estimates of any costs and benefits perceived by commenters. The Commission also requests specific comment on how many advisers would be eligible for either proposed rule and how many would likely avail themselves of such exemptions if adopted.

Summary of Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed rules. The Analysis considers the impact that exemption from federal registration would have on small advisers. It explains that the exemptions, together with the amendment of several rules, would eliminate costs of registration and reporting as well as compliance with the "brochure rule," the recordkeeping rule, the performance fee rule, the cash solicitation rule, the advertising rule, the disciplinary disclosure rule, and the Act's regulation of principal and agency cross transactions for exempt advisers. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained by contacting Dorothy M. Donohue, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-2, Washington, DC 20549.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Proposal

Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read, in part, as follows:

Authority: Sec. 203, 15 U.S.C. 80b-3; Sec. 204, 15 U.S.C. 80b-4; Sec. 206A, 15 U.S.C. 80b-6A.

2. By adding §§ 275.203(b)(1)-1 and 275.203(b)(3)-2 as follows:

§ 275.203(b)(1)-1 Exemption from registration for certain intrastate investment advisers.

(a) Section 203(a) of the Act [15 U.S.C. 80b-3(a)] shall not apply to any investment adviser all of the clients of which are residents of the State within which such investment adviser maintains its principal office and all of its places of business and which is registered as an investment adviser in such State: Provided, that during all periods in which the adviser relies on the exemption provided by this rule, it:

(1) Has had, during the course of the preceding twelve months, no more than 50 clients;

(2) Does not act as an investment adviser to any investment company registered or requried to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*], or to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a-53], and has not withdrawn its election;

(3) Has managed, on a discretionary or non-discretionary basis, securities portfolios with an aggregate fair market value of not more than ten million dollars at the end of the adviser's last fiscal year; and

(4) Does not have custody or possession of any funds or securities in which any client has any beneficial interest.

(b) For purposes of this rule, an investment adviser has custody or possession if it holds clients' funds or securities directly or indirectly, has any authority to obtain possession of them, or has the ability to appropriate them.

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[41] Paragraph (b) of Rule 206(4)-4 creates a presumption that for ten years subsequent to the event, certain enumerated disciplinary events are material. These include adverse civil and criminal court actions generally involving fraud proceedings involving findings of violations of securities or other investment related laws and the imposition of significant sanctions.

[42] Section 206(3), like all the provisions of Section 206, applies to both registered and unregistered advisers. *See supra*, note 20.

[43] Rule 206(3)-2 (17 CFR 275.206(3)-2) creates a blanket exemption for agency cross transactions under certain circumstances, but would not be available for exempt advisers because federal registration as an adviser is one of the conditions of the blanket exemption.

[44] Rule 206(3)-1 exempts advisers which are also registered broker-dealers from the prohibitions of section 206(3) under certain conditions. As proposed, a new paragraph would be added to the rule exempting advisers exempt from registration under rules 203(b)(1)-1 or 203(b)(3)-2.

[45] The Model Act (section 102(a)(3)) and Model Rules (Rule 102(f)-2) contain provisions very similar to Section 206(3) of the Act and rules 206(3)-1 and 206(3)-2.

§ 275.203(b)(3)-2 Exemption from registration for certain state registered advisers with limited amount of clients and assets under management.

(a) Section 203(a) of the Act [15 U.S.C. 80b-3(a)] shall not apply to any investment adviser which is registered as an investment adviser in each State in which it does business: Provided, that, during all period in which the adviser relies on the exemption provided by this rule it:

(1) Has had, during the course of the preceding twelve months, no more than 25 clients:

(2) Does not act as an investment adviser to any investment company registered or required to be registered under the Investment Company Act of 1904 [15 U.S.C. 80a-1 *et seq.*], or to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a-53], and has not withdrawn its election;

(3) Has managed, on a discretionary or non-discretionary basis, securities portfolios with an aggregate fair market value of not more than one million dollars at the end of the adviser's last fiscal year; and

(4) Does not have custody or possession of any funds or securities in which any client has any beneficial interest.

(b) For purposes of this rule, an investment adviser has custody or possession if it holds clients' funds or securities directly or indirectly, has any authority to obtain possession of them, or has the ability to appropriate them.

2. By amending § 275.204-2 by revising paragraph (a) introductory text as follows:

§ 275.204-2 Books and records to be maintained by investment advisers.

(a) Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with its business as an investment adviser (other than one exempted from registration pursuant to section 203(b) of the Act [15 U.S.C. 80b-3(b)] or rules 203(b)(1)-1 [17 CFR 275.203(b)(1)-1] or 203(b)(3)-2 [17 CFR 275.203(b)(3)-2] that does not register under Section 203 of the Act) shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

* * * * *

3. By amending § 275.206(3)-1 by revising the section heading redesignating paragraphs (a) and (b) (including the note) as paragraphs (a)(1) and (a)(2), respectively, revising newly redesignated (a)(2), and adding a new paragraph (b) as follows:

§ 275.206(3)-1 Exemption of certain investment advisers.

* * * * *

(a)(2) For purpose of this paragraph (a), publicly distributed written materials are those which are distributed to 35 or more persons who pay for such materials, and publicly made oral statements are those made simultaneously to 35 or more persons who pay for access to such statements.

* * * * *

(b) An investment adviser exempt from registration pursuant to rules 203(b)(1)-1 [17 CFR 275.203(b)(1)-1] or 203(b)(3)-2 [17 CFR 175.203(b)(3)-2] that does not register under section 203 of the Act [15 U.S.C. 80b-3] shall be exempt from section 206(3).

4. By amending § 275.206(4)-1 by adding a new paragraph (c) to read as follows:

§ 275.206(4)-1 Advertisements by investment advisers.

* * * * *

(c) This rule shall not apply to an investment adviser exempt from registration pursuant to rules 203(b)(1)-1 [17 CFR 275.203(b)(1)-1] or 203(b)(3)-2 [17 CFR 275.203(b)(3)-2] that does not register under section 203 of the Act [15 U.S.C. 80b-3].

5. By amending § 275.206(4)-3 by adding a note after paragraph (a)(1)(i) to read as follows:

§ 275.206(4)-3 Cash payments for client solicitations.

* * * * *

Note: An investment adviser exempt from registration pursuant to section 203(b) of the Act: [15 U.S.C. 80b-3(b)] or rules 203(b)(1)-1, [17 CFR 275.203(b)(1)-1] or 203(b)(3)-2, [17 CFR 275.203(b)(3)-2] thereunder that does not register under section 203 [15 U.S.C. 80b-3] of the Act is not required to comply with this rule.

* * * * *

6. By amending § 275.206(4)-4 by adding a new paragraph (g) after the note to paragraph (f) to read as follows:

§ 275.206(4)-4 Financial and disciplinary information that investment advisers must disclose to clients.

* * * * *

(g) This rule shall not apply to an investment adviser exempt from registration pursuant to rules 203(b)(1)-1 [17 CFR 275.203(b)(1)-1] or 203(b)(3)-2 [17 CFR 275.203(b)(3)-2] that does not register under section 203 of the Act [15 U.S.C. 80b-3].

By the Commission.

September 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21788 Filed 9-22-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-26-88]

Public Hearing on Proposed Regulations; Nonaccrual-Experience Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the nonaccrual-experience method of accounting.

DATES: The public hearing will be held on Thursday, December 1, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by November 17, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, *Attn:* CC:LR:T (LR-26-88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 448(d)(5) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Friday, April 15, 1988 (53 FR 12534).

The rules § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday,

November 17, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-21832 Filed 9-22-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-88-32]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Treasure Island, the Coast Guard is considering a change to the regulations governing the Treasure Island Causeway drawbridge by requiring advance notice for opening be given during certain periods. This proposal is being made because of a lack of requests to open the bridge at night. This action would relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 7, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming at (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The draw presently opens on signal, except that from 3 p.m. to 6 p.m. Monday through Friday, and 11 a.m. to 6 p.m. Saturdays, Sundays, and Federal Holidays, the draw opens at 15 minute intervals. In a recent 12 month period there was an average of less than 1 request each evening for opening between 11 p.m. and 7 a.m. This proposal would require a 10 minute advance notice for opening, between 11 p.m. and 7 a.m. Notification would be given by telephone or radiotelephone to the Treasure Island Causeway toll booth station which is attended 24 hours per day. The proposed rule would meet the reasonable needs of navigation considering the minimal number of requests for opening during the hours of 11 p.m. and 7 a.m.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because there are few openings during the proposed advance notification period. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Part 117 is proposed to be amended by revising § 117.287(g) to read as follows:

117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 3 p.m. to 6 p.m. Monday through Friday, and from 11 a.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

* * * * *

Dated: September 12, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 88-21715 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Business Reply Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend existing postal regulations on paper stock requirements for business reply cards processed under the automated Business Reply Mail Accounting System. The proposal would add a five percent tolerance to minimum basis weight specifications in order to respond to concerns of interested mailers, while

still meeting the requirements for automated processing of these cards.

DATE: Comments must be received on or before October 24, 1988.

ADDRESS: Written comments on the proposal should be directed to Director, Office of Classification and Rates Administration, Room 8430, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5360.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268-5311.

SUPPLEMENTARY INFORMATION: On March 28, 1988 the Postal Service published a final rule in the **Federal Register** implementing changes in postal classifications, rates and fees. 53 FR 9888-9943. As part of these implementing regulations, the Postal Service revised section 917.622 of the Domestic Mail Manual (DMM) to set forth minimum and maximum thickness and paper basis weight requirements for business reply cards eligible for the new reduced fee for pre-barcoded, automation-compatible business reply mail (BRM). 53 FR 9940. Interested persons were invited to submit written comments concerning the implementing regulations by May 3, 1988.

The reduced fee for this pre-barcoded BRM is based on the Postal Service's capability to process this mail through the Business Reply Mail Accounting System (BRMAS). BRMAS provides an automated method of processing and rating BRM in which each mail piece is preprinted with a nine-digit Zip Code barcode which identifies the type of BRM (card, one- or two-ounce letter), the applicable postage rate and the BRM permit holder. All pieces must be prebarcoded and machinable so that they may be processed through bar code sorters at automated postal facilities. A software program provides the capability for the bar code sorter to read the address of the BRM, calculate the appropriate postage and fees, and print an itemized bill for each permit holder. Participating mailers whose mail pieces meet specific machinability, readability, and addressing criteria obtain the reduced fee for the return of their cards and letters under this program.

Because BRM cards that are too flimsy tend to get rejected by automated equipment and must be processed manually, the Postal Service adopted implementing regulations which require that BRMAS card stock meet minimum and maximum thickness and paper basis weight specifications (DMM 917.622). This regulation requires that cards must be printed on paper stock with a minimum basis weight of 75 pounds for 500 sheets measuring 25 inches by 38 inches, and have a thickness of at least .007 inch and not more than .011 inch, with the proviso that items more than .0095 inch thick are charged the letter rate of postage. The regulation also permits mailers to continue to distribute existing paper stock, meeting the minimum thickness requirement but not meeting the minimum basis weight, until October 1, 1988.

The Postal Service received twenty-eight comments from paper companies and mailers regarding these BRMAS requirements. All were in general agreement with the concept of establishing a basic requirement for machinable card stock. However, twenty-five commenters expressed some concern about the specific requirement and asked that the Postal Service re-evaluate it. Paper manufacturers expressed concern regarding their ability to manufacture and supply the specified weight paper stock, while BRM users were concerned about the additional cost of the paper.

Based on these comments, additional testing of manufacturer supplied card stock by the Automation Division, Postal Service Engineering Support Center, and a review of the standards used by the Government Printing Office in ordering paper, the Postal Service is proposing a modification to the current requirements. If adopted, this proposal would retain the 75 pound paper basis weight requirement, but would provide for manufacturing flexibility by adopting the Government Printing Office approach of allowing a plus or minus 5 percent tolerance. Thus, the proposal sets a minimum requirement that none of the paper can have a basis weight of less than 71.25 pounds. The Postal Service believes that this change should satisfy the economic concerns of manufacturers and mailers without significantly reducing the Postal Service's capability to process this mail through automation. Additionally, the Postal Service proposes to adopt a prohibition, taken from Government Printing Office specifications, that the paper stock must be free from groundwood and unbleached pulp. This provision will make it clear that the kind of paper used in newspapers cannot be used to manufacture BRMAS cards. In consideration of this proposal, the October 1, 1988 deadline for mailer compliance is being extended until January 1, 1989, pending the publication of a final rule.

The Postal Service also proposes to restate that the maximum thickness requirement for BRMAS cards is 0.0095 inch. Cards larger than 4¼ inches in height, 6 inches in length, or 0.0095 inch in thickness are not eligible for the post card rate of postage and are not required to meet the provisions in section 917.622 for BRMAS cards. Cards thicker than 0.0095 inch are charged the regular First-Class letter rates, that the proposed rule clarifies that they must comply with the BRMAS provisions in section 917.611.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553(b),(c)) the Postal Service invites public comments on the following proposed revisions of Part 917 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

In Part 917, amend § 917.622 to read as follows:

PART 917—BUSINESS REPLY MAIL (BRM)

* * * * * * *

917.6 BRMAS Automation Requirements.

* * * * * * *

917.62 Additional Physical Requirements.

* * * * * * *

917.622 Business reply cards prepared under the BRMAS system must be printed on paper stock meeting a standard industry basis weight minimum of 75 pounds, with a five percent tolerance, for 500 sheets measuring 25 inches by 38 inches and must have a thickness of at least 0.007 inch and not more than 0.0095 inch. The paper stock must be free from groundwood and unbleached pulp.

Exception: The Postal Service will permit BRMAS mailers to use their existing paper stock meeting the minimum and maximum thickness requirements but not meeting the minimum basis weight requirements until January 1, 1989.

Note: BRMAS cards exceeding 4¼ inches in height, 6 inches in length, or .0095 inch in thickness, are subject to postage at the regular single-piece rate for matter other than cards in Exhibit 310 (see 322.2 and 322.4), and must comply with 917.611.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-21725 Filed 9-22-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[FRL-3452-7]

Reporting Exemptions for Federally Permitted Releases of Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 19, 1988, the Environmental Protection Agency (EPA) proposed a rule to clarify the federally permitted release exemption from release reporting and liability provisions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLA), as amended. The proposed rule also addressed this exemption from the release notification requirements under Title III of the Superfund Amendments and Reauthorization Act of 1986. Further, the Agency proposed in this rule to make conforming changes to the regulation describing the notification requirements for releases of hazardous substances under section 311 of the Clean Water Act (40 CFR Part 117). Finally, the proposal addressed several issues concerning the applicability of notification requirements under CERCLA to certain types of releases. Today, EPA is extending the comment period on the proposed rule from September 19, 1988 to October 19, 1988.

DATES: Comments must be received on or before October 19, 1988.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are kept in Room LG-100 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1-202/382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2463; or the RCRA/Superfund Hotline, 1-800/424-9356; in Washington, DC, 1-202/382-3000.

The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washingon, DC metropolitan area, the number is 1-202/426-2675.

SUPPLEMENTARY INFORMATION: On July 19, 1988, EPA proposed a rule (53 *FR* 27268) to clarify reporting exemptions for federally permitted releases of hazardous substances (40 CFR Parts 117, 302, and 355). The Agency requested comments on the proposed rulemaking, which were to be received by September 19, 1988.

EPA has received several requests from members of the regulated community for an extension of the comment period to allow time to prepare their responses. The Agency has decided to extend the comment period until October 19, 1988, to give all members of the public adequate time to review and comment fully on the proposed regulation.

Dated: September 19, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator.

[FR Doc. 88-21772 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3452-2]

Ocean Dumping; Proposed Designation of Site; Nome, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two ocean dredged material disposal sites (ODMDS) known as the Western ODMDS and Eastern ODMDS located offshore of Nome, Alaska for the disposal of dredged material removed from the Nome channel and harbor area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material. This proposed site designation is for an indefinite period of time, but the sites are subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATE: Comments must be received on or before November 7, 1988.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Ocean Dumping Coordinator, Region X, WD-138.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest Washington, DC

EPA Region X, 1200 Sixth Avenue, Seattle, Washington

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eight, Portland, Oregon

U.S. Army Corps of Engineers, Alaska District, Building 21-700, Elmendorf AFB, Alaska

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, section 228.4) state that ocean dumping site will be designated by publication in Part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 1461 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established these sites as interim sites. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42

U.S.C. 4321 *et seq.*, (NEPa) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA has prepared a Draft and Final EIS entitled "Environmental Impact Statement (EIS) for Nome, Alaska, Dredged Material Disposal Site Designation". Four reviewers submitted comments on the draft EIS, which EPA assessed and responded to in the final EIS. Comments that could not be appropriately treated as text changes were addressed point by point in the final EIS following the letters of comment. On May 25, 1984, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register** (49 FR 22123). One reviewer submitted comments after the close of the public comment period concerning the potential effects of dredged material disposal on existing mineral leases and mining operations. The comment was considered in preparing this rulemaking notice. Because of the dynamic environment of the two proposed sites, it is unlikely that dredged material disposal would cause a significant adverse effect. Comments were also received after the close of the public comment period from the Corps of Engineers concerning the proposal to de-designate the Western ODMDS. Coordination has continued with the Corps regarding this issue and has resulted in this draft rulemaking notice to designate both sites. Coordination has included the City of Nome.

The action discussed in this Final EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location of ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discussed the need for the action and examines ocean disposal sites and alternatives to the proposed action, including land-based disposal options.

The EIS presents the information needed to evaluate the suitability of ODMDS areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Description

The proposed sites are located adjacent to shore, west and east of the entrance channel to Nome harbor and occupy a total area of about 0.67 square nautical miles. Water depths within the areas range from 1 meter along the shoreline boundary to maximum depths of 11 and 12 meters along the southern boundary of the Western and Eastern ODMDS respectively. The coordinates of the sites are as follows:

The Western ODMDS is located adjacent to and west of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.30 square nautical miles. Its corner coordinates are:

64d 30' 04" N., 165d 25' 52" W.;
64d 29' 18" N., 165d 26' 04" W.;
64d 29' 13" N., 165d 25' 22" W.;
64d 29' 54" N., 165d 24' 45" W.;

The Eastern ODMDS Is located adjacent to and east of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.37 square nautical miles. Its corner coordinates are:

64d 29' 54" N., 165d 24' 41" W.;
64d 29' 45" N., 165d 23' 27" W.;
64d 28' 57" N., 165d 23' 29" W.;
64d 29' 07" N., 165d 24' 25" W.

If at any time disposal operations at either site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in §228.5 of the EPA Ocean Dumping Regulations, and §228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Draft and Final EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing sites have not resulted in substantial adverse effects to living resouces of the ocean or to other uses of the marine environment.

The characteristics of the proposed sites are reviewed below in terms of the eleven factors.

1. Geolographical position, depth of water, bottom topography, and distance from coast. 40 CFR 228.6(a)(1).

Geographical positions and distances from the coast for each site are given above. Water depth at the sites range from 1 to 12 meters. Bottom topography is similar at both sites. Slope gradient is 1:120 to about −13 meters.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases. 40 CFR 228.6(a)(2).

Breeding, spawning, nursery, and/or passage activities of commercially important finfish and shell fish species typical of the Norton Sound all occur on a seasonal basis in or near the proposed sites. The two sites comprise a small portion of the available habitat of the Sound. No unique breeding, spawning, nursery, or passage areas for living resources occur in the sites. Feeding of Gray Whales may reach to within about 770 meters of Nome's shoreline. Anticipated disposal volumes represent about 2 percent of natural annual sediment transport for the Norton Sound area. Accordingly, any impacts would be of very short duration and minor in nature.

3. Location in relation to beaches and other amenity areas. 40 CFR 228.6(a)(3).

Both sites adjoin the shore at their northern boundary. Thus, they are in close proximity to the beaches on either side of the entrance channel to Nome Harbor.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any. 40 CFR 228.6(a)(4).

Sediments from operations and maintenance dredging of the Nome Harbor have been deposited annually in either site since 1923. It is expected that disposal of project sands and silts from the turning basin and entrance channel will continue to occur during summer months at an estimated annual volume of 13,000 cubic yards. The interim sites are immediately adjacent to the dredging areas and their use will minimize transport time. All dredged material disposed at the sites must comply with the requirements of EPA's Ocean Dumping Regulations.

5. Feasibility of surveillance and monitoring. 40 CFR 228.6(a)(5).

Surveillance and monitoring of the sites can be accomplished because of the proximity to shore and the shallow depths of the sites. Monitoring by EPA, the Corps of Engineers, and permittees, as required, will occur as long as the site is used. If evidence of significant environmental effects is found, EPA will take appropriate action to alter or terminate disposal practices at the site(s).

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity. 40 CFR 228.6(a)(6).

Littoral drift will be a primary force causing dispersion of material at the sites. Except for a small portion of their outer limits in mid-summer, the sites are in a single mixed zone. Both sites are in a highly dynamic environment with an estimated 650,000 cubic yards of sediments transported annually under natural conditions. Transport direction appears to be predominantly easterly, but has been interrupted by construction of a 2,600-foot-long breakwater/port facility. Plans exist to increase the length of the breakwater to a total of 3,500 linear feet in the future. Disposal at the eastern or western site would occur to complement littoral drift patterns and prevent significant build-up or erosion of sediments.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). 40 CFR 228.6(a)(7).

The sites have been used for dredged material disposal annually since 1923. There has been no indication that these disposal events have materially altered the characteristics of the sites.

8. Interference with shipping, fishing, recreation, mineral-extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean. 40 CFR 228.6(a)(8).

Ice forms in Norton Sound during the winter months, restricting all commercial and recreational vessel traffic. The sites lie outside the navigation channel. While there is need for navigational coordination during dredging and disposal, these operations are not expected to interfere with commercial shipping in the area. Some restrictions on recreational activities may be necessary in the vicinity of dredging and disposal activities. The sites do not uniquely support fisheries, but commercial and subsistence shellfishing do exist. Accordingly, fishing and fish and shellfish culture could be affected at the site during and immediately after disposal operations. Significant interference with these activities is not expected. No interference with mineral extraction, desalination, areas of special scientific importance, or other legitimate uses of the ocean are anticipated.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys. 40 CFR 228.6(a)(9).

Evaluation of existing information indicates that disposal of dredged sediments from Nome Harbor will have minimal impact on the water quality and ecology of the sites. The area is a dynamic, high-energy environment; water quality parameters (concentrations of dissolved nutrients, trace metals, dissolved oxygen, pH, etc.) and biological characteristics (planktonic and benthic communities) are not expected to be significantly altered by dredging or disposal activities. Temporary reductions in water quality and minor, temporary disruptions to biological communities within the sites during and after disposal will occur.

10. Potentially for the development or recruitment of nuisance species in the disposal site. 40 CFR 228.6(a)(10).

There appears to be little, if any, potential for development or recruitment of nuisance species in the disposal sites.

11. Existence at our in close proximity to the site of any significant natural or cultural features of historical importance. 40 CFR 228.6(a)(11).

There are no known cultural or historical properties in close proximity of the Nome sites that could be affected by disposal activities.

E. Proposed Action

The EIS concluded that either or both of the proposed sites may be appropriately designated for use. The proposed sites are compatible with the general criteria and specific factors used for site evaluation. Designation of the Eastern site was specifically proposed as this site was most frequently used. Because of considerations for littoral drift, which may be affected by the current or proposed to be expanded breakwater, designation of the Western site is also proposed. Determination whether that year's dredged material would go to the Western or Eastern site will be made on a case-by-case basis by the Corps of Engineers, with review by EPA.

The designation of the Western and Eastern ODMDS as EPA approved Ocean Dumping Sites is being published as proposed rulemaking. Management of the sites will be delegated to the Regional Administrator of EPA Region X.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA will make an independent evaluation of the permit application and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a signficant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule

does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Robert S. Burd,

Acting Regional Administrator for Region X.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 28 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) "Nome—West Site and Nome—East Site", and adding paragraphs 36(b) and (37) as two ocean dumping sites for Region X, to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(36) Nome—West Site—Region X.

Location: 64d 30' 04" N., 165d 25' 52" W.; 64d 29' 18" N., 165d 26' 04" W.; 64d 29' 13" N., 165d 25' 22" W.; 64d 29' 54" N., 165d 24' 45" W.

Size: 0.30 square nautical miles.

Depth: Ranges from 1–11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging. Preference will be given to placing any material in the inner third of the site to supplement littoral drift, as needed.

(37) Nome—East Site—Region X.

Location: 64d 29' 54" N., 165d 24' 41" W.; 64d 29' 45" N., 165d 23' 27" W.; 64d 28' 57" N., 165d 23' 29" W.; 64d 29' 07" N., 165d 24' 25" W.

Size: 0.37 square nautical miles.

Depth: Ranges from 1–12 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging.

[FR Doc. 88–21773 Filed 9–22–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

Use of Electronic Data Interchange To Document and Pay Transportation Bills

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend the Federal Property Management Regulations to permit Federal agencies to electronically transmit carrier billings and backup documentation for freight and passenger transportation services as an alternative to issuing the hard copy standard forms (SF's) prescribed in 41 CFR 101–41. This regulation will reduce paperwork and encourage implementation of electronic data interchange Governmentwide.

DATE: Written comments must be received by no later than 4:00 p.m. October 24, 1988.

ADDRESS: Comments should be sent to the General Services Administration (FWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786–3065 or FTS 786–3065.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Paperwork Reduction Act of 1980

This Notice of Proposed Rulemaking does not specify the format of the data which must be supplied by the carrier thereby allowing maximum flexibility for the industry and Government agency to develop standards for electronic data interchange (EDI). Nevertheless, it is anticipated that data collected from carriers will follow the guidelines proposed and utilized by industry as the standard for use of EDI in transportation transactions; namely, the Transportation Data Coordinating Committee's (TDCC) 210 Transaction Set, found in the TDCC publication entitled "Volume III, Motor Industry Applications of the United States Electronic Data Interchange Standards."

The data elements provided by the carrier in invoicing under the 210 Transaction Set are acceptable to the General Services Administration as a system providing sufficient documentation to audit, provided that the Shipment Identification Number (SID) block contains the Government bill of lading (GBL) number of the shipment. However, since the Government provides the carrier with the GBL number, no additional data collection is required from the carrier. The SID is data already included in the 210 Transaction Set.

Concomitantly, in the hard copy arena, the information collection required from the carrier by the Public Voucher for Transportation Charges (SF 1113) and the GBL (SF 1103) or the GBL-Privately Owned Personal Property (SF 1203), collectively referenced as the GBL, is less burdensome than the collection requirements imposed by the 210 Transaction Set.

The carrier must initiate the SF 1113 and provide data on it, but it may include up to 25 attached GBL's. Some of the information is within the carrier's scope; for example, its Standard Carrier Alpha Code, the address to which the Government will remit payment, and the date of billing. This type of information is either mandated in the 210 Transaction Set or is provided by the carrier to commercial shippers in ordinary hard copy freight bills. Other types of information, for example, the GBL number and "bill charges to" addressee, are provided by the Government and derived from the GBL. Likewise, this type of information is either required by the 210 Transaction Set or is provided by the carrier to its commercial shipper in ordinary hard copy freight bills.

While the carrier is responsible for the accuracy and completion of the GBL, the Government provides most of the information on the GBL before tendering it to the carrier. The GBL number is conspicuously preprinted on the GBL. Although there have been some cases where a procuring Government agency failed to specify the "bill charges to" address (less than 1% of the time), Government agencies are required to provide this data. The carrier merely transcribes this address from block 13 of

the SF 1103, for example, and places the information in the upper left hand corner of the SF 1113. The 210 Transaction Set allows not only billing address information, but also bank identification information. Other blocks on the GBL are also generally completed by the Government but require no transcription of information to the SF 1113; among these are, Route Order/Release Number; Appropriation Chargeable; Marks and Annotations; and Seal Numbers.

The carrier would have to transcribe the total claimed on the SF 1113, but this is also required by the 210 Transaction Set.

In summary, the only item that the carrier has to add to the SF 1113 which is not specifically required, but only generally allowed by the 210 Transaction Set, appears to be the name and address of the "bill charges to" addressee, but this is ordinarily included in commercial freight bills. Therefore, no additional collection burden is imposed on industry either by the Government's adoption of EDI or by the use of the hard copy SF 1113 and GBL.

The collection of information from carriers contained in this regulation has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: GSA Desk Officer.

Regulatory Flexibility Analysis

Since use of EDI will be optional within the discretion of each carrier, this proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis has therefore not been prepared. Comments are invited from small business and other interested parties.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

GSA proposes to amend Part 101–41 as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding §§ 101–41.006, 101–41.007, and 101–41.103 as follows:

Sec.
101–41.006 Electronic data interchange (EDI) records.
101–41.007 EDI policy.
101–41.103 Procedures and standards for utilizing EDI.

3. Section 101–41.002 is amended by adding paragraphs (c) and (d) to read as follows:

§ 101–41.002 Definitions.

* * * * *

(c) "Electronic data interchange" (EDI) means the electronic exchange of transportation information by means of electronic transmission of the information in lieu of the creation of a paper document.

(d) "Signature," in the case of an EDI transmission, means a discreet authenticating code intended to bind parties to the terms and conditions of a contract.

4. Section 101–41.006 is added to read as follows:

§ 101–41.006 Electronic data interchange (EDI) records.

(a) For the purposes of EDI only, a paper or microform record need not be created to satisfy the requirements of this part if the record is initially prepared in a coordinated electronic exchange medium. Each record kept in such a coordinated medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated. This statement shall be executed by the person duplicating the records. The records shall be indexed and retained in such a manner that they are easily accessible and the carrier or the agency shall have the facilities available to locate, identify, and reproduce the records in readable form without loss of clarity.

(b) The transmission of records between the agency, the carrier, and the General Services Administration may be in an electronic media.

5. Section 101–41.007 is added to read as follows:

§ 101–41.007 EDI policy.

When mutually agreeable to the procuring agency and the participating carrier, authorization is granted to use EDI for the procurement of transportation services, provided that there are sufficient procedures to safeguard the integrity of the billing and payment process. These procedures must include use of a letter of agreement between the parties which contractually binds each carrier participating in the electronic exchange to all of the requirements of Part 101–41 with the exception of the forms being used. An authenticating signature will be used in each transaction as the equivalent of a signature to certify receipt, delivery of goods, and that the bill accurately reflects the services provided and that the carrier charged the lowest charges available for the service. The use of national standards in the electronic exchange is encouraged.

Subpart 101–41.1—General

6. Section 101–41.103 is added to read as follows:

§ 101–41.104 Procedures and standards for utilizing EDI.

(a) The media, timing, and precise format of transmissions of data shall be coordinated in advance with GSA's Office of Transportation Audits.

(b) The minimum data required for transmission is that data specified in Part 101–41 which GSA must have to carry out its responsibilities.

Dated: September 2, 1988.

Leonard Yonkler,

Acting Commissioner, Federal Supply Service.

[FR Doc. 88–21834 Filed 9–22–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Astragalus osterhoutii (Osterhout milkvetch) and Penstemon penlandii (Penland beardtongue)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that a public hearing will be held in Kremmling, Colorado, on the proposed determination of endangered status for *Astragalus osterhoutii* (Osterhout milkvetch) and *Penstemon penlandii* (Penland beardtongue) and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on October 13, 1988, from 7 p.m. to 9 p.m. Comments on the proposal must be received by October 24, 1988.

ADDRESS: The public hearing will be held at the Colorado State University

Extension Hall, Eleventh and Eagle, Kremmling, Colorado. Written comments and materials should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 730 Simms Street, Suite 290, Golden, Colorado 80401. Comments and materials received will be available for public inspection during normal business hours by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John L. Anderson, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529 25½ Road, Suite B-113, Grand Junction, Colorado 81505 (303-243-2778 or FTS 322-0351).

SUPPLEMENTARY INFORMATION:

Background

Astragalus osterhoutii and *Penstemon penlandii* are herbaceous perennial wildflowers endemic to Middle Park, a sagebrush basin in north-central Colorado. They are restricted to badlands of shale and of siltstone sediments at 2,250-2,350 meters (7,450-7,700 feet) elevation within 8 miles to the north and east of the town of Kremmling. The habitat of both plants is fragile and susceptible to damage from off-road vehicle use.

The largest population of the *osterhout milk-vetch* occurs on shale benches along Muddy Creek, the site of the proposed Muddy Creek Reservoir. While the lower edges of this population would be inundated by the proposed reservoir, there would be additional impacts to the remainder of the population from associated development and recreational use of the reservoir and the surrounding beaches.

The single Penland beardtongue site, 7 miles east of the dam site, is a fragile habitat vulnerable to off-road vehicle damage. Off-road vehicle damage would likely increase if the proposed reservoir is constructed.

The Service proposed a determination of endangered status for *Astragalus osterhoutii* and *Penstemon penlandii* in the **Federal Register**, July 5, 1988 (53 FR 25181). The period for submission of public comments on the proposal was originally scheduled to end September 6, 1988.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested, within 45 days of the publication of the proposed rule. On August 15, 1988, the Service received letters from Roland C. Fischer, Secretary-Engineer of the Colorado River Water Conservation District, Glenwood Springs, Colorado, and W.A. Needham, Chairman of the Grand County Board of Commissioners, Hot Sulphur Springs, Colorado, requesting a public hearing on the proposal to determine endangered status for *Astragalus osterhoutii* and *Penstemon penlandii*. The Service has scheduled this hearing for October 13, 1988, from 7:00 p.m. to 9:00 p.m. at the Colorado State University Extension Hall, Kremmling, Colorado. Those parties wishing to make statements for the record should have a copy of their statements available to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period on the proposal. Written comments may now be submitted until October 24, 1988, to the Service's Office in the "**ADDRESS**" section.

Author:

The primary author of this notice is John L. Anderson, botanist (see "**ADDRESS**" section above).

Authority: The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 19, 1988.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 88-21818 Filed 9-22-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 185
Friday, September 23, 1988

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

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: November 9–11, 1988.

Time: 8:00 a.m.–5:30 p.m., November 9–10, 1988; 8:00 a.m.–12:00 Noon, November 11, 1988.

Type of meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will review research and extension programs which are representative of thrusts in (1) new users and new products, (2) new biological tools, (3) reducing unit costs of production, (4) water/air quality and resource conservation. The UAB will also visit a privately owned and operated grain elevator and cob processing plant to learn what is happening to U.S. grain quality and to assess the pot ential for biomass products.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board, Room 432–A, Adminstration Building, U.S. Department of Agriculture, Washigton, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 15th day of September 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–21783 Filed 9–22–88; 8:45 am]

BILLING CODE 3410–22–M

Food Safety and Inspection Service

[Docket No. 88–021N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on Sunday and Monday, October 30 and 31, 1988, in Monterey, California, from 9:00 a.m. to 5:00 p.m., at the Hyatt Regency Monterey, One Old Golf Course Road, Monterey, California. The Committee provides advice and recommendations to the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e)). The October 1988 meeting will include a discussion of the following topics:

1. Improved Processing Inspection (Discretionary Inspection)
2. Pizza Proposal
3. Exemption Policy (Retail and Custom Exempt)
4. Microbiological and Residue Issues
5. "Exceeds USDA Standards"
6. Consumer Outreach Activities
7. Streamlined Inspection for Cattle
8. Puerto Rico Study
9. Verified Production Control

The meeting is open to the public on a space available basis. Comments of interested persons may be filed prior to or following the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contracting Ms. DeRoever on (202) 447–3002.

Done at Washington, DC, on September 16, 1988.

Lester M. Crawford,

Administrator.

[FR Doc. 88–21784 Filed 9–22–88; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Clarification of final policy.

SUMMARY: On July 15 at 53 FR 26807, the Forest Service gave notice that it was issuing amendments to Forest Service Manual Chapter 1920-Land and Resource Management Planning and four chapters of the accompanying Forest Service Handbook 1909.12 effective August 1, 1988. Subsequent inquiries from field personnel have identified a need for further clarification on when to implement amended planning direction. This notice provides the necessary clarification.

EFFECTIVE DATE: This policy is effective upon October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Randy Sheffield, Land Management Planning Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 382–8017.

SUPPLEMENTARY INFORMATION: Forest Service policy on when units are to implement changes in planning direction issued through the Agency's directive system is set forth in Forest Service Manual section 1920.3 as follows:

Regional guides and forest plans begun prior to issuance of this direction are exempt from the requirements of this chapter until such time as a significant amendment to the regional guide is prepared or, for forest plans, until the next scheduled revision."

Similar language is found in the introductory paragraph to Forest Service Handbook 1909.12.

This policy was adopted in 1984 to prevent serious disruption in preparation of forest plans already underway. The Agency felt it would be counterproductive to require planners to revise their preparation and documentation approach to incorporate new procedural requirements. Without an exemption from new planning direction—which at that time was primarily limited to preparation and

documentation requirements—forest plans and regional guides would be subject to continual revision.

This policy statement remained unchanged in the July 1988 amendments to FSM 1920 and FSH 1909.12, which primarily issued first time direction on implementation, monitoring, and evaluation of forest plans. Subsequently, a number of field personnel have rightly pointed out that the exemption from implementation of changes in planning direction is inappropriate when applied to implementation, monitoring, and evaluation activities. These are prospective and continuing planning steps. Units should be able to integrate the new policies and procedures governing these activities without disruption or inefficiency in ongoing activities.

Accordingly, the following clarification on implementation of changes in planning direction, will be issued to Forest Service personnel as an amendment to FSM 1920.3:

8. Implement changes in Service-wide planning direction in this chapter and the accompanying FSH 1909.12 as follows:

a. *Changes in direction governing preparation and documentation of regional guides and forest plans.* Implement changes in preparation and documentation requirements when a significant amendment to a regional guide is to be prepared or when a forest plan is to be revised, unless otherwise specifically directed in an interim directive. Do not interrupt or redirect preparation and documentation activities begun prior to issuance of a new planning directive, unless the new direction can be implemented, in whole or in part, with ease and efficiency and without disrupting established planning schedules and activities.

b. *Changes in all other planning direction.* Implement changes in direction governing forest plan implementation, amendment, monitoring and evaluation, and study of wilderness and wild and scenic river suitability upon issuance of a new directive amendment.

A corollary change is also being made to FSH 1909.12.

Date: September 14, 1988.

George M. Leonard,

Associate Chief, Forest Service.

[FR Doc. 88-21850 Filed 9-22-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Resolution and Order Approving the Application of the Dallas/Fort Worth International Airport Board for a Special-Purpose Subzone in Athens, Texas

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, filed with the Foreign-Trade Zones Board (the Board) on November 9, 1987, and amended on January 29, 1988, requesting special-purpose subzone status for the television manufacturing plant of Harvey Industries, Inc. (HII), located in Athens, Texas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if a restriction is adopted requiring that full Customs duties be paid on foreign television picture tubes, approves the application subject to the condition that HII be required to elect privileged foreign status (19 CFR 146.41) on all such picture tubes used at the facility that are sourced abroad.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone in Athens, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone No. 39, has made application (filed November 9, 1987, FTZ Docket 32–87, 52 FR 44620, and amended on January 29, 1988, 53 FR 3411) in due and proper form to the Board for authority to establish a special-purpose subzone at the television manufacturing plant of Harvey Industries, Inc., located in Athens, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

Now, therefore, in accordance with the application filed November 9, 1987, the Board hereby authorizes the establishment of a subzone at the television manufacturing plant of Harvey Industries, Inc., in Athens, Texas, designated on the records of the Board as Foreign-Trade Subzone No. 39A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and to those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 16th day of September, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-21822 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-029]

Fishnetting of Man-Made Fibers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The review covers eight manufacturers and/or exporters and one third-country reseller of this merchandise to the U.S. and generally the period June 1, 1986 through May 31, 1987.

Two firms had no shipments to the U.S. during the period. We used the best information available for seven firms which either failed to respond or provided inadequate responses to our original questionnaire or to our requests for additional information.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 10264) the final results of its last administrative review of the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). The petitioner and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published notices of initiation on July 9, 1986 (51 FR 24883) and July 17, 1987 (52 FR 27036). The Department has now conducted those administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, currently classifiable under item numbers 355.4520 and 355.4530 of the Tariff Schedules of the United States Annotated and Harmonized System numbers 5608.11.00 and 5608.90.10.

The review covers eight manufacturers and/or exporters and one third-country reseller of Japanese fishnetting of man-made fibers to the U.S. and generally the period June 1, 1986 through May 31, 1987.

Two firms had no shipments to the U.S. during the period. One firm did not respond to our original questionnaire and two firms failed to respond to our requests for additional information. Four firms provided inadequate responses to our requests for additional information. Specifically, Nippon Kenmo failed to submit computer tapes of its U.S. and home market sales or request an exemption from that requirement, provided no explanations or worksheets to support its claimed U.S. expenses, provided an incomplete listing of home market and third-country sales, and refused to explain or quantify differences between U.S. and home market merchandise. For Mitsui's sales of fishnetting produced by Hakodate, Mitsui also failed to submit computer tapes of its U.S. and third-country sales or request an exemption from that requirement; in its claimed adjustments for differences in U.S. and Canadian merchandise it did not provide data on direct factory overhead; it did not quantify any cost differences between U.S. and Icelandic merchandise; and it did not furnish individual sales listings for either Canada or Iceland. Hakodate failed to provide a complete listing of indirect sales to the U.S., provided an inadequate explanation of claimed U.S. and home market expenses, did not provide data on direct factory overhead in its claimed adjustments for U.S. cost differences, failed to adequately explain and quantify the differences in payment terms on U.S. and home market sales, and did not provide dates of payment or worksheets for accounts receivable on Canadian and Icelandic sales. Momoi failed to submit computer tapes of its U.S. and home market sales or request an exemption from that requirement, provided an incomplete listing of home market sales and, though requested, provided inadequate information concerning physical differences between U.S. and home market merchandise based on cost differences by type of fishnetting (direct materials, direct labor, and direct factory overhead). For these firms we used the best information available for appraisement and cash deposit purposes, which was the highest rate from the last review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amikan	06/01/86-05/31/87	18.30
Hakodate	05/01/86-05/31/87	18.30
Hakodate/Mitsui	06/01/83-05/31/86	18.30
Momoi	06/01/86-05/31/87	18.30
Morishita	06/01/86-05/31/87	[1] 12.66
Morishita/Mitsui	06/01/86-05/31/87	[1] 18.30
Nagaura Seimosho	06/01/82-05/31/84	18.30
Nippon Kenmo	06/01/86-05/31/87	18.30
Third-Country Reseller/(Country)		
Puretic Fishing Gear/(Canada)	06/01/86-05/31/87	18.30

[1] No shipments during the period; margin from last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 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.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit

of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese fishnetting of man-made fibers. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 18339, April 30, 1984, and 53 FR 10264, March 30, 1988).

For any future entries of this merchandise from a new manufacturer/exporter not covered in this or prior administrative reviews whose first shipments of Japanese fishnetting or man-made fibers occurred after May 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese fishnetting of man-made fibers 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 19 CFR 353.53a.

Date: September 9, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-21823 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-063]

Certain Iron-Metal Castings From India; Amendment to Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Amendment to final results of Countervailing Duty Administrative Review in accordance with decision upon remand.

SUMMARY: The Court of International Trade has upheld remand results submitted by the Department of Commerce on July 8, 1988. The remand involved the final results of the administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1984 through December 31, 1984. As a result of the remand decision, the Department has determined the net subsidy to be 7.31 percent *ad valorem*.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Swell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1986, the Department of Commerce ("the Department") pubished in the **Federal Register** (51 FR 45789) the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India. The review covered the period January 1, 1984 through December 31, 1984. The results of that review were challenged in the Court of International Trade ("CIT") by Indian exporters, RSI (India), Pvt. Ltd., *et al.* Pursuant to an injunction issued on January 20, 1987, to continue suspension of liquidation of entries of the subject merchandise pending final judgment of the CIT. On April 27, 1988, the CIT in *RSI India Pvt., Ltd., et al v. United States*, Slip Op. 88-49, remanded the final results of review to the Department to recalculate the net IPRS benefit received by RSI. On July 8, 1988, we submitted the final results of the remand to the CIT. The remand results were affirmed in Slip Op. 88-110 (August 22, 1988).

Remand Results

Pursuant to the remand in *RSI (India)*, the Department was required to recalculate the net IPRS benefit received by RSI. The CIT held that the Department's methodology did not reflect factual information contained in the administrative record and that the Department should recalculate RSI's net benefit by allocating benefits received under the IPRS over the export value of all castings to all markets.

We divided RSI's total IPRS benefit received for all castings by its total value of all castings exported to all markets to recalculate RSI's net benefit from this program. We then weight-averaged this rate and the rates from the IPRS rebate previously determined for the other companies under review by each company's share of exports of the subject merchandise to the United States. The weighted-average rate for the IPRS is 6.54 percent *ad valorem* and the new weighted-average country-wide rate for all programs for both assessment and cash deposit purposes is 7.31 percent *ad valorem*.

As a result of the remand decision, we are amending the final results of the administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1984 through December 31, 1984 to incorporate the reasoning and calculations set forth above. Accordingly, we determined that the net subsidy during the period of review is 7.31 percent *ad valorem*.

The Department will instruct the Customs Service to assess countervailing duties of 7.31 percent of the f.o.b. invoice price on all shipments of the subject merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 7.31 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: September 14, 1988.

[FR Doc. 88-21825 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-803]

Initiation of Countervailing Duty Investigation; Malleable Iron Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of malleable iron pipe fittings (pipe fittings) as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties of grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before November 23, 1988.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 and (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On August 30, 1988, we received a petition in proper form from the Cast Iron Pipe Fittings Committee, Washington DC, filed on behalf of the U.S. industry producing malleable iron pipe fittings. CIPFC comprises four of the five domestic manufacturers of malleable iron pipe fittings and has received support for its petition from the one U.S. non-CIPFC manufacturer. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters of pipe fittings in Thailand receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. The merchandise subject to this investigation is dutiable and therefore, in accordance with section 303(b) of the Act, petitioner is not required to allege that, and the ITC is not required to determine whether, imports of these products from Thailand materially injury, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on pipe fittings from Thailand and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of pipe fittings in Thailand as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before November 23, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department through the end of this year. A reference copy of the HTS schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs Offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are malleable iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process, other than with grooves, classified under TSUSA category 610.7400 and classified under HTS category 7307.19.90.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Thailand which allegedly confer bounties or grants on manufacturers, producers, or exporters of pipe fittings in Thailand. We are initiating an investigation of the following programs:

- Export Packing Credits.
- Rediscount of Industrial Bills.
- Electricity Discount for Exporters.
- Tax Certificates for Exports.
- Investment Promotion Act.

—Income Tax Exemption

—Goodwill and Royalties Tax Exemption

—Tax Deduction for Dividends

—Double Deduction of Foreign Marketing Expenses and Foreign Taxes

- Export Processing Zones.
- International Trade Promotion Fund.

Although not specifically alleged by petitioner, we are also investigating whether the manufacturers, producers or exporters of pipe fittings in Thailand receive countervailable benefits under the following programs:

- Reduced Business Tax for Producers of Intermediate Goods for Export Industries.
- Holding of Foreign Currency Accounts Under the Investment Promotion Act.

This notice is published pursuant to section 702(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

September 19, 1988.

[FR Doc. 88-21826; Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-086]

Spun Acrylic Yarn From Japan; Final Results of Antidumping Duty, Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review and revocation in part.

SUMMARY: On June 8, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 21507) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on spun acrylic yarn from Japan (45 FR 24127, April 8, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1988, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on spun acrylic yarn from Japan. The review covers eight exporters of this merchandise and the period April 1, 1986 through March 31, 1987.

We gave interested parties an opportunity to comment on our preliminary results and tentative determination to revoke in part. We received no comments. We also determined that there were no shipments of this merchandise to the United States by the firms during the period April 1, 1987 through the date of the tentative determination to revoke in part. We advised the petitioner that there were no shipments and we provided an additional opportunity to comment and we received comments.

Scope of the Review

Imports covered by the review are shipments of spun acrylic plied yarn for machine knitting, currently classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated (TSUSA) and 5509.32.00 of the Harmonized System.

The review covers eight exporters of Japanese spun acrylic yarn to the United States and the period April 1, 1986 through March 31, 1987.

Analysis of Comments Received

We received comments from the petitioner, the American Yarn Spinners Association (AYSA).

Comment 1: AYSA submitted import statistics for the TSUSA categories covered by the order for the period April 1987 through May 1988. The Department has an obligation to verify this information to determine if the imported merchandise is subject to the order.

Department's Position: The Department reviewed the import statistics provided by AYSA as well as import statistics covering 1986 and found that there were no significant changes in quantities under the applicable TSUSA classifications. The TSUSA classifications covering spun acrylic yarn are "basket" provisions and include a variety of products not subject to the antidumping duty order. As stated in our preliminary results of review, our Tokyo office verified that there were no shipments of this merchandise from the 5 firms seeking revocation during the 4 years prior to the tentative revocation. Moreover, the Customs Service has verified that there have been no shipments by these firms for the period April 1, 1986 through June 8, 1988, the date of our tentative revocation.

Comment 2: AYSA suggests that the Department require all exporters to state in writing that they have not transshipped spun acrylic yarn through third countries to the United States.

Department's Postition: As stated in our last notice of final results of administrative review published in the **Federal Register** on November 16, 1987 (52 FR 43781), the Department notified the Customs Service of the possibility of transshipments. No transshipments have been reported by the Customs Service. We see no need to revisit this question absent new information giving some basis to suspect a change in trading patterns since the last time this concern was raised.

Final Results of Review and Revocation in Part

Based on our analysis, the final results of review are unchanged from those presented in the preliminary results, and we revoke the order for this merchandise exported to the United States by C. Itoh and Co., Ltd., Gunze Sangyo, Inc., Nichimen Corp., Nissho Iwai Corp., and Teijin Shoji Kaisha, Ltd.

For the remaining firms reviewed, we determine that the following margins exist:

Manufacturer/exporter	Margin (percent)
Itoman & Co., Ltd.	[1] 18.33
Mitsubishi Corp.	[1] 20.26
Mitsui & Co., Ltd.	[2] 0

[1] No shipments during the period; margins from fair value investigation.

[2] No shipments during the period; margin from last review in which there were shipments.

For the reasons set forth in the preliminary results and tentative determination to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by C. Itoh and Co., Ltd., Gunze Sangyo, Inc., Nichimen Corp., Nissho Iwai Corp., and Teijin Shoji Kaisha, Ltd. this partial revocation applies to all unliquidated entries of this merchandise exported by C. Itoh, Gunze Sangyo, Nichimen, Nissho Iwai or Teijin Shoji and entered, or withdrawn from warehouse, for consumption on or after June 8, 1988, the date of our tentative determination to revoke with respect to these firms. The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries for these firms.

Further, in accordance with section 751(a)(1) of the Tariff Act of 1930, the Department shall require a cash deposit of estimated antidumping duties for the other firms listed above. For any shipments from the one remaining known manufacturer/exporter not covered by this review, a cash deposit shall be required at the rate published in the final results of the last administrative review for that firm (49 FR 22368, May 29, 1984).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after June 8, 1988 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required.

These deposit requirements are effective for all shipments of Japanese spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the next administrative review.

This administrative review, revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and sections 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: September 19, 1988.

[FR Doc. 88-21824 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-09-M

Applications for Duty-Free Entry of Scientific Instruments; University of Illinois at Chicago

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-068R. *Applicant:* University of Illinois at Chicago, Purchasing Division, P.O. Box, 6998, 833 South Wood Street, Chicago, IL 60680. *Instrument:* Gas Chromatograph/Mass

Spectrometer with Data System, Model MAT 90. *Manufacturer:* Finnigan MAT GmbH, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of January 27, 1988.

Docket No. 88-088R. *Applicant:* U.S. Environmental Protection Agency, MD-33, Research Triangle Park, NC 27771. *Instrument:* Gas Chromatograph/Mass Spectrometer/Data System, MAT 90. *Manufacturer:* Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of February 29, 1988.

Docket No. 88-113R. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Micromass, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Docket No. 88-144R. *Applicant:* University of Minnesota, Department of Aerospace Engineering and Mechanics, 107 Akerman Hall, 110 Union Street SE., Minneapolis, MN 55455. *Instrument:* Bridgman Stockbarger Growth System. *Manufacturer:* Crystalox Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Docket No. 88-245. *Applicant:* University of Colorado, Laboratory for High Voltage Electron Microscopy, Department of Molecular, Cellular and Developmental Biology, Campus Box 347, Boulder, CO 80309. *Instrument:* Goniometer, Objective Lens, Beam Deflector Kit and other Accessories for an Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* These accessories to an existing electron microscope will be used in numerous applications of high voltage electron microscopy to biological materials for basic biomedical research. The projects carried out will include studies of nerves in both sensory systems and the central nervous system; cancerous and normal cells during cell division; the motile apparatus of normal and abnormal sperm; and the structure of embryos as they develop. The objectives of all the investigations are the elucidation of normal biological processes and the understanding of diseased states. *Application Received by Commissioner of Customs:* August 3, 1988.

Docket No. 88-251. *Applicant:* University of Virginia Medical Center, Box 286, Charlottesville, VA 22908. *Instrument:* Stopped-Flow Apparatus. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* Studies of fluorescent dyes which demonstrate changes in fluorescence intensity and/or spectrum in a manner which reflects the environment in which the probe is located. *Application Received by Commissioner of Customs:* August 8, 1988.

Docket No. 88-252. *Applicant:* Oregon State University, College of Oceanography, Oceanography Admin. Bldg. 104, Corvallis, OR 97331-5503. *Instrument:* Electron Probe Microanalyzer, Model CAMEBAX SX-50. *Manufacturer:* Cameca, France. *Intended Use:* Studies of the formation of the various rocks and minerals on Earth, on the Moon and in meteorites and ore deposits. In addition, the instrument will be used in a course entitled "Principles of Electron Microprobe Analysis" which will involve an introduction to the principles and usage of the electron microprobe for analyses of geological materials (rocks and minerals). *Application Received by Commissioner of Customs:* August 8, 1988.

Docket No. 88-253. *Applicant:* Virginia Military Institute, Route 11, Lexington, VA 24450. *Instrument:* Terrain Conductivity Meter, Model EM34-3-DL. *Manufacturer:* Geonics, Ltd., Canada. *Intended Use:* The instrument will be used for educational purposes in a course which will allow students to understand and become familiar with geophysical instruments. *Application Received by Commissioner of Customs:* August 9, 1988.

Docket No. 88-254. *Applicant:* U.S. Geological Survey, 975 W. 3rd Avenue, Columbus, OH 43212. *Instrument:* Ground Conductivity Electromagnetic System & Data Logger, Model EM34-2-DL and EM-55. *Manufacturer:* GISCO, Canada. *Intended Use:* The instrument will be used in investigations to help determine geologic formation materials, mostly combining sand, gravel, and clay. A determination will also be made as to the saturation of the materials and the approximate depth to ground water. Areas of higher specific conductance will also be traced and recorded. These investigations will be conducted to determine the impacts of highway-deicing chemicals, predominantly chloride, on the ground water quality of shallow unconfined aquifers that underlie highways in Ohio, and to determine the salt concentration present in the soil and unsaturated zone. *Application Received by Commissioner of Customs:* August 9, 1988.

Docket No. 88-255. *Applicant:* California State University, Long Beach, Chemistry Department, 1250 Bellflower Blvd., Long Beach, CA 90840. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF-51. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the rates (kinetics) of very fast reactions in solution; specifically, electron-transfer reactions involving transition metal complexes and ions such as the silver(II)—cyclams and the thiones and the iron(III) tris(polypyridine) complexes and amines, and acid catalyzed hydrolysis reactions of several hemi-acetals. The kinetics data obtained will be used to elucidate the reaction mechanistic pathways which are crucial to all chemical reactions. In addition, the instrument will be used for educational purposes in the courses: Chemistry 373 Physical Chemistry Laboratory, Chemistry 496 Undergraduate Research, Chemistry 697 Directed Research and Chemistry 698 Thesis Research. *Application Received by Commissioner of Customs:* August 9, 1988.

Docket No. 88-256. *Applicant:* U.S. Geological Survey, 12201 Sunrise Valley Drive, 954 National Center, Reston, VA 22092. *Instrument:* Gas Isotope Ratio Mass Spectrometer System, Model 251. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used for stable isotope studies including analyses of carbon, nitrogen, oxygen, and sulfur. The overall objective of the investigations is a deduce the geologic processes involved in the formation and distribution of ore deposits. *Application Received by Commissioner of Customs:* August 10, 1988.

Docket No. 88-257. *Applicant:* Arizona State University, Department of Botany, Tempe, AZ 85287-1601. *Instrument:* Electron Microscope System, Model CM12S with Accessories. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for research in the following areas: (a) Maturation and early development in mammalian oocytes, (b) localization of mRNA and cytoskeletal proteins during maturation of Xenopus eggs, (c), redistribution of cell calcium during exocytosis in secretory cells, (d) extracellular coats on sea urchin and amphibian eggs and ultrastructural modifications of these during fertilization, (e) immunocytochemical localization of snake venom myotoxins, and (f) binding and mode of action of bacterial mosquito-larvicidal toxins. *Application Received by Commissioner of Customs:* August 10, 1988.

Docket No. 88-258. *Applicant:* Rensselaer Polytechnic Institute, 110 8th Street, Troy, NY 12180-3590. *Instrument:* Molecular Beam Epitaxy System, Model V90S and V90H. *Manufacturer:* VG Semicon, Ltd., United Kingdom.

Intended Use: The instrument will be used to study the process of molecular beam epitaxy of various metals, semiconductors and insulators onto silicon (Si) and gallium arsenide (GaAs) substrates. The instrument will also be an integral part of the training of graduate students at the Master's and Ph.D. levels. *Application Received by Commissioner of Customs:* August 10, 1988.

Docket No. 88–260. *Applicant:* Centers for Disease Control, Center for Infectious Diseases, 1600 Clifton Road, NE., Atlanta, GA 30333. *Instrument:* High Dose Rate Research Irradiator, Model Gammacell 220. *Manufacturer:* Atomic Energy of Canada Ltd., Canada. *Intended Use:* The instrument will be used for studies on inactivation of infectious virus or virus infected cells to determine the proper dose of each organism that does not destroy antigenicity. The instrument will also be used in radiation safety courses and for individual instruction. *Application Received by Commissioner of Customs:* August 11, 1988.

Docket No. 88–261. *Applicant:* Bard College, Annadale-on-Hudson, NY 12504. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* Studies of the rate of reaction of photochromic compounds (indolospirans) with acid and bases. The instrument will also be used for undergraduate teaching of organic and physical chemistry. *Application Received by Commissioner of Customs:* August 11, 1988.

Docket No. 88–262. *Applicant:* Food and Drug Administration, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892. *Instrument:* Mass Spectrometer, Model BIO ION 20. *Manufacturer:* BIO–ION Nordic AB, Sweden. *Intended Use:* Studies of proteins synthesized by recombinant DNA technology and other high molecular weight biomolecules, such as polysaccharides and polynucleotides, that are not amenable to direct analysis by other mass spectrometric methods. *Application Received by Commissioner of Customs:* August 15, 1988.

Docket No. 88–263. *Applicant:* University of California, Berkeley, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* NMR Spectrometer, Model AM 300wb. *Manufacturer:* Bruker Analytische GmbH, West Germany. *Intended Use:* The instrument will be used for analysis of chemical and biological materials during the following experiments: (a) Ionic osmoregulation and bioenergetics of cyanobacteria, (b) regulation and control of cytoplasmic cellular pH and studies of the acidic compartments in gastric glands, (c) studies of the chemical components and how they change in red blood cells, mitochondria, and liver cells, (d) organic synthesis of new chemical problems for studying biological mechanisms of intracellular signalling. The instrument will also be used for instruction of NMR techniques. *Application Received by Commissioner of Customs:* August 15, 1988.

Docket No. 88–264. *Applicant:* The College of William & Mary in Virginia, Department of Physics, Campus Drive, Williamsburg, VA 23185. *Instrument:* Atomic Hydrogen Source/RF Generator, Model SLEVIN. *Manufacturer:* Leisk Engineering, Ltd., United Kingdom. *Intended Use:* The instrument will be used to produce a beam of atomic hydrogen of sufficient intensity to allow detailed studies of the interaction between atomic hydrogen and selected negative ions. *Application Received by Commissioner of Customs:* August 15, 1988.

Docket No. 88–265. *Applicant:* National Bureau of Standards, Gaithersburg, MD 20899. *Instrument:* Electron Microscope, CM30/STEM with Accessories. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the analysis of asbestos in air. Other uses of the instrument include: (a) Characterization of asbestos reference and proficiency testing materials to be used by program participants, (b) research and development of standard materials and methods for calibration of TEM and analytical electron microscopy; (c) characterization of submicrometer regions of metals, ceramics, composites, and geological materials for a variety of projects, and (d) the study of fundamental interactions of electrons with solids via measurement of elastically and inelastically scattered electrons and x-rays. *Application Received by Commissioner of Customs:* August 16, 1988.

Docket No. 88–266. *Applicant:* Scripps Clinic & Research Foundation, 10666 N. Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Stopped-Flow Spectrofluorimeter System, Model SF–51. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* Studies of proteins, other biomolecules and simple chemical systems. The experiments that will be conducted will include measurement of the microscopic rate and binding constants for antibody- and semisynthetic enzyme-catalyzed reactions by following changes in the absorbence and/or fluorescence properties of the materials undergoing reaction. For the self-assembling cytotoxin project, fast kinetic techniques will be used to study oxime and hydrazone formation, silyl ether hydrolysis as well as binding phenomena. *Application Received by Commissioner of Customs:* August 17, 1988.

Docket No. 88–267. *Applicant:* Xavier University, 3800 Victory Parkway, Cincinnati, OH 45207. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in conjunction with a spectrophotometer for teaching fundamental chemical instrumentation techniques. *Application Received by Commission of Customs:* August 17, 1988.

Docket No. 88–268. *Applicant:* Virginia Institute of Marine Science, College of William and Mary, Gloucester Point, VA 23062. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for applications involving biological specimens—primarily estuarine fish and shellfish and disease agents found in them. The objectives of the investigations are to determine the effects of pollutants on estuarine organisms at the level of the individual cell (ultrastructural level). *Application Received by Commissioner of Customs:* August 17, 1988.

Docket No. 88–259. *Applicant:* Oklahoma State University, Chemistry Department, 105 Physical Sciences I, Stillwater, OK 74078–0447. *Instrument:* Mass Spectrometer, Model ZAB–2SE. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to obtain the following research objectives:

(1) Identification of allelochemicals that mediate communication between plants and other plants, plant-microorganisms and plant-insects.

(2) Identification of reaction products from photochemically induced rearrangements and for elucidating reaction mechanisms by means of daughter ion identification and isotopic studies.

(3) Identification and characterization of organic products produced under liquid-phase high-pressure ambient-temperature conditions.

(4) Identification of unknowns in coal liquids, petroleum and shale oils and for characterization of synthetic intermediates and products to be used for thermodynamic, spectroscopic and separation studies by National Institute for Petroleum and Energy Reserves.

(5) Characterization of intermediates in the biosynthesis of phytealexins.

compounds which may be responsible for plant resistance to bacterial pathogens.

(6) Characterization of complex carbohydrates obtained from plant cell walls after anhydrous HF solvolysis.

(7) Development of techniques for the analysis of peptides by modification of the sample target surface.

In addition, the instrument will be used for educational purposes in graduate research in chemistry.

Application Received by Commissioner of Customs: August 10, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-21827 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Committee, will convene public meetings at the Virgin Isle Hotel, St. Thomas, U.S. Virgin Islands; as follows:

Council—On October 4, 1988, will convene its 64th regular public meeting at 9 a.m., to discuss among other topics the proposal to include highly migratory tunas under the Magnuson Fishery Conservation and Management Act, the Queen Conch Fishery Management Plan (FMP), the first shallow-water reef fish FMP amendment, and other technical and administrative matters related to Council operations. The public meeting will recess at 5:30 p.m., reconvene October 5 to 9 a.m., and will adjourn at 5:30 p.m.

Administrative Committee—On October 3 will convene its public meeting at 2 p.m., to discuss issues related to the Committee's regular administrative operations, and will adjourn at 5 p.m.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; (809) 753-4926.

Date: September 19, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-21786 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda for the public meeting at the Sheraton Hotel, Anchorage, AK, of the North Pacific Fishery Management Council and its advisory entities, as published in the **Federal Register** (53 FR 35345-35346, September 13, 1988), has been amended as follows:

The Council and Advisory Panel members will receive an overview from the Bycatch Committee on proposed bycatch measures for the Bering Sea and Aleutian Islands on September 27, 1988, at 10:30 a.m.

The Bycatch Committee meeting originally scheduled for October 1-4, 1988, has been cancelled; however, available committee members will meet informally on September 29, 1988, at 7 p.m., to discuss Bering Sea herring.

The Council's Crab Management Committee will meet on September 26, 1988, at 7 p.m.; the Council's Halibut Regulatory Amendment Advisory Group also will meet on September 26 at 7 p.m., to review proposals received for allocative regulations for halibut.

Also added to the agenda are a consideration of foreign directed allocations of groundfish and a possible emergency rule or other action to address the issue of sablefish being used mainly as bycatch in other target fisheries in the Bering Sea. All other information as published originally remains unchanged.

For more information contact Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: September 19, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-21787 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Permit; Harold M. Brundage III, (P298B)

On March 23, 1988, Notice was published in the **Federal Register** (53 FR 9469) that an application had been filed with the National Marine Fisheries Service by Mr. Harold Brundage, III, Environmental Research and Consulting, Inc., 320 Bancroft Road, Kennett Square, Pennsylvania 19348 for a permit to capture, weigh, measure, tag, and release shortnose sturgeon (*Acipenser brevirostrum*) on the Delaware River and Bay and Potomac River to Chesapeake Bay; and to collect eggs and larvae from spawning areas.

Notice is hereby given that on September 2, 1988, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to Mr. Harold Brundage III, subject to certain conditions set forth herein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., room 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: August 25, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-21836 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Application for Permit; Clearwater Marine Science Center (P414A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take a marine mammal as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Clearwater Marine Science Center, 249 Windward Passage, Clearwater, Florida 34630
2. *Type of Permit:* Public display
3. *Name and Number of Marine Mammal:* Atlantic bottlenose dolphin *(Tursiops truncatus)* 1
4. *Type of Take:* Captive maintenance
5. *Location of Activity:* Southeast U.S.
6. *Period of Activity:* One year.

The arrangements and facilities for transporting and maintaining the marine mammal requested in the above described application have been inspected by a licensed veterinarian.

who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammal involved.

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 of Scientific Advisors.

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.

All statements and opinions containted in this application are summaries of those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: September 16, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-21835 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intention to Grant Exclusive Patent License; Roberts Laboratories

The notice (FR Doc. 88-19178) which appeared on Page 32272 in the issue of Wednesday, August 24, 1988 Vol. 53, No. 164 concerning granting an exclusive license in the U.S. is hereby withdrawn. Patent Application Serial Number 7-140,269 is currently not available for licensing.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-21820 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 27 October 1988 at 10:00 am at the Commission's offices at 708 Jackson Place, NW., Washington, DC 2006 to discuss various projects affecting the appearance of Washington, DC., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 19 September 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-21819 Filed 9-22-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China.

September 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import charges.

EFFECTIVE DATE: September 20, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Overshipment charges from 1987 in the amount of 161,701 dozen had been previously charged to the 1988 established sublimit 338pt./339pt. As a result of consultations held July 26, 1988 through July 29, 1988, the Governments of the United States and the People's Republic of China agreed to deduct these charges from the sublimit, but to retain these charges against the current limit for Categories 338/339.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20029.

Dear Mr. Commissioner: To facilitate implementaion of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988 between the Governments of the United States and the People's Republic of China, I request that, effective on September 20, 1988, you deduct 161,701 dozen for goods exported in 1987 and charged to the 1988 sublimit for Categories 338pt./339pt.[1] This amount, 161,701 dozen, shall remain charged to the 1988 limit for Categories 338/339.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-21741 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Categories 338pt./339pt., only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970 and 384.3437 in Category 338; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339.

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

September 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: October 3, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and Mauritius is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 3, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1988 and extends through September 30, 1989 in excess of the following restraint levels:

Category	12-mo. restraint level
Knit group:	
345, 438, 445, 446, 645 and 646, as a group.	119,669 dozen.
Levels not in a group:	
331	337,080 dozen pairs.
335/835	50,562 dozen.
337/637	127,200 dozen.
338/339	238,203 dozen.
340	252,495 dozen.
341/641	268,540 dozen.
342/642/842	174,900 dozen.
347/348	477,530 dozen.
442	10,795 dozen.
604–A [1]	587,579 pounds.
638/639	273,934 dozen.
640	129,214 dozen of which not more than 45,225 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling in TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.
647/648/847	393,260 dozen.

[1] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

Imports charged to the category limits for the periods which began on August 1, 1987, October 1, 1987 and April 1, 1988 and extend through September 30, 1988 shall be charged against the restraint limits established for those periods to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius.

Also effective on October 3, 1988, you are directed to charge 36,966 dozen for Category 341 to the limit established in this letter for Categories 341/641.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–21803 Filed 9–22–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Taiwan

September 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 19, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 301 is being increased for swing.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 62, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on September 19, 1988, the directive of December 30, 1987 is being amended to increase to 480,507 pounds[1] the limit for cotton textile products in Category 301, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-21742 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

Amending the Previous Directive and Detailing Coverage of the Export Visa and Certification Requirements for Certain Textiles and Textile Articles Produced or Manufactured in the United Mexican States

September 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a previous directive and detailing coverage of the existing visa and certification requirements.

EFFECTIVE DATE: September 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-412.

SUPPLEMENTARY INFORMATION: The H.S. tariff number for Special Regime shipments (currently 807.0010) is 9802.00.80.10 instead of 9800.00.00.20 (53 FR 32421).

The requirement that the description on the Shippers Export Declaration of the cut parts to be exported to Mexico for assembly must state the correct category or part category has been revised to allow stating the correct merged category also.

The existing visa and certification requirements cover merged and part categories subject to the U.S.-Mexico bilateral textile agreement of February 18, 1988.

A copy of the current visa and certification arrangement is available from the Textile Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 15724, published on May 3, 1988 and 53 FR 32421, published on August 25, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20299

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 22, 1988 which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, including any part or merged categories as established in the bilateral agreement, produced, manufactured or assembled in Mexico for which the Government of the United Mexican States has not issued an appropriate export visa or exempt certification.

Effective on September 27, 1988, the H.S. tariff number for Special Regime shipments (currently 807.0010) should be corrected to 9802.00.80.10. Also, in addition to the correct category or part category, the correct merged category may be stated in the Shippers Export Declaration (form ITA-370P or successor document).

The following is a list of merged and part categories established in the bilateral agreement of Federal 13, 1988:

Merged and Part Categories

201-C/669-C [1] (cordage)
201-0 [2] (other)
300/301/607-Y [3] (poly/cotton yarn)
336/636
337/637
338/339/638/639
340/640
341/641 [4] (blouses other than those with two or more colors in the warp and/or the filling)
341-Y/641-Y [5] (blouses with two or more colors in the warp and/or the filling)
342/642
347/348
349/649
351/651
352/652
359-C [6] (coveralls and overalls)
359-O [7] (other)
369-B [8] (handbags and luggage)
369-D [9] (dishtowels)
369-U [10] (shoe uppers)
369-O [11] (other)
604A [12] (acrylic plied yarn)
604-O/607-O [13] (other)
647/648
659-C [14] (coveralls and overalls)
659-H [15] (headwear)
659-S [16] (swimwear)
659-O [17] (other)
669-P [18] (man-made fiber bags)

[1] In Category 201-C, only TSUSA numbers 315.0500, 315.1000, 315.1500, 316.5500 and 316.5800; in Category 669-C, only TSUSA numbers 348.0065, 348.007, 348.0565 and 348-0575.

[2] In Category 201-O, all TSUSA numbers except 315.0500, 315.1000, 315.1500, 316.5500 and 316.5800 in Category 201-C.

[3] Category 300/301, and in 607-Y, only TSUSA number 310.6034.

[4] In Categories 341/641, all TSUSA numbers except 384.4608, 384.4610, 384.4612, 384.0505, 384.0511, 384.0512, 384.2302, 384.2304, 384.2307, 384.9110, 384.9120 and 384.4788 in Categories 341-Y/641-Y.

[5] In Categoryies 341-Y/641-Y, only TSUSA numbers 384.4608, 384.4610, 384.4612, 384.0505, 384.0511, 384.0512, 384.2302, 384.2304, 384.2307, 384.9110, 384.9120 and 384.4788 in Categories 341-Y/641-Y

[6] In Category 359-C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[7] In Category 359-O, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222.

[8] In Category 369-B, only TSUSA numbers 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[9] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[10] In Category 369-U, only TSUSA numbers 386.0410 and 386.5210.

[11] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369-D; 386.0410 and 286.5210 in Category 369-U; and 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4101 in Category 369-B.

[12] In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.

[13] In Category 604-O/607-O, all TSUSA numbers except 310.5049 and 310.6045 in Category 604-A and all TSUSA numbers except 310.6034 in Category 607-Y.

[14] In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[15] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[16] In Category 659-S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

[17] In Category 659-O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 659-C; 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560,703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659-H; and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659-S.

[18] In Category 669-P, only TSUSA numbers 385.5300.

669-O [19] (other)

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-21804 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Consultations With the Government of Thailand To Review Trade in Category 363

September 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 26, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Textile Agreement of July 27 and August 8, 1983.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On August 31, 1988, the Government of the United States requested consultations with the Government of Thailand regarding cotton terry and other pile towels in Category 363, produced or manufactured in Thailand.

Pending a mutually satisfactory solution, the United States has decided to control imports of Category 363 during the ninety-day consultation period. If no solution is reached during the consultation period, the United States may establish a prorated limit for the period August 31, 1988 through December 31, 1988 at a leval of 5,325,229 numbers.

A summary market statement concerning Category 363 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 363, under the agreement with Thailand, or in any other aspect thereof, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or infomation to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 363. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement Category 363—Cotton Towels; Thailand, August 1988

Summary and Conclusions

U.S. imports of cotton towels—Category 363—from Thailand were 13.2 million units during the year ending May 1988, three times the 4.4 million units imported a year earlier. Thailand was the fourth largest supplier, and the largest uncontrolled supplier, accounting for ten percent of the total imports in the year ending May 1988. In the year ending May 1987, Thailand ranked eighth among the major suppliers accounting for three percent of total imports. During the first five months of 1988, imports from Thailand reached 5.4 million units, nearly two and a half times the level reached in the same months of 1987.

The sharp and substantial increase of low-valued imports of Category 363 cotton towels from Thailand is causing a real risk of market disruption.

Production and Market Share

The cotton towel market flattened in early 1988. First quarter domestic production fell one percent below the first quarter 1987 level. The U.S. manufacturers' share of the market was 78.6 percent in the first quarter of 1988 compared with 80.8 percent for calendar year 1987.

Imports and Import Penetration

U.S. imports of Category 363 cotton towels from all sources reached a record level 132.4 million units in 1987. During the first five months of 1988, imports of cotton towels were up seven percent over the comparable period in 1987.

The import to production ratio increased to 27.2 percent during the first quarter of 1988, 14 percent above the 23.8 percent ratio in calendar year 1987.

Duty Paid Import Values and U.S. Producer's Prices

Approximately 95 percent of Category 363 cotton terry towel imports from Thailand enter under TSUSA Nos. 366.1965 and 366.2460. These towels are being entered at duty-paid landed values well below U.S. producer prices for comparable towels.

Committee for the Implementation of Textile Agreements

September 19, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Tetxtiles done at Geneva on December 30, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, 1983 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 26, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the Category 363, produced or manufactured in Thailand and exported during the ninety-day period which began on August 31, 1988 and extends through November 28, 1988, in excess of 4,621,693 numbers.

Textile products in Category 363 which have been exported to the United States prior to August 31, 1988 shall not be subject to this directive.

[19] In Category 669-O, all TSUSA numbers except 348.0065, 348.0075, 348.0665 and 348.0575 in Category 669-C; and 385.5300 in Category 669-P.

Textile products in Category 363 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-21743 Filed 9-22-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 24, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION:

On July 8, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 25651) of proposed addition to Porcurement List 1988, December 10, 1987 (52 FR 46926).

The current contractor, in submitting information to the Committee staff on its annual sales, made statements regarding the firm's financial condition and indicated that the addition of this belt buckle to the Procurement List would severely impact the firm.

The data provided by the contractor revealed that the value of the current contractor's contract for the subject belt buckle represents approximately 3.8% of the firm's total annual sales. The Committee has considered the comments of the current contractor and has considered the comments of the current contractor and has determined that the impact is not serious. After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to procurement List 1988.

Buckle, Belt
8315-00-275-4513

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-21816 Filed 9-22-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1988 a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 24, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Grounds Maintenance, Naval Weapons Station, Areas 13-22, Yorktown, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-21817 Filed 9-22-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Merchantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in futures on (1) Euromark forward spread agreements, (2) Eurosterling forward spread agreements and (3) Euroyen forward spread agreements. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 24, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Reference should be made to the CME's proposed Euromark, Eurosterling or Euroyen forward spread agreement futures contracts.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by

mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and condition of the proposed futures contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washingotn, DC 20581, by the specified date.

Issued in Washington, DC, on September 19, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–21722 Filed 9–22–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Nomination for Appointment to the United States Military Academy, Naval Academy and Air Force Academy, DD Form 1870, OMB No. 0701–0026.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 10 minutes.

Frequency of Response: On occasion.

Number of Respondents: 32,640.

Annual Burden Hours: 5,440.

Annual Responses: 32,640.

Needs And Uses: Individuals seeking a nomination to one of the service academies provide information about themselves to an authorized candidate nominating source (Member of Congress, etc.). The nominating source uses the information provided to fill out the nomination for appointment (DD Form 1870).

Affected Public: Individuals.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timonthy Sprehe at Office of Management and Budget, Desk Officer, Room 3225, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21794 Filed 9–22–88; 8:45 am]

BILLING CODE 3810-01-M

Record of Decision for Facilities Development at Orchard Training Area, Idaho

September 20, 1988.

AGENCY: National Guard Bureau, DOD/Idaho Military Division.

ACTION: Record of Decision for Facilities Development at Orchard Training Area, Idaho.

SUMMARY: This is the Record of Decision regarding the Final Environmental Impact Statement (FEIS) for facilities development at Orchard Training Area, Idaho. The alternatives selected in the Record of Decision are:

(1) Upgrade the existing Multipurpose Range Complex (MPRC);

(2) Locate the new Mobilization and Training Equipment Site (MATES) facility at the Orchard Site; and

(3) Locate the new Ammunition Storage Point (ASP) at the Orchard site.

SUPPLEMENTARY INFORMATION: The National Guard Bureau and the Idaho Military Division (IDARNG) have selected the alternatives of upgrading the MPRC and locating the MATES and the ASP at the Orchard site.

In accordance with the Council on Environmental Quality Regulations concerning tiering, the FEIS is limited to three specific proposed construction projects and is tiered to the FEIS for Snake River Birds of Prey (SRBOPA) prepared by the Bureau of Land Management (BLM), Department of Interior, in 1979. The BLM prepared that FEIS for the establishment of the SRBOPA of which Orchard Training Area is a part. The FEIS evaluated the effect of IDARNG ongoing training on the raptors and their habitat, concluding that "25 years of National Guard use has had no known effects on the birds of prey". The National Guard began training on the area in 1953 under a Special Land Use Permit issued by the BLM. An Environmental Assessment was prepared in 1973 by the BLM to analyze National Guard training activities. This Environmental Asessment concluded that the training was compatible. In order to avoid future conflicts with nesting bird of prey and to minimize soil erosion, the size of the training area was reduced by moving the boundary away from the Snake River Canyon rim.

The decisions made by the National Guard are based on the need to update the existing training facility. Upgrading the existing Multipurpose Range Complex will provide state-of-the-art training for the troops. Reclocation and upgrading of existing support facilities closer to the Orchard Training Area (OTA) will save training time and expense.

In the FEIS, the following alternatives were evaluated:

(1) No Action (status quo continuance of ongoing IDARNG training activities at the OTA);

(2) Locating the MATES and the ASP at the Owyhee site;

(3) Locating the MATES and the ASP at the Orchard site; and

(4) Upgrading the MPRC.

Under the no action alternative, impacts and benefits of the ongoing training in the specific locations proposed for the new facilities would continue. The construction traffic would not occur as with the action alternatives. Also, there would not occur the benefits of construction employment, the increase in permanent jobs, and the savings in fuel and training time expenses.

The major effects of the action alternative at the Owyhee site would be the loss of 17 acres of wildlife habitat, withdrawal of 20 acres of grazing land, and the consumption of 3 million gallons of groundwater annually. At the Owyhee site ferruginous hawks, a candidate for threated species, nest on power poles between the proposed MATES and ASP locations. The hawks may be disturbed by the construction and operation of these facilities. Other social and economic effects include the

addition of approximately 130 construction jobs for 12 to 15 months, the addition of 75 permanent jobs, and the savings of 11,000 work hours and $500,000 in equipment and fuel annually.

The major effects of the action alternative at the Orchard site would be the loss of 17 acres of wildlife habitat. However, since the location of the MATES at this site would be outside the SRBOPA, only 8 acres would be lost from the SRBOPA. Additional effects include the withdrawal of 20 acres of grazing land and the consumption of 3 million gallons of groundwater annually. Since this site lies in the Mountain Home Groundwater Management Area, the Idaho Department of Water Resources will require substantiation that adequate water is available and no previous rights would be impacted. Social and economic impacts would be the same as at the Owyhee Site.

Due to the possible disturbance of the candidate threatened species and the greater loss of habitat in the SRBOPA at the Owyhee site, the Orchard site was selected as the preferred location.

The alternative to upgrade the MPRC would result in the permanent loss of 2 acres of wildlife habitat. Although training levels might increase at the MPRC, this would be balanced by less training in other areas of the OTA. The no action alternative, which is status quo continuance of existing conditions and activities, was not selected.

All practicable means to avoid or minimize environmental harm from the alternatives selected have been adopted. To mitigate the loss of two acres of wildlife habitat at the MPRC and 17 acres of wildlife habitat at the MATES and ASP facilities, land leased from the state (and adjacent to the SRBOPA) at the Orchard Site will preserve 120 acres of similar wildlife and raptor habitat. Furthermore, the IDARNG Environmental Management Program, under the direction of an Environmental Specialist, will continue to develop and implement mitigation for training-related impacts. Under a Memorandum of Understanding between the IDARNG and the BLM, yearly meetings are held to monitor the impacts of training and mitigation actions.

During the past five years, the BLM and IDARNG have identified resource management issues and implemented mitigation measures:

(1) To mitigate mechanical damage, the IDARNG has limited its use of southern sectors of the training area to reduce possible disturbance of nesting raptors in the canyon and reduce impacts on erosive soils;

(2) The IDARNG conducts an environmental awareness briefing for troops using the OTA;

(3) To mitigate wildfire impacts, the IDARNG has stationed four fire-trucks within the OTA to suppress fires within the impact area, future plans include the purchase of a helicopter-mounted water tank and an agreement with BLM to suppress fires in the SRBOPA outside the OTA;

(4) To rehabilitate disturbed habitat, the IDARNG, under the direction of the BLM, has re-seeded 2,500 acres within the OTA, and more rehabilitation is planned for the future; and

(5) To mitigate noise impacts which could disturb the raptors, the IDARNG does not conduct live firing exercises during prime morning and evening raptor hunting periods.

In response to public comment on the need for assessing the impacts of ongoing training, the BLM, IDARNG, the Governor of Idaho, and the National Guard Bureau have signed a joint policy statement in which an agreement is made to develop an intensive four-year research project on the impacts of military training in the SRBOPA. At the conclusion of the study period, BLM will lead a full National Environmental Policy Act review which will examine the impacts of all uses of the SRBOPA. In preparation for this research, the IDARNG participated in an interdisciplinary-team workshop convened by the BLM to assess information needs for the long-term management and preservation of the SRBOPA.

Donald Burdick,

Major General, GS, Director, Army National Guard.

Darrell V. Manning,

Major General, The Adjutant General, Idaho.

[FR Doc. 88-21815 Filed 9-22-88; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Meeting Base Realignment and Closure Commission

ACTION: Notice of business meeting and public hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., October 6, 1988 in the Dirksen Senate Office Building, Room 628. This will immediately be followed by a hearing to take testimony on future military base needs beyond the year 2000.

For further information, please contact: Russel Milnes, (202) 653-0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88-21795 Filed 9-22-88; 8:45 am]

BILLING CODE 3810-01-M

Meetings: Base Realignment and Closure Commission

ACTION: Notice of a closed meeting.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a closed meeting at 3:00 p.m., October 6, 1988 to receive a classified staff briefing. 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 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Russel Milnes, (202) 653-0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 20, 1988.

[FR Doc. 88-21840 Filed 9-22-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Competitive Strategies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Competitive Strategies will meet in closed session on October 12, 1988 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 technicial matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will periodically review the application of competitive strategies to the selection of technologies, weapons, and support systems including C3 for emphasis by the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amenderd (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21796 Filed 9–22–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on October 13–14, 1988 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 technicial matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

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 this DSB Task Force meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21797 Filed 9–22–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on October 14, 1988 at the Institute for Defense Analyses, Alexandria, 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 this meeting the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21798 Filed 9–22–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on October 17–18, November 21–22, December 5–6, 1988, January 11–12, and February 8–9, 1989 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 examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21799 Filed 9–22–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on November 15–16, 1988 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 target requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 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.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1988.

[FR Doc. 88–21800 Filed 9–22–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on October 4–5, 1988. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, VA. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on October 4; and commence at 8:30 a.m. and terminate at 5:00 p.m. on October 5, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capacilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The

agenda will include discussions on detection and reporting, fielded and developmental systems, and technology base programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice for this meeting.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: September 21, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88-21893 Filed 9-22-88; 8:45am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the addition of the Magnox reprocessing plant located at the Sellafield site in the United States Kingdom to Annex 1 of the Implementing Agreement between the Government of the United States of America and the Government of Japan Pursuant to Article 11 of Their Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy. The Magnox reprocessing line processes magnesium-uranium spent fuel from gas-cooled reactors, and has a capacity of 1,500 metric tons per year.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Date: September 19, 1988.

Richard H. Williamson,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-21851 Filed 9-22-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket Nos. 88-37-LNG; 88-05-LNG]

Distrigas Corp.; Authorization to Import Liquefied Natural Gas From Algeria

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting amended long-term authorization to import liquefied natural gas from Algeria, amending a short-term authorization, and granting interventions.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending Distrigas Corporation's (Distrigas) authorization, issued in ERA Docket No. 77-011-LNG on December 31, 1977, under which Distrigas is authorized to import liquefied natural gas (LNG) from Algeria. The order authorizes, in ERA Docket No. 88-37-LNG, a long-term amendment (Amendment No. 3) to the April 13, 1976, sales and purchase agreement (1976 Agreement) between Distrigas and its supplier, Sonatrach, the Algerian national energy corporation. Amendment No. 3, among other things, extends the term of the 1976 Agreement until October 1, 2003, and includes make-up provisions which could extend the authorization until as late as October 1, 2008. Also, Amendment No. 3 changes the pricing provisions, provides for new transportation arrangements, and removes the strict take-or-pay provisions of the 1976 Agreement. The effective date of the authorization will be on the date of final approval and acceptance of Distrigas' and Distrigas of Massachusetts' pending application in Federal Energy Regulatory Commission Docket No. CP88-587. The order granted intervention to all movants.

In ERA Docket No. 88-05-LNG, the order amended a short-term import authorization granted Distrigas by the ERA in DOE/ERA Opinion and Order No. 228, issued on March 4, 1988, and further amended by DOE/ERA Opinion and Order No. 228-A, issued on June 10, 1988, by exending the term of that authorization until the effective date of the authorization granted pursuant to Amendment No. 3.

A copy of this order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20505, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on September 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-21852 Filed 9-22-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-35-NG]

Northern Natural Gas Co.; Order Granting Amendment to Authorization to Import Natural Gas and Granting Interventions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending an authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending DOE/ERA Opinion and Order No. 76 (Order 76) that granted authorization to Northern Natural Gas Company (Northern) to import Canadian natural gas. This order, DOE/ERA Opinion and Order No. 270, issued in ERA Docket No. 88-25-NG, increases the volume of gas Northern may import from 135,000 Mcf per day up to 200,000 Mcf per day from September 18, 1988, through October 31, 1988. All other terms and conditions of Order 76 remain in effect.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20858, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-21853 Filed 9-22-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-50-NG]

Poco Petroleum Inc.; Application for Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 25, 1988, of an application filed by Poco Petroleum, Inc. (Poco) for authorization to import from its Canadian parent company, Poco Petroleums, Ltd. (Poco Ltd.), up to 15 MMcf per day of natural gas from the date the authorization is granted through October 31, 1989; up to 25 MMcf per day, November 1, 1989, through April 30, 1990; and up to 50 MMcf per day, May 1, 1990, through October 31, 2004; and 25 MMcf per day, November 1, 2004, through March 31, 2005. Poco would import the gas as agent for its Canadian parent and sell part of it to Consumers Power Company (Consumers) for Consumers' system supply. The remainder of the imported gas would be sold to Midland Cogeneration Venture Limited Partnership (Midland) for use as generation fuel at Midland's cogeneration facility to be constructed from a portion of the idled Midland nuclear plant in Midland County, Michigan.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than October 24, 1988.

FOR FURTHER INFORMATION:

Stanley C. Vass, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Poco, a Delaware corporation and wholly-owned U.S. subsidiary of Poco Ltd., proposes to import natural gas from Poco Ltd. pursuant to two separate natural gas purchase agreements dated April 29, 1988, executed by Poco Ltd. with Consumers and Midland respectively. Under the Poco Ltd.-Consumers gas purchase agreement, Poco Ltd. would supply natural gas to Consumers as follows: up to 15 MMcf per day during the first two contract years and up to 25 MMcf per day over the remaining ten years of the contract term, which may be extended at Poco Ltd.'s option to March 31, 2005. The contract also provides that, if during any contract year, the volumes nominated for delivery by Consumers is less than 75 percent of the aggregate of the maximum daily quantities, then the maximum daily quantity which Poco Ltd. is obligated to supply in the following year is reduced to 133 percent of the volumes nominated for delivery in the immediately preceding contract year.

The Poco Ltd.-Consumers gas purchase contract further provides that the monthly contract price paid for the imported gas shall be composed of a monthly demand charge and a monthly commodity charge. The demand charge consists of the sum of the demand charges of the following transporters of the imported gas: TransCanada PipeLines Limited (TransCanada), Great Lakes Transmission Company (Great Lakes), and ANR Pipeline Company (ANR). For the contract period prior to January 1, 1990, the computation of the monthly commodity charge is tied to a reference price set at 95 percent of the lowest interstate pipeline commodity charge incurred by Consumers under a Federal Energy Regulatory Commission (FERC) approved sales tariff for firm contracts of two years or more. After December 31, 1989, the provision "at a 100 percent load factor" is added to the same formula. The actual commodity charge is computed by subtracting the total monthly demand charge from the reference price. For volumes in excess of 75 percent of the maximum monthly quantity, the commodity charge paid by Consumers would be lowered by subtracting the average monthly demand charge divided by .75 from the reference price.

Under the Poco Ltd.-Midland gas purchase contract, Poco Ltd. would supply up to 25 MMcf per day of imported natural gas to Midland beginning on date of first delivery in 1990 over a 15-year term or such earlier date as may be required by either U.S. or Canadian authorities. The maximum daily quantity which Poco Ltd. is obligated to supply is subject to reduction, as under the Poco Ltd.-Consumers gas purchase contract, if the volumes nominated for delivery by Midland fall below 75 percent of the aggregate of the maximum daily quantities during the contract year.

Further, under the Poco Ltd.-Midland contract, the commodity price of the gas is tied to a reference price consistent with Consumers' avoided cost rates for power production from "qualifying facilities" under section 201 of the Public Utilities Regulatory Policy Act. The reference price would be computed as follows: $.40 (U.S.) per MMBtu plus $1.95 (U.S.) times a fraction with Midland's monthly fixed and variable expenses of producing electricity in the numerator and 2.29 cents per kilowatt hour in the denominator. The reference price, however, may not be less than a floor price set at $1.78 per MMBtu as of January 1, 1987, compounded at four percent annually. The actual commodity charge Midland would pay for the imported gas would be computed by subtracting from the reference price the total monthly demand charges of TransCanada and Great Lakes divided by a factor of .75.

The applicant states that there are no minimum take or minimum commodity bills in either the Poco Ltd.-Consumers or the Poco Ltd.-Midland gas purchase agreements but the total monthly demand charges in the demand component of the two-part rate provided for must be paid regardless of the level of takes. If the firm transportation capacity which Poco Ltd. has contracted for is not fully used because either Consumers or Midland took less than the maximum contract quantity, then both contracts allow credit against the demand charges for excess pipeline capacity which Poco Ltd. is able to sell to third parties. If excess pipeline capacity arises because Poco Ltd. has failed to deliver at least 90 percent of the sum of the daily quantities requested, then Consumers or Midland may have the excess pipeline capacity assigned to them in order to be able to mitigate the burden of demand charges

they must pay regardless of the level of takes.

The gas imported for sale to Consumers and Midland would enter the U.S. via the Emerson import point. The gas for delivery to Consumers would then be transported by Great Lakes to an interconnection with ANR's pipeline facilities at Fortune Lake, Michigan, and then by ANR to Consumers. The gas for delivery to Midland would be transported by Great Lakes to a new proposed interconnection in Chippewa Township, Isabella County, Michigan, between the facilities of Great Lakes and the facilities of Michigan Gas Storage Company (Michigan). Michigan would then transport the gas to Midland. According to the applicant, no new facilities are required to deliver the gas to Consumers, However, to deliver the gas to Midland, looping of approximately 83.2 miles of 36-inch pipeline facilities of Great Lakes would be required.

In support of the application, the applicant asserts that the imported gas would be sold at market-sensitive prices over the term of the import arrangement and notes that under the price formulas in the gas purchase agreements, the combined commodity charge and demand charge components would not exceed reference prices set at competitive gas or energy levels. Further, the applicant asserts that the proposed import enhances the diversity of gas supplies for both Consumers and Midland who are free to purchase other natural gas as they may choose under the terms of their respective gas purchase contracts. With respect to need for the gas, the applicant notes that under a renegotiated contract with Trunkline Gas Company, Consumers' contract demand will be gradually reduced from the current 700 MMcf per day level to the 360 MMcf per day level as of November 1, 1989. With respect to Midland, the applicant points out that the proposed cogeneration plant would be a new gas-fired facility and therefore a new source of demand for natural gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). To the extent there are any issues that are unique to cogeneration facilities, the ERA may consider them in making a public interest determination.

Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., October 24, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-21854 Filed 9-22-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-603-000, et al.]

Iowa-Illinois Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Iowa-Illinois Gas and Electric

[Docket No. ER88-603-000]

September 19, 1988.

Take notice that on September 12, 1988, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing pursuant to Part 35 of the Commission's regulations a Firm Power Transaction for the period May 1, 1988-October 31, 1988 (Transaction), dated May 1, 1988, between Iowa-Illinois and Interstate Power Company (Interstate Power). This Transaction is provided for under Service Schedule J—Firm Power Interchange Service of the Mid-Continent Area Power Pool (MAPP) Agreement dated March 31, 1972, as amended, of which both parties are signatory participants. Service Schedule J has previously been accepted for filing by the Commission in FPC Docket No. E-7734, effective December 31, 1972.

The parties request an effective date of May 1, 1988. This date corresponds to the beginning of the MAPP summer season and accreditation requirements and, according to the parties, reflects the benefits accruing from the Transaction.

A waiver of the Commission's notice requirements under Section 35 necessary for the implementation of the Transaction, as proposed, is requested.

Comment date: October 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. MDU Resources Group, Inc.

[Docket No. ES88-61-000]

September 20, 1988.

Take notice that on September 14, 1988, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $50,000,000 of short-term debt on or before December 31, 1990, with a final maturity no later than December 31, 1991.

Comment date: October 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa-Illinois Gas and Electric Company

[Docket No. ES88-60-000]

September 20, 1988.

Take notice that on September 14, 1988, Iowa-Illinois Gas and Electric Company filed an application seeking an order pursuant to Section 204 of the Federal Power Act to issue from time to time not more than $75 million of short-term notes with a final maturity date of not later than June 30, 1991.

Comment date: October 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Ebensburg Power Co., Inc., Cambria County Project

[Docket No. QF86-1074-003]

September 20, 1988.

On August 31, 1988, Ebensburg Power Company (Applicant) of 20 S. Van Buren Avenue, P.O. Box 351, Barberton, Ohio 44203, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Cambria Township, Cambria County, Pennsylvania. The facility will consist of one fluidized bed combustion boiler, a steam turbine generator and three miles of 115 kV transmission line. Applicant states that the primary energy source will be waste in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 48.5 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Pracice and Procedure (18 CFR 385.211 and 385.214). All such motions or protets should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21848 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6281-008 California]

Five Bears Hydro, Inc.; Availability of Environmental Assessment

September 16, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an amendment of license for the Five Bears Power Project and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed amendment, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21758 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-798-000 et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation September 14, 1988.

[Docket No. CP88-798-000]

Take notice that on September 13, 1988, CNG Transmission Corporation, (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-798-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for eleven shippers under the certificate issued in Docket No. CP86-311-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNG proposes to transport gas for CNG Trading Company (an affiliated marketer), *et al.*, on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. The proposed services are listed in the Appendix hereto which shows the receipt and delivery points, along with the maximum daily, average daily and annual volumes.

CNG advises that the proposed services have commenced under § 284.223(a), as reported in the ST dockets shown in the Appendix.

Comment date: October 31, 1988, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX A.—PART 284, SUBPART G, TRANSPORTATION TRANSACTIONS FOR THE PERIOD 7-01-88 THROUGH 7-31-88

Docket No.	Shipper customer	Commence date	Maximum daily DT, average daily DT, estimate annual DT	Receipt point	LDC
ST88-5491	1. American Steel & Wire	7/01/88	2,000 1,587 730,000	B	EOG
ST88-5492	2. Consolidated Fuel Corp	7/01/88	3,000 64 1,095,000	B	EOG
ST88-5504	3. Reliance Gas Marketing	7/01/88	55,000 287 20,075,000	A	EOG
ST88-5503	4. Kogas, Inc	7/07/88	100,000 800 36,500,000	B	PNG
ST88-5496	5. Kogas, Inc	7/14/88	100,000 600 36,500,000	B	NFG
ST88-5499	6. James River #1	7/01/88	3,500 80 1,277,500	A	NIMO
ST88-5498	7. P & N Energy Services	7/01/88	3,800 2,800 1,387,000	B	NIMO
ST88-5494	8. CNG Trading Company	7/09/88	500,000 511 182,500,000	D	NIMO
ST88-5502	9. Kogas, Inc	7/13/88	100,000 1,491 36,500,000	B	NIMO
ST88-5501	10. Ladd Gas Marketing	7/05/88	50,000 390 18,250,000	D	NIMO
ST88-5500	11. The Resource Group	7/15/88	10,000 127 3,650,000	D	NIMO
ST88-5495	12. Pipeline Marketing	7/18/88	1,200 600 438,000	B	NYSEG
ST88-5493	13. Ohio Gas Marketing	7/01/88	1,100 275 401,500	B	NYSEG

Legend of Local Distribution Companies (LDC) or Delivery Points:
HGI—Hope Gas, Inc.
NYSEG—New York State Electric & Gas Corporation.
RGE—Rochester Gas & Electric Corporation.
EOG—East Ohio Gas Company.
PNG—Peoples Natural Gas Company.
NIMO—Niagara Mohawk Power Corporation.
NFG—National Fuel Gas Supply Corporation.
Transco—Transcontinental Gas Pipeline Corporation.
Corgas—Corgas Pipeline Company (Intrastate).
Legend of Receipt Points:
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in WV/PA/NY.
C—Various interconnects between Texas Gas Transmission Corporation and CNG.
D—Various interconnects between Texas Eastern Transmission Corporation and CNG.

2. CNG Transmission Corporation

[Docket No. CP88-798-000]

September 15, 1988.

Take notice that on September 13, 1988, CNG Transmission Corporation, (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-798-000 a request, as supplemented on September 15, 1988, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for eleven shippers under the certificate issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued September 14, 1988. By its supplement filed on September 15, 1988, CNG has changed the volume to be transported for American Steel & Wire to 5,000 dt per day equivalent of natural gas on a maximum daily basis and to 1,825,000 dt on an annual basis from 2,000 dt and 730,000dt, respectively.

Comment date: October 31, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP88-765-000]

September 15, 1988.

Take notice that on September 6, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-765-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a

transportation service for Enron Oil and Gas Company (Enron), a producer of natural gas, under the Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Northwest states that purusant to an Agreement dated July 1, 1986, as amended, under Rate Schedule TI-1, it proposes to transport up to 125,000 MMBtu per day of natural gas for Enron from points of receipt located in the Big Piney area, Sublette and Lincoln Counties, Wyoming to Northwest's Opal Plant in Lincoln County, Wyoming.

Northwest also states that no construction for new facilities will be required to provide this transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 125,000 MMBtu, 72,000 MMBtu and 26,000,000 MMBtu, respectively.

Northwest advises that service under Section 284.223(a) commenced July 3, 1988, as reported in Docket No. ST88-5402 (filed August 26, 1988).

Comment date: October 31, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-774-000]

September 16, 1988.

Take notice that on September 7, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77251-1188, filed in Docket No. CP88-774-000 an applicant pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, for permission and approval to abandon firm sales and transfer firm sales service between rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authorization to abandon certain levels of firm sales entitlements of its customers who have elected to reduce or convert to firm transportation service a specified level of their firm sales entitlements, and transfer firm sales entitlements between firm rate schedules, all as required to certificate levels of service found to be in compliance with the Commission orders dated December 22, 1986, and November 9, 1987, modifying and approving the April 11, 1986 Stipulation and Agreement filed by Northern in Docket No. RP85-206. Northern is requesting that such authorizations be granted effective December 1, 1987, the date Northern indicates is the first day of the billing month following the Commission's November 9, 1987, order.

Northern indicates that in the aggregate, it proposes to decrease the firm entitlements under the Contract Demand and Pipeline Rate Schedules by 357,321 dt and 51,857 dt equivalent of natural gas per day, respectively, reduce the hardship adjustments under the Contract Demand and Seasonal Service Rate Schedules by 60,306 and 1,903 dt equivalent of natural gas, respectively, and increase the firm entitlements under the Seasonal Service, Winter Period Service, Peaking Service and General Service Rate Schedules by 92,575 dt, 13,536 dt, 1,372 dt, and 12,321 dt equivalent of natural gas, respectively.

Northern has indicated that it has previously filed with the Commission the required information detailing the volume service levels contained in the Docket No. RP85-206 settlement. Northern states that the filing was found by the Commission to be in compliance with the approved settlement.

Comment date: October 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88-757-000]

September 16, 1988.

Take notice that on September 1, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-757-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Superior Natural Gas Corporation (Superior), on behalf of itself and as agent for Walter Oil & Gas Corporation, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated July 21, 1988, it proposes to transport natural gas on an interruptible basis for Walter Oil & Gas Corporation, a producer, from points of receipt located offshore Louisiana, offshore Texas, and in the states of Texas, Louisiana, and Alabama. Tennessee indicates that the points of delivery are located in the states of Texas, Massachusetts, Louisiana, Mississippi, New Jersey, Pennsylvania, New York, and Arkansas. It is also indicated that the locations of the ultimate delivery points of the gas are in the states of Arkansas, Missouri, New Mexico, Kansas, Nebraska, Louisiana, Mississippi, Illinois, Indiana, Oklahoma, Massachusetts, Connecticut, New Jersey, New York, Pennsylvania, Rhode Island, Delaware, Kentucky, Tennessee, Iowa, North Carolina, South Carolina, Alabama, Georgia, and Virginia. Applicant asserts that no new facilities are required to implement the proposed service.

The applicant further states that the peak day quantities would be 50,000 dekatherms, the average daily quantities would be 2,000 kekatherms, and that the annual quantities would be 730,000 dekatherms. Applicant also states that service is currently being performed under the 120-day provision of § 284.223(a) which commenced on August 1, 1988, as reported in Docket No. ST88-5369 (filed August 24, 1988).

Comment date: October 31, in accordance with Standard Paragraph G at the end of this notice.

6. East Tennessee Natural Gas Company

[Docket No. CP88-683-000]

September 16, 1988.

Take notice that on August 15, 1988, as supplemented September 8, 1988, East Tennessee Natural Gas Company (Applicant), P.O. 10245, Knoxville, Tennessee 37939-0245, filed an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to permit the rearrangement of the maximum daily quantities of some of its customers, to increase and decrease the supplemental winter service (SWS) of some SWS customers, and to expand pipeline capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate facilities, to expand pipeline capacity, to rearrange certain of its customers' maximum daily quantities prior to the 1989-90 heating season and increase the contract demand of certain of its customers in the amount of 35,165 Mcf prior to the 1989-90 heating season. Applicant also seeks authority to revise supplemental winter service daily and annual volumes prior to the 1989-90 heating season. Applicant indicates that twenty of its resale customers and four direct sale customers have requested increases. A table listing all of the requested changes is included as Exhibit Z-1 to the application.

Applicant states that it proposes to utilize increased contract demand from Tennessee Gas Pipeline Company and presently certificated excess L.N.G. deliverability as the supply sources for the proposed increased contract demands.

Applicant indicates that in order to effectuate the increase in firm service, it proposes to construct and operate approximately 27.1 miles of pipeline loop, to restage some existing compressors, to add new compressors at some existing compressor stations, and to add two new compressor stations, all at an estimated cost of $23,996,150. Applicant indicates that it would finance the project from funds on hand, or if necessary, from funds outside East Tennessee.

Comment date: October 7, 1988, in accordance with Standard Paragraph F at the end of his notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21760 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT88-23-000 et al.]

Colorado Interstate Gas Co.; Natural Gas Pipeline Rate Filings

Take notice that the following filings have been made with the Commission. The comment date is seven days from publication in the **Federal Register**, in accordance with Standard Paragraph K at the end of the notice.

1. Colorado Interstate Gas Company

[Docket No. MT88-23-000]

September 19, 1988.

Take notice that on September 12, 1988, Colorado Interstate Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1-A:

First Revised Sheet No. 22, Superseding Original Sheet No. 22
First Revised Sheet No. 23, Superseding Original Sheet No. 23
Original Sheet No. 23A
First Revised Sheet No. 24, Superseding Original Sheet No. 24
First Revised Sheet No. 25, Superseding Original Sheet No. 25
Original Sheet No. 25A
Original Sheet No. 25B
First Revised Sheet No. 45, Superseding Original Sheet No. 45
Original Sheet No. 45A

Trunkline Gas Company

[Docket No. MT88-22-000]

September 19, 1988.

Take notice that on September 12, 1988, Trunkline Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 9-BY
First Substitute First Revised Sheet No. 9-BZ
First Substitute First Revised Sheet No. 9-CC
First Revised Sheet No. 9-DC
First Substitute Original Revised Sheet No. 9-DD
First Revised Sheet No. 9-DG

3. K N Energy, Inc.

[Docket No. MT88-18-000]

September 19, 1988.

Take notice that on September 12, 1988, K N Energy, Inc. tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1:

Original Sheet No. 27E
Original Sheet No. 27F
Original Sheet No. 27G
Original Sheet No. 27H
Original Sheet No. 27I

Texas Sea Rim Pipeline, Inc.

[Docket No. MT88-17-000]

September 19, 1988.

Take notice that on September 12, 1988, Texas Sea Rim Pipeline, Inc., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 2
First Revised Sheet No. 9
Original Sheet No. 9a
First Revised Sheet No. 10
First Revised Sheet No. 22
Original Sheet No. 22a
First Revised Sheet No. 23
First Revised Sheet No. 112
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116

Superior Offshore Pipeline Company

[Docket No. MT88-16-000]

September 19, 1988.

Take notice that on September 12, 1988, Superior Offshore Pipeline Company tendered the following tariff sheets for filing in the captioned docket

pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 2
First Revised Sheet No. 9
Original Sheet No. 9a
Second Revised Sheet No. 10
Second Revised Sheet No. 19
Original Sheet No. 19a
First Revised Sheet No. 20
Second Revised Sheet No. 40
Second Revised Sheet No. 41
First Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44

CNG Transportation Corporation

[Docket No. MT88-15-000]

September 19, 1988.

Take notice that on September 12, 1988, CNG Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 74, Superseding Original Sheet No. 74
First Revised Sheet No. 79, Superseding Original Sheet No. 79
First Revised Sheet No. 80, Superseding Original Sheet No. 80
First Revised Sheet No. 120, Superseding Original Sheet No. 120
First Revised Sheet No. 121, Superseding Original Sheet No. 121
First Revised Sheet No. 122, Superseding Original Sheet No. 122
First Revised Sheet No. 123, Superseding Original Sheet No. 123
First Revised Sheet No. 124, Superseding Original Sheet No. 124
First Revised Sheet No. 127, Superseding Original Sheet No. 127, Original Sheet No. 133, Original Sheet No. 134, Original Sheet No. 135

7. Williams Natural Gas Company

[Docket No. MT88-14-000]

September 19, 1988.

Take notice that on September 12, 1988, Williams Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 2
Third Revised Sheet Nos. 95 and 96
First Revised Sheet Nos. 97-105
Original Revised Sheet Nos. 106-111 and 183-193

8. El Paso Natural Gas Company

[Docket No. MT88-12-000]

September 19, 1988.

Take notice that on September 12, 1988, El Paso Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Substitute Second Revised Sheet No. 200
First Revised Sheet No. 227
Second Revised Sheet No. 228 through 231
Second Revised Sheet No. 231-A
Second Revised Sheet Nos. 232 through 237
Original Sheet Nos. 240 through 254
Original Sheet Nos. 255 through 299

9. Phillips Gas Pipeline Company

[Docket No. MT88-5-000]

September 19, 1988.

Take notice that on September 12, 1988, Phillips Gas Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Original Sheet Nos. 4A and 4B

10. Mid Louisiana Gas Company

[Docket No. MT88-4-000]

September 19, 1988.

Take notice that on September 12, 1988, Mid Louisiana Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet Nos. 26l through 26t

11. Algonquin Gas Transmission Company

[Docket No. MT88-1-000]

September 19, 1988.

Take notice that on September 12, 1988, Algonquin Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 566
Original Sheet No. 566A
Original Sheet No. 573
Second Revised Sheet No. 586
Original Sheet No. 586A
First Revised Sheet No. 592
Fifth Revised Sheet No. 600
First Revised Sheet No. 655
First Revised Sheet No. 656
First Revised Sheet No. 657
First Revised Sheet No. 658
Original Sheet No. 660

12. Questar Pipeline Company

[Docket No. MT88-2-000]

September 19, 1988.

Take notice that on September 12, 1988, Questar Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its Original Volume No. 1A of FERC Gas Tariff:

First Revised Sheet Nos. 101 and 102
Original Sheet Nos. 112 thru 114-A

13. Texas Eastern Transmission Corporation

[Docket No. MT88-9-000]

September 19, 1988.

Take notice that on September 12, 1988, Texas Eastern Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Fifth Revised Volume No. 1:

Revised Second Revised Sheet No. 301
Revised Original Sheet No. 305A
Revised Second Revised Sheet No. 327
Revised Second Revised Sheet No. 330
Revised Original Sheet No. 330A
Revised Third Revised Sheet No. 400
Revised Third Revised Sheet Nos. 484-599

14. Transcontinental Gas Pipe Line Corporation

[Docket No. MT88-3-000]

September 19, 1988.

Take notice that on September 12, 1988, Transcontinental Gas Pipe Line Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Third Revised Sheet No. 195
Third Revised Sheet No. 196
Second Revised Sheet No. 196-A
Second Revised Sheet No. 196-B
First Revised Sheet No. 196-C
Original Revised Sheet No. 196-D
Original Revised Sheet No. 196-E
First Revised Sheet No. 199-N
First Revised Sheet No. 199-O
First Revised Sheet No. 199-P
First Revised Sheet No. 199-Q
First Revised Sheet No. 199-R
Original Sheet No. 199-R1
Original Sheet No. 199-R2
First Revised Sheet No. 202

Second Substitute Original Sheet No. 262
Original Sheet No. 270
Original Sheet No. 271
Original Sheet No. 272
Original Sheet No. 273
Original Sheet No. 274
Original Sheet No. 275
Original Sheet No. 276
Original Sheet No. 277

15. Texas Gas Transmission Corporation

[Docket No. MT88-6-000]

September 19, 1988.

Take notice that on September 12, 1988, Texas Gas Transmission Corporation tendered the following tariff sheets for filing in the captioned docket purusant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Fourth Revised Sheet No. 1
Substitute Original Sheet No. 1A
Substitute Second Revised Sheet No. 76
Original Sheet No. 76A
Fourth Revised Sheet No. 117
First Revised Sheet No. 126
Original Sheet No. 127
Original Sheet No. 128
Original Sheet No. 129
Original Sheet No. 130
Original Sheet No. 131
Original Sheet No. 139A
Original Sheet No. 139B
Original Sheet No. 139C
Original Sheet No. 139D
Original Sheet No. 139E
Original Sheet No. 139F
Original Sheet No. 139G
Original Sheet No. 139H
Original Sheet No. 139I
Original Sheet No. 139J
Original Sheet No. 139K
Original Sheet No. 139L
Original Sheet No. 139M
Original Sheet No. 139N
Original Sheet No. 139O
Original Sheet No. 139P
Original Sheet No. 139Q
Original Sheet No. 139R

16. ANR Pipeline Company

[Docket No. MT88-19-000]

September 20, 1988.

Take notice that on September 12, 1988, ANR Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Third Revised Sheet No. 1
Third Revised Sheet No. 134
Original Sheet No. 134A
Third Revised Sheet No. 135
Original Sheet No. 136
Third Revised Sheet No. 138
Original Sheet No. 138A
Substitute Original Sheet No. 164
Substitute Original Sheet No. 165
Substitute Original Sheet No. 166
Substitute Original Sheet No. 167

17. South Georgia Natural Gas Company

[Docket No. MT88-21-000]

September 20, 1988.

Take notice that on September 12, 1988, South Georgia Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 16K
Original Sheet No. 16K.1
Third Revised Sheet No. 16L
First Revised Sheet No. 16P
SEcond Revised Sheet No. 16AA
Third Revised Sheet No. 16BB
Original Sheet No. 16BB.1
Original Sheet No. 16GG
First Revised Sheet No. 34P
Original Sheet No. 34P.1
First Revised Sheet No. 34Q
Original Sheet No. 34Q.1
First Revised Sheet No. 34R
Second Revised Sheet No. 34S
Third Revised Sheet No. 34T
Third Revised Sheet No. 34U
Original Sheet No. 34Z.1-34Z.7

18. Northwest Pipeline Corporation

[Docket No. MT88-11-000]

September 20, 1988.

Take notice that on September 14, 1988, Northwest Pipeline Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Third Revised Sheet No. 414-A
Fourth Revised Sheet No. 415
Original Sheet Nos. 423 through 500

19. Southern Natural Gas Company

[Docket No. MT88-20-000]

September 20, 1988.

Take notice that on September 12, 1988, Southern Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Sixth Revised Volume No. 1:

Second Revised Sheet No. 30W
Original Sheet No. 30W.1
Fourth Revised Sheet No. 30X
First Revised Sheet No. 30CC
Second Revised Sheet No. 30OO
Fourth Revised Sheet No. 30PP
Original Sheet No. 30PP.1
Fifth Revised Sheet No. 30QQ
Original Sheet No. 30VV
Second Revised Sheet No. 45R.19
Original Sheet No. 45R.19a
Third Revised Sheet No. 45R.20
Original Sheet No. 45R.20a
First Revised Sheet No. 45R.21
Third Revised Sheet No. 45R.22
Original Sheet No. 45R.22a
Fourth Revised Sheet No. 45R.23
Original Sheet Nos. 45R.28a—45R.28g

Standard Paragraphs

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordanc with 18 CFR § 385.214 and 385.211. All such motions or protests should be filed within seven days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission 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 must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21761 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7182-007 et al.]

Gerald L. & Lois R. Simms et al.; Surrender of Preliminary Permits and Exemptions

September 20, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

Gerald L. & Lois R. Simms

[Project No. 7182-007]

Take notice that Gerald L. and Lois R. Simms, exemptees for the Davis Creek Hydroelectric Project No. 7182, have requested that their exemption be terminated. The exemption was issued on February 20, 1986, and would have been located on Davis Creek in Lewis County, Washington, partially within the Gifford Pinchot National Forest. The exemptees have determined that the

project is not economically feasible and have not commenced any ground-disturbing activities at the project site.

The exemptees filed the request on August 19, 1988.

2. Willard Ray, Moulton Margie T. Moulton, Eric Paul Moulton, Phillip Frank Moulton, Marva K. Grimm

[Project No. 9247-001 Idaho]

Take notice that Eric Moulton, et al., exemptee for the proposed Pratt Creek Project, has requested that his exemption from licensing be terminated. The exemption was issued on June 19, 1986. The project would have been located on Pratt Creek in Lemhi County, Idaho. No construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on June 13, 1988.

Standard Paragraph

1. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21762 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-451-000, et. al.; CP87-92-000; CP87-92-001; CP87-92-002; and CP66-43-001]

Northeast U.S. Pipeline Projects, Texas Eastern Transmission Corp.; Certification by Chief Judge of Discrete Northeast Project

September 19, 1988.

Pursuant to the order issued on July 27, 1988, Order Consolidating Projects and Ordering the Appointment of a Settlement Judge, Docket Nos. CP87-451-008, *et al.*,[1] the Chief Administrative Law Judge (Chief Judge) has presided over settlement negotiations between parties to potentially competitive open-season applications. A purpose of these negotiations is to eliminate by way of settlement competitive issues. This could result in additional discrete projects.

By order issued September 7, 1988, the Chief Judge certified to the Commission as a discrete project the portion of the Capacity Restoration Program (CRP) contained in Docket Nos. CP87-92-000, CP87-92-001, CP87-92-002, and CP66-43-001 and described as Project No. 11 in Appendix C to the Commission's July 27 order. Three conditions were attached to the certification: that the LNG reinstatement portion of the CRP Project is discrete if the APEC settlement is approved by the Commission;[2] if the APEC settlement is approved, Texas Eastern Transmission Corporation will eliminate or not refile for the 100 MMcfd of capacity to be provided by Transcontinental Gas Pipe Line Corporation under the APEC settlement; and if the APEC settlement is not approved, the CRP Project will remain on file and the parties may maintain their current positions regarding discreteness.

The Chief Judge indicated in his September 7 order that only Tennessee Gas Pipeline Company (Tennessee) opposes the certification of the CRP Project as discrete. According to the Chief Judge, Tennessee's opposition is based on the premise that all 13 potentially competitive open-season projects compete one against the other. The Chief Judge did not find Tennessee's arguments persuasive, because the only portion of the CRP Project not subject to the APEC agreement [3] (102 MMdtd) merely replaces the capacity lost when the LNG facility on Long Island was destroyed.

In the July 27 order, the Commission modified Rule 602 of the Commission's Regulations to provide that comments on any offer of settlement must be filed no later than 10 days after the filing of the offer of settlement and reply comments may be filed no later than 15 days after the filing of the offer. Because the Chief Judge's certification is in essentially the same procedural posture as an offer of settlement filed by a party, the comment and reply deadlines provided in the July 27 order will apply from the date of this notice. After analyzing all comments, the Commission will determine whether this is an additional discrete project.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21759 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] 44 FERC ¶ 61,150.

[2] The APEC settlement severs from the open-season proceeding several projects as discrete, including the so-called fence-to-fence portion of the CRP Project. By order issued on September 16, 1988 in Docket No. CP87-451-009, Order Finding Additional Discrete Projects, the Commission approved the APEC settlement.

[3] The Chief Judge specifically noted that the portion of the CRP Project covered by the APEC settlement is not part of his certification.

[Docket No. CP88-762-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 19, 1988.

Take notice that on September 2, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkie Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-762-000 a request as supplemented September 9, 1988, pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Gypsum Energy Management Company (Gypsum Energy), under Columbia's blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to transport, on an interruptible basis, up to a maximum of 500 MMBtu of natural gas per day for Gypsum Energy from Armstrong County, Pennsylvania, to a point of delivery in Wyoming County, New York. Columbia anticipates transporting, on an average day 400 MMBtu and an annual volume of 182,500 MMBtu.

Columbia states that the transportation of natural gas for Gypsum Energy commenced July 22, 1988, as reported in Docket No. ST88-5053-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Columbia in Docket No. CP86-240-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therfor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21747 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-70-001]

Columbia Gulf Transmission Co.; Filing

September 19, 1988.

Take notice that on September 6, 1988, Columbia Gulf Transmission Company (Columbia Gulf) filed Substitute Fifth Revised Sheet No. 31 to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1988.

Columbia Gulf states that on August 30, 1988, it filed Fifth Revised Sheet No. 31 in compliance with Commission Order Nos. 472 and 472-A reflecting thirty (3) days prior to the effective date. Columbia Gulf states that Substitute Fifth Revised Sheet No. 31 corrects this error reflecting thirty (30) days prior to the effective date.

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, N.E., Washington DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 26, 1988. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21748 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-778-000]

Hall-Houston Oil Co; Petition for a Declaratory Order

September 20, 1988.

Take notice that on September 8, 1988, Hall-Houston Oil Company (Hall-Houston), 700 Louisiana Street, Suite 2390, Houston, Texas 77002, filed in Docket No. CP88-778-000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for declaratory order finding that certain natural gas facilities located in the Mustang Island Area in the federal domain of offshore Texas along with certain related activities, are gathering facilities and activities under section 1(b) of the Natural Gas Act and are, therefore, exempt from Commission jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Hall-Houston states that it is a producer and gatherer of natural gas. Hall-Houston indicates that the subject facilities consist of two delivery lines, 9.75 miles of 4-inch pipeline and 4.49 miles of 6-inch pipeline, which commence in Mustang Island Area block 752, connect with a production platform located in Mustang Island Area block 781, and extend from the platform to a terminus at a subsea interconnection with the Matagorda Offshore Pipeline System (MOPS) in Mustang Island Area block 786.

Hall-Houston states that natural gas is to be produced and gathered from three wells located in Mustang Island Area blocks 752 and 781 and delivered into MOPS at a subsea interconnection in Mustang Island block 786. Hall-Houston explains that it operates the facilities and that various interest owners identified in the petition own the facilities and the gas that will flow through them. It is noted that all of the anticipated production is price deregulated. It is indicated that basic separation and dehydration is to be performed at the Mustang Island Area block 781 platform to the extent needed to qualify the gas for transmission in MOPS, although the gas will not be treated or processed. Hall-Houston asserts the facilities perform a gathering function under the "primary function" test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

Hall-Houston states that in the event the Commission concludes that all or any portion of the subject facilities are jurisdictional, it requests a certificate of public convenience and necessity authorizing the construction and operation of such facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1988, 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and 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 Hall-Houston to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21754 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-18-000]

Hillin Production Co.; Petition for Adjustment

Issued September 19, 1988.

Take notice that on August 30, 1988, R.N. Hillin filed with the Commission on behalf of Hillin Production Company (Hillin) a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from the Btu refund obligation of Order Nos. 399, 399-A, and 399-B. Hillin states that it is financially unable to make the Btu refunds because the production value derived from its wells is obligated to the Federal Deposit Insurance Corporation (FDIC), that it has ceased doing business as a going concern, and that the FDIC is seeking to foreclose on all its properties. Hillin therefore requests waiver of its Btu refund obligation.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. 18 CFR 1101 *et seq.* (1988). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rule 214, 18 CFR 385.214 (1988). All motions to intervene must be filed within 15 days after

publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21749 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-137-001]

Kentucky West Virginia Gas Co.; Filing

September 19, 1988.

Take notice that on September 12, 1988, Kentucky West Virginia Gas Company (Kentucky West) filed Second Revised Sheet Nos. 34 through 38 to its FERC Gas Tariff, Second Revised Volume 1, to be effective June 1, 1988.

Kentucky West states that in compliance with the Commission's Letter Order of August 3, 1988, the tariff changes clarify the intent of the original filing herein to comply with the provisions of the Commission's new Purchased Gas Adjustment regulations promulgated in Order No. 483.

Kentucky West states that copies of this filing has been made upon each of its jurisdictional customers and interested state commissions and upon each party on the service list.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 26, 1988. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21750 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-783-000]

Lodi Processing Corp. and Jala Pipe Line Corp.; Petition for Declaratory Order Disclaiming Jurisdiction

September 20, 1988.

Take notice that on September 12, 1988, Lodi Processing Corporation (Lodi) and Jala Pipe Line Corporation (Jala), both of 839 Kings Highway, Suite 200, Shreveport, Louisiana 71104, jointly filed in Docket No. CP88-783-000 a petition for an order declaring that certain natural gas pipeline facilities are gathering facilities pursuant to section 1(b) of the Natural Gas Act and thereby, are exempt from the jurisdiction of the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Lodi states that it owns a natural gas processing plant and gas gathering system that has been in operation since the early 1930's. It is stated that the Lodi system consists of approximately 75 miles of low-pressure lines which gather gas from more than 100 wells located in Miller County, Arkansas, Caddo Parish, Louisiana and Cass and Marion Counties, Texas. It is further stated that gas is gathered to the Lodi plant in Marion County, Texas where residue gas is delivered at the tailgate of the plant to an interstate pipeline.

Jala states that it owns a smaller natural gas gathering system and processing plant that has been in operation since the 1930's. It is stated that the Jala system consists of over 120 miles of low-pressure lines which gather gas from more than 180 wells located in Marion County, Texas and Caddo Parish, Louisiana. It is stated that the gas is gathered to the Jala plant in Caddo Parish, Louisiana, where residue gas is delivered at the tailgate of the plant to industrial customers.

It is explained that although both Lodi and Jala are owned by the same individuals, each plant is operated separately and the gas gathered into and processed at the respective plants has never been commingled. In addition, it is explained, that all gas gathered to and processed at each plant is owned by Lodi and Jala or their affiliates.

It is explained that Lodi and Jala propose to interconnect two previously unconnected 8-inch pipelines which currently gather gas from wells in both Marion County, Texas and Caddo Parish, Louisiana, to the respective plants. It is stated that upon completion of the interconnection, gas from the wells historically gathered to and processed at the Lodi plant will be able to flow directly to the Jala plant while gas from wells historically gathered to and processed at the Jala plant will be able to flow directly to the Lodi plant. It is stated that through revalving at both plants, the processed gas from the tailgate of either plant can be commingled with wet gas coming into the interconnected pipeline for gathering to and further processing at the other plant, and delivery into a different market at the tailgate of such other plant.

Lodi and Jala state that the Lodi and Jala systems were constructed as gathering systems, exempt from Commission regulation under section 1(b) of the NGA. Lodi and Jala maintain that the interconnected pipeline between the two plants would continue to be a non-jurisdictional gathering line. It is maintained that gas in the interconnected line is not of pipeline quality and that the interconnected line will remain "behind the plant." It is stated that the gas in the interconnected line would not be gathered to a central point until it reaches the tailgate of the plant from which it is ultimately sold. Further, Lodi and Jala contend that the length, diameter and operating pressure of the interconnection line satisfy the *Farmland* criteria and that the overall configuration of the interconnected system reflects a gathering function.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 3, 1988, 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). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21755 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-699-000]

Northern Natural Gas Co.; Petition for Declaratory Order

September 16, 1988.

Take notice that on August 19, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-699-000 a petition pursuant to section 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)) for a declaratory order to terminate a controvery between Northern and United Gas Pipe Line Company (United), all as more fully set

forth in the petition which is on file with the Commission and open to public inspection.

Northern requests that the Commission issue an order herein declaring (1) that under the gas exchange agreement between United and Northern dated August 10, 1979, as amended, (Northern's Rate Schedule No. X-103) (the 1979 Agreement), and the Commission's order of April 28, 1980, *Northwest Alaskan Pipeline Company* (11 FERC ¶ 61,088), neither party to the 1979 Agreement need provide volumes for a cost-free exchange if the providing of such volumes would cause a detriment to that party; and (2) that, under the 1979 Agreement and the Commission's order of April 28, 1980, Northern is required to tender to United for exchange on a cost-free basis natural gas from Northern's Gulf Coast production only when to do so is beneficial to Northern's system.

Northern states that at the time the 1979 Agreement was negotiated and entered into, United had for several years been suffering from inadequate gas supplies and resulting curtailments to its customers. It is stated that United had recently entered into an agreement with Northwest Alaskan Pipeline Company (Northwest Alaskan) to purchase up to 450,000 Mcf of natural gas per day to be produced in Canada and delivered to the United States Canadian border at the beginning of the Northern Border Pipeline Company (Northern Border) system. It is stated that an application for a certificate of public convenience and necessity had recently been filed by Northern Border seeking authority to construct and operate the Northern Border system, as described in detail at 11 FERC ¶ 61,088. During the same period, Northern states that it had been contracting with producers for substantial volumes of gas in the general Gulf Coast area of the United States. It is stated that United, of course, had no facilities near the Northern Border pipeline and Northern did not have pipelines that could directly connect its Gulf Coast reserves to its main line system, which originates in west Texas and terminates in northern Minnesota and Michigan, thus, presenting the opportunity for a beneficial exchange of gas.

Northern states that the 1979 Agreement, on Original Sheet No. 1777, notes:

> Whereas, Northern has contracted and expects to continue to contract with various producers to purchase quantities of natural gas from areas including, but not necessarily limited to, the offshore vicinities of the Texas and Louisiana Gulf Coast (Gulf Coast volumes) and to contract with other natural gas pipeline companies for exchange and transportation in order to receive such purchases into its own system; and
>
> Whereas United desires to have Northern receive [United's] Alberta volumes from Northern Border for United's account and to have Northern redeliver thermally-equivalent volumes to United at mutually agreeable points on United's pipeline system, including, but not necessarily limited to, the Texas and Louisiana Gulf Coast, or to other pipelines for United's account (United's receipt points) * * *

Northern states that the 1979 Agreement thus contemplated exchanges of Canadian Gas for Gulf Coast gas to the extent that such exchanges were mutually beneficial but with the recognition that gas other than Gulf Coast gas may be tendered to United for whatever reason.

It is stated that the 1979 Agreement further provides, under *"RATES ARTICLE II"*:

> 2.1 To the extent that gas volumes are exchanged pursuant to Article I of this agreement United and Northern anticipate that such services will be mutually beneficial and substantially equal in which event no consideration on the part of either party shall be required of the other. However, should either party incur transportation or facility costs which in its sole judgment are disproportionate to the benefits that party derives from said exchange (excluding costs which Northern incurs in making its Gulf Coast volume available to United and the Northern Border costs which United incurs in making gas available to Northern), then the parties shall endeavor to agree on an equitable division of such costs. If such an agreement cannot be reached then either party may make other arrangements for delivery of such gas to its own system.

Northern states that it was hoped and anticipated by the parties that all volumes could be exchanged to the mutual benefit of each. However, the parties clearly recognized, states Northern, that this was a long-term agreement and that circumstances could change which would require either party to incur detriments in order to tender to the other party the exchange volumes desired by the other party and provided for such contingencies in Article II as quoted above.

Northern states that a hearing was held in the so-called Northern Border Pre-build Project in 1979 and 1980 in phases. Phase II-B including testimony, evidence and briefs concerning the 1979 Agreement. Both Northern and United presented witnesses stating to the effect that exchanges under the 1979 Agreement were expected to be mutually beneficial, it is stated.

Northern, claims that, in its Brief of March 13, 1980, it was noted that the parties expected that the Agreement would be mutually beneficial and that the benefits would be substantially equal.

United, it is claimed, in its Brief of March 13, 1980, in describing the 1979 Agreement stated, " * * * United has agreed in principle to exchange the volumes it purchases * * * for natural gas which Northern will have available from production in the Gulf Coast area. This agreement provides for a cost-free exchange of equivalent volumes, * * * thus minimizing the overall cost impact to United's markets."

Northern claims that the Commission's Staff, in its Reply Brief of March 20, 1980, noting United's characterization of the 1979 Agreement as an "agreement in principle" and also noting the paucity of evidence concerning Northern's ability to deliver Gulf Coast gas and United's ability to receive same, expressed concern as to whether the benefits would indeed be mutual, as the parties had hoped. Northern claims that the Staff was concerned that Northern may incur costs to make gas available to United and requested that further evidence be submitted on the question of mutual benefits between Northern and United from the exchange.

Northern states that circumstances were changing substantially and rapidly during the period from the time the 1979 Agreement was entered into and the Northern Border pipeline went into operation in late 1982. First of all, Northern asserts that the Natural Gas Policy Act of 1978 was beginning to show its effects with increases in the availability of domestic gas supplies; second, the price of Canadian gas at the border had increased from $2.16 to $4.94 per Mcf; third, conservation measures were affecting domestic gas markets; fourth, higher gas costs were adversely affecting domestic markets; and finally, U.S. pipelines were beginning to feel the first pangs of the take-or-pay pain that became endemic in the 1980s. Northern states that from the beginning of the exchanges in 1982, United rarely—on but a few occasions during the life of the 1979 Agreement—delivered 450,000 Mcf in any day to Northern Border for delivery to and exchange with Northern. Northern further states that, as noted in a Commission order of June 16, 1987, in *Northwest Alaskan Pipeline Company*, 39 FERC ¶ 61,301 at 61,977, in February of 1983, United issued a *force majeure* notice to Northern Alaskan, which resulted in an agreement which reduced substantially the minimum daily and annual take levels for 1983 and 1984. Northern states also that the minimum daily takes were reduced to 20 percent in 1983 and 30 percent in 1984. Northern

further states that the Commission's June 16, order also noted that in August of 1984 United again issued a *force majeure* notice resulting in a settlement between Northern Alaskan and United providing for a minimum take level for United of 150,000 Mcf per day, again far short of the maximum under the contract. In February of 1986 United, again on the basis of a claim of *force majeure*, reduced its takes to approximately 23,000 Mcf per day, it is stated.

United, Northwest Alaskan, and its supplier, Pan Alberta Gas Limited (Pan Alberta), entered into a comprehensive settlement agreement, Northern states, to be effective on or about July 1, 1987. As described in the Commission's June 16 order (39 FERC at 61,978–9), Northwest Alaskan, Pan Alberta and United agreed to a release of Pan Alberta's take-and-pay claims for the contract years 1985, 1986 and a portion of 1987 and a reduction of the purchase price and the take-and-pay levels for United's volumes for a 2-year period, approximately July 1, 1987, through June 30, 1989, it is further stated. Northern also states that the settlement provides that United shall take a minimum daily volume of 25,000 Mcf during the interim period and a minimum annual average day volume of 40,000 Mcf. Northern states that the settlement further provides that the agreement also reduce Pan Alberta's obligation to deliver to United in excess of 200,000 Mcf in any day during the 2-year period toward satisfaction of United's minimum annual purchase obligation of more than 50,000 Mcf per day above the volume requested by United on the previous day.

Most significantly, Northern argues, the settlement agreement provided that United and Northwest Alaskan offer to release at the request of Pan Alberta all or a portion of the gas volume entitlement of United in excess 150,000 Mcf per day, provided that Pan Alberta or a third party designated by Pan Alberta assumes United's obligations for that portion of the Northern Border cost of service attributable to any capacity released in conjunction with the release of the volumes. Northern argues further that United, over the 2-year period, has disabled itself from delivering more than 200,000 Mcf per day to Northern and permanently has exposed itself to being incapable of delivering more than 150,000 Mcf per day to Northern for exchange.

During all this time, Northern states, while United was delivering only small volumes to Northern in its market area, Northern had to utilize other means of getting its Gulf Coast area gas to its market area, as contemplated by the 1979 Agreement.

Northern indicates that the table below shows the approximate differences between Northern's Gulf Coast Production and United's deliveries of Canadian Gas to Northern.

	1983	1984	1985	1986	1987
Northern's average daily Gulf Coast production (MMcf)	525	462	277	204	187
United's average daily deliveries to Northern from Northern Border Pipeline Co. (MMcf)	172	155	155	34	88
Difference (MMcf)	353	307	122	170	99

Coincidental with United's declining market requirements, as evidenced by its low takes from Northwest Alaskan, Northern states that it was also experiencing declines in its annual market requriements due to some or all of the factors that were affecting United. In dealing with its producer-supplier problems, Northern has been shedding reserves, particularly its higher cost Gulf Coast reserves, it is stated. Additionally, it has been scheduling its takes from its various sources of supply in a manner which allows it to optimize its sales weighted average cost of gas (WACOG), Northern states. Hence, today, Northern concludes that it does not have deliverability in the Gulf Coast area of anywhere near 450,000 Mcf per day. Moreover, Northern concludes further that because of the prices of much of its Gulf Coast gas supplies, Northern schedules takes from that area near minimum levels so as to minimize the adverse impact of higher cost gas on its WACOG.

Northern explains that, over the course of the very difficult last several years, Northern and United have made every effort to accommodate each other to obtain, to the limited extent possible, the mutual benefits of the cost-free exchange and to otherwise assist each other in moving gas at minimum cost.

Recently, Northern states, United, contrary to its previous method of operating under the 1979 Agreement with Northern, has been contending that Northern has an absolute obligation to provide up to 450,000 Mcf of natural gas per day on a cost-free and firm basis, apparently ignoring the provisions of the 1979 Agreement that cost-free exchanges are to take place only on a mutually beneficial basis. United contends, in a letter dated August 4, 1988, that Northern has not been living up to the 1979 Agreement, it is said. Northern states that, by letter dated August 9, 1988, it responded in detail to United's August 4th letter explaining the meaning of and the history of operations under the 1979 Agreement. Northern indicates that it offered to seek alternatives, such as the transportation contemplated by Section 2.1 of the 1979 Agreement, to accommodate United. However, Northern states that, by letter dated August 11, 1988, United appears to maintain a hard line that Northern is refusing to perform obligations under the 1979 Agreement. Northern states further that, by letter of August 15, 1988, Northern expounded, reiterating its offer to continue the cooperation that both parties had relied on in the past.

Northern asserts that it continues to offer to work with United to assist in making Canadian gas available to United's system, and that it is time for the Commission to step in and declare the obligations of the parties under the 1979 Agreement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 7, 1988, 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). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88–21756 Filed 9–22–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-252-000]

Phoenix Chemical Co.; Petition for Declaratory Order

September 19, 1988.

Take notice that on September 12, 1988, Phoenix Chemical Company (Phoenix), 16675 Highway 20 West, East Oubuque, Illinois 61025–0229, filed in

Docket No. RP88 252-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order asking the Commission to confirm that Northern Natural Gas Company (Northern) has the discretion to waive section 6 of Rate Scedule IT-1 of its effective FERC tariff, and that the grant of such a waiver to Phoenix in the circumstances described in the Petition will constitute a valid exercise of such discretion.

Phoenix states section 6 is said to contain nominations procedures intended to specify how natural gas is scheduled for receipt and delivery under Northern's "open-access" transportation program. Phoenix contends that confusion surrounding how those procedures should be applied over a long holiday period has resulted in Northern's not accounting for deliveries of natural gas made on Phoenix' behalf and has resulted in a 60,000 MMBtu overdelivery to Northern. As a result, Phoenix states that it has been exposed to substantial excess usage penalties imposed by the local distribution company to which the 60,000 MMBtus were to be delivered for Phoenix' account, Northern Illinois Gas Company (NIGAS). Phoenix states that NIGAS has assessed these penalties in spite of the fact that neither Northern, NIGAS or any other party involved in the relevant transaction has incurred any out-of-pocket costs or other harm. Moreover, Phoenix contends that the magnitude of the threatened penalties, which represent a windfall to NIGAS, has been multiplied by a delay in addressing a resulting mistake in nominations due to combined national and normal weekend holidays.

Phoenix states that these unique circumstances, as set forth more fully in the Petition, which is on file and available for public inspection at the Commission, justify according Phoenix a waiver of the strict requirements of section 6, but that NIGAS has opposed grant of the waiver by Northern. Accordingly, Phoenix states that Northern has to date been unwilling to grant the waiver, presumably for fear of being accused by NIGAS of discriminatory treatment. Phoenix further states, however, that Northern is willing to grant such a waiver, if regulatorily permissible. In addition, if such a waiver is permissible, Northern has agreed to make appropriate adjustments in its July billings to reflect the waiver on a retroactive basis.

Accordingly, Phoenix asks that the Commission:

1. Declare that Northern is authorized to grant Phoenix the waiver it requests and that it is reasonable and appropriate that Phoenix be granted a waiver of section 6 of Northern's Rate Schedule IT-1 for the July 2-5, 1988, period;

2. Confirm that Northern is authorized to adjust its billing statements to Phoenix and NIGAS for the month of July 1988 to correct the effects of the lack of such waiver; and

3. Grant the requested relief as a matter of summary disposition.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 19, 1988, 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). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21757 Filed 9-22-88; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CP85-806-006]

Texas Eastern Transmission Corp.; Petition To Amend

September 20, 1988.

Take notice that on August 31, 1988, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed a petition to amend the order issued September 12, 1986, in Docket No. CP85-806-000, pursuant to section 7(c) of the Natural Gas Act, so as to authorize additional delivery points for the transportation of natural gas, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Texas Eastern states that by the order issued September 12, 1986, CNG Transmission Corporation (CNG) and Texas Eastern were authorized to implement a project to provide additional gas supplies to Baltimore Gas and Electric Company (BG&E) and Washington Gas Light Company (WGL), whereby CNG was authorized to sell a total of 120,000 dt to BG&E and WGL, and Texas Eastern was authorized to construct and operate pipeline loops on its PennJersey system and render a transportation service for CNG of up to 120,000 dt of natural gas per day, pursuant to a precedent agreement dated August 9, 1985, and a pro forma Gas Transportation Agreement (Agreement). It is asserted that the Agreement provides that Texas Eastern will receive natural gas for transportation from CNG at the existing interconnection between their systems at the Oakford Storage Pool in Westmoreland County, Pennsylvania, and redeliver quantities of gas transported to CNG at the existing interconnection of their systems at Texas Eastern's Perulack Compressor Station in Juniata County, Pennsylvania.

Texas Eastern also states that acceptance of the certificate by Texas Eastern was deferred pending resolution of issues on court appeal, and that Texas Eastern has accepted the certificate and construction is in progress to commence transportation on November 1, 1988.

Texas Eastern alleges that in order to enhance operating flexibility between their systems, Texas Eastern and CNG have agreed to add existing authorized points of interconnection between their systems as additional transportation delivery points to CNG under the Agreement, and Texas Eastern therefore requests the Commission to amend the September 12, 1986, order to authorize Texas Eastern to add additional delivery points under the Agreement pursuant to an Amendment dated July 13, 1988.

Texas Eastern also alleges that the Amendment provides that on any day during the Summer Months (defined as the calendar months of April through October, inclusive, in any calendar year), and upon request by CNG, Texas Eastern would make deliveries of gas under the Agreement to CNG at the existing point of interconnection of pipeline facilities of Texas Eastern and CNG at the Leidy Storage Pool, in Clinton County, Pennsylvania.

In addition, Texas Eastern alleges that the amendment further provides that on any day during the Winter Months (defined as the calendar months beginning in November of any year and ending on the last day of March of the following calendar year), Texas Eastern would make, upon the request of CNG and to the extent practical, deliveries of natural gas to CNG under the Agreement at the Perulack point of delivery by displacement of quantities of gas otherwise deliverable by CNG to Texas Eastern at points of delivery under the GSS Storage Agreements between Texas Eastern and CNG dated March 20, 1984, December 28, 1979, and

March 11, 1968. Texas Eastern maintains however, that it would not be obligated under the Amendment to request deliveries of natural gas under the GSS Storage Agreement solely to permit Texas Eastern to delivery natural gas by displacement under the Amendment.

Texas Eastern states that the Leidy interconnection presently serves as a receipt and delivery point under varous storage, transportation, and exchange arrangements between CNG and Texas Eastern, and has historically served as a key balancing point for the CNG and Texas Eastern dispatchers in their day to day operations, and that approval of the Amendment would likewise enhance flexibility in rendering the 120,000 dt/day transportation service. It is also stated that no additional facilities are required as the Amendment provides that the additional point is not a firm delivery obligation and is subject to mutually agreeable dispatching arrangements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 11, 1988, 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 384.214 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.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21751 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-767-000,[1] CP88-768-000, CP88-770-000, CP88-771-000, CP88-772-000, CP88-773-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

September 20, 1988.

Take notice that on September 7, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-767-000 *et al.*, requests pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) authorization to transport natural gas for various customers under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

[1] Not consolidated

United proposes to transport, on an interruptible basis, natural gas for specified customers, as noted in the Appendix hereto. It is stated that transportation between the parties provide for United to receive natural gas from various existing points of receipt on its system in Louisiana and Mississippi. United states that each service has commenced in accordance with § 284.223(a) of the Regulations. United states that no new facilities are required to provide the propsed services.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

APPENDIX

Docket Nos.	Filed	Customer	Redelivery point	Interruptible Transportation			
				Peak (MMBtu/d)	Average (MMBtu/d)	Annual (MMBtu/d)	Docket No.[1] ST88
CP88-767-000	9/7/88	Parker Gath. Co. Inc	TETCO, at Bienville Parish, LA or, Red River, LA.	2,060	3,060	751,900	5228
CP88-768-000	9/7/88	Texaco Gas Marketing, Inc.	Southern MRT, TxGas, Tennessee & International Minerals Corp. in Ouachita Parish, LA & Gulf South in Morehouse Parish, LA.	25,750	25,750	9,398,750	5363
CP88-770-000	9/7/88	MidCon Marketing Corp	Gulf South in St. Charles Parish, LA	41,200	41,200	15,038,000	5229
CP88-771-000	9/7/88	The Resource Group	AKZO Chamical Plant, Mobile County, AL	5,150	5,150	1,879,750	5230
CP88-772-000	9/7/88	Air Products & Chemicals, Inc.	Santa Rosa County, Florida	36,050	36,050	13,158,250	5384
CP88-773-000	9/7/88	Consolidated Fuel Corp	MRT in Ouachita Parish, LA	77,250	77,250	28,196,250	5386

[1] Report of service under Section 284.223(a) of the Regulations.

[FR Doc. 88-21752 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-804-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

September 19, 1988.

Take notice that on September 14, 1988, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-804-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for MidCon Marketing Corporation (MidCon), a marketer, under its blanket certificate issued in Docket No. CP88-6-000,

pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated June 22, 1988, it proposes to transport up to 103,000 MMBtu (MMBtu) per day equivalent of natural gas on an interruptible basis for MidCon from points of receipt listed in Exhibit "A" of the agreement which accompanies the application to delivery points listed in Exhibit "B", which transportation service involves interconnections between United and various transporters.

United advises that service under § 284.223(a) commenced August 4, 1988, as reported in Docket No. ST88-5347 (filed August 23, 1988). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-21753 Filed 9-22-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3453-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 5, 1988 through September 9, 1988 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) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-COE-E36163-SC, Rating LO, Gills Creek Flood Control Plan, Implementation, Richland County, SC.

Summary: EPA has no objections to the project as proposed.

ERP No. D-FAA-D40235-MD, Rating EO2, 15L/33R Runway Extension, Baltimore/Washington International Airport, Approval and Funding, Anne Arundel County, MD.

Summary: EPA has objections to the proposed project due to potential noise, air quality, and water quality impacts and requested additional analysis and mitigation measures be included in the final document.

ERP No. D-FHW-H40138-NB, Rating EC2, US 275 Improvement, Mercer to Waterloo, Funding, Douglas County, NB.

Summary: EPA requested additional information to assess both direct and indirect impacts to biological resources.

Final EISs

ERP No. F-GSA-K81018-CA, Oakland Federal Building Construction, Approval, Alameda County, CA.

Summary: EPA requested a copy of the Record of Decision when it is issued.

ERP No. F-NPS-L61171-AK, Kenai Fjords National Park, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NPS-L61173-AK, Gates of the Arctic National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NRC-A00150-00, Decommissioning of Nuclear Facilities, Implementation.

Summary: EPA offered several minor concerns relating to the final EIS, including acceptable levels of residual radioactivity and proper management and disposal of hazardous waste.

Dated: September 20, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-21863 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3453-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5074 or (202) 382-5076.

Availability of Environmental Impact Statements Filed September 12, 1988 Through September 16, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880303, Final, COE, TX, Buffalo Bayou and Tributaries, Comprehensive Flood Damage Prevention Study, Implementation, Harris, Fort Bend, and Waller Counties, TX, Due: October 24, 1988, Contact: Charles R. Harbaugh (409) 766-3044.

EIS No. 880304, Final, COE, FL, Martin County Beach Erosion Control Project, Implementation, Hutchinson and Jupiter Islands, Martin County, FL, Due: October 24, 1988, Contact: Dan Malanchuk (904) 791-1698.

EIS No. 880305, Final, EPA, FL, MXG, Gulf of Mexico Ocean Dredged Material Disposal Site (ODMDS) Designation for Fine Grained Dredged Material from the Pensacola Navy Homeport Project and Other Future Projects, FL, Due: October 24, 1988, Contact: Reginald Rogers (404) 347-2126.

EIS No. 880306, Final, SCS, MS, Whites Creek Watershed Protection and Flood Prevention Plan, Funding, Possible 404 Permit and Implementation, Webster County, MS, Due: October 24, 1988, Contact: L. Pete Heard (601) 965-5205.

EIS No. 880307, Final, BLM, NM, Socorro Resource Area Management Plan, Implementation, Las Cruces District, Socorro and Catron Counties, NM, Due: October 24, 1988, Contact: Harlen Smith (505) 835-0412.

EIS No. 880308, Final, SFW, AK, Arctic National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, AK, Due: October 24, 1988, Contact: William Knauer (907) 786-3399.

EIS No. 880309, Final, COE, PA, NY, MI, IN, OH, IL, WI, MN, Great Lakes Connecting Channels and Harbors Improvement Study and Feasibility Report, Implementation, PA, NY, MI, IN, OH, IL, WI and MN, Due: October 24, 1988, Contact: Jim Galloway (313) 226-7590.

Amended Notices

EIS No. 880393, Draft, SFW, NY, VT, Lake Champlain Sea Lamprey Control Temporary Pgm., Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Cos., NY and Addison and

Chittenden Cos., VT, Due: April 15, 1989, Contact: Ralph Abele, Jr. (617) 965-5100.

Published FR 11-13-87—Review period extended.

EIS No. 880152, Draft, USA, PRO, NAT, Nationwide Biological Defense Research Program, Continuation, Implementation, Due: October 4, 1988, Contact: Charles Dasey (301) 663-2732. Published FR 5-20-88-Review period extended.

EIS No. 880287, DSuppl, AFS, OR, ID, Wallowa Whitman National Forest, Land and Resources Management Plan, Additional Alternative, Implementation, Baker, Union, Wallowa, Grant, Malheur and Umatilla Counties, OR and Adams, Nez Perce and Idaho Counties, ID, Due: December 12, 1988, Contact: Bruce McMillan (503) 523-6319.

Published FR 9 9-88—Review period extended, incorrect date published in 9-9-88 FR.

Dated: September 20, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-21862 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3452-6]

Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification notice.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a notice which clarifies requirements for facilities that treat, store or dispose of radioactive mixed waste to obtain interim status pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA). Radioactive mixed wastes are wastes that contain both hazardous waste subject to RCRA and radioctive waste subject to the Atomic Energy Act (AEA). Additionally, this notice addresses "notification" requirements for handlers of radioactive mixed waste.

DATE: Owners and operators of facilities treating, storing, or disposing of radioactive mixed waste in States not authorized by September 23, 1988 to administer the Federal hazardous waste program in lieu of EPA must submit a RCRA Part A permit application to EPA by March 23, 1989 to qualify for interim status. Facilities treating, storing or disposing of radioactive mixed waste in States that received authorizatioin by September 23, 1988 are not subject to RCRA regulations until the State revises its existing authorized hazardous waste program to include authority to regulate radioactive mixed waste. Owners and operators must then comply with applicable State requirements regarding interim status.

To date, four States (i.e., Colorado, South Carolina, Tennessee, and Washington) have been authorized to regulate radioactive mixed wastes. In those States, owners and operators must comply with the applicable State law governing interim status for radioactive mixed waste facilities if it is more stringent than the otherwise applicable provisions of this notice.

FOR FURTHER INFORMATION CONTACT: Betty Shackleford, Office of Solid Waste (WH-563B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2221.

SUPPLEMENTARY INFORMATION:

A. Background

In 1976, the Resource Conservation and Recovery Act (RCRA) as amended, was passed to provide for development and implementation of a comprehensive program to protect human health and the environment from the improper management of hazardous waste. Specifically, Subtitle C of RCRA creates a managment system intended to ensure that hazardous waste is safely handled from the point of generation to final disposal. To acomplish this, Subtitle C requires the Agency first to define and characterize hazardous waste. Second, a hazardous waste manifest system was implemented to track the movement of hazardous waste from the point of generation to ultimate disposal. Hazardous waste generators and transporters must employ appropriate management practices and procedures to ensure the effective operation of the manifest system. Third, owners and operators of treatment, storage or disposal facilities (TSDF's) must comply with standards the Agency established under section 3004 of RCRA that "may be necesary to protect human health and the environment." These standards are implemented exclusively through permits issued to TSDF owners and operators by the Agency or authorized States. Until final permits are issued, treatment, storage, and disposal facilities must comply with the interim status regulations found in 40 CFR Part 265, which were promulgatd mostly on May 19, 1980.

Under RCRA interim status, the owner or operator of a TSDF may operate without a final permit if: (1) The facility existed on November 19, 1980 (or existed on the effective date of statutory or regulatory changes under RCRA that render the facility subject to the requirements to have a permit under section 3005); (2) the owner or operator complies with the notification requirements of section 3010 of RCRA; and (3) the owner or operator submits a RCRA Part A permit application (40 CFR 270.70). Interim status is retained until the Agency or authorized State makes a formal decision to issue or deny the final TSDF permit.

As provided by section 3006(b) of RCRA, States may apply to EPA for authorization to administer and enforce a hazardous waste program pursuant to Subtitle C of RCRA. Authorized State programs are carried out in lieu of EPA. To date, forty-four States have received final authorization to administer the basic hazardous waste program. Of these forty-four States, only four (i.e., Colorado, South Carolina, Tennessee, and Washington) have received the additional authorization needed to regulate radioactive mixed waste. In these States, which had base program authorization by July 3, 1986, the State's regulations on interim status for mixed waste facilities control.

The other forty States with base program authorization must still revise their existing programs to include authority to regulate the hazardous component of radioactive mixed waste. In the twelve States and trust territories (i.e., Alaska, American Samoa, California, Connecticut, Hawaii, Idaho, Iowa, Marianna Islands, Ohio, Puerto Rico, Virgin Islands, and Wyoming) *unauthorized* to carry out their own RCRA hazardous waste program, radioactive mixed waste is subject to Federal hazardous waste regulations administered by EPA.

Historically, substantial confusion and uncertainty have surrounded the applicability of RCRA to hazardous wastes containing certain radioactive materials (i.e., source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)). This uncertainty stemmed, to a large extent, from the exclusion of source, special nuclear and byproduct material from the definition of solid waste under section 1004(27) of RCRA.

To clarify State responsibilities with regard to the hazadous components of radioactive mixed waste, the EPA published a notice in the **Federal Register** of July 3, 1986 (51 FR 24504). That notice recognized that States had not previously been authorized under RCRA to regulate radioactive mixed waste because of continuing debate surrounding the extent of RCRA jurisdiction over this category of waste.

Through that notice, EPA clarified its position that the hazardous component(s) of mixed waste was subject to RCRA regulation. Accordingly, States were required to revise their existing hazardous waste programs and apply for RCRA authorization to regulate radioactive mixed waste in accordance with the deadlines set forth in the July 3, 1986 notice. Similarly, such authority must now be sought by States initially submitting an application for RCRA final authorization.

Since publication of the July 3, 1986 notice, the Agency promulgated new deadlines for State hazardous waste program modifications (the "Cluster Rule," September 22, 1986, 51 FR 33712). This subsequent rulemaking established annual deadlines for States to submit program changes in groups or clusters when seeking Agency authorization. For State program changes occurring after June 1984, the groups or clusters were to correspond to successive twelve-month periods beginning each July 1 and ending June 30 of the following year. In accordance with the schedule established by the Cluster Rule, States which applied for final authorization before July 3, 1986 were required to revise existing hazardous waste programs to include the authority to regulate the hazardous component of radioactive mixed waste by July 1, 1988 (or by July 1, 1989 if a statutory amendment is necessary). States initially seeking final authorization after July 3, 1987 were required to seek authorization for radioactive mixed waste as part of their application for final authorization. Any State applying for HSWA corrective action must concurrently seek authority for radioactive mixed waste. The July 3, 1986 notice addressing RCRA's applicability to TSDF's handling radioactive mixed waste did not, however, address the issue of interim status.

B. Clarification of the Definition of Byproduct Material

At the same time that EPA's rules governing State programs for radioactive mixed waste were being developed and implemented, controversy arose over which wastes are mixed and therefore subject to RCRA and which wastes are pure "byproduct material" and therefore exempt from RCRA regulations as provided by section 1004(27). To delineate RCRA applicability to their byproduct material waste streams, the Department of Energy (DOE) issued an interpretive rule on May 1, 1987 (52 FR 15937). In that rule DOE stated that the term byproduct material as it applies to DOE-owned wastes (i.e., any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material) refers only to the actual radionuclides dispersed or suspended in the waste substance. That interpretation is consistent with the position issued on January 8, 1987 by the EPA and the Nuclear Regulatory Commission (NRC) in a document entitled "Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions." Therefore, as DOE clarified in its May 1, 1987 byproduct rule, any matrix containing a RCRA hazardous waste as defined in 40 CFR 261 and a radioactive waste subject to the AEA is a radioactive mixed waste. Such wastes are subject to RCRA hazardous waste regulations regardless of further subclassification of the radioactive waste constituent as high-level, low-level, transuranic, etc.

C. Interim Status

As discussed previously, RCRA section 3005(a) prohibits treatment, storage, or disposal of hazardous waste without a permit after November 19, 1980. However, section 3005(e) of RCRA provides that facilities in existence on November 19, 1980 *or* on the date of statutory or regulatory changes which subject the facility to RCRA requirements, may continue treatment, storage, or disposal under "interim status" pending a final decision on its permit application.[1] To qualify for interim status under section 3005(e), the owner or operator of a TSDF in existence must submit a Part A permit application and meet applicable notification requirements under section 3010 of RCRA.

EPA has become aware that many TSDF's handling radioactive mixed waste, both in authorized and unauthorized States (EPA-administered hazardous waste programs), have been substantially confused about the regulatory status of their particular mix of hazardous waste. Further, these owners and operators are uncertain about how to qualify for interim status if they are handling radioactive mixed waste.

The July 3, 1986 notice addressing RCRA's applicability to TSDF's handling radioactive mixed waste did not address the issue of interim status. Given that omission and subsequent definitional clarifications on which radioactive waste streams are subject to RCRA regulation, EPA has determined that substantial confusion about interim status requirements existed. The primary purpose of this notice, therefore, is to clarify RCRA interim status requirements with respect to TSDF's managing radioactive mixed waste. The requirements are discussed below.

1. Requirement That Facilities Be "in Existence"

Interim status provides temporary authorization to continue hazardous waste management activities at facilities engaging in such activities at the time that they first become subject to RCRA regulation. Without interim status, the activities would have to cease until a permit application was filed and reviewed and final permit issued.

One of the conditions for qualifying for interim status under section 3005(e) is that the facility be "in existence" either on November 19, 1980 or on the date of the regulatory or statutory change which first subjects the facility to RCRA permitting requirements. Under EPA regulations at 40 CFR 260.10 and 270.2, to be "in existence" (i.e., to be an existing hazardous waste management facility or existing facility) means that the facility is either operating or construction of such a facility has commenced on the relevant date.

As applied to facilities handling radioactive mixed waste in States unauthorized to implement a hazardous waste program (i.e., without base program authorization) as of the date of this notice, EPA believes that facilities in operation or under construction as radioactive mixed waste treatment, storage, or disposal facilities on July 3, 1986 may qualify for interim status under section 3005(e)(1)(A)(ii) of RCRA. The Agency interprets this provision as applying to such facilities in existence on July 3, 1986 because the July 3, 1986 notice was EPA's first official pronouncement to the general public that RCRA permitting requirements are applicable to radioactive mixed waste. In view of the level of confusion surrounding regulation of radioactive mixed waste prior to that time, EPA will treat the July 3, 1986 notice as the relevant regulatory change for establishing that facilities in existence

[1] However, if a *facility* has previously had its interim status terminated, the facility is barred by statute from qualifying for interim status for a newly listed waste (RCRA section 3005(e)(1)). If only certain *units* at the facility have previously had interim status terminated, then the facility may operate newly-regulated units under interim status (see 40 CFR 270.72).

on that date may qualify for interim status if other applicable requirements are met.

Facilities treating, storing, or disposing of radioactive mixed waste but not other hazardous waste in a State with base program authorization are not subject to RCRA regulation until the State program is revised and authorized to issue RCRA permits for radioactive mixed waste. The effective date of the State's receipt of radioactive mixed waste regulatory authorization from EPA will therefore be the regulatory change that subjects these TSDF's to RCRA permitting requirements. Any facility treating, storing, or disposing of radioactive mixed waste, or any such facility at which construction commenced by the effective date of authorization for the State's radioactive mixed waste program revision may qualify for interim status if the other requirements described below are met. However, owners and operators of TSDF's in authorized States are subject to all applicable State laws. A State can establish its own date for qualifying for interim status but, in order to be no less stringent than the Federal program, that date *may not* be after the effective date of EPA's authorization to the State to regulate radioactive mixed waste.

Some facilities in States with base program authorization as of July 3, 1986 may already have interim status under RCRA because they handle other RCRA hazardous wastes. These facilities should submit a revised Part A permit application reflecting their radioactive mixed waste activities within six months of the State's receipt of authorization for radioactive mixed waste.

2. Requirements to File a Permit Application

To qualify for interim status under RCRA section 3005(e) (1), the owner or operator of an "existing" facility must submit a Part A permit application. Under 40 CFR 270.10(e), existing facilities in *unauthorized* States must submit Part A of their permit application no later than six months after the date of "publication or regulations" which first require them to comply with technical standards, or thirty days after they first become subject to the technical standards, whichever is first. Although the July 3, 1986 notice clarified RCRA jurisdiction over radioactive mixed waste, it specifically addressed only the issue of State authorization. Application of the time periods specified in 40 CFR 270.10(e) to facilities located in unauthorized States was not addressed. Furthermore, the July 3, 1986 notice was technically not a regulation, which is the trigger for § 270.10(e) in normal circumstances. As a result, owners and operators in unauthorized States could legitimately have been confused as to whether (and when) they were required to submit a Part A permit application. Under § 270.10(e)(2), EPA finds that the confusion is substantial and is attributable primarily to (1) ambiguities surrounding the 40 CFR parts 260–265 regulatory status of mixed waste, (2) the narrow scope of the July 3, 1986 notice and (3) uncertainty regarding DOE's final definition of byproduct material which had direct bearing on RCRA applicability to Federally-owned radioactive mixed wastes and indirect bearing on commercial radioactive mixed wastes.

EPA, therefore, is exercising its authority today under § 270.10(e)(2) to extend the Part A permit application filing dates for owners and operators of facilities handling radioactive mixed waste in unauthorized States. Owners and operators of radioactive mixed waste facilities in operation or under construction as of July 3, 1986 (See 45 FR 33066, May 19, 1980) in unauthorized States must submit RCRA Part A permit applications or modifications within six months of the date of publication of today's notice to qualify for interim status. This is predicated on the Agency's determination that the time periods specified in § 270.10(e) are triggered as of the date of publication of this notice given the circumstances presented herein. It should be noted, however, that radioactive mixed waste land disposal facilities must also submit a final (Part B) permit application and certification of compliance with applicable ground-water monitoring and financial assurance requirements within twelve months from the date of this notice pursuant to section 3005(e)(3) of RCRA. Failure to do so may result in loss of interim status for the affected units and possibly for the facility. Facilities other than land disposal must submit Part B of the permit application in accordance with deadlines established by the EPA Regional Office.

Mixed waste TSDF's in States with base program authorization must comply with applicable State requirements and deadlines for obtaining interim status as prescribed in authorized State law. Radioactive mixed waste land disposal facilities obtaining interim status in authorized States are nevertheless subject to the section 3005(e)(3) one-year provision on loss of interim status for newly-listed wastes. Thus, the owners or operators of such facilities must submit the State analogue of the Part B permit application and the required certifications within twelve months of the effective date of the State's authorization to regulate radioactive mixed waste. Failure to submit the Part B permit application or the required certifications will result in loss of interim status for the affected units and possibly for the facility. Facilities other than land disposal must submit the Part B permit application in accordance with deadlines established by the authorized State program.

3. Requirement to Comply with Section 3010 Notification

The final condition for obtaining interim status under section 3005(e) of RCRA is notification of hazardous waste activity under section 3010(a) of RCRA. Section 3010(a) requires persons handling hazardous wastes at the time of publication of EPA's initial hazardous waste regulations (on May 19, 1980) to notify EPA of their hazardous waste activity within 90 days (i.e., by August 18, 1980). Section 3010(a) also allows the Administrator discretion on whether to require persons to provide such notification not later than 90 days after promulgation or regulations identifying a substance they handle as hazardous waste thereby providing EPA with a current picture of the hazardous waste universe.

Although many facilities currently treating, storing, or disposing of radioactive mixed waste were doing so in May 1980, EPA believes that the status of radioactive mixed waste was sufficiently unclear that no notification under section 3010(a) was required by August 18, 1980 for facilities handling such waste (See 45 FR 76631–32, November 19, 1980). Nor has notification subsequently been required as part of EPA promulgation of additional RCRA regulations. Therefore, EPA has determined that it is unreasonable to penalize owners and operators of facilities currently handling radioactive mixed waste for any failure to file notification under Section 3010.

Further, EPA finds that TSDF's have "complied with the requirements of section 3010(a)" for purposes of section 3005(e) interim status under 40 CFR 270.70(a)(1). This finding is predicated largely on the fact that radioactive mixed waste will not be subject to hazardous waste regulations in the vast majority of States until they revise their programs to include such authority. These program revisions could take until July 3, 1989 for States needing a statutory amendment. Because notification would be linked to radioactive mixed waste authorization for these States, receipt of this

information would be fragmented. Moreover, the Agency has been aware of the magnitude of the potential radioactive mixed waste universe for some time since each NRC and NRC Agreement State lincensee is a potential handler of radioactive mixed waste. Thus, no further notification of EPA under § 270.70(a)(1) is required in order for facilities treating, storing or disposing of mixed waste to qualify for interim status. However, TSDF owners and operators, like generators and transporters of radioactive mixed waste, must obtain an EPA Identification Number in accordance with the procedures set forth in 40 CFR 265.11 if they do not already have one. The Identification Number may be obtained by completing EPA Notification Form 8700-12 and submitting it to the EPA Regional Office serving the area where the hazardous waste activity is located.

D. Joint Regulation of Radioactive Mixed Waste

As stated previously, a single radioactive mixed waste stream is subject to regulation by two separate Federal agencies (i.e., EPA and NRC, or EPA and DOE). This dual regulatory system requires handlers of waste formerly regulated exclusively by NRC or DOE to also comply with RCRA regulations for hazardous waste management. EPA is committed to minimizing the impact of RCRA regulations by developing a strategy for joint regulation of radioactive mixed wastes that will effect program implementation in the least burdensome manner practicable.

One area of the radioactive mixed waste regulatory process which may lend itself to streamlining occurs when regulatory requirements for hazardous and radioactive waste management are duplicative. When this occurs, compliance with regulations governing radioactive waste management may accomplish a level of environmental protection that may be commensurate with that required under RCRA for hazardous waste management or vice versa. In such instances, EPA will accept, to the extent possible, information already submitted to the NRC when processing the RCRA permit. Moreover, EPA and NRC are assessing the feasibility of developing a joint permitting/licensing guidance that will address these concerns. Suggestions from the regulated community regarding duplicative requirements and simplification of the licensing/permitting process are welcome. Comments should be specific and should document how equivalent protection of human health and the environment from hazardous waste is achieved. The Agency urges States authorized to regulate radioactive mixed waste to adopt a comparable practice when implementing its hazardous waste program.

E. Consistency with the Atomic Energy Act

Publication of the clarification notice addressing RCRA applicability to radioactive mixed waste precipitated a variety of concerns from the regulated community, most of which reflected confusion about the RCRA program. However, two issues were commonly raised, namely, (1) the appropriateness of RCRA hazardous waste regulations for managing waste containing radioactive components and, (2) compliance with RCRA would result in violation of a basic tenet of radioactive waste management, that of keeping radiation exposures as low as reasonably achievable (ALARA).

These concerns prompted the EPA and the NRC to jointly review their respective regulations in an effort to delineate the extent of inconsistencies between EPA's hazardous waste and NRC's radioactive waste management requirements. No inconsistencies were identified as a result of this comparison although RCRA was more prescriptive in some instances and differences in stringency were observed. Differing or more stringent regulations do not necessarily constitute inconsistent requirements. For example, the comparison of container management regulations (See 10 CFR Parts 61 and 71 and 40 CFR Part 264, Subpart I) revealed that they covered different aspects of container management. NRC regulations provide requirements for packaging and placement for land disposal (including the use of fill and liquid-absorbent materials) (See 10 CFR 61.51 and 10 CFR 40-44) while EPA regulations provide prescriptive provisions for the design, use, and inspection of containers at storage facilities and describe how spills from storage areas are to be mitigated. Both agencies have regulations on packaging and waste transport. Here, the regulatory requirements were found to be complementary rather than conflicting.

Although NRC and EPA waste management regulations differ in stringency and scope, the technical requirements were not found to be inconsistent. Section 1006(a) of RCRA precludes any solid or hazardous waste regulation by EPA or a State that is "inconsistent" with the requirements of the AEA. In such instances, the AEA would take precedence and the inconsistent RCRA requirement would be inapplicable.

EPA recognizes that implementation of the dual regulatory program for radioactive mixed waste management might result in instances where compliance with both sets of regulations is not only infeasible but undesirable. Therefore, EPA urges the regulated community to bring to our attention all cases of actual inconsistency which may form the basis for future rulemaking and/or technical or policy guidance.

Dated September 16, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

[FR Doc. 88-21776 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51714; FRL-3452-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances, Control Act (TSCA) requires any person who intends to manufacture or import a new chemcial substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-eight such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1878, 88-1879, 88-1880, November 22, 1988.

P 88-1881, 88-1882, November 23, 1988.

P 88-1883, 88-1884, 88-1885, 88-1886, 88-1887, 88-1888, 88-1889, 88-1890, 88-1891, 88-1892, 88-1893, 88-1894, 88-1895, 88-1896, November 26, 1988.

P 88-1897, 88-1898, 88-1899, 88-1900, 88-1901, 88-1902, 88-1903, 88-1904, 88-1905, 88-1906, 88-1907, 88-1908, 88-1909, 88-1910, 88-1911, November 27, 1988.

P 88-1912, 88-1913, 88-1914, November 28, 1988.

P 88-1915, 88-1916, 88-1917, 88-1918, 88-1919, 88-1920, 88-1921, 88-1922, 88-1923, 88-1924, 88-1925, November 29, 1988.

Written comments by:

P 88-1878, 88-1879, 88-1880, October 23, 1988.

P 88-1881, 88-1882, October 24, 1988.

P 88-1883, 88-1884, 88-1885,

P 88-1886, 88-1887, 88-1888, 88-1889, 88-1890, 88-1891, 88-1892, 88-1893, 88-1894, 88-1895, 88-1896, October 27, 1988.

P 88-1897, 88-1898, 88-1899, 88-1900, 88-1901, 88-1902, 88-1903, 88-1904, 88-1905, 88-1906, 88-1907, 88-1908, 88-1909, 88-1910, 88-1911, October 28, 1988.

P 88-1912, 88-1913, 88-1914, October 29, 1988.

P 88-1915, 88-1916, 88-1917, 88-1918, 88-1919, 88-1920, 88-1921, 88-1922, 88-1923, 88-1924, 88-1925, October 30, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-51714]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agnecy Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-974), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1878

Manufacturer. Confidential.
Chemical. (G) Alicyclic heterocyclic polyether polyurethane.
Use/Production. (G) Curing agent (industrial use). Prod. range: 20,000-155,000 kg/yr.

P 88-1879

Manufacturer. Confidential.
Chemical. (G) Styrenated methacrylate polymer.
Use/Production. (S) Automotive coating. Prod. range: 200,000-250,000 kg/yr.

P 88-1880

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) Laminating adhesive for packaging. Import range: Confidential.

P 88-1881

Importer. Emser Industries, Div.
Chemical. (S) Poly(oxy-1,4-butandily)-(ociranylmethy)-(oxiranylmethy1); Polytetrahydrofluraneglycidylether; polytetramethylenoxidediglycidylether.
Use/Import. (S) Component of epoxy systems. Import range: Confidential.

P 88-1882

Manufacturer. Confidential.
Chemical. (G) Amine salt of sulfonated heterocyclic compound.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1883

Manufacturer. Confidential.
Chemical. (G) Alkenyl substituted succinic anhydride product with substituted ethanol.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1884

Manufacturer. Confidential.
Chemical. (G) Substituted polyetheramine.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1885

Manufacturer. Confidential.
Chemical. (G) Substituted polyetheramine.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1886

Importer. Confidential.
Chemical. (G) Aminoalkylated polydimethyl siloxane.
Use/Import. (G) Polish ingredient. Import range: Confidential.

P 88-1887

Manufacturer. Confidential.
Chemical. (G) Water reducible urethane alkyd.
Use/Production. (S) Varnish enamel. Prod. range: Confidential.

P 88-1888

Manufacturer. Confidential.
Chemical. (G) Water reducible polyester polymer.
Use/Production. (S) Industrial naking finishes. Prod. range: Confidential.

P 88-1889

Importer. Henkel Corporation.
Chemical. (G) Modified fatty acid, amine salt.
Use/Import. (G) Emulsifier. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 2,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

P 88-1890

Importer. Confidential.
Chemical. (G) Polycaprolactone ester.
Use/Import. (S) Laminating adhesive. Import range: Confidential.

P 88-1891

Importer. Marubeni America Corporation.
Chemical. (S) Oxirane, 2,2-(oxybis-(2-1-ethylenediyloxymethylenebis-.
Use/Import. (S) Monomer for thermosetting resins. Import range: 50-10,000 kg/yr.

P 88-1892

Manufacturer. Confidential.
Chemical. (G) Vanadium oxide.
Use/Production. (G) Active component for batteries. Prod. range: Confidential.
Toxicity Data: Acute oral toxicity: LD50 549.1 mg/kg species(Rat). Acute dermal toxicity: LD50 2,000 mg/kg species(Rabbit). Eye irritation: strong species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

P 88-1893

Importer. Confidential.
Chemical. (S) Phenyl-2,4,6-trimethylphenylmehtanone.
Use/Import. (S) Phtoinitiator. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 850 mg/kg species(Rat).

P 88-1894

Importer. Confidential.
Chemical. (G) Olig(4-(alpha-hydroxyisobutyril)-alpha-methystyrene).
Use/Import. (S) Photoinitiator. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species(Rat). Mutagenicity: negative.

P 88-1895

Manufacturer. Confidential.
Chemical. (G) Hydroxyl terminated polyester urethane.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1896

Importer. Organic Dyestuff Corporation.
Chemical. (G) Reactive blue 71.
Use/Import. (S) Coloring (mixture). Import range: 3,000-8,000 kg/yr.

P 88-1897

Importer. Confidential.

Chemical. (G) Carboxylated acrylated epoxy novalac resin.
Use/Import. (S) Ethch resist. Import range: Confidential.

P 88-1898

Importer. Marubeni America Corporation.
Chemical. (S) Poly(oxy(epoxyethyl-1,2-cyclohexanediyl)),alpha-hydroxy-omega,-hydroxy-ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.
Use/Import. (S) Resin for powder coating. Import range: Confidential.

P 88-1899

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Maleated rosin ester modified with alkyl phenol, formaldehyde condensate.
Use/Production. (S) Ink vehicle for lithographic printing. Prod. range: Confidential.

P 88-1900

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1901

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1902

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1903

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1904

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1905

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1906

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1907

Manufacturer. Hi-Tek Polymers.
Chemical. (G) Urethane modified epoxy resin dispersion.
Use/Production. (S) Reactive dye for textiles. Prod. range: Confidential.

P 88-1908

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88-1909

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Molding applications. Prod. range: Confidential.

P 88-1910

Importer. Confidential.
Chemical. (G) Hydroxy acrylic resin.
Use/Import. (S) Resin for coatings. Import range: Confidential.

P 88-1911

Manufacturer. The Dow Chemical Company.
Chemical. (G) Partially polymerized unsaturated aromatic hydrocarbon.
Use/Production. (G) Binder. Prod. range: Confidential.

P 88-1912

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurethane.
Use/Production. (G) Adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species(Rat).

P 88-1913

Manufacturer. E.I. Du Pont De Nemours Co., Inc.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1914

Manufacturer. Confidential.
Chemical. (S) Methyl quaternary of oxyethylated triethylenetetramine.
Use/Production. (S) Drilling, mining. Prod. range: Confidential.

P 88-1915

Manufacturer. Confidential.
Chemical. (G) Aminoarylamide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1916

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Ink resin. Prod range: Confidential.

P 88-1917

Manufacturer. Confidential.
Chemical. (G) Styrenated polyacrylate urethane.
Use/Production. (G) Automotive refinish binder resin. Prod. range: 210,000-250,000 kg/yr.

P 88-1918

Importer. Confidential.
Chemical. (G) Hexandedioic acid polymer with a substituted diisocyanate and a mixed diol.
Use/Import. (S) Manufacture of adhesives. Import range: Confidential.

P 88-1919

Importer. Confidential.
Chemical. (G) Oxepanone, polymer with a substituted isocyanate, a substituted organic acid, and a alkyldiamine, amine salt.
Use/Import. (S) Top coat for fabrics. Import range: Confidential.

P 88-1920

Importer. Confidential.
Chemical. (G) Hexanedioic acid, polymer with a mixed diol, a substituted diisocyanated, a substituted organic acid and a diamine, amine salt.
Use/Import. (S) Elastic coating for fabrics. Import range; Confidential.

P 88-1921

Manufacturer. Confidential.
Chemical. (G) Acrylic acid/polyol copolymer.
Use/Production. (G) Emulsion stabilizer. Prod. range: Confidential.

P 88-1922

Manufacturer. Texaco Chemical Company.
Chemical. (S) 4-Morpholinecarboxaldehyde.
Use/Production. (S) Solvent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (Rat).

P 88-1923

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Diethylenetriamine expoxide adduct.
Use/Production. (S) Coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LDS50 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 mg/kg n species (Rat).

P 88-1924

Importer. Sherex Chemical Company.

Chemical. (S) Oxirane, 2,2'-(1,6-hexandediylbis(oxymethylene)bis).

Use/Import. (S) Reactive diluent expoxy resins. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2,900 mg/kg species (Rat).

P 88-1925

Importer. Mitsui Toatsu Chemicals America.

Chemical. (S) Eicosanedioic acid.

Use/Import. (S) Curing agent for acrylic resin. Import range: 3,600-12,000 kg/yr.

Date: September 19, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-21778 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3452-3]

Jacques Miller Drum Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Jacques Miller Drum Site, Nashville, Tennessee, with Space Park East, Ltd. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Mr. Herb Miller, Environmental Scientist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above on or before October 24, 1988.

Date: September 14, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-21781 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

NUCLEAR REGULATORY COMMISSION

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (Criteria for Utility Offsite Planning and Preparedness)

The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have jointly developed the document entitled: *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (Criteria for Utility Offsite Planning and Preparedness).* The document is published as Supplement 1 to NUREG-0654/FEMA-REP-1, Revision 1. The guidance contained in this document is to be used for the development, review and evaluation of offsite utility radiological emergency planning and preparedness for accidents at commercial nuclear power plants. It applies to those situations in which State and/or local governments decline to participate in the planning and preparedness process for such accidents.

While Supplement 1 contains changes and additions to the evaluation criteria of NUREG-0654/FEMA-REP-1,REV.1. no changes have been made to its 16 planning standards. The existing evaluation criteria have been modified to address utility-developed compensatory measures resulting from the non-participation of State and/or local governments in emergency planning and preparedness.

Supplement 1 was previously published as an interim-use document in November 1987 and was noticed in the **Federal Register** (52 FR 45866, 12/2/87) with comments invited by February 29, 1988. Twenty-four comment letters were received. Fifteen comment letters opposed issuing Supplement 1 and nine comment letters supported issuing it. Single copies of a detailed analysis of the comments and the changes that they prompted in this final version of Supplement 1 can be obtained by writing to the NRC contact listed below. A summary of the significant changes made to the interim-use document follows:

(1) Language on the application of the guidance to operating reactors was added to the Introduction.

(2) A description of the Commission's "realism rule" 10 CFR 50.47c(1) (52 FR 42709) and its relationship to the implementing guidance in Supplement 1 was added to the Introduction.

(3) A statement that the NRC will defend any legal challenges to its assumptions related to the realism rule was added in Section D. of the Introduction.

(4) The definitions of the "Offsite Response Organization" and "Nonparticipating Organization" were sharpened to indicate more clearly that the "Offsite Response Organization" includes voluntary and private organizations and local, State and Federal governments who participate in emergency planning while the "Non-participating Organization" is restricted to only State and local governmental units who decline to participate in emergency planning.

(5) The term "liaison" is used to describe those utility personnel who would advise and assist State and local officials during an actual emergency.

(6) Guidance that would have discouraged the use of "standins" for State and local personnel during exercises was deleted.

One free copy of Supplement 1, to the extent of available supply, is obtainable by writing to: Document Control Branch, Distribution Section, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

FOR FURTHER INFORMATION CONTACT: Marshall E. Sanders, Chief, Program Development Branch, Technological Hazards Division, Federal Emergency Management Agency, 500 C Street, SW. Washington, DC 20472 telephone number 202/646-4131 or Edward M. Podolak, Jr. Senior Emergency Preparedness Specialist, Emergency Preparedness Branch, Nuclear Regulatory Commission, Washington, DC 20555 Telephone number 301/492-3167.

Dated this 12th day of September 1988 at Washington, DC.

Frank J. Congel,

Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission.

Richard W. Krimm,

Assistant Associate Director, Office of Natural and Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-21769 Filed 9-22-88; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Long Beach

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200109–001.

Title: City of Long Beach Preferential Assignment Agreement.

Parties: City of Long Beach (City) Cooper/T. Smith Stevedoring Co., Inc. (Assignee).

Synopsis: The agreement amends the existing agreement to (1) correct the description of assignment of Berth 62 facilities to include Parcel 2, (2) adjust the guaranteed throughput to reflect the reduced area available to Assignee for its operations and (3) release Assignee from obligation to indemnify the City from claims occurring prior to September 1, 1988, on Parcel 2.

By Order of the Federal Maritime Commission.

Dated: September 20, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–21857 Filed 2–22–88; 8:45 am]

BILLING CODE 6730–01–M

Agreements Filed; Georgia Ports Authority and Jugolinija

The **Federal Register** Notice of September 14, 1988, (Vol. 53, No. 178, Page 35560) incorrectly stated that Agreement No. 224–200137 is a lease of paved premises to be used only for storage and handling containers, trailers and chassis located within Containerport, Garden City Terminal, Port of Savannah. The Notice should have stated that the proposed agreement modifies the rate schedule of Agreement No. 224–200137 and increases rates pursuant to clauses in that Agreement. In addition, the Agreement should have been identified as Agreement No. 224–200137–001.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 20, 1988.

[FR Doc. 88–21858 Filed 9–22–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

September 19, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received 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 Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. *Report title:* Commercial Bank Report of Consumer Credit.

Agency form number: FR 2571.

OMB Docket number: 7100–0080.

Frequency: Monthly.

Reporters: Commercial banks.

Annual reporting hours: 2,880.

Estimated average hours per response: 0.6.

Number of respondents: 400.

Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 225a and 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects information monthly from a sample of 400 commerical banks on consumer installment credit. On the September report only, respondents provide information on total noninstallment credit. The major proposed revision would add a new section to the report form requesting monthly information on the amounts outstanding of consumer installment credit that have been sold without recourse and included in packages of asset-backed securities.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Quarterly Gasoline Company Report.

Agency form number: FR 2580.

OMB Docket number: 7100–0009.

Frequency: Quarterly.

Reporters: Gasoline companies.

Annual reporting hours: 7.

Estimated average hours per response: 0.15.

Number of respondents: 11.
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 263, 461 and 353 *et seq.*] and is given confidential treatment [5 U.S.C. 552(b)(4)]

This report collects information on the amount outstanding of retail credit card accounts at gasoline companies. These data are included in the installment credit component of total consumer credit which is used by the Federal Reserve in general financial analysis for monetary policy purposes.

2. Report title: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans.
Agency form number: FR 2835.
OMB Docket number: 7100-0085.
Frequency: Quarterly
Reporters: Commercial banks.
Annual reporting hours: 175.
Estimated average hours per response: 0.25.
Number of respondents: 175.
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is not given confidential treatment.

This report collects interest rate information quarterly on selected consumer installment loans from a sample of 175 member banks. This information helps the Federal Reserve to assess interest rate developments and is used in general financial analysis for monetary policy purposes.

Board of Governors of the Federal Reserve System, September 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-21721 Filed 9-22-88; 8:45 am]

BILLING CODE 6210-01-M

F.N.B. Corp., et al.; Formations of; Acquistions 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 October 14, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to acquire 6.27 percent of the voting shares of The Farmers National Bank of Emlenton, Emlenton, Pennsylvania.

2. *First Bancorporation of Ohio*, Akron, Ohio; to acquire 100 percent of the voting shares of The First National Bank in Massillon, Massillon, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of The Wiregrass Bank & Trust Company, Headland, Alabama.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice Presdient) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of First Interstate Bank of Northern Indiana, National Association, South Bend, Indiana.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice Presdient) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Bancompany*, Jefferson City, Missouri; to acquire 100 percent of the voting shares of Centerre Bank of Branson, Branson, Missouri.

E. **Federal Researve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *HMC Holding Company*, Sioux Falls, South Dakota; to become a bank holding company by acquiring 85 percent of the voting shares of Gary State Bank, Gary, South Dakota.

Board of Governors of the Federal Reserve System, September 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-21719 Filed 9-22-88; 8:45 am]

BILLING CODE 6210-01-M

Penncore Financial Services Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulatory 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.

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 October 14, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Penncore Financial Services Corporation*, Newtown, Pennsylvania; to engage *de novo* through its subsidiary, Commonwealth Courier Services, Inc.,

Newton, Pennsylvania, in courier services and to provide for contract courier services for transportation of nonbearer instruments of Commonwealth State Bank customers pursuant to § 225.25(b)(10) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-21720 Filed 9-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Matthew L. Gold; Manufacturing Acquisition Associates, L.P.; Hayes Holdings I Inc	88-2048	08/22/88
General Instrument Corporation; Bilzerian Partners Limited Partnership; Dalmo Victor Holdings Corporation	88-2142	08/22/88
Itel Corporation; The Henley Group, Inc.; Signal Capital Holdings Corporation	88-2209	08/22/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
The Henley Group, Inc.; Itel Corporation; Itel Corporation	88-2210	08/22/88
Itel Corporation; Oak Industries, Inc.; Oak Industries, Inc	88-2211	08/22/88
Itel Corporation; American President Companies, Ltd.; American President Companies, Ltd	88-2213	08/22/88
Itel Corporation; Sante Fe Southern Pacific Corporation; Sante Fe Southern Pacific Corporation	88-2216	08/22/88
Westinghouse Electric Corporation; W.H. Hawks; National Electric, Inc	88-2223	08/22/88
Charles E. Bradley, c/o Stanwich Partners, Inc.; Bullard-Sundstrand, Inc.; Bullard-Sundstrand, Inc	88-2241	08/22/88
H. J. Heinz Company; Robert M. Harris and Cecily W. Harris; Nutrition Industries Corporation	88-2244	08/22/88
Centel Corporation; Tele-Communications, Inc.; Tele-Communications, Inc	88-2250	08/22/88
Telecommunications, Inc.; Centel Corporation; Centel Corporation	88-2251	08/22/88
FPL Group, Inc.; Neil St. John; Turner Foods Corporation	88-2265	08/22/88
Sanford Corporation; Borden, Inc.; Sterling Plastics Co	88-2373	08/22/88
Pablo Raul Alarcon; Jeffrey H. Smulyan; Emmis Broadcasting Corporation of New York	88-2310	08/23/88
Blue Cross of Western Iowa and South Dakota; Plan Investment Fund, Inc.; Plan Investment Fund, Inc	88-2313	08/23/88
Angell Real Estate Company; Forum Group, Inc.; Forum Group, Inc	88-2338	08/23/88
Pacific Dunlop Limited; Nucleus Limited; Nucleus Limited	88-2341	08/23/88
Pacific Dunlop Limited; Nucleus Limited; Telectronics Holdings Limited	88-2342	08/23/88
Aktiebolaget Electrolux; Laurent H. Girard, Jr.; A&E Systems, Inc	88-2350	08/23/88
Operating Engineers Pension Trust; The Prudential Insurance Company; Capital Place Hotel Joint Venture	88-2355	08/23/88
William J. Schoen; Health Management Associates, Inc.; Health Management Associates, Inc	88-2361	08/23/88
EG&G, Inc.; Cenco Capital Company; Astrophysics Research Corporation	88-2187	08/24/88
Cenco Capital Company; EG&G, Inc., EG&G, Inc	88-2188	08/24/88
The Rio Tinto-Zinc Corporation, PLC; Allied-Signal Inc.; Allied-Signal Inc	88-2218	08/24/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
CIBA-GEIGY Limited; Herbert F. Johnson Distributing Trust; Rydelle Laboratories, Inc	88-2278	08/24/88
Blue Cross and Blue Shield of Nebraska; Plan Investment Fund, Inc.; Plan Investment Fund, Inc	88-2314	08/24/88
The Prospect Group, Inc.; Figgie International Inc.; Figgie International Inc	88-2269	08/25/88
Cimenteries CBR S.A.; Monolith Portland Cement Company; Monolith Portland Cement Company	88-2198	08/26/88
ML-Lee Acquisition Fund, L.P.; CDI Holdings, Inc.; CDI Holdings, Inc	88-2282	08/26/88
ML-Lee Acquisition Fund, L.P.; American Health Companies, Inc.; American Health Companies, Inc	88-2283	08/26/88
State Farm Mutual Automobile Insurance Company; Brooktree Corporation; Brooktree Corporation	88-2300	08/26/88
Eli S. Jacobs; Charles E. Stotz; Dubuque Packing Company	88-2324	08/26/88
Eli S. Jacobs; Joseph A. Erman; Beef Nebraska, Inc	88-2325	08/26/88
Eli S. Jacobs; Michael M. Erman; Beef Nebraska, Inc	88-2326	08/26/88
Eli S. Jabobs; Nebraska Boxed Beef Co.; Nebraska Boxed Beef Co	88-2327	08/26/88
The Morgan Stanley Leveraged Equity Fund II, L.P.; Philip F. Anschutz; Rio Grande Industries, Inc	88-2332	08/26/88
Maxwell Communications Corporation plc; Macmillan, Inc.; Macmillan, Inc	88-2353	08/26/88
Northwest Corporation; Western Savings and Loan Association; Western Savings and Loan Association;	88-2359	08/26/88
U.S. West, Inc.; Westinghouse Electric Corporation; Westinghouse Financial Services, Inc	88-2360	08/26/88
The Chronicle Publishing Company; Jack Kent Cooke; Cooke CableVision Inc	88-2362	08/26/88
Jack Kent Cooke; The Chronicle Publishing Company; State TV Cable	88-2363	08/26/88
JWP Inc.; DynCorp; DynCorp	88-2364	08/26/88
Sonatrach; Panhandle Eastern Corporation; Panhandle Estern Corporation	88-2365	08/26/88
Stewart A. Resnick; The Rayo Company; The Rayo Company	88-2366	08/26/88
Nippon Shinpan Co., Ltd.; Bancorp Hawaii, Inc.; Bank of Hawaii	88-2367	08/26/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Melvin L. Wheeler; Price Communications Corporation; Cardinal Broadcasting Corporation	88-2371	08/26/88
Primerica Corporation; The A.L. Williams Corporation; The A.L. Williams Corporation	88-2372	08/26/88
Hewlett-Packard Company; Octel Communications Corporation; Octel Communications Corporation	88-2386	08/26/88
Fletcher Challenge Limited; Theodore W. Smith; Dinwiddie Construction Company	88-2387	08/26/88
Heco, Inc; SSC Associates, L.P.; The Stop & Shop Companies, Inc	88-2391	08/26/88
American Express Company; First Capital Holdings Corp.; First Capital Holdings Corp	88-2411	08/26/88
The New Corporation Limited; Product Movers, Inc.; Product Movers, Inc.;	88-2258	08/29/88
Herbert H. Haft; Zayre Corp; Zayre Corp	88-2259	08/29/88
National Sea Products Limited; Treasure Isle, Inc.; TI and two of its subsidiaries	88-2268	08/29/88
Yale and Valor PLC; Mark IV Industries, Inc.; Rixson-Firemark Inc	88-2298	08/29/88
Fibreboard Corporation Snider Lumber Products Co. Inc; Lumber Products Co., Inc	88-2302	08/29/88
Aon Corporation; Paul R. Davies; Reinsurance Agency, Inc	88-2352	08/29/88
Stuart's Drug and Surgical Supply, Inc.; Elliott J. Brodsky; Eastern Hospital Supply, Inc	88-2368	08/29/88
Paul R. Davies; Aon Corporation; Aon Corporatio;	88-2395	08/29/88
Beiersdorf AG; Technical Tape, Inc.; Technical Tape, Inc	88-2395	08/29/88
Tele-Communications, Inc.; Giancario Parretti; Commonwealth Theatres, Inc	88-2421	08/29/88
Marmon Holdings, Inc., (Pritzker, Family); McHenry Sand & Gravel Co., Inc.; McHenry Sand & Gravel Co., Inc	88-1861	08/30/88
Olin Corporation; Dr. Beurt R. SerVaas, c/o SerVaas, Inc.; Bridgeport Brass Corporation	88-1864	08/31/88
Tele-Communications, Inc.; Cablevision International, c/o Cross Country Cable, Inc.; Cablevision International, L.P	88-2159	08/31/88
Burns, Philp & Company Limited; United Biscuits (Holdings) plc; Specialty Brands Incorporated	88-2217	08/31/88
Whirlpool Corporation; Emerson Electric Co.; Emerson Contract Division, Inc	88-2228	08/31/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
David H. Murdock; Beverly Enterprises, Inc.; Beverly Enterprises, Inc	88-2279	08/31/88
Pfizer Inc.; Oral Research Laboratories, Inc.; Oral Research Laboratories, Inc	88-2309	08/31/88
UAL Corporation; Texas Air Corporation; Continental Airlines, Inc	88-2345	08/31/88
Gulf & Western Inc.; Arthur Goldberg; Great Dane Finance Company	88-2485	08/31/88
Pyro Energy Corp; Buddie R. Morris; Green River Coal Co., Inc	88-2461	09/01/88
Costain Group PLC; Buddie R. Morris; Green River Coal Co., Inc	88-2462	09/01/88
Joseph F. Chapman III; Peoples First Financial Savings and Loan Association; Peoples First Financial Savings and Loan Association	88-2230	09/02/88
SCEcorp; Burlington Northern Inc.; BN Geothermal, Inc	88-2262	09/02/88
Laidlaw Transportation Limited: Enviropact, Inc.; Williams Trucking Company	88-2311	09/02/88
Nichirel Corporation; The Rymer Company; Sea Watch International, Ltd	88-2315	09/02/88
CBS Inc.; TVX Broadcast Group Inc.; TVZ of Miami, Inc	88-2358	09/02/88
American Express Company; IntelliTEK Computer Corporation; IntelliTEK Computer Corporation	88-2430	09/02/88
Interstate Securities, Inc.; Johnson, Lane, Space Smith & Co., Inc.; Johnson, Lane, Space Smith & Co., Inc	88-2441	09/02/88
ML Media Opportunity Partners, L.P.; Prime Cable of Maryland, Inc.; Prime Cable of Maryland, Inc	88-2453	09/02/88
ML Media Opportunity Partners, L.P.; Prime Cable Limited Partnership; Prime Cable II, Inc	88-2454	09/02/88
Eagle Clothes, Inc.; BINY Clothing, Inc.; BINY Clothing, Inc	88-2459	09/02/88
WFS Financial Corporation; Butcher and Company Incorporated; Butcher & Singer Inc	88-2477	09/02/88
Echlin, Inc.; GKN plc; GKN Aftermarket Import Parts, Inc	88-2287	09/02/88
Dean Foods Company; Richard A. Shaw, Inc.; Richard A. Shaw, Inc	88-2334	09/02/88
Hawker Siddeley Group Public Limited Company; Dranetz Technologies, Inc.; Dranetz Technologies, Inc	88-2394	09/02/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Hawker Siddeley Group Public Limited Company; Dranetz Technologies, Inc.; Dranetz Technologies, Inc	88-2404	09/02/88
Glenn R. Jones; AccuCable Co.; AccuCable Co	88-2419	09/02/88
Tootsie Roll Industries, Inc.; Charms Company Employee Stock Ownship Plan Trust; Charm Company	88-2428	09/02/88
William R. Berkley; Jerrold S. Pressman; Master Protection Enterprises, Inc	88-2449	09/02/88
James M. Fail; James M. Fail; Mutual Security Life Insurance Co	88-2458	09/06/88
The Dun & Bradstreet Corporation; Commercial Credit Group, Inc.; American Credit Indemnity Company	88-2301	09/06/99
The May Department Stores Company; The Prudential Insurance Company of America; Primac Center Associates, L.P	88-2304	09/07/88
The Prudential Insurance Company of America; The May Department Stores Company; Primac Center Associates, L.P	88-2305	09/07/88
Masco Industries, Inc.; Auto Style, Inc.; Auto Style, Inc	88-2343	09/07/88
T&N plc; Medard H. Cronin; Aerodyne Investment Castings, Inc	88-2381	09/07/88
Russell Corporation; Quality Mills, Inc.; Quality Mills, Inc	88-2450	09/07/88
James N. Blue; Kerr-McGee Corporation; Sequoyah Fuels Corporation	88-2232	09/08/88
Koninklijke Wessanen N.V.; Walter N. Mirpaul; Ohio Pure Foods, Inc	88-2288	09/08/88
McWane, Inc.; ITT Corporation; ITT Kennedy Valve Division	88-2293	09/08/88
MEI Diversified Inc.; Harmony Foods Incorporated; Harmony Foods Incorporated	88-2351	09/08/88
Vincent A. Wasik; National Car Rental System, Inc.; National Car Rental System, Inc	88-2374	09/08/88
George Wimpey PLC; Orange Quarry Company; Orange Quarry Company	88-2410	09/08/88
ML-Lee Acquisition Fund, L.P.; Stanley Holding Corporation; Stanley Holding Corporation	88-2435	09/08/88
ML-Lee Acquisition Fund, L.P.; Stanley Interiors Corporation; Stanley Interiors Corporation	88-2436	09/08/88
VenTech Healthcare Corporation Inc.; Avon Products, Inc.; Foster Medical Corporation	88-2455	09/08/88
Herbert H. Haft; The Kroger Co.; The Kroger Co	88-2331	09/09/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Arabian Investment Banking Corporation (INVESTCORP) EC; Estate of Joseph L. Greenberg; Westchester Farms, Inc., and Amity Dairies, Inc	88-2333	09/09/88
Cilluffo Associates, L.P.; R.P. Scherer Corporation; R.P. Scherer Corporation	88-2340	09/09/88
Ciba-Geigy Limited; Liberty Leasing Trust; Liberty Leasing Trust	88-2397	09/09/88
PepsiCo, Inc.; Mr. Cleber J. Massey; Southwest Beverage Corporation	88-2402	09/09/88
Fisons plc; Pennwalt Corporation; Pennwalt Pharmaceutical Group	88-2412	09/09/88
Armstrong World Industries, Inc.; LaFarge Coppee; American Olean Tiel Company, Inc	88-2414	09/09/88
Imo Delaval, Inc.; Varo, Inc.; Varo, Inc	88-2437	09/09/88
Coventry Corporation; Maxicare Health Plans, Inc.; Maxicare/HealthAmerica Pennsylvania, Inc	88-2466	09/09/88
American Western Corporation; Exxon Corporation; Exxon Chemical Company	88-2470	09/09/88
King World Productions, Inc.; Robert S. Howard; Buffalo Broadcasting Co., Inc	88-2474	09/09/88
Toppan Printing Co., Ltd.; Robert Herring, Sr.; Herco Technology Corp	88-2475	09/09/88
Alberta Pork Producers Marketing Board; Goehring Meat Inc.; Western Iowa Pork Company & Miko Meat Corporation	88-2370	09/12/88
Exxon Corporation; Mrs. Vivan Smith; Mrs. Vivan Smith	88-2380	09/12/88
Tyco Laboratories, Inc.; Arabian Investment Banking Corporation (INVESTCORP) EC; Mueller Holdings Corp	88-2383	09/12/88
Central National-Gottesman Inc.; Arthur W. Anderson, Sr. and Patricia A. Anderson; D. F. Munroe Company	88-2392	09/12/88
Mark C. Sanford; Ronald H. Scott; Interform Corporation	88-2425	09/12/88
Mark C. Sanford; Frank J. Scott; Interform Corporation	88-2426	09/12/88
Citicorp; Zapata Corporation; Zapata Financial Services, Inc	88-2440	09/12/88
The National Mutual Life Association of Australasia Ltd.; The Equitable Life Assurance Society of the U.S.; Integrity Life Insurance Company	88-2442	09/12/88
Russell Corporation; Quality Mills, Inc.; Quality Mills, Inc	88-2444	09/12/88
The Interpublic Group of Companies, Inc.; G. Smoot Fahlgren; Fahlgren & Swink, Inc	88-2473	09/12/88
Morris D. Jaffe, Jr.; Apache Corporation; Apache Corporation	88-2476	09/12/88
H&R Block, Inc.; Access Technology, Inc.; Access Technology, Inc	88-2483	09/12/88
The CALPIS FOOD Industry Co., Ltd.; Hansen Foods, Inc.; Hansen Foods, Inc	88-2489	09/12/88
Triton Group Ltd.; Nora Pascarella; Western Sizzlin, Inc	88-2500	09/12/88
The Hongkong and Shanghai Hotels, Ltd.; Gotham Associates; Nova-Park New York, Inc. N.V	88-2507	09/12/88
Liberty Mutual Insurance Company; The Travelers Corporation; Keystone Provident Life Insurance Company	88-2509	09/12/88
Mark B. Herman; Kaufman and Broad, Inc.; Universal Guaranty Life Insurance Company	88-2510	09/12/88
MGI Properties; Turner Equity Investors, Inc.; Turner Equity Investors, Inc	88-2512	09/12/88
Cyril Wagner, Jr.; Insilco Corporation; Insilco Corporation	88-2516	09/12/88
Jack E. Brown; Insilco Corporation; Insilco Corporation	88-2517	09/12/88
GTM Entrepose; Mr. Selby W. Sullivan; Hubbard Construction Co., Orange Paving & Construction Co	88-2520	09/12/88
Jeremy M. Jacobs and Margaret D. Jacobs; Ogden Corporation; Wheeling Downs Racing Association, Inc	88-2522	09/12/88
Southmark Corporation; Beverly Hills Savings; Beverly Hills Savings	88-2523	09/12/88
Citicorp; Zapata Corporation; Zapata Automotive Leasing Corp	88-2529	09/12/88
Cal Fed Income Partners L.P.; Harold S. Wenal; Palmetto Square Associates, Ltd	88-2558	09/12/88
U.E.I. plc; The Nucleus, Inc.; The Nucleus, Inc	88-2519	09/13/88
Nippon Mining Company, Limited; Gould Inc.; Gould Inc	88-2527	09/13/88
The Fulcrum III Limited Partnership; American Stores Company; Lucky Stores, Inc	88-2393	09/14/88
Caparo Group Ltd.; National Intergroup, Inc.; Bull Moose Tube Company	88-2396	09/14/88
Communications Transmission, Inc.; ALC Communications Corporation; ALC Communications Corporation	88-2405	09/14/88
Glenn R. Jones; Michael S. Maurer; Maurer	88-2417	09/14/88
Glenn R. Jones; Robert E. Schloss; Schloss	88-2418	09/14/88
The Fulcrum III Limited Partnership; LSI Acquisition Corporation; LSI Acquisition Corporation	88-2420	09/14/88
Time Incorporated; Southland Communications, Inc.; Southland Communications, Inc	88-2456	09/14/88
Glenn R. Jones; Richard Henderson; The Realty Investment Company, Limited	88-2457	09/14/88
Ward White Group plc; Schottenstein Stores Corporation; R&S/Strauss Associates and Penn-Jersey Corporation	88-2460	09/14/88
Alan Gerry; RMB Cable Interest Partners; Wometco Cable TV, Inc	88-2464	09/14/88
Alan Gerry; Wometco Cable Investors Limited; Wometco Cable TV, Inc	88-2465	09/14/88
Ward White Group plc; Mr. Donald Schlenger; R&S/Strauss Associates and Penn-Jersey Corporation	88-2469	09/14/88
Claude C. Rancourt; Generale Occidentale; Diamond International Corp	88-2495	09/14/88
Transamerica Corporation; Alexander & Alexander Services, Inc.; Tifco, Inc	88-2542	09/14/88
The Gates Corporation; Dyneer Corporation; Spun Steel, Inc	88-2555	09/14/88
Paulo Products Company; U.S. Steel Supply Inc.; U.S. Steel Supply Inc	88-2384	09/15/88
Lees Holdings Corporation; Damon Creations, Inc.; Damon Creations, Inc	88-2434	09/15/88
Universal Furniture Limited; Kemp Furniture Industries, Inc.; Kemp Furniture Industries Inc	88-2443	09/15/88
Minnesota Power & Light Company; Baukol-Noonan, Inc.; Baukol-Noonan, Inc	88-2513	09/15/88
Mitsui Toatsu Chemicals, Incorporated; Dr. Amos R. Anderson; Anderson Development Company	88-2484	09/16/88
A.R. Townsend, Sr.; James M. Fail; Pima Capital Co., Lincoln Life & Casualty Company	88-2493	09/16/88
Avron B. Fogelman; Robert A. Kathary; RAK Development, Inc	88-2524	09/16/88
LIT Holdings PLC; Lee S. Casty; Shatkin Investment Corp	88-2530	09/16/88
Astronautics Corporation of America; Bilzerian Partners Limited Partnership I; Kearfott Guidance & Navigation Corporation	88-2532	09/16/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN AUGUST 28, 1988 AND SEPTEMBER 16, 1988—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Takata Corporation; General Motors Corporation; Fisher Body Overseas Corporation	88-2546	09/16/88
Computer Sciences Corporation; Index Group, Inc.; Index Group, Inc	88-2571	09/16/88
Cal Fed Income Partners L.P.; First American Bank and Trust; The Polo Club Joint Venture	88-2572	09/16/88
Cal Fed Income Partners, L.P.; Rainberry Developers Four, Inc.; The Polo Club Joint Venture	88-2573	09/16/88
British & Commonwealth Holdings PLC; Datalease Corporation; Datalease Corporation	88-2578	09/16/88
First Interstate Bancorp; Pinnacle West Capital Corporation; MeraBank of Phoenix, Arizona	88-2584	09/16/88
Robert W. Plaster; Empire Gas Corporation; Empire Gas Corporation	88-2592	09/16/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-21814 Filed 9-22-88; 8:45 am]

BILLING CODE 6750-01-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 (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C Chapter 35). The following are those packages submitted to OMB since the last list was published on September 16, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Railroad Employment Questionnaire—0960-0078—The information collected by the SSA-671 is used by the Social Security Administration to coordinate data with the Railroad Retirement Board in order to correctly process claims for Social Security benefits. Respondents: Individuals or households; Number of Respondents: 125,000; Frequency of Response: On occasion; Average burden per response: 5 minutes; Estimated Annual Burden: 10,416.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

2. Protection of Human Subjects—Certification and Recordkeeping Requirements—0925-0137—The Public Health Service Act mandates that institutions receiving support for research involving human subjects report to the Secretary and to the Institutional Review Board (IRB) of that research in accordance with 45 CFR 46. Records are minutes of the IRB review. Respondents: State or local governments, Federal agencies or employees, Non-profit institutions, Small businesses or organizations, Businesses or other for profit; Number of Respondents: For reporting purposes, 250, for recordkeeping, 2500; Frequency of Response: Reporting/Recordkeeping: On Occasion/Annually: Average burden per response: Reporting; .083; Recordkeeping: 6; Total Annual Burden: 15,022.

3. Patent Term Restoration Regulations (Regulatory Review Period Revisions-Due Diligence) Final Rule—0910-0233—These information collection provisions enable patent term extension applicants, patent holders, and interested parties to request revisions to regulatory review period determinations, file due diligence petitions, and request hearings. Respondents: Individual or households, Businesses or other for-profit, Small businesses or Organizations; Number of Respondents: 1; Frequency of Response: On occasion; Averazge Burden per Response: 200 hours; Estimated Annual Burden: 200 hours.

4. Collection and Evaluation of Human Tissues and Cells—0925-0152—Epidemiological data is collected to compare the environmental characteristics of non-cancer control autopsy tissues to those of surgically derived cancer cases when analyzing for binding level of carcinogens, composition of macromolecules complexed with text chemicals, and susceptibility of tissues to chemically induced transformation and tumorigenesis. Respondents: Individuals or households; Number of Respondents: 11; Frequency of Response: Annually; Average Burden per Response: 33 hours; Estimated Annual Burden: 4 hours.

5. The Baseline Survey and Instrument and Preliminary Approach to the Community Intervention Trial for Smoking Cessation (COMMIT)—0925-0309—The National Cancer Institute has designed the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. Clearance is herein being requested for the pretesting and fielding of cohort surveys which will assess and monitor the progress of this trial. Respondents: Individuals or households; Number of Respondents: 27,200; Frequency of Response: Annually; Average Burden per Response: 0.131 hours; Estimated Annual Burden: 3,577 hours.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245-2100
HCFA: (301) 966-2088
FSA: (202) 245-0652
SSA: (301) 965-4149
OS: (202) 245-6511
OHDS: (202) 472-4415

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: Shannah Koss-McCallum.

Date: September 19, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-21740 Filed 9-22-88; 8:45 am]

BILLING CODE 4150-04-M

Agency for Toxic Substances and Disease Registry

[Announcement No. 811]

Cooperative Agreement With International Society of Regulatory Toxicology and Pharmacology; Availability of Funds for Fiscal Year 1988

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces

the availability of funds in Fiscal Year 1988 for a cooperative agreement with the International Society of Regulatory Toxicology and Pharmacology (ISRTP), Council for Health and Environmental Safety of Soils (CHESS) to assist the development of scientifically sound and consistent methodology for the assessment of environmental and public health risks from contaminated soils. This is not a formal request for applications. Assistance will be provided only to the ISRTP/CHESS for the support of this project. No other applications are solicited or will be accepted.

Authority: This cooperative agreement is authorized by section 104(i)(1)&(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Catalog of Federal Domestic Assistance Number is 13.161.

Reasons For Proposing ISRTP as Recipient of This Cooperative Agreement

The ISRTP is a unique non-governmental organization that is organized and operates exclusively to promote improved linkage of scientific principles, data and information to the legal aspects of toxicological and pharmacological regulations. The ISRTP brings together lawyers, scientists, and government officials to discuss significant developments, public opinions, and ideas that impact or influence regulatory actions. Convinced that the current regulatory status with respect to the wide range of soil contamination issues was in a state of uncertainty, the ISRTP created a focused organization called the Council for Health and Safety of Soils (CHESS). The overall mission of ISRTP/CHESS is to facilitate through the scientific process, the preservation, use and management of land consistent with the protection of public health and the environment.

This cooperative agreement will allow ISRTP/CHESS to stimulate and promote fundamental advances for developing methodologies to assess public health and environmental risks from contaminated soils through expert committees, public and scientific symposia, workshops, published proceedings, and technical papers. These activities will allow the identification of major scientific issues, research needs, and data gaps in this increasingly important area of health and safety assessment.

Cooperative Activities

1. ISRTP Activities

a. Develop a generic "Decision Tree" methodology which can be used by multiple agencies in the Federal, State, and private sectors for the assessment of public health implications from contaminated soils.

b. Develop a peer review process that assures that the "Decision Tree" is scientifically sound and meets the needs of State, local, and Federal officials.

c. Publish relevant materials and organize a series of regional workshops/conferences in order to improve public understanding of policy and technical issues.

d. Develop training materials and courses for use by those involved in evaluating sites and making decisions on remediation. Develop course materials for schools teaching public health, medicine, and environmental engineering.

2. ATSDR Activities

a. Provide a science liaison to the ISRTP/CHESS.

b. Where appropriate, participate and serve on the expert committees. This includes collaboration on the development of final reports and recommendations.

c. Collaborate and participate as appropriate in regional workshops/conferences and other technology transfer functions.

d. Collaborate in the development of educational materials for courses and for schools of medicine and public health.

Availability of Funds

Approximately $50,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 30, 1988, and depending upon the availability of funds, will be funded in 12-month budget periods within a 4-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Grantee Financial Participation

There are no grantee cost participation requirements for this program.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information regarding the business aspects of the project may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road NE., Atlanta, GA 30305, telephone (404) 842-6575. Information regarding the technical aspects may be obtained from Dr. Allan S. Susten, Project Officer, Extramural Program Branch, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Chamblee 28-South, Atlanta, GA 30333, telephone (404) 488-4630.

Dated: September 19, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-21801 Filed 9-22-88; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse and Mental Health Administration

Alcohol, Drug Abuse and Mental Health Advisory Board; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

NOTICE: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the Alcohol, Drug Abuse, and Mental Health Advisory Board in the month of October 1988. The Board will discuss issues in areas of treatment, research, prevention, and education vis-a-vis the legislative mandate.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: October 20-21: 9:00 a.m.

Place: Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857.

Status of Meeting: Open.

Contact: Barbara Wagner, Room 12C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1910.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B & C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health

Administration, respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Substantive information, summary of the meeting, and rosters of committee members may be obtained as follows: Ms. Barbara Wagner, Room 12C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1910.

Date: September 19, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-21805 Filed 9-22-88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Workshop on Potency Standards for Recombinant Human Cytokines; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a workshop to discuss the establishment of potency standards for recombinant human cytokines.

DATE: The workshop will be held on Thursday, November 3, 8:30 a.m. to 5 p.m., and Friday, November 4, 1988, 8:30 a.m. to 12 m.

ADDRESS: The workshop will be held at the National Cancer Institute (NCI), Frederick Cancer Research Facility, Bldg. 549, Sultan St., Frederick, MD 21701-1013.

FOR FURTHER INFORMATION CONTACT:

For information and preregistration: Margaret Fanning, Conference Coordinator, PRI, NCI-Frederick Cancer Research Facility, P.O. Box B, Frederick, MD 21701-1013, 301-698-1089.

If additional information is needed: Theresa L. Gerrard, Center for Biologics Evaluation and Research (HFB-530), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20857, 301-496-9084.

SUPPLEMENTARY INFORMATION: On November 3 and 4, 1988, FDA, in conjunction with Biological Response Modifers Program (BRMP), National Cancer Institute, and the National Institute of Allergy and Infectious Diseases (NIAID), is sponsoring a workshop on potency standards for recombinant human cytokines. The purpose of this workshop is to discuss the establishment of standards for IL-1, TNF, GM-CSF, G-CSF, M-CSF, IL-3, IL-4, and IL-6. FDA requires biological potency testing for the licensure of biological products. However, many cytokines are currently being used in clinical trials before recognized standards are available. The establishment of biological standards for cytokines would be of benefit to manufacturers, regulatory agencies, and clinicians. BRMP would like to standardize cytokines and provide distribution services for these standards in the same way that it has established and distributed the BRMP standard for IL-2.

The goal of this workshop is to improve standardization of specific cytokine bioassays. The sessions will include selected presentations of specific cytokine bioassays describing procedure, unit definition, data calculation, and standardization. A general discussion of the pros and cons of the different assays as well as the potential for standardization will follow each session. Criteria for the selection of standards will be discussed but actual testing and selection of the standards will be done by the sponsors as a followup to this meeting.

To obtain a copy of the tentative agenda and preregistration packet contact Margaret Fanning (telephone and address above). Persons planning to attend should be aware that space is limited and should contact Margaret Fanning as soon as possible.

Dated: September 16, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-21723 Filed 9-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1865]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports, Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: September 19, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: American Housing Survey—1989 Metropolitan Sample (AHS-MS)

Office: Policy Development and Research

Description of the Need for the Information and its Proposed Use: The 1989 AHS-MS is a longitudinal study that collects current information on the quality, availability, and cost of housing in ten selected metropolitan areas. It also provides information on demographic and other characteristics of the occupants. Federal and local

government agencies use AHS data to evaluate housing issues.

Form Number: AHS–61, 62, 63, 66, 67, 68, and 590
Respondents: Individuals or Households
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Survey	46,750		1		0.543		25,386

Total Estimated Burden Hours: 25,386
Status: Revision
Contact: Duane T. McGough, HUD, (202) 755–5060, Leonard J. Norry, Census, (301) 763–8550, John Allison, OMB, (202) 395–6880

Date: September 19, 1988.

[FR Doc. 88–21865 Filed 9–22–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–08–4311–13]

Lifting of Closure and Restrictions on Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of lifting of August 30 closure and restrictions on public lands pursuant to 43 CFR 8364.1.

SUMMARY: The following activities were prohibited or restricted on BLM administered public lands in the Rawlins District until further notice:

—Using chain saws on public lands north of I–80 is prohibited without a special permit obtained from the BLM.
—Building, maintaining, attending or using a fire, campfire or open charcoal grill in all forests and woodlands in the district, except at designated developed recreation sites is prohibited. Stoves using propane or white gas may still be used.
—Smoking is prohibited, except within an enclosed vehicle or building, a developed recreation site or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

These restrictions or prohibitions no longer apply.

EFFECTIVE DATE: September 15, 1988.

ADDRESS: Bureau of Land Management, 1300 Third Street, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: George Phillips, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301, telephone (307) 324–7171, ext. 375.

Date: September 16, 1988.

Leslie A. Oliver,
Acting District Manager.

[FR Doc. 88–21841 Filed 9–22–88; 8:45 am]
BILLING CODE 4310–22–M

[AZ–920–08–4212–12; A–23110]

Arizona; Conveyance of Public Land in Exchange for Private Land

September 16, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Rancho Verdad, a Wyoming Partnership. The United States transferred 510 acres of public land in Pima County and accepted title to 1,580.87 acres of private land in Yavapai County.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534.

SUPPLEMENTARY INFORMATION: On May 16, 1988, the Bureau of Land Management transferred the following described and by Patent No. 02–88–0032, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 12 S. R. 11 E.,
Sec. 25, NE¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½W½, W½E½, SW¼NW¼, W½SW¼.
Comprising 510 acres.

In exchange the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 3 E.,
Sec. 20, lots 13 and 14;
Sec. 21, lots 1 to 10, incl., 15 and 16 (surface only);
Sec. 25, lots 1 to 4, incl., W½E½,W½, Excepting the portion commencing at the NE¼ corner of said sec. 25, said corner being a G.L.O. brass cap; Thence S. 01°20'59" E., 146.27 ft., to a 1 ft. x 1.5 ft. x 1.5 ft. malpais rock with a cross scribed on top marking the NW¼ corner of sec. 30, T. 11 N., R. 4 E.; Thence S. 00°16'31" E., 1,988.24 ft., to a stone approximately 4 in. x 10 in. and 6 in. above ground with "HES" scribed on the east face, said stone being the corner No. 2 of H.E.S. No. 324 and the true Point of Beginning; Thence S. 00°02'36" E., on a line between the HES corner No. 2 and the SE¼ corner of said sec. 25 as marked by G.L.O. brass cap, a distance of 790.86 ft. to a ⅝-in. rebar with cap stamped "LS 13015"; Thence S. 47°37'02" W., 1,947.77 ft. to a ⅝-in. rebar with cap stamped "LS 13015"; Thence S. 00°02'36" W., 420.00 ft., to a ⅝-in. rebar with cap stamped "LS 13015"; Thence S. 40°30'24" E., 2,214.58 ft., to the True Point of Beginning, containing 20.01 acres, more or less. Basis of Bearing was on line from the NE¼ corner of said sec. 25 to the SE¼ corner of said sec. 25 as located in the field and from BLM notes that state a bearing of N. 00°10' W. (surface only in lots 1 and 2, W½NE¼ and W½, except metes and bounds description);
Sec. 28, E½NE¼, SW¼NE¼ (surface only);
Sec. 29, N½NW¼;
Sec. 33, SW¼.
Comprising 1,580.87 acres.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

FR Doc. 88–21821 Filed 9–22–88; 8:45am]
BILLING CODE 4310–32–M

Bureau of Reclamation

Availability of Planning Report/Draft Environmental Statement, Westside Irrigation Project, et al.

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

ACTION: Notice of availability of Planning Report/Draft Environmental Statement, Westside Irrigation Project, Big Horn Division, Pick-Sloan Missouri Basin Program, Wyoming.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a planning report/draft environmental statement (PR/DES) on the development of the Westside Irrigation Project, which would irrigate 4,068 acres along the Big Horn River in north central Wyoming.

The land is administered by the Bureau of Land Management.

Availability: Copies of the PR/DES are available for inspection at the following locations:

Washington Liaison Office—Resources Management, Room 7456, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343-4778.

Denver Office Library, Code 7921-A, Bureau of Reclamation, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236-6963.

Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6214.

Grass Creek Resource Area Manager, Worland District, Bureau of Land Management, P.O. Box 119, Worland, WY 82401, Telephone: (307) 347-9871.

Single copies of the PR/DES may be obtained on request from the Washington Liaison Office, the Regional Director, or the Grass Creek Resource Area Manager, at the above address. Copies will also be available for inspection in libraries in the vicinity of the project.

Dated: September 16, 1988.

C. Dale Duvall,

Commissioner.

[FR Doc. 88-21718 Filed 9-22-88; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

[FES 88-33]

Availability of Final Environmental Impact Statement; Arctic National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan, Wilderness Review, and Wild River Plans for the Arctic National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans (Plan) for the Arctic National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980; section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes seven alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also determines the suitability of all the federal lands in the refuge outside of the "1002" coastal plain area and the existing Arctic Wilderness for inclusion in the National Wilderness Preservation System.

DATES: A Record of Decision will be issued no sooner than November 9, 1988.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to federal and state agencies, Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete Plan are available for public review at the office of the Regional Director, at the above address; at the Arctic National Wildlife Refuge Office, Room 226, Federal Bldg. & Courthouse, 101 12th Ave., Fairbanks, Alaska 99701, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: September 16, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-21644 Filed 9-22-88; 8:45 am]

BILLING CODE 4315-55-M

National Park Service

Dinosaur National Monument, CO

AGENCY: National Park Service, Interior.

ACTION: Notice of correction of the map pertaining to the selection of an access road in fee and adjacent scenic easement pursuant to the Act of September 8, 1960 (74 Stat. 857-861) and withdrawal of the federally-owned lands involved in this correction.

SUMMARY: On September 10, 1985, pursuant to the authority cited in the above paragraph, there was published in FR Vol. 50, No. 175, pages 36923 and 36924 a notice of the selection of the Dinosaur National Monument entrance road serving the east entrance to the monument at Deerlodge Park.

The location of the road selected and the lands and ownerships involved are depicted on Drawing No. 122/92,003 entitled "Dinosaur National Monument Land Status Map 09."

It has recently been discovered that a short segment of road and scenic easement connecting the Cross Mountain overlook and view area to the road identified in the above referenced publication was inadvertantly omitted from Drawing No. 122/92,003.

Therefore, pursuant to the reasons and the authority cited above the following federally-owned lands are added to Dinosaur National Monument and said lands are hereby withdrawn from all forms of entry and appropriation under public land laws and the general mining and mineral leasing laws. As provided in section 2(a) of the Act, supra, the lands included in this notice constitute a part of the Dinosaur National Monument and, therefore, are subject to the laws and regulations applicable thereto. Notwithstanding the inclusion of these lands into the monument, the Bureau of Land Management is authorized to administer the lands hereby selected for scenic easement control for the purpose of livestock grazing insofar as grazing is consistent with section 3 of the Act of September 8, 1960.

The lands affected by this notice and correction are all located within the SE¼ SE¼ of Sec. 22 and the W½ SW¼ of Sec. 23 in T. 6 N., R. 98 W., 6th P.M., Moffat County, Colorado. The additional roadway selected embraces approximately 4.82 acres in fee consisting of a strip 200 feet wide and approximately 1,050 feet long. The additional scenic easement embraces approximately 12.14 acres and lies in two strips 400 feet wide each on both sides of the adjacent to the 200 foot

roadway. These parcels will now be depicted on the revised Drawing No. 122/92,003 entitled "Dinosaur National Monument Land Status Map 09" with a revision date identical to this publication date.

DATES: The effective date of this notice and correction shall be the date of the **Federal Register** in which this notice appears.

ADDRESSES: The revised drawing and the scenic easement estate and restrictions are on file in the office of the Superintendent at Dinosaur National Monument, Dinosaur, Colorado; the National Park Service, Rocky Mountain Regional Office, Land Resources Division in Lakewood, Colorado and the National Park Service, Land Resources Division, Branch of Coordination and Control, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Division, Rocky Mountain Region, National Park Service, P.O. Box 25287, Denver, Colorado 80225, Telephone: 303-969-2610.

William Penn Mott, Jr.,

Director.

[FR Doc. 88-21837 Filed 9-22-88; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: Upper Delaware Citizens Advisory Council, National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 28, 1988, 7:00 p.m.[1]

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround management of the Delaware watershed water supply.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-21838 Filed 9-22-88; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Upper Delaware Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: Upper Delaware Citizens Advisory Council, National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: November 18, 7:00 p.m.[1]

Inclement Weather Reschedule Date: November 26, 1988.

ADDRESS: Zane Grey House, Lackawaxen, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround Future plans for Zane Grey House, and information regarding Zane Grey, the author.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-21839 Filed 9-22-88; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

INTERNATIONAL TRADE COMMISSION

[TA-503(a)-16 and 332-260]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 29, 1988, of a request from the U.S. Trade Representative made in part at the direction of the President, the Commission instituted investigation No. TA-503(a)-16 and 332-260 under sections 503(a) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) Pursuant to sections 503(a) and 131(a) of the Trade Act, and the authority of the President delegated to the U.S. Trade Representative by sections 4(c) and 8(c) and (d) of Executive order 11846, as amended, to advise the President, with respect to each article listed in Part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the

elimination of U.S. import duties under the U.S. Generalized System of Preferences (GSP). In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limitations specified in section 504(c) of the Act.

(2) Pursuant to section 332(g) of the Tariff Act and the direction of the President—

(A) To advise the President, with respect to each article listed in Part B of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of articles in Part B from eligibility for duty-free treatment under the GSP.

(B) In accordance with section 504(c)(3)(A)(i) of the Trade Act, to advise the President on whether any industry in the United States is likely to be adversely affected by waiving the competitive need limits for countries specified with respect to the articles listed in Part C of the attached Annex and for the Philippines for certain alcohols; and,

(C) To advise the President, with respect to whether products like or directly competitive with those described in Part A of the attached Annex were being produced in the United States on January 3, 1985, for purposes of section 504(d) of the Trade Act.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT:

(1) Textiles and apparel, Mr. Larry Butler (202–252–1470)
(2) Chemical products, Ms. Cynthia Trainer (202–252–1354)
(3) Minerals and Metals, Mr. Jim Lukes (202–252–1426)
(4) General Manufacturers, Mr. Eric Langer (202–252–1497)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Background

The USTR announced the items which have been sent to the Commission for probable economic effect advice in the Federal Register of July 20, 1988 (53 FR 24733).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on October 11, 1988, and continuing as required on October 12 and 13. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a request to appear and should file a prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than noon, October 3, 1988. Posthearing briefs must be filed by October 19, 1988.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 19, 1988. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 20, 1988.

Annex [1]

A. Petitions to add products to the list of eligible articles for the Generalized Systems of Preferences.

1519.30.40
2905.17.00
2907.11.00
2917.19.15
2917.19.2510
2918.19.50(pt.)
3817.10.00
7019.10.40
9607.20.00
9607.20.0040
9607.20.0080

[1] See USTR Federal Register notice of July 20, 1988 (53 FR 27433) for article descriptions.

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

2804.69.10
2916.39.15
2933.90.47
7307.93.30
9025.11.20

C. Petitions for waiver of competitive-need limit for a product on the list of eligible products.[2]

9503.90.50 (Mexico)
9503.90.60 (Mexico)
9503.90.70 (Mexico)

[FR Doc. 88–21885 Filed 9–22–88; 8:45 am]

BILLING CODE 7020-20-M

[2] Advice is also requested for the Philippines with respect to certain alcohols (HTS 1519.30.40 and 2905.17.00).

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

a. 1. Parent Corporation: Lane County Implement Inc., East Hwy. 96, Box 847, Dighton, KS. 67839.

2. Wholly-owned subsidiaries: Ness County Implement Inc., East Hwy. 96, Ness City, KS. 67560.

b. 1. Parent corporation and address of principal office: Lock Joint Tube Co., Inc., 1400 Riverside Drive, South Bend, Indiana 46616.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: (i) Roman Manufacturing, Inc.; an Indiana corporation.

	State of Incorporation
c. 1. Parent corporation and address of principal office: Toyota Motor Sales, U.S.A., Inc., 19001 S. Western Avenue, Torrance, California 90509.	California
2. Wholly-owned subsidiaries which will participate in the operations: (i) Toyota Motor Distributors, Inc., 19001 S. Western Avenue, Torrance, California 90509.....	California

	State of Incorporation
(ii) Vehicle Processors, Inc./VPI, Transport Division, 19001 S. Western Avenue, Torrance, California 90509.	California.

Noreta R. McGee,

Secretary.

[FR Doc. 88-21807 Filed 9-22-88; 8:45am]

BILLING CODE 7035-01-M

[Finance Docket No. 31317]

Bad Water Line; Acquisition and Operation Exemption

Bad Water Line (BWL) has filed a notice of exemption to acquire by purchase and to operate approximately 26.6 route miles of rail line of Chicago and North Western Transportation Company (C&NW) located at Shobon, WY and extending from milepost 699.0 to milepost 725.6 at Riverton, WY. The agreement for the transfer of this rail line between BWL and C&NW was to be consummated approximately on or before September 1, 1988.

This transaction will also involve the issuance of securities by BWL, which will be a Class III carrier. The issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on: Peter F. Moriarty, Weiner, McCaffrey, Brodsky & Kaplan, P.C., suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797, and Mack H. Shumate, Jr., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

BWL has provided the appropriate State Historic Preservation Officer with the identification of sites and structures (a) listed in the National Register of Historic Places, and (b) 50 years old and older, that will be transferred as a result of the transaction.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-21632 Filed 9-22-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31314]

Fort Worth & Western Railroad Co.; Acquisition and Operation Exemption

Fort Worth & Western Railroad Company (FWW), a noncarrier, has filed a notice of exemption to acquire and operate approximately 6.65 miles of railroad of Burlington Northern Railroad Company (BN) located in Fort Worth, TX. The rail line extends from milepost 00.00 (the old freight house) along a line referred to as "City Lead" to milepost 741.05 (the Eighth Avenue Yard) and then to milepost 736.30 (Northeast 21st Street). FWW will also acquire incidental trackage rights to operate over 1,646 feet of rail line owned by St. Louis Southwestern Railway Company.

The agreement for transfer of the lines between FWW and BN was to be consummated on or about September 8, 1988. This transaction will also involve the issuance of securities by FWW, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

FWW must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption — Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[1]

Any comments must be filed with the Commission and served on Kevin M. Sheys, of Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797, and Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-21633 Filed 9-22-88; 8:45 am]

BILLING CODE 7035-01-M

[1] FWW has certified that it has identified such sites and structures to the appropriate state historic preservation office for Texas.

Release of Waybill Data to Trustee of the Chicago, Missouri and Western Railroad Co.

The Commission has received a request from the Trustee of the Chicago, Missouri and Western Railroad Company (CM&W) for permission to access certain 1985, 1986 and when, available, 1987 waybill data for use by the Trustee, his counsel, and expert consultants. The CM&W is currently operating in bankruptcy while the Trustee assesses alternatives for its future. The presiding Judge in the matter has directed the Trustee to evaluate whether the CM&W can be reorganized as a operating entity in whole or in part or disposed of in whole or part. Access to certain waybill data will permit the Trustee to analyze traffic flows via CM&W's major gateways—Chicago, St. Louis, and Kansas City—in order to assess the potential interest for voluntary coordination agreements between CM&W and other railroads and to review the potential interest of other carriers in purchasing CM&W assets.

Specifically, the Trustee requests certain selected data items for only those waybill records which are geographically relevant to his analysis. Accordingly, the Trustee's request is restricted to:

(1) Waybill records for traffic which originates in IL, MO or KS and terminates in IL, MO or KS; or

(2) Waybill records for traffic which originates, terminates or interchanges at one of the following points: Chicago, IL; Joliet, IL; Lincoln, IL; Springfield, IL; E. St. Louis, IL/St. Louis, MO, and Kansas City, MO/KS.

The Commission requires rail carriers to file way bill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all waybill data requests while protecting the confidentiality of proprietary data

submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after public notice is given and certain protective conditions are met. More specifically, under the Commission's rules for release of waybill [Ex Parte 385 (Sub-No. 2), 49 CFR 1244.8], we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party.

If any parties object to this request, they should file their objections (an original and 3 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. Objections should identify the parties seeking the waybill data, state the purpose for which the data are sought, and include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser or James Nash, (202) 275-7684.

Noreta R. McGee,

Secretary.

[FR Doc. 88-21833 Filed 9-22-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 11, 1988, 9:30 a.m., Rm. 4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION, CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565. Signed at Washington, DC this 16th day of September 1988.

Eugene K. Lawson,

Deputy Under Secretary International Affairs.

[FR Doc. 88-21730 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Delegation of Authority and Assignment of Responsibility; Office of Labor-Management Standards

Effective July 6, 1988, I have delegated authority to Mr. William White, Deputy Assistant Secretary for Labor-Management Standards, and have assigned to him responsibility for performing all of the duties and functions previously assigned to the Assistant Secretary for Labor-Management Standards.

This delegation will remain in effect until a duly appointed Assistant Secretary for Labor-Management Standards takes office.

Signed at Washington, DC, this 16th day of September, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-21729 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-86-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.D.G. Sportswear, Co. 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 date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1988.

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 12th day of September 1988.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.D.G. Sportswear, Co. (ILGWU)	Newark, NJ	9/12/88	8/30/88	20,933	Women's Dresses.
Bayou Resources, Inc. (Workers)	Houston, TX	9/12/88	8/12/88	20,934	Crude Oil & Gas.
Brazos Gas Compressing Co. (Company)	Bridgeport, TX	9/12/88	8/30/88	20,935	Oil and Gas.
Conseis, Inc. (Company)	Houston, TX	9/12/88	9/1/88	20,936	Oil.
Core Service, Inc. (Company)	Corpus Christi, TX	9/12/88	8/30/88	20,937	Oil.
Core Service, Inc. (Company)	Victoria, TX	9/12/88	8/30/88	20,938	Oil.
Core Service, Inc. (Company)	Helbronville, TX	9/12/88	8/30/88	20,939	Oil.
Core Service, Inc. (Company)	Carrizo Springs, TX	9/12/88	8/30/88	20,940	Oil.
Core Service, Inc. (Company)	San Antonio, TX	9/12/88	8/30/88	20,941	Oil.
Core Service, Inc. (Company)	Houston, TX	9/12/88	8/30/88	20,942	Oil.
Culberson Well Service Inc. (Company)	Victoria, TX	9/12/88	9/1/88	20,943	Oil.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dot Togs, Inc. (ILGWU)	Boston, MA	9/12/88	8/31/88	20,944	Ladies' Skirts.
Dubrow and Bravman, Inc. (ILGWU)	Boston, MA	9/12/88	8/31/88	20,945	Children's Blouses.
Fishers Big Wheel (Workers)	Ellwood City, PA	9/12/88	8/30/88	20,946	Retail Merchandise.
French Tool & Supply Co. Inc. (Company)	Odessa, TX	9/12/88	9/1/88	20,947	Truck Dealership.
Geophysical Service, Inc. (Workers)	Stafford, TX	9/12/88	4/28/88	20,948	Oil & Gas Data.
Gillespie Oil Co. (Company)	Abilene, TX	9/12/88	8/30/88	20,949	Crude Oil & Natural Gas.
Greater El Paso Corp. (Workers)	El Paso, TX	9/12/88	8/30/88	20,950	Jeans, Skirts, Jackets & Shorts.
Halliburton, Co. (Workers)	Hays, KS	9/12/88	9/1/88	20,951	Oil Field Services.
ISC Systems Corp. (Workers)	Spokane, WA	9/12/88	8/26/88	20,952	Mini Computers & Perpheral Devices.
International Shoe Co. (UFCW)	Marshall, MO	9/12/88	8/30/88	20,953	Men's Work Footwear.
MND Drilling Corp. (Southern Div.) (Company)	Magnolia, TX	9/12/88	8/30/88	20,954	Oil & Gas Drilling.
MND Drilling Corp. (Northern Div.) (Company)	Bridgeport, TX	9/12/88	8/30/88	20,955	Oil & Gas Drilling.
Marline Petroleum Corp (Company)	Houston, TX	9/12/88	9/2/88	20,956	Oil & Gas.
Mattoon Garment Co. (ILGWU)	Mattoon, IL	9/12/88	8/31/88	20,957	Ladies Dresses & Apparel.
Murfin Drilling Co. (Workers)	Wichita, KS	9/12/88	8/30/88	20,958	Crude Oil & Gas.
Murray Machinery (G.M.P.)	Wausau, WI	9/12/88	8/29/88	20,959	Grey Iron Casings.
Pacesetter Sportswear (ACTWU)	Portage, PA	9/12/88	8/29/88	20,960	Men's Topcoats & Suits.
S.W. Jack Drilling Co. (Workers)	Buckhannon, WV	9/12/88	8/25/88	20,961	Crude Oil & Gas.
Sears Truck Tire Serv. Center (Workers)	Clay, NY	9/12/88	9/1/88	20,962	Sales and Service of Tires and Batteries.
Standard-Coosa-Thatcher Yarns Co. (ACTWA)	Chattanooga, TN	9/12/88	8/31/88	20,963	Grey Yarn.
St. Marys Box Co. (Workers)	St. Marys, PA	9/12/88	8/25/88	20,964	Packaging Partitions.
Standard Oil Production Co. (Company)	Casper, WY	9/12/88	8/29/88	20,965	Crude Oil.
Standard Oil Production Co. (Company)	Oklahoma City, OK	9/12/88	8/29/88	20,966	Crude Oil.
Standard Oil Production Co. (Company)	Lafayette, LA	9/12/88	8/29/88	20,967	Crude Oil.
Washington Mfg Co., Inc. (Company)	Nashville, TN	9/12/88	8/15/88	20,968	Men's, Women's & Children's Apparel.
Willis Drilling Co. (Workers)	Edinburg, TX	9/12/88	8/29/88	20,969	Oil & Gas Drilling.
Brazos Gas Compressing Co. (Company)	Choudrant, LA	9/12/88	8/30/88	20,970	Oil and Gas.
Recovery Resources Corp (Workers)	Gorham, KS	9/12/88	8/31/88	20,971	Crude Oil.
Dee Cee Apparel Inc. (Company)	Hohenwald, TN	9/12/88	8/15/88	20,972	Men's, Women's & Children's Apparel.
Elkton Apparel Co., Inc. (Company)	Elkton, KY	9/12/88	8/15/88	20,973	Men's, Women's & Children's Apparel.
Haywood Male, Inc. (Franklin) (Company)	Franklin, KY	9/12/88	8/15/88	20,974	Men's, Women's & Children's Apparel.
Haywood Male, Inc. (Gamaliel) (Company)	Gamaliel, KY	9/12/88	8/15/88	20,975	Men's, Women's & Children's Apparel.
Haywood Male, Inc. (Red Boiling Springs) (Company).	Red Boiling Springs, TN.	9/12/88	8/15/88	20,976	Men's, Women's & Children's Apparel.
Heavy Duty Mfg. Co. (Company)	Gainsboro, TN	9/12/88	8/15/88	20,977	Men's, Women's & Children's Apparel.

[FR Doc. 88-21731 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Paterson Gearmotors et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 5, 1988–September 9, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firms.

TA-W-20,761; Paterson Gearmotors, Paterson, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,750; American Felt & Filter Co., Staffordville, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,799; National Plastics Corp., Jeannette, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,795; Gavin Electronics, Somerset, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,823; Berol Corp., Berol USA Division, Fairlawn, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,816; Lone Star Industries, Utah Division, Salt Lake City, UT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,801; Victory Glass, Inc., Jeannette, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,814; Fisher-Stevens, Inc., Totowa, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,802; King-Seeley Termos Co., Scotsman Div., Alberta Lea, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,812; Damon Creations, Inc., North Bergen, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,835; Sears Repair Parts Depot, Pennsauken, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,785; Simmonds-Rand Co., Charleroi, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,800; Lightcraft Corp., Youngwood, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-20,759; Material Things, Braintree, MA

A certification was issued covering all workers separated on or after June 23, 1987 and before July 31, 1988.

TA-W-20,757; Kason Merchandising Fixture, Binghamton, NY

A certification was issued covering all workers separated on or after June 16, 1987.

TA-W-20,797; Miller Printing Equipment Corp., Pittsburgh, PA

A certification was issued covering all workers separated on or after August 27, 1988.

TA-W-20,798; NCR Corp., Cambridge, OH

A certification was issued covering all workers separated on or after June 29, 1987.

TA-W-20,804; Allen Automated Systems, Saginaw, MI

A certification was issued covering all workers separated on or after July 6, 1987.

TA-W-20,790; Automation Components, Inc., Pickville, PA

A certification was issued covering all workers separated on or after September 26, 1987.

I hereby certify that the aforementioned determinations were issued during the period September 5, 1988–September 9, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

Dated: September 13, 1988.

[FR Doc. 88-21732 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-30-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 comment 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 supersede as 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 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.

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

Delaware:
- DE88-2 (Jan. 8, 1988) ..... p. 94.

New York:
- NY88-3 (Jan. 8, 1988) ..... pp. 702-703.
- NY88-7 (Jan. 8, 1988) ..... p. 739.
- NY88-12 (Jan. 8, 1988) ..... p. 791.
- NY88-18 (Jan. 8, 1988) ..... pp. 830-831.

Pennsylvania:
- PA88-22 (Jan. 8, 1988) ..... pp. 990, 993.
- PA88-24 (Jan. 8, 1988) ..... p. 1006.

Virginia:
- VA88-1 (Jan. 8, 1988) ..... p. 1118.

VA88-2 (Jan. 8, 1988)..... p. 1122.
VA88-7 (Jan. 8, 1988)..... p. 1134.
VA88-13 (Jan. 8, 1988)..... pp. 1148-1148a.
VA88-18 (Jan. 8, 1988)..... p. 1160f.
VA88-21 (Jan. 8, 1988)..... p. 1160n.
VA88-22 (Jan. 8, 1988)..... p. 1160p.
West Virginia:
WV88-2 (Jan. 8, 1988)..... pp. 1182-1186, pp. 1188-1191, p. 1194, pp. 1197-1198.
WV88-3 (Jan. 8, 1988)..... pp. 1206-1218.

VOLUME II

Missouri:
MO88-1 (Jan. 8, 1988)..... p. 583.
Wisconsin:
WI88-1 (Jan. 8, 1988)..... p. 1084.
WI88-4 (Jan. 8, 1988)..... p. 1096.

VOLUME III

Colorado:
CO88-1 (Jan. 8, 1988)..... p. 104.
CO88-2 (Jan. 8, 1988)..... p. 114.
CO88-4 (Jan. 8, 1988)..... p. 120.
Idaho:
ID88-1 (Jan. 8, 1988)..... p. 143.
Montana:
MT88-2 (Jan. 8, 1988)..... p. 189.
North Dakota:
ND88-2 (Jan. 8, 1988)..... p. 228.
Oregon:
OR88-1 (Jan. 8, 1988)..... pp. 302-303.
Utah:
UT88-1 (Jan. 8, 1988)..... p. 336.
Washington:
WA88-1 (Jan. 8, 1988)..... p. 371.
WA88-2 (Jan. 8, 1988)..... pp. 387-388, 390.
WA88-6 (Jan. 8, 1988)..... p. 412.
WA88-8 (Jan. 8, 1988)..... p. 420.

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 50 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. 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 16th day of September 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-21642 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-162-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidated Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Amonate No. 31 Mine (I.D. No. 46-04421) located in McDowell County, West Virginia. 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. On October 16, 1987, petitioner was granted a modification of 30 CFR 75.1103-4(a) to use air in belt entries for ventilating active working places, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket number M-87-28-C).

2. This petition concerns paragraph 1(d) of the Decision and Order which states that the velocity of air in the belt conveyor entry shall be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry shall not exceed 300 feet per minute.

3. Petitioner states that paragraph 1(d) should be modified to state that low-level carbon monoxide sensors shall not be used where the velocity of the air current in the belt conveyor entry is less than 50 feet a minute or where the air current does not have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that large quantities of methane are liberated from the coal bed during mining and from the mine surface after mining. To ensure that the amount of methane is less than 1.0 volume percent, it must be diluted and removed using large quantities of air. A restriction of air velocity to 300 feet per minute in the outby belt entries would result in insufficient air movement in the section belt entries, thus allowing methane to accumulate. In addition, present and projected mining conditions require a minimum amount of entries to be driven.

5. For these reasons, petitioner requests an amendment to the previously granted petition modifying the application of 30 CFR 75.1103-4(a).

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 October 24, 1988.

Copies of the petition are available for inspection at that address.

Date: September 19, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-21736 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-160-C]

Consolidation Coal Company; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Matthews Mine (I.D. No. 40-00520) located in Claiborne County, Tennessee. 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 follow:

1. On January 30, 1986, petitioner was granted a modification of 30 CFR 75.326 to use air in belt entries for ventilating active working places, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket number M-85-11-C).

2. This petition concerns paragraph 1(d) of the Decision and Order which states that the velocity of air in the belt conveyor entry shall be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry shall not exceed 300 feet per minute.

3. Petitioner states that paragraph 1(d) should be modified to state that low-level carbon monoxide sensors shall not

be used where the velocity of the air current in the belt conveyor entry is less than 50 feet a minute or where the air current does not have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that severe roof conditions and roof falls have caused airways to become restricted. To adequately ventilate the working sections, the velocity and volume of air in the outby areas must be increased. A restriction of the air velocity to 300 feet per minute would reduce the air movement in the section belt entries and result in accumulations of methane and dust. In addition, the present and projected size of the mine requires an increased velocity and volume of air to ensure compliance with the standard.

For these reasons, petitioner requests an amendment to the previously granted petition modifying the application of 30 CFR 75.326.

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 October 24, 1988. Copies of the petition are available for inspection at that address.

Date: September 19, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-21734 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-161-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Matthews Mine (I.D. No. 40-00520) located in Clairborne County, Tennessee. 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. On January 24, 1986, petitioner was granted a modification on 30 CFR 75.1103-4(a) to use air in belt entries for ventilating active working places, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket number M-85-12-C).

2. This petition concerns paragraph 1(d) of the Decision and Order which states that the velocity of air in the belt conveyor entry shall be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry shall not exceed 300 feet per minute.

3. Petitioner states that paragraph 1(d) should be modified to state that low-level carbon monoxide sensors shall not be used where the velocity of the air current in the belt conveyor entry is less than 50 feet a minute or where the air current does not have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that severe roof conditions and roof falls have caused airways to become restricted. To adequately ventilate the working sections the velocity and volume of air in the outby areas must be increased. A restriction of the air velocity to 300 feet per minute would reduce the air movement in the section belt entries and result in accumulations of methane and dust. In addition, the present and projected size of the mine requires an increased velocity and volume of air to ensure compliance with the standard.

5. For these reasons, petitioner requests an amendment to the previously granted petition modifying the application of 30 CFR 75.1103-4(a).

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 October 24, 1988. Copies of the petition are available for inspection at that address.

Date: September 19, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-21735 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-169-C]

C.P.G., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C.P.G., Inc., Box 159, Fedscreek, Kentucky 41524 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 15-15524) 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 cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Pond Creek coal seam and ranges from 30 to 48 inches in height.

3. Petitioner states that due to an uneven coal bed and a low overall seam height the use of canopies on the mine's electric face equipment would result in a dimunution of safety. The canopies could strike the roof and dislodge roof bolts creating the danger of a roof fall, and the canopies would also limit the visibility and operating position for the operator creating the chances for an accident.

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 October 24, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: September 16, 1988.

[FR Doc. 88-21733 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-166-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its

Dominion No. 11 Mine (I.D. No. 44-03763) located in Buchanan County, Virginia. 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 a borehole or boreholes would be drilled to a distance of at least 20 feet in advance of the working place and would be continually maintained to a distance of at least 10 feet in advance of the advancing working face whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas; or within 200 feet of any workings of an adjacent mine.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry would be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry would be a 90 degree angle to the face and the hole drilled 5 feet from the right rib would be a 75 degree angle to the face with a margin of error of +/−5 degrees. This pattern would provide a 10-foot barrier in all directions to the cut to be taken. This pattern would also prevent the cut being taken from interescting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restriced area available to maneuve the drilling machine.

3. 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 October 24, 1988. Copies of the petition are available for inspection at that address.

Date: September 16, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-21737 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-158-C]

Elk Run Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Elk Run Coal Company, Inc., P.O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Castle Mine (I.D. No. 46-07009) located in Boone County, West Virginia. 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 entries used as intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner states that an early warning fire detection system would be installed. A low-level carbon monoxide detection system would be installed in all belt entries utilized as intake aircourses. The low-level CO system would be capable of giving warning of a fire for fours hours should the power fail; a visual alert signal would be activated when the CO level is 10 ppm above the ambient level and an audible signal would sound at 15 ppm above the established ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initate the fire alarm signals at an attended surface location. This responsible person would notify the working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

3. The CO monitoring system would be visually examined at least once each coal producing shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

4. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously partrolled and monitored for CO by a qualified person using hand-held CO detecting devices.

5. The details for the fire detection system would be included as a part of the Ventilation System and Methane Dust Control Plan.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway would be specifically approved in the Ventilation System and Methane and Dust Control Plan.

7. The concentrations of respirable dust would comply with 30 CFR 70.100(b) and would be determined by establishing a designated area in the mine's Ventilation Plan, with a specific sampling location as required by 30 CFR 75.316-1(b)(2) that is always within 200 feet out by the working face of the section in the intake airways.

8. 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, Virgina 22203. All comments must be postmarked or received in that office on or before October 24, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: September 16, 1988.

[FR Doc. 88-21738 Filed 9-22-88; 88:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-165-C]

Mineral Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mineral Mining Company, Inc., P.O. Box 368, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16261) located in Knox 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 methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30.-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modificaitons would be made in addition to the manufacturer's specifications.

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 petitioner 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 October 24, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: September 19, 1988.

[FR Doc. 88-21739 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-182-C]

Polcovich Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Polcovich Coal Company, 511 South Hickory Street, Mount Carmel, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Slope (I.D. No. 36-07975) located in Columbia 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 October 24, 1988. Copies of the petition are available for inspection at that address.

Date: September 19, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-21808 Filed 9-22-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 170, 170, and 167 to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee), which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (the facility) located in Oconee County, South Carolina. The amendments were effective as of the date of issuance.

The amendments revise the Technical Specifications to support operations of Unit 3, Cycle 11, at full rate power.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 29, 1988 (53 FR 28735). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the enviornmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment. (53 FR 36140)

For further details with respect to the action see (1) the application for amendments dated May 16, 1988, (2) Amendment Nos. 170, 170, and 167 to License Nos. DPR-38, DPR-47, and DPR-55 and (3), the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 19th day of September 1988.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Project Manager, Project Directorate II-3, Division of Reactor Projects-I/II.

[FR Doc. 88-21811 Filed 9-22-88; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power and Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc., (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3.6.1.2, "Containment Leakage," and the associated Table 3.6.4-1, "Containment and Drywell Isolation Valves," by excluding certain small valves in test, drain, and vent lines from local leak rate tests and placing them under administrative control for leak tight integrity.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By October 24, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission, or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how tha interest may be affected by the result of proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interst. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 in (Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should be also sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1) (i)-(v) and 2.714 (d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any requiring hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 15th day of September, 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Senior Project Manager, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 88-21812 Filed 9-22-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26092; File No. SR-Amex-88-15]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Increased Flexibility in Determining Position and Exercise Limits

On June 16, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, a proposed rule change to amend Amex Rule 904 to provide greater flexibility in the establishment of position and exercise limits for stock options.

The proposed rule change was noticed in Securities Exchange Act Release No. 25846 (June 24, 1988), 53 FR 25224 (July 5, 1988). No comments were received on the proposed rule change.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985.[3] Pursuant to this system, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares [4] will qualify the overlying option for either an 8,000, 5,500, or 3,000 contract position limit. Under current practices, the Exchange reviews the volume and outstanding share information of all underlying stocks every six months (in January and July) to determine which contract limit shall apply for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July expiration.

The proposed rule change will revise the current review procedures such that the Exchange, in its discretion, may increase an option's position limit before the next six-month review date if, subsequent to one six-month review but prior to the next review, an increase in the option's trading volume and/or outstanding shares would make a stock eligible for a higher position limit at the next review period. Nothing in the proposed rule change, however, shall change the current six-month review process that occurs in January and July. In this regard, even if an option becomes eligible for a higher position limit between review periods, all subsequent calculations of that option's trading volume and/or outstanding shares for position limit purposes will continue to be based upon the six-month period immediately preceding the January or July review period, whichever is appropriate. The proposed rule change also does not alter the existing position limit criteria relating to outstanding shares and/or trading volume.[5]

The Amex states that the proposed rule change is designed to provide liquidity to certain options without increasing the potential for market manipulation. The Amex notes that frequently an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. The Amex notes further that, under current rules, an option that qualifies for a higher position limit before the next review period remains at the lower limit until the next semi-annual review is conducted. The Exchange suggests that limiting an option which is qualified for a higher position limit to the lower limit can discourage market participation by institutions and other market participants with substantial hedging needs.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of section 6 and the Rules and Regulations thereunder. More specifically, the Commission believes that the proposed rule change will help provide additional liquidity to certain options by increasing institutional and individual investor participation in the trading of those options without altering the existing position limit criteria. In addition, because options are used to hedge existing stock portfolios, the Commission believes that acceleration of the date upon which a qualified option's increased position limit takes effect will provide investors with a useful tool to hedge more effectively underlying stock positions. At the same time, because the current position limit criteria for equity options have not changed, the Commission does not believe that the proposed rule change raises any additional market disruption or manipulation concerns.[6]

The Commission believes further that any increase in an option's position limit before a semi-annual review period will not result in investor confusion. The Amex specifically has indicated that it will provide its member firms with adequate notice of any increase so as to ensure the investment community is aware in advance of the changed position limit.[7]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440 (April 4, 1985).

[4] Pursuant to the current system, position limits are as follows: (1) 8,000 contracts for options on an underlying security which had trading volume of at least 40,000,000 shares or trading volume of at least 30,000,000 shares and at least 120,000,000 shares outstanding during the most recent six-month period; (2) 5,500 contracts for options on an underlying security which had trading volume of at least 20,000,000 shares or trading volume of at least 15,000,000 shares and at least 40,000,000 shares outstanding during the most recent six-month period; (3) 3,000 contracts for all other options.

[5] For example, under current Amex rules, if during the first two months after a six-month review a stock with an options position limit of 5,500 contracts trades 40,000,000 shares, the position limit would remain at 5,500 contracts even though the option would qualify for an 8,000 contract limit at the next six-month review. The Amex proposed rule change would allow the Amex, at its discretion, to raise the limit to 8,000 contracts after the stock had reached the requirements for an 8,000 contract limit.

[6] *See* notes 3-4, *supra*.

[7] In this regard, the Commission expects that the Amex will exercise judgment in determining whether to raise an option's limit so that the six-month review will remain as the review period for the overwhelming majority of options. For example, it would be more consistent with the Amex's discretion under the proposed rule for it to raise the limit for an option with a 5,500 limit if the underlying stock reaches the 40,000,000 share trading threshold two months before a six-month review than if it reached it one week before a six-month review.

Finally, the Commission believes that the proposed rule change, along with the recently approved two-year pilot program permitting a position limit exemption for up to twice the existing position limit where equity option posiitons are hedged on a one-for-one basis with underlying stock,[8] will assist specialists and market makers in adequately meeting their obligations to maintain a fair and orderly market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: September 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21842 Filed 9-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26090; File No. SR-NSCC-88-7]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Securities Clearing Corporation Relating To Eliminating Bond Form (Registered or Bearer) as a Match Criterion

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 11, 1988, 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 approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules by eliminating bond form (registered or bearer) as a match criterion.

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 has 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

The purposes of the proposed rule change are: (1) To accommodate the amendments to Municipal Securities Rulemaking Board ("MSRB") Rules G-12(c) and G-15(a) relating to delivery requirements for municipal securities, which were set forth in an MSRB rule change (File No. SR-MSRB-87-12) and approved by the Commission; [1] and (2) to remove an inconsistency in the NSCC rules relating to the delivery requirements for corporate bonds and unit investment trusts. The amendments to MSRB Rules G-12(c) and G-15(a) eliminate the requirement that interdealer and customer confirmations designate whether securities are in registered form. Therefore, the MSRB has requested that NSCC modify its procedures by removing the bond form (registered or bearer) as a match criterion for the comparison of municipal bond transaction.

Elimination of the bond form designation requirement for other debt securities will bring NSCC procedures in line with NSCC Rule 44(5)(c) which states: "Each delivery of bonds that are issuable in either coupon or registered form shall be settled by delivery of bonds in either form * * * notwithstanding, that there may be a charge for interchanging one form with the other." Since the Proposed rule change relates to the prompt and accurate clearance and settlement of securities transactions, it is consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were solicited by NSCC pursuant to Important Notice A 3042, P&S 2834, dated August 8, 1988. No coments have been received.

III. Discussion of Proposal

The Commission believes that this proposal is consistent with the Act, particularly Section 17A of the Act. The purposes of this proposal are:

(1) To accommodate certain changes to the rules of the MSRB dealing with the delivery of municipal securities; and

(2) To remove an internal inconsistency in NSCC's own rules relating to the form (registered or bearer) of bond delivery.

The Commission finds good cause for approving the proposal prior to the thirtieth day after publication of notice of the filing. The Commission believes that it is in the public interest to have harmony among the self-regulatory organization rules that govern delivery of securities and inasmuch as the related MSRB rule change will become effective on September 18, 1988, it would be in the public interest for NSCC's rule change also to become effective by that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file 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 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 abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 14, 1988.

It is therefore Ordered, pursuant to section 19(b)(2) of the Securities Exchange Act, that the above-mentioned proposed rule change (SR-NSCC-88-7) be, and hereby is, approved. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

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[8] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1988).

[1] *See* Securities Exchange Act Release No. 25489 (March 18, 1988), 53 FR 9837.

Dated: September 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21789 Filed 9-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6655]

South Dakota; Declaration of Disaster Loan Area

The Counties of Butte, Custer, Fall River, Lawrence, Meade, and Pennington in the State of South Dakota constitute an Economic Injury Disaster Loan Area as a result of damages from forest fires which occurred on July 5 and July 26, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 13, 1989 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853-4795, or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: September 12, 1988.

James Abdnor,

Administrator

[FR Doc. 88-21829 Filed 9-22-88; 8:45 am]

BILLING CODE 8025-01-M

Capital Equity Corp.; Surrender of License

[License No. 06/06/-0263]

Notice is hereby given that Capital Equity Corporation (CEC), 1885 Wooddale Boulevard, Baton Rouge, Louisiana 70806 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). CEC was licensed by the Small Business Administration on March 11, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on September 14, 1988, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 16, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-21830 Filed 9-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Meeting on Revisions to the Carriage of Goods by Sea Act

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: A meeting on the proposed revisions to the Carriage of Goods by Sea Act (COGSA) has been scheduled. Members of the general public may attend and participate in the discussion subject to instruction of the Chairman. The meeting agenda will include a review of the need for COGSA revisions and the international trade implications related thereto, the transportation cost changes resulting from any COGSA revisions, and the importance of uniformity of law in any new regime.

DATE: The meeting is scheduled for 8:30 a.m. on Thursday, October 20, 1988.

ADDRESS: The meeting will be held at the Department of Transportation, 400 7th Street, SW., Washington, DC in Room 2230.

FOR FURTHER INFORMATION CONTACT: John D. Coakley, Office of Assistant Secretary for Policy and International Affairs, Room 10300, Department of Transportation, Washington, DC 20590. (telephone (202) 366-9504).

SUPPLEMENTARY INFORMATION: To facilitate entry into the building members of the general public planning to attend should, prior to October 20, notify the Office of International Transportation and Trade, P-20 Room 10300, Department of Transportation, Washington, DC 20590 (telephone (202) 366-4368) of their name, affiliation, address and telephone number.

Dated: September 20, 1988.

Arnold Levine,

Director, Office of International Transportation and Trade, Department of Transportation.

[FR Doc. 88-21745 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-62-M

Fitness Determination of Iowa Airways, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 88-9-39, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Iowa Airways, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh 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 October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: September 19, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-21856 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 88-079]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on a commercial fishing industry vessel advisory committee presently being established by the Coast Guard as required by the Commercial Fishing Industry Vessel Safety Act of 1988.

When established, the committee will act in an advisory capacity to the Commandant of the Coast Guard on matters relating to the safety of commercial fishing vessels.

The appointment of 17 members will be as follows: Ten (10) members from the commercial fishing industry who

reflect a regional and representational balance and have experience in the operation of vessels to which Chapter 45 of Title 46, United States Code, applies or as crew member or processing line worker on an uninspected fish processing vessel: one (1) member representing naval architects or marine surveyors; one (1) member representing manufacturers of equipment for vessels to which Chapter 45 applies; one (1) member representing education or training professionals related to fishing vessel, fish processing vessel, fish tender vessel safety, or personnel qualifications; one (1) member representing underwriters that insure vessels to which Chapter 45 applies; and three (3) members representing the general public, including whenever possible an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which Chapter 45 applies and persons representing the marine insurance industry. Members will normally serve a term of three years, except that one third of the initial members will serve a term of one year and one third of the initial members will serve a term of two years. A limited portion of the membership may serve consecutive terms.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. When established, the committee is expected to meet at least once each year.

DATE: Request for applications should be received not later than October 24, 1988.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. N.W. Lemley, Marine Technical and Hazardous Materials Division (G-MTH), Room 1218, U.S. Goast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001; (202) 267-0001.

September 15, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Evnironmental Protection.

[FR Doc. 88-21716 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-080]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, October 11, 1988, in the 29th floor boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the 12 July 1988, meeting.
3. Report by the Coast Guard on items discussed from 12 July 1988, meeting.

A. Anchorage area modification.

B. Line of Demarcation between the Inland and International Rules of the Road.

C. VTS New Orleans sector radio frequencies.

4. Sectorization of bridge-to-bridge radio on the Mississippi River.
5. Report from the Ad Hoc Committee on GNO Bridge RACON.
6. New Business.
7. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G.A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6234.

Dated: September 12, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Chief of Staff, Eighth Coast Guard.

[FR Doc. 88-21717 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Stewart International Airport; Newburgh, NY; Environmental Impact Statement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for the adoption of the proposed plan to facilitate development on a portion of Stewart International Airport New York.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Region Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430; Telephone No. (718) 917-0902.

OR

James P. McGuinness, NYS Department of Transportation, Joint-Lead Agent, Stewart Airport, Bldg. #138, 1035 First Street, Stewart Airport, New York 12550; Telephone No. (914) 564-2100.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the New York State Department of Transportation (joint lead agent—NYSDOT) will prepare an Environmental Impact Statement (EIS) for adopting a plan for proposed development of Stewart International Airport's Noise Buffer Area. Stewart International Airport consists of approximately 9,700 acres consisting of 1,700 acres of existing aeronautical facilities and a 8,000 acre noise buffer area. The site is owned by the State of New York and is located in Orange County, New York.

The proposed project is in response to Sections 400 and 401 of the New York State Transportation Law, which provides: "* * * for the economic development of the area around the airport, the joining together of such economic development and the airport operations, the identification and implementation of ways of working with the local community to accomplish the program and the identification of non-aviation uses and purposes and prorations of use or purposes for determinations of in lieu of tax payments." The EIS will evaluate alternative development scenarios including the no-build alternative.

The EIS will evaluate, but not be limited to the cumulative impacts on the affected environment for the following resource areas: noise quality, surface water hydrology and quality, air quality, wetlands, wildlife, habitat, upland vegetation, recreation, geology and soils and groundwater. The EIS will also evaluate impacts on the affected environment resulting form infrastructure development traffic and induced economic growth associated with project development.

Public Scoping Meeting

To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments a public scoping meeting will be held on October 25, 1988, at 7:00 p.m. at Stewart International Airport in the International Arrivals Building, Building 128, First Street, Stewart International Airport, Newburgh, New York.

Written comments may be mailed to the informational contact persons no later than November 7, 1988.

Issued in Jamaica, NY, on September 15, 1988.

Louis P. DeRose,

Assistant Manager, Airports Division, FAA, Eastern Region.

[FR Doc. 88-21845 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Bellingham, WA; Notice of Closing

Notice is hereby given that on or about September 30, 1988, the flight service station at Bellingham, Washington, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Seattle, Washington. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Seattle, Washington, on September 9, 1988.

Frederick M. Isaac,

Acting Regional Administrator, Northwest Mountain Region.

[FR Doc. 88-21846 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. M-007]

Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration (MARAD) has received applications under 46 CFR Part 249 from the following French underwriters, to write marine hull insurance on subsidized and Title XI program vessels: Assurances Generales de France (AGF) La Concorde Cie, D' Assurances, Groupe des Assurances Nationales Inceudie Accidents, Assurance du Group de Paris (AGP) La Reunion Francaise S.A., C.A.M.A.T., Cie D' Assurances Maritimes, Aeriennes & Terr.

In accordance with 46 CFR 249.7(d), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and must be received by close of business on October 7, 1988.

James E. Saari,

Secretary, Maritime Administration.

Date: September 20, 1988.

[FR Doc. 88-21785 Filed 9-22-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 19, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0191.

Form Number: 4952.

Type of Review: Resubmission.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verity the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 800,000.

Estimated Burden Hours Per Response/Recordkeeping:

Rrecordkeeping—1 hour 5 minutes

Learning about the law or the form—16 minutes

Preparing the form—55 minutes

Copying, assembling, and sending the form to IRS—20 minutes.

Frequency of Response: Annually.

Estimated Average Recordkeeping/Reporting Burden: 2,080,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-21726 Filed 9-22-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 19, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0152.

Form Number: 3115.

Type of Review: Revision.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—98 hours 17 minutes

Learning about the law or the form—6 hours 58 minutes
Preparing the form—11 hours 40 minutes
Copying, assembling, and sending the form to IRS—48 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 77,733 hours.

OMB Number: 1545-0575.

Form Number: 5330.

Type of Review: Revision.

Title: Return of Excise Taxes Related to Employee Benefit Plans.

Description: Code sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4978A, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 10,100.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—12 hours 26 minutes
Learning about the law or the form—7 hours 56 minutes
Preparing and sending the form to IRS—8 hours 29 minutes

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 291,688 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-21727 Filed 9-22-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 185
Friday, September 23, 1988

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, September 27, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *Kerosene Heaters Petition CP 87-1.*—The Staff will brief the Commission on petition CP 87-1 from the National Kerosene Heater Association. The petition requests the development of a consumer product safety rule for kerosene heaters containing requirements to limit nitrogen dioxide emissions of kerosene heaters now set forth in the Underwriters Laboratories standard for kerosene heaters designated UL standard 647. The Commission decided to allow the petitioner to make an oral presentation at the meeting.

The staff will also brief the Commission on the International Association of Fire Chief's request that the Commission require kerosene heaters be labeled to warn against flare-up fires.

Closed to the Public

2. *Compliance Status Report.*—The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800

[FR Doc. 88-21946 Filed 9-21-88; 3:51 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:05 p.m. on Monday, September 19, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible closing of certain insured banks; and (2) the request of Lisbon Bank and Trust Company, Lisbon, Iowa, for an exemption pursuant to 348.4(b)(1) of the Corporation's rules and regulations.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6221 of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: September 20, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88-21940 Filed 9-21-88; 2:40 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 28, 1988.

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. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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 a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-21939 Filed 9-21-88; 2:39 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, October 5, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of September, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: September 19, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-21938 Filed 9-12-88; 2:34 pm]

BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 53, No. 185
Friday, September 23, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-08-4220-11; I-15320 et al]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 88-19747 appearing on page 33549 in the issue of Wednesday, August 31, 1988, make the following correction:

In the third column, under **Boise Meridian, Idaho**, under T. 10 N., R. 22 E., Sec. 17, should read " SW¼SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

Correction

In rule document 88-20556 beginning on page 35610 in the issue of Wednesday, September 14, 1988, make the following corrections:

1. On page 35610, in the second column, in the third complete paragraph, in the 19th line, "regulatory" should read "Regulatory".

2. On page 35611, in the second column, in the second complete paragraph, in the fourth line, "exits" should read "exists".

3. On page 35613, in the third column, the heading "12. New Construction" should read "2. New Construction".

4. On page 35616, in Table 2, in the heading, the footnote designation "aa" should read "a".

5. On page 35617, in the first column, in the first complete paragraph, in the eighth line, "Two" should read "two".

6. On page 35619, in the first column, in the second complete paragraph, in the third line, "lowet" should read "lowest".

7. On the same page, in the second column, in the second complete paragraph, in the fourth line, "lowet" should read "lowest".

8. On page 35621, in the third column, in the last paragraph, in the seventh line, "Eleven" should read "EL even".

9. On page 35623, in the second column, in the third complete paragraph, in the 29th line, "air-hauling" should read "air-handling".

BILLING CODE 1505-01-D

federal register

Friday
September 23, 1988

Part II

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-63385-3]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today finalizes regulations for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), except any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). These regulations were first proposed on April 17, 1987 (52 FR 12662) and a subsequent Supplemental Notice was published on December 23, 1987 (52 FR 48638).

Under Section 9003 of RCRA, EPA must establish requirements for leak detection, leak prevention, financial responsibility, and corrective action for all underground storage tanks containing regulated substances as necessary to protect human health and the environment. Today's final rule sets forth requirements satisfying the mandates of section 9003, except that final requirements concerning financial responsibility will be addressed later by EPA in another **Federal Register** notice.

EFFECTIVE DATE: December 22, 1988, except § 280.22(g) which is effective October 24, 1988.

ADDRESS: The docket for this rulemaking (Docket No. UST 2-1) is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for federal holidays. You may make an appointment to review docket materials by calling (202) 475-9720. You may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: Call the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or 382-3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, and 9006, 9007, and 9009 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

II. Background

A. Subtitle I of RCRA

The Hazardous and Solid Waste Amendments of 1984 extended and strengthened the provisions of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA) of 1976. One major portion of RCRA as amended, Subtitle I, provides for the development and

implementation of a comprehensive regulatory program for "underground storage tanks" containing "regulated substances" and releases of these substances to the environment.

Subtitle I defines "underground storage tank" as a tank system, including its piping, that has at least 10 percent of its volume underground. Throughout this preamble and final rule, the terms "underground storage tanks," "USTs," and "UST systems" include both the underground storage tank vessel and the underground piping connected to it.

"Regulated substances" are defined as substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), except hazardous wastes regulated under Subtitle C of RCRA, and petroleum.

Subtitle I excludes the following from the definition of USTs:

- Farm or residential tanks of 1,100 gallons or less capacity storing motor fuel for noncommercial purposes;
- Tanks storing heating oil for consumptive use on the premises where stored;
- Septic tanks;
- Pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Act of 1979, or State laws comparable to these Acts;
- Surface impoundments, pits, ponds, and lagoons;
- Storm-water or wastewater collection systems;
- Flow-through process tanks;
- Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
- Storage tanks situated on or above the floor of underground areas, such as basements and cellars.

Subtitle I contains several major provisions for the regulation of UST systems. Section 9002 requires UST system owners to notify states of the existence of their UST systems. These notification requirements were addressed in a final rule published by EPA on November 8, 1985 (50 FR 46602). Section 9002, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), also requires that states use the notifications they receive to compile tank inventories. Under Federal grant agreements, states are providing EPA with aggregated data from these notifications.

Under section 9003, EPA must promulgate regulations applicable to all owners and operators of UST systems as necessary to protect human health and the environment. In promulgating these regulations, section 9003(b) authorizes the Administrator to distinguish between types, classes, and ages of underground storage tanks. Section 9003 requires EPA to issue design, construction, installation, and compatibility standards for new tanks, as well as requirements applicable to all tank owners and operators concerning leak detection, recordkeeping, reporting, closure, corrective action, and financial responsibility.

Section 9003(h), as amended by SARA, gives EPA—and states under cooperative agreements with EPA—authority to clean up petroleum releases from UST systems or to require their owners and operators to do so. It also establishes a trust fund to finance these activities.

Section 9004 permits EPA to authorize states to implement their own UST programs in place of the Federal requirements if the state's requirements are "no less stringent" than EPA's and provide for adequate enforcement. Programs which are less stringent in certain areas may receive approval for an interim period.

Other provisions of Subtitle I pertain to definitions (section 9001); entry, inspection, and information gathering (section 9005); enforcement (section 9006); Federal facilities (section 9007); state authorities (section 9008); and studies and reports to Congress required of EPA (section 9009).

This preamble and final rule pertain to the requirements mandated by sections 9003 (a), (c), (e) and (g); they also meet the study requirements of sections 9009 (a) and (b). Final rules for state program approval requirements, under section 9004, are found elsewhere in today's **Federal Register**. Final rules for financial responsibility requirements for petroleum UST systems, under sections 9003 (a) and (d), will be promulgated by EPA at a later date.

Section 9003(c) requires EPA to establish the following minimum technical requirements for all UST systems: To maintain a leak detection system or comparable system designed to identify releases to protect human health and the environment; to maintain records of any such release detection system; to report releases and corrective action taken; to take corrective action in response to a release; and to close tanks to prevent future releases. Under section 9003(e), EPA must also establish performance standards for new UST systems. At a minimum, these standards must include design, construction, installation, release detection, and compatibility standards.

Until the promulgation of today's final rule, section 9003(g) established an "Interim Prohibition" that allowed installation of UST systems after May 8, 1985, only if the UST system is protected from corrosion, prevents releases due to corrosion or structural failure for the operational life of the tank, and is constructed of material compatible with the substance to be stored. The law allowed an exemption from the requirement of corrosion protection if an UST system is located at a site having a soil resistivity measured at 12,000 ohms/cm or greater. An interpretive rule concerning the Interim Prohibition was published on June 4, 1986 (51 FR 20418). These Interim Prohibition requirements are replaced by today's final rule for new tank standards, except in those few cases where the Agency has decided to defer regulatory action on some types of UST systems. For these deferred UST systems, the Interim Prohibition will continue to apply until EPA takes action in the future either to regulate or not regulate them (see §§ 280.10 and 280.11 of the final rule).

B. Operating Principles

Faced with the mandate of Subtitle I, EPA recognized several unusual aspects of the regulated universe that have created special problems in developing an effective regulatory approach. First, the regulated universe is immense, including over 2 million UST systems estimated to be located at over 700,000 facilities nationwide. Second, over 75 percent of the existing systems are made of unprotected steel, a type of tank system proven to be the most likely to leak and thus create the greatest potential for health and environmental damage. Third, most of the facilities to be regulated are owned and operated by very small businesses, essentially "Mom and Pop" enterprises not accustomed to dealing with complex regulatory requirements. Fourth, numerous technological innovations and changes are now underway in various sectors of the UST system service community.

In response to the unique aspects of this regulated community, and the clear need for comprehensive management of USTs during their operating life, EPA has identified and followed several key operating principles, described briefly below, in developing the final regulations for USTs.

- The UST program must be based on sound national standards that protect human health and the environment.
- The UST regulatory program must be designed to be implemented at the

state and local levels. State and local governments have been and continue to be the authorities most capable of effective oversight of UST systems and response to releases.

• The regulations must be kept simple, understandable, and easily implemented by the owner and operator in order to facilitate voluntary compliance. Section 9003(b) specifically indicates that technical capability can be considered in developing the Subtitle I rules.

• The regulations must not inhibit new UST technological developments.

• The regulations must be designed to retain the flexibility necessary to accommodate, where possible, the special needs of the UST regulated community, which is largely composed of small businesses with limited resources available for capital improvements.

• In order to encourage the utmost voluntary compliance, the regulations should build upon current industry trends and tie into and utilize ongoing industry initiatives toward more sound UST management. Toward this end, section 9003(b) specifically authorizes EPA to consider industry practices and consensus codes in developing appropriate UST regulations. The Agency expects the nationwide use of these new management practices to yield direct environmental benefits.

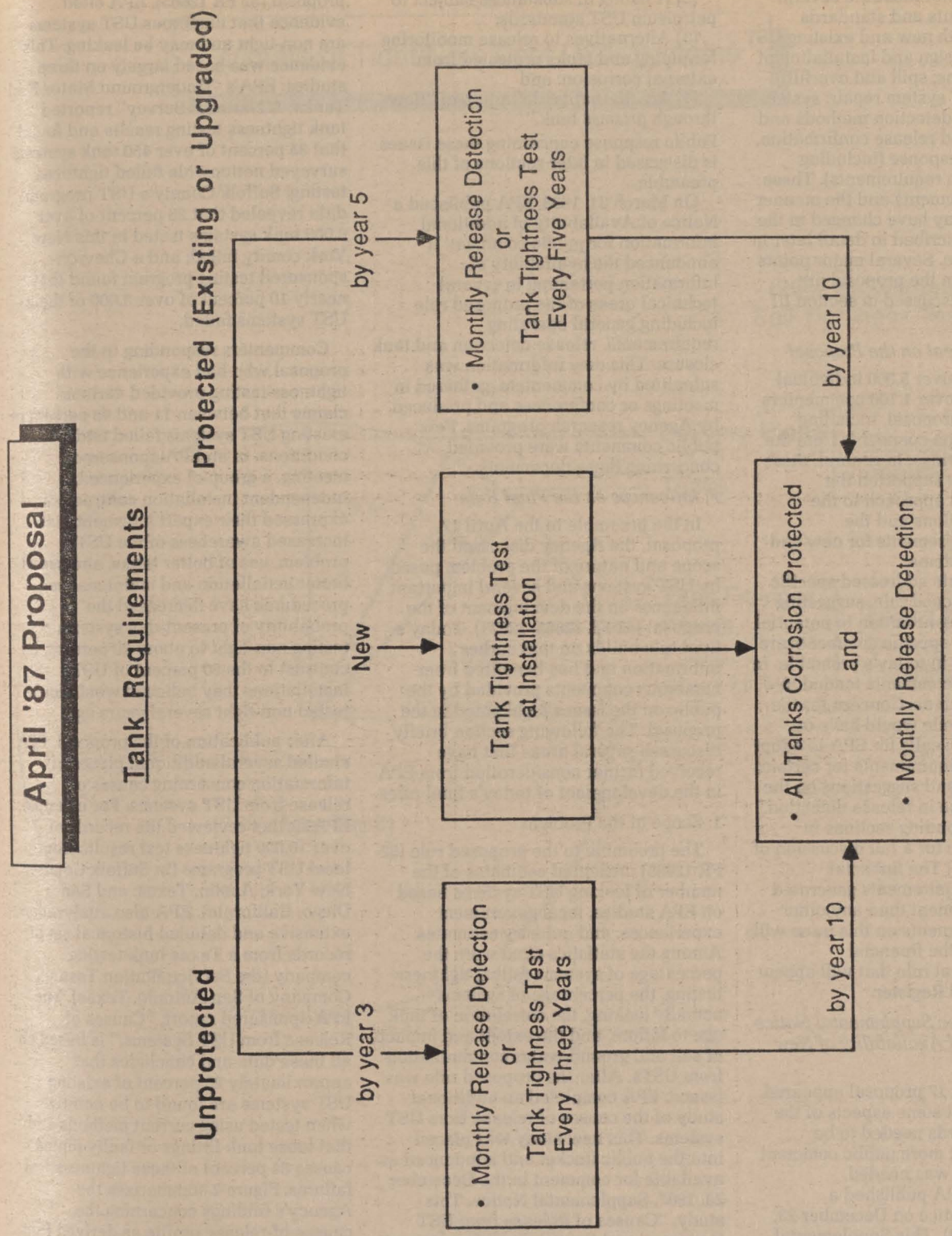
By reflecting these operating principles in the final UST regulations, the Agency believes it has taken the most effective approach toward protecting human health and the environment.

C. Summary of April 17 Proposed Rule

On April 17, 1987, EPA proposed regulations for USTs storing either petroleum or hazardous substances (other than hazardous wastes regulated under Subtitle C of RCRA) (52 FR 12662). These proposed regulatory measures set requirements for both new and existing UST systems to control the major causes of releases from these tank systems and included, among other things, corrosion controls, proper installation requirements, and spill and overfill prevention measures.

Figure 1 illustrates several key aspects of the regulatory program proposed in April 1987; requirements for corrosion protection and monthly release detection at all new UST systems; the phase-in of either monthly release detection or periodic tightness testing combined with inventory control at all existing USTs, within 3 years if unprotected from corrosion and within 5 years if protected; and the upgrading of all existing UST systems to the new tank standards within 10 years. In addition, the proposed new and upgraded tank standards for hazardous substance USTs required secondary containment with interstitial monitoring.

BILLING CODE 6560-50-M



Piping: Continuous monitoring or mechanical detectors required for new pressurized lines.

Figure 1

BILLING CODE 6560-50-C

Figure 1 does not illustrate several other requirements and standards proposed for both new and existing UST systems: The design and installation of new UST systems; spill and overfill prevention; UST system repair; system closure; release detection methods and performance; and release confirmation, reporting, and response (including corrective action requirements). These proposed requirements and the manner in which they may have changed in the final rule are described in detail later in today's preamble. Several major points of departure from the proposal are identified and discussed in section III below.

D. Public Comment on the Proposal

EPA received over 5,000 individual comments from over 1,100 commenters on the April 17 proposal, including verbal and written comments from the three public hearings. In general, these public comments supported the Agency's overall approach to the proposed regulations and the substantive requirements for new and existing UST systems.

Many comments addressed specific parts of the proposed rule, suggesting changes or calling attention to potential problems. These specific comments are discussed below in today's preamble. In summary, many comments tended to center on three areas: Concern for the impact the UST rule would have on small businesses, calls for EPA to adopt more stringent requirements for certain sensitive areas, and suggestions on the best way to phase in release detection. (See the corresponding sections in today's preamble for a full discussion of these comments.) The financial responsibility requirements generated more public comment than any other single area. Comments on this issue will be addressed in the financial responsibility final rule that will appear in a later **Federal Register**.

E. Summary of the Supplemental Notice and the Notice of Availability of New Information

After the April 17 proposal appeared, EPA realized that some aspects of the technical standards needed to be clarified and that more public comment on these matters was needed. Consequently, EPA published a Supplemental Notice on December 23, 1987 (52 FR 48638). This Supplemental Notice dealt with four areas pertaining to the proposed technical requirements:

(1) Use of "static inventory control" to monitor used oil UST systems;

(2) A listing of substances subject to petroleum UST standards;

(3) Alternatives to release monitoring for piping and tanks protected from external corrosion; and

(4) An alternative definition of "flow-through process tank."

Public response concerning these issues is discussed in later sections of this preamble.

On March 31, 1988, EPA published a Notice of Availability of additional information for public comment. It announced the availability of information pertaining to several technical areas of the proposed rule including general operating requirements, release detection and tank closure. This new information was submitted by commenters, gathered in meetings or conferences and produced by Agency research programs. Few public comments were provided concerning these documents.

F. Influences on the Final Rule

In the preamble to the April 17 proposal, the Agency discussed the scope and nature of the problem posed by UST systems and several important influences on the development of the proposal (52 FR 12665–12671). Today's final rule builds on that earlier information and has benefited from numerous comments provided by the public on the issues highlighted in the proposal. The following section briefly discusses several areas that have received further consideration from EPA in the development of today's final rules.

1. Scope of the Problem

The preamble to the proposed rule (52 FR 12665) presented estimates of the number of leaking UST systems based on EPA studies, local government experiences, and industry estimates. Among the statistics cited were the percentage of systems failing tightness testing, the percentage of systems actually leaking, the correlation of tank age to failure, and the extent and impact of soil and ground-water contamination from USTs. After the proposed rule was issued, EPA completed an additional study of the causes of release from UST systems. This new study was placed into the public docket and announced as available for comment in the December 23, 1987, Supplemental Notice. This study, "Causes of Release from UST Systems," and the public comments on it were important in developing today's preamble and final rule.

a. *Current Estimates of "Non-Tight" UST Systems.* In the preamble to the proposal (52 FR 12665), EPA cited evidence that numerous UST systems are non-tight and may be leaking. This evidence was based largely on three studies: EPA's "Underground Motor Fuel Tanks: A National Survey" reported tank tightness testing results and found that 35 percent of over 450 tank systems surveyed nationwide failed tightness testing; Suffolk County's UST program data revealed that 26 percent of over 6,000 tank systems tested in this New York county failed; and a Chevron-sponsored testing program found that nearly 10 percent of over 3,000 of their UST systems failed.

Commenters responding to the proposal who had experience with tightness testing provided various claims that between 11 and 48 percent of existing UST systems failed under test conditions. In an EPA-sponsored meeting, a group of experienced, independent installation contractors expressed their expert judgment that increased awareness of the UST problem, use of better tanks, and use of better installation and maintenance procedures have decreased the probability of present-day systems testing non-tight to about 20 percent, in contrast to the 50 percent of UST installations they believed would have tested non-tight several years ago.

After publication of the proposal, EPA studied several additional pieces of information concerning causes of release from UST systems. For example, EPA further reviewed the records of over 10,000 tightness test results from local UST programs (in Suffolk County, New York; Austin, Texas; and San Diego, California). EPA also analyzed an extensive and detailed historical set of records from a Texas tank testing company (the Service Station Testing Company of San Antonio, Texas). The EPA-sponsored report, "Causes of Release from UST Systems," is based on all these data and concludes that approximately 25 percent of existing UST systems are found to be non-tight when tested using current methods and that loose tank fittings or faulty piping causes 84 percent of these tightness test failures. Figure 2 summarizes the Agency's findings concerning the causes-of-release profile as derived from tank testing results and documented follow-up at over 10,000 UST systems conducted nationwide.

BILLING CODE 6560-50-M

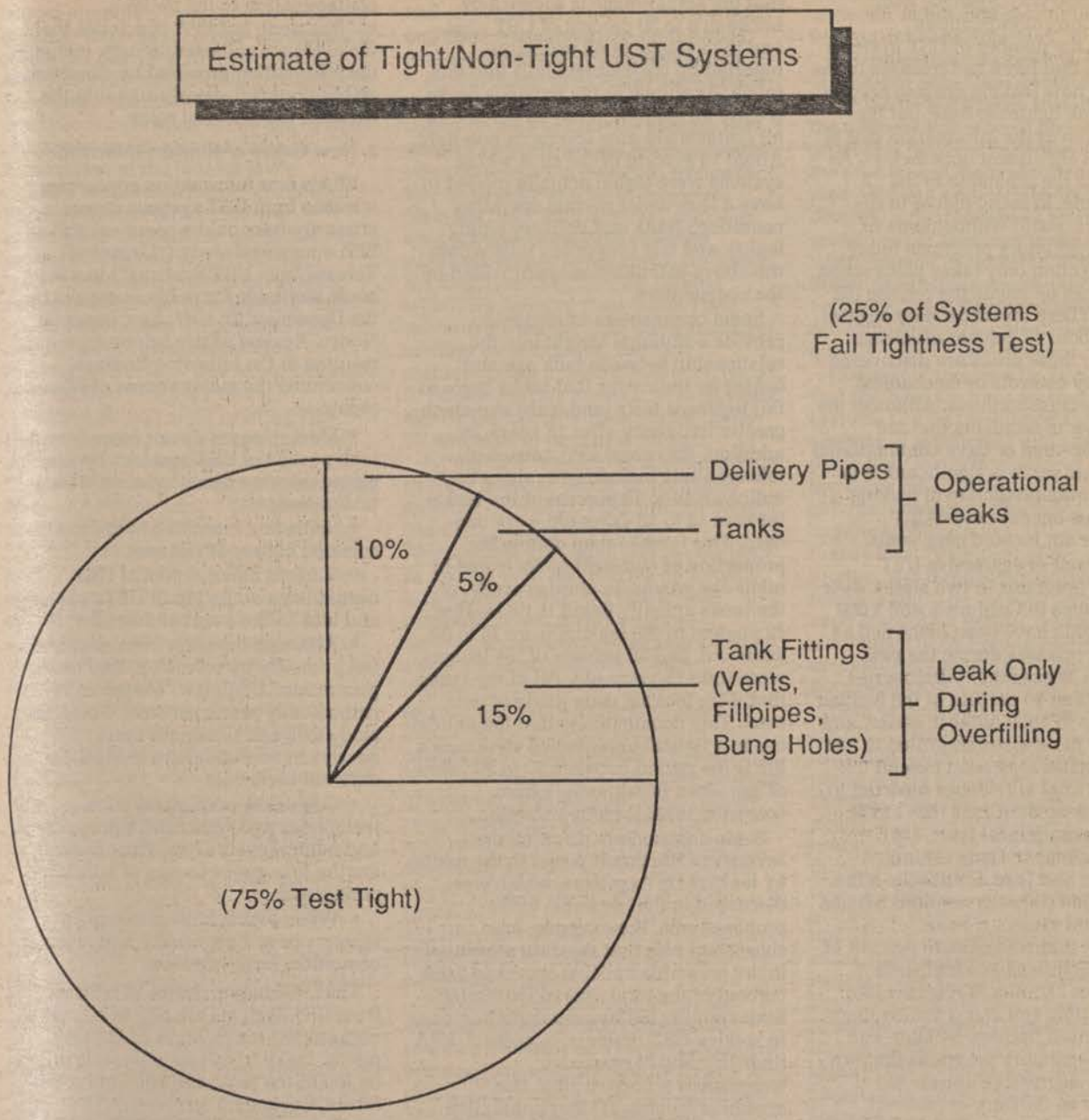


Figure 2

BILLING CODE 6560-50-C

b. *Estimated UST Systems with Releases.* Current indications concerning the number of UST systems nationwide that have had releases in the past or are now leaking are less precise than the tank tightness data, but the Agency believes the information that is available is significant nonetheless. As discussed in the preamble to the proposed rule, in many places in the nation that are still without state or local UST regulatory programs today, release detection only takes place when someone sees or smells the release (52 FR 12665). These historical data suggest that only about 10 percent of release incidents in these areas are discovered by inventory controls or mechanical release detection methods. Although the large number of incidents that are known to threaten or have contaminated ground-water wells is significant, it is not an accurate prediction of leaking UST systems because most UST systems are not located near wells.

As the result of aggressive UST monitoring programs in two states, over 5,000 UST sites in California and 3,000 sites in Florida have been identified as having had releases during the past three years. These recent discoveries already exceed 10 percent of the number of UST sites in each of these states, and the number of releases identified in just these two states may soon exceed the cumulative total of releases reported to all the states up until 1985 (see 52 FR 12665). At a more local level, UST system programs in Dade County, Florida, and San Jose, California, have also identified (through required release detection and system closure procedures) that well over 10 percent of their UST facilities have had some noticeable or significant releases into the surrounding soil and groundwater. Thus, the initial findings by state and local UST regulatory programs that are particularly aggressive appear to corroborate an industry-sponsored study (than previously cited Chevron investigation) that found approximately 10 percent of their 1,000 UST facilities located throughout the South and Southwest of the United States have had an adverse impact on nearby ground water in the form of released product floating on top of the ground-water table (see 52 FR 12666).

Public comments received in response to the proposal concerning this subject are not conclusive. Some industry sources provided very low estimates, claiming that from 0 to 3 percent of UST systems have had releases. Others claimed the actual number of leaking tank systems could be as high as 50 percent in some areas. Many estimated that the actual range is somewhere between 8 to 20 percent of UST sites, and the average of all estimates reported by commenters falls into this range. As shown in the previous figure (Figure 2), approximately 25 percent of all systems are now testing as non-tight. About 15 percent of the sites whose systems were tested actually proved to have a leak under normal operating conditions (tank and delivery piping leaks), and this proportion falls within the above-estimated range provided by the commenters.

Some commenters attempted to provide additional insight into the relationship between tank age and failure by indicating that tanks begin to fail tightness tests (and leak) at a much greater frequency after 12 years. In addition, the recent EPA causes-of-release study includes one study that indicated 10 to 13 percent of the tanks that are 12 to 13 years old were non-tight. This is more than double the proportion of non-tight tanks tested in other age groups. In another study, of the tanks actually found to be leaking, 42 percent of the leakers were 15 to 20 years old, and 30 percent of the leakers were 10 to 15 years old. All of the tanks that were leaking were made of bare steel. This demonstrates that the critical age in a typical unprotected steel tank's life is the period between 10 to 20 years of age when breakthrough from corrosion is most likely to begin.

Some commenters disputed the severity of the threat posed to the nation by leaking UST systems, which was discussed in the preamble to the proposed rule. For example, one suggestion was that the data presented in the preamble indicate less than 0.008 percent of the total area of the United States is affected by contamination due to leaking UST systems. In general, EPA finds this line of reasoning unpersuasive. In particular, this argument ignores, (1) that population density in the nation is not uniform (with most areas being sparsely populated or unpopulated); (2) that tank systems are generally located near populated areas to provide the fuel for these centers of human activity and; (3) that there are numerous documented cases of drinking water wells that have been threatened or already destroyed by leaking UST systems nationwide. The dispersal of leaked contaminants within ground-water aquifers can also affect an area many times larger than the soil-contaminated area. Further information gathered over the coming years of UST program implementation will ascertain the full magnitude of the impacts that leaking UST systems pose in terms of contamination to the nation's environment, but EPA concludes that the evidence collected to date, including the information provided by commenters on the proposal, clearly supports the need for today's final rules.

2. New Cause-of-Release Information

EPA's new information concerning releases from UST systems comes primarily from public comment and an EPA-sponsored study ("Causes of Release from UST Systems") that was made available for public comment in the December 23, 1987, Supplemental Notice. Review of this information has resulted in the following findings concerning the major causes of releases today:

- Most releases do not come from the tank portion of UST systems, because piping releases occur twice as often as tank releases;
- Spills and overfills are the most common causes of releases;
- Various nonoperational UST components at the top of USTs are loose and leak in the event of overfills;
- Although the older bare steel tanks fail primarily by corrosion, the "new generation" USTs (i.e., coated and cathodically protected steel, fiberglass-clad steel, and fiberglass tanks) have nearly eliminated failure induced by external corrosion;
- Corrosion, poor installation techniques and workmanship, accidents, and natural events (e.g., frost heaves) are the four major causes of failure for piping; and
- When piping fails, pressurized systems pose a significant added threat of sudden, large releases.

Thus, the major causes of releases from UST systems are due to failures of unprotected tanks, leaks in delivery piping, leaks from vent pipes and fittings on top of the tank, and spill and overfill errors. Comments received on the original proposal (52 FR 12665–12668) and the Supplemental Notice concerning causes of release generally tend to corroborate the above findings. The following information summarizes some of the most relevant findings that are important in guiding today's standard-setting.

a. *Tanks.* Most existing tanks are made of bare steel. Numerous tank failure histories indicate that when bare steel tanks fail they almost always do so because of external corrosion. Of all of the current causes of release, corrosion of bare steel (tanks and pipes) is by far the most important.

Tank manufacturers have responded to this problem with a "new generation"

of tanks. Innovative tanks began to appear about 20 years ago in the United States in three basic forms: Fiberglass-reinforced plastic (FRP); steel with a corrosion-resistant coating and cathodic protection; and steel-FRP composite. A dramatic acceleration in the use of new generation tanks occurred with the introduction of the federal law's "Interim Prohibition" three years ago. These protected tanks now are estimated to account for about 20 to 25 percent of existing USTs. Although "new" in terms of protective designs, some of each of the new types of tank systems have been in the ground for over 20 years. Reported failures observed in the field due to corrosion (or other reasons) are very rare.

Failures (leaks) at all existing FRP tanks appear to have occurred at less than a rate of 0.05 percent per year of the total FRP tanks installed nationwide. Many commenters and other sources support the field estimates collected by EPA that less than 0.5 percent of the total number of existing FRP tanks have ever leaked. Although some installation-related failures have occurred in the past, heightened installer awareness of proper practices and techniques appropriate to FRP technology, manufacturer-sponsored contractor education programs, and production quality assurance appear to be responsible for a consistently decreasing failure rate of FRP tanks. The most important reported failure mode for these tanks is improper installation practices.

One new tank type, the STI-P3, is a favorite of corrosion engineers. These steel tanks have an external noncorrodible coating and a factory-applied metal anode that sacrifices itself to protect any bare spots on the tank, and the tank vessel is electrically isolated from any attached piping. Very few failures have ever been reported, and those failures are due to installation damage or improper maintenance, not design. In Ontario, Canada, where STI-P3 tanks have been widely used, the number of tank releases due to corrosion is reported to be declining as old tanks are replaced with STI-P3 tanks.

The steel-FRP composite tanks have not been used as widely as either the FRP or coated and cathodically protected tanks described above. Approximately 65,000 have been installed in this country. No corrosion-related failures have been reported. Many commenters suggested that this type of tank has several advantages over both FRP and coated and cathodically protected steel tanks, such as durability, no need for maintenance, and an added barrier between the tank and the environment should the steel tank be breached by internal corrosion.

As the threat of external corrosion is reduced by new tank designs, internal corrosion may eventually become the primary cause of failure for steel tanks. Internal corrosion, however, occurs far less frequently and takes longer to manifest itself than external corrosion. Many commenters have reported problems with internal corrosion under the drop tube (i.e., fill pipe located within the tank) of steel tanks. Data submitted from the tank lining industry confirm these reports. The tank manufacturing industry, however, began to respond to this problem several years ago by including "striker plates" under all openings of their new tanks.

Lining tank interiors is another way to prevent releases due to internal and external corrosion. Tank interior lining has been employed by major corporations and small businesses both as a short-term solution for potentially leaking tanks and as a preventive measure for temporarily giving structurally sound, non-leaking existing tanks the same protection from corrosion-induced releases that "new generation" tanks have. Data indicate this to be a successful procedure for extending an existing tank's operational life. Even when employed in the absence of external cathodic protection, failure rates are reported to be very low, apparently because current industry consensus codes only recommend the use of lining when the tank shell is assessed to be able to withstand the expected rate of corrosion at the site (determined by assessing the tank's existing condition).

b. *Piping.* Most commenters rated delivery piping the most significant source of releases and reported releases occurring twice as frequently from piping as from bare steel tank releases. Two types of piping systems are commonly used: Suction piping, which is used in low-volume applications where only a few dispensers are needed; and pressurized piping, which is used in high-volume applications where many dispensers are fed from one tank. Each piping system has unique advantages and disadvantages, discussed below.

Suction piping is considered by commenters to be safer than pressurized piping because it operates at less than atmospheric pressure. If the pipe develops a leak, air or ground water is usually drawn into the pipe instead of product leaking out. Commenters suggested, however, that suction piping systems do not operate efficiently in a number of settings, such as at high altitudes, in hot climates, or in high-volume delivery situations.

Pressurized piping systems reportedly are used at about 95 percent of new retail motor fuel system installations. If the delivery line is breached, free product is released until the pressure in the pipe equals the pressure outside the pipe. Without add-on instrumentation or devices, large volumes of product can be pushed out of breaches in the piping when product is delivered to the pump. Pressurized piping simply pushes more volume to meet this increase in demand, releasing large amounts of product quickly into the environment.

Comments received by EPA indicate that the releases from pressurized piping systems can be catastrophic in the absence of monitoring and automated pump flow restriction devices. Incidents involving releases of thousands of gallons have been reported to EPA by experienced installers. It is estimated that at least 70 percent of the volume of product lost through pressurized pipe releases could be avoided by retrofitting each line with a simple, inexpensive, continuous in-line pressure monitor that automatically restricts product flow in the presence of a significant line leak.

Both suction and pressurized piping are often damaged by external corrosion. Cathodic protection of steel piping would significantly reduce corrosion failures. Presently, most steel piping is protected by galvanizing and coating, or coating and wrapping. The threaded portions at joints are the most common failure points because the protection is removed from them while threading and is never replaced. In these cases, cathodic protection would reduce joint failures. Other joint failures result from untightened joints, cross-threaded joints, or improperly made joints. Improving the installer's education and skills in the complex task of pipe installation would reduce these piping failures.

Also, installers and others have estimated that piping is damaged 10 percent of the time at new installations between the installation of equipment and completion of paving. They strongly recommend that a test of new equipment before start-up is essential as a sound practice, particularly with pressurized piping.

Natural forces and accidents also cause piping failures. The piping is near the surface of the ground and, thus, subject to frost heaves and overloading. In addition, the starting and stopping of product delivery causes the piping to move and shift. This eventually causes joint failure in many piping systems.

"New generation" piping systems comparable to the "new generation" of tanks are under development but not widely used.

c. *Nonoperational Components.* Nonoperational components consist of tank bung holes, tank manholes, vent and fill lines, vapor recovery lines, and manifold piping (the piping used in connecting tanks together). These components, all located above the top of the tank, are called nonoperational because releases from these sources do not occur under normal operating conditions. Releases from them are usually unseen because they are underground. These releases are episodic and usually of small volume, because they only occur when the tank is overfilled or when manifolded tanks are filled through the piping connecting the tanks together. Generally, when an overfill occurs, the volume of product contained in the fill tube above the loose nonoperational component will be forced out into the environment until the product level in the UST drops below the leaking component. These leaking, nonoperational components are reported to be most often caused by improper installation practices, such as loose bung hole plugs not being tightened at installation or vent lines being handtightened on top of the tank.

Two solutions are available to stop this type of release: either ensure proper installation of these different types of fittings or eliminate overfills. Elimination of overfilling of the tank is the surest remedy and is probably the easiest to accomplish with overfill shutoff devices now widely available. Most releases associated with nonoperational components would be prevented if overfills were successfully eliminated.

d. *Spills and Overfills.* In addition to episodic releases from nonoperational components, there is an even more prevalent source of release that takes place at the tank fill port during tank filling. Although usually small in volume, spill and overfill releases are probably the most common causes of release from UST systems. These releases usually occur at the surface of the ground around the top of the fill pipe when the delivery truck's hose is disconnected from the fill pipe. Most of these releases go unreported due to the typically small volume of product lost (generally, less than the volume of the delivery truck's hose). Most excavated bare steel tanks, however, show evidence of spilled material, such as dissolved asphalt coating near the fill pipe. Regulatory officials in Dade County (Florida) cite spills and overfills as the primary cause of release—45 percent of reported releases. These surface releases are at least twice as numerous as tank or piping releases.

Spills most often occur at the fill pipe opening when the delivery truck's hose is disconnected, usually releasing only a few gallons. Overfills occur far less frequently but usually release much larger volumes. Overfills generally result in a release from loose, nonoperational components located above the tanks (as discussed in the previous section), or from the top of the tank's vent pipe as product is forced out during overfilling of the system. Experienced installation contractors emphasize to EPA that the control of spills and control of overfills are two different problems and equipment that controls one may not control the other.

3. Industry Codes and Practices

In the preamble to the proposed rule (52 FR 12670), EPA identified numerous industry consensus codes and recommended practices that influenced the development of the proposed regulatory program. A table was provided listing several codes and practices concerning the proper management of UST systems that have been developed, mostly in the past decade, by industry associations, nationally recognized professional organizations, and independent testing laboratories. Since the proposal of the Federal rule over a year ago, these consensus code-making groups and industry standard-setting activities have continued at an increased rate. (Refer to section IV.H.1. for a more detailed discussion clarifying the use of codes developed by nationally recognized organizations or independent testing laboratories.)

Table 1 reflects a sampling of the current status of this national consensus code-making network. The codes and standards marked with an asterisk have been reviewed, updated, or revised over the past year. For example, last summer, the American Petroleum Institute reviewed several of its recommended practices (e.g., API 1631 and 1615) and improved the guidance provided in these documents. In addition, several new codes are now under development or have been recently added. For example, the National Leak Prevention Association was formed and developed an industry consensus code for the interior lining of tanks (NLPA 631).

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TABLE 1. SELECTED NATIONAL CONSENSUS CODES AND RECOMMENDED PRACTICES FOR UST MANAGEMENT

DOCUMENT NUMBER	MAJOR TECHNICAL TOPICS OF THE FINAL EPA UST RULE							
	DESIGN AND CONSTRUCTION	CORROSION PROTECTION	INSTALLATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIREMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
American National Standards Institute (ANSI)								
ANSI B31.4	x	x	x	x	x	x	x	x
American Petroleum Institute (API)								
* API 5L	x							
* API 12F	x							
API 650	x							
API 1604								x
* API 1615		x	x		x	x		
API 1628						x	x	
* API 1631		x		x	x	x		
API 1632	x	x		x	x			
API 2202								x
American Society for Testing and Materials (ASTM)								
ASTM (Steel Piping, Tubing, and Fittings)	x							
* ASTM A 53-87b	x							
* ASTM A182/A182M-87	x			x				
* ASTM D 4021-86	x							

TABLE 1. SELECTED NATIONAL CONSENSUS CODES AND RECOMMENDED PRACTICES FOR UST MANAGEMENT (CONTINUED)

DOCUMENT NUMBER	MAJOR TECHNICAL TOPICS OF THE FINAL EPA UST RULE							
	DESIGN AND CONSTRUCTION	CORROSION PROTECTION	INSTALLATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIREMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
Association of Composite Tanks (ACT)								
* ACT 100	x	x	x		x			
Factory Mutual (FM)								
FM 1920	x		x					
National Association of Corrosion Engineers (NACE)								
NACE RP-0169-83	x	x	x	x	x			
NACE RP-0172-72	x	x		x				
NACE RP-0184-84		x		x				
NACE RP-0275-75	x	x						
NACE RP-0285-85	x	x	x	x	x			
NACE RP-0572-85	x	x	x	x		x		
National Fire Protection Association (NFPA)								
* NFPA 30	x	x	x		x	x		x
* NFPA 321	x						x	x
* NFPA 327					x			
* NFPA 328							x	x
* NFPA 329					x	x	x	x
* NFPA 385					x			
National Leak Prevention Association (NLPA)								
** NLPA 631	x	x	x	x				x

TABLE 1. SELECTED NATIONAL CONSENSUS CODES AND RECOMMENDED PRACTICES FOR UST MANAGEMENT (CONTINUED)

DOCUMENT NUMBER	MAJOR TECHNICAL TOPICS OF THE FINAL EPA UST RULE							
	DESIGN AND CONSTRUCTION	CORROSION PROTECTION	INSTALLATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIREMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
Owens Corning (OC)								
OC 3-PE-9632-A	x		x					
Petroleum Equipment Institute (PEI)								
* PEI/RP100	x	x	x	x		x	x	x
Steel Tank Institute (STI)								
STI (Installation of Sti-P3)		x	x					
STI (Interior Corrosion Control)	x	x	x	x				
STI (Exterior Corrosion Protection)	x	x	x					
STI (Dual Wall USTs)	x	x	x					
Underwriters Laboratories (UL)								
UL 58	x							
UL 567	x	x						
* UL 1316	x		x					

TABLE 1. SELECTED NATIONAL CONSENSUS CODES AND RECOMMENDED PRACTICES FOR UST MANAGEMENT (CONCLUDED)

DOCUMENT NUMBER	MAJOR TECHNICAL TOPICS OF THE FINAL EPA UST RULE							
	DESIGN AND CONSTRUCTION	CORROSION PROTECTION	INSTALLATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIREMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
Western Fire Chiefs Association								
* UFC 1985	x	x	x	x	x	x	x	x

* Revised in 1987

** Drafted in 1987

x - There is a code or recommended practice.

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Table 1 provides a snapshot of the depth and scope of the collective wisdom that has developed over the past several years in the United States concerning the proper standards for UST systems. The recent updates and additions to this list of industry consensus codes and recommended practices reflect what appears to be a resurgence of interest in several areas of sound UST management practices. Numerous commenters on the proposal cited specific developments in these consensus codes and provided copies of some of the most recent codes that were added or updated and revised. In general, they provided a reminder to EPA that this improving body of knowledge should be understood and considered during the development of today s final rule.

4. Industry Trends

The nature and extent of the public response to the proposal has generally confirmed that a significant level of voluntary industry upgrading and replacement programs is already underway. The closure and replacement trends briefly discussed in the preamble to the proposal (52 FR 12671) were confirmed by some commenters. Numerous major oil companies, independent marketers of retail motor fuel, transportation fleet operators (government and private), and various manufacturers with USTs have clearly embarked on their own UST system management programs before promulgation of today's final rule.

One of the most encouraging trends has been the increasing use of protected UST systems nationwide. EPA estimates that there are currently over 450,000 UST systems in use today that are protected from external corrosion. This expanding use of an important and necessary approach to the prevention of releases has increased rapidly over the past three years, particularly after the Interim Prohibition went into effect in May 1985 (section 9003(g) of RCRA), making illegal the installation of bare steel UST systems. EPA estimates that, during the past three years over 50,000 new protected tanks were installed annually. To date, over 210,000 FRP tanks, 120,000 coated and cathodically protected tanks, and 65,000 steel-FRP composite tanks have been installed. In addition, an estimated 70,000 tanks have had their interiors lined to prevent releases, and another 50,000 UST systems are estimated to have been provided with field-installed corrosion protection systems. According to tank manufacturers, the number of new bare steel tanks installed over the past three years has dropped precipitously.

Early findings from several local UST programs visited by EPA staff since the proposal have confirmed the beginnings of an accelerated rate of closure of old, substandard UST systems (for example, in Suffolk County, New York; Austin, Texas; Dade County, Florida; and Sunnyvale, California). A rapid rate of closure appears to manifest itself when each of these, and several other, local UST programs initiate their release detection requirements. Thus, EPA's earlier projections that as much as three-fourths of the existing UST universe will be closed, upgraded, or replaced to the requirements of the Interim Prohibition within 10 years appears to be realistic (52 FR 12671). Today's final rule will further ensure that these positive changes are accomplished and increased.

EPA believes these are important developments because the successful implementation of this program depends a great deal on the regulated community's voluntary compliance. The Agency is convinced that the most widespread compliance will be facilitated by technically sound standards that are capable of easy implementation by a highly varied regulated community. Thus, as much as possible, the Federal technical requirements must rely on familiar industry codes and build on recognized and effective trends occurring in the field of UST management that are consistent with protection of human health and the environment.

5. UST System Technology Development

As discussed in the preamble to the proposal, the array of technical control options available to address causes of releases, as well as response to releases that occur, also appears to be growing. Numerous commenters provided technical information to EPA about newly available equipment being marketed for use in the prevention, detection, and correction of releases from UST systems. New equipment for use either inside or outside of the UST system to detect releases from the underground tank or attached piping is being introduced for sale at many trade shows and industry fairs nationwide, including less expensive methods for providing secondary containment with interstitial monitoring for both existing and new UST systems.

Several new types of equipment capable of preventing spills and overfills appear to be less costly and more easily retrofitted to existing tanks than earlier models. For example, several new models of line leak detectors have recently been introduced to the UST market that are more sophisticated and sensitive than older types of equipment. In addition, numerous companies have contacted EPA about their development efforts in the area of retrofitting preventive devices onto existing tanks or refurbishing old tanks. Makers of nylon tanks are in the process of soliciting the approval of Underwriters Laboratories of Canada in that country. Finally, vapor gas vacuum extraction techniques for use in the subsurface cleanup of volatile substances are also under accelerated development and investigative use in several places nationwide. This cleanup technique has reportedly had widespread use in West Germany for a number of years.

In summary, business in the UST control technology sector appears to be booming, and invention is proceeding at a rapid pace. All this activity is a good indication that in the future, simpler, cheaper, and more dependable equipment will be produced to aid in the prevention, detection, and correction of releases. Experienced persons in UST management in the public and private sectors have told EPA staff that the current level of control technology development by far exceeds any previous efforts within this industry. In order to avoid interfering with this ongoing development of innovative and more environmentally protective new technologies, the Agency has chosen to write regulations that allow room for these new developments.

6. Leaking USTs Present a Unique Regulatory Challenge

EPA believes its approach to setting standards for UST systems on a national scale will have to be different from most national environmental programs because the UST problem is significantly different. This difference is mainly due to three factors: The large number of facilities to be regulated, the comprehensive scope of the regulations, and the nature of the regulated community.

The most significant problem is the sheer size of the regulated community. Nationally, over 700,000 UST facilities account for about 2 million UST systems, an average per state of about 14,000 UST facilities and 40,000 UST systems. Estimates indicate that roughly 75 percent of existing UST systems are unprotected from corrosion. In addition, because a relatively high proportion of UST facilities (10 to 30 percent) already have had a leak, or will soon leak unless measures are taken to upgrade them, the average number of leaking UST systems may range from 1,400 to 4,200 per state in the near future.

The large number of tank owners and tank systems has also led EPA to conclude that the final federal UST standards must include a phase-in period for certain requirements that apply to existing tank systems. Although all federal requirements are in effect immediately for new tanks, owners and operators will have additional time to upgrade existing tank systems to the corrosion protection standard for new UST systems, and to install release detection equipment for existing UST systems. This phased-in approach is needed to establish a reasonable schedule that recognizes the limited capability of 700,000 UST owners and supporting service and manufacturing industries to respond immediately to new national regulations, and provides sufficient flexibility for implementing agencies. The experience of states that have already been operating UST regulatory programs is that it takes several years for most owners or operators of existing UST systems to understand, plan, and arrange for the purchase, scheduling, and installation of necessary services and equipment required by the regulations. The phase-in approach also has the added benefit of allowing time for continued development and improvement of available technologies in the marketplace for prevention and detection of releases from UST systems (as discussed previously in this section of the preamble).

In addition, today's final rule establishes comprehensive requirements for the management of a wide range of UST systems. These final standards for UST systems are designed to reduce the number of releases of petroleum and hazardous substances, increase the ability to quickly detect and minimize the contamination of soil and ground water by such releases, and ensure adequate cleanup of contamination. To do this, the standards in some way must affect every phase of the life cycle of a storage tank system: Selection of the tank system; installation, operation and maintenance; closure and disposal; and cleanup of the site in cases of product release. As a result, these standards must be technically adequate to ensure the wide array and needed level of improved performance when implemented. At the same time, these wide ranging requirements must be straightforward enough to be understood and to be carried out successfully hundred of thousands of times nationwide.

A third problem is the nature of the regulated community. A large proportion of USTs are owned by small businesses with $500,000 or less in total assets. For example, 72 percent of all retail motor fuel outlets are owned by small businesses. An important influence in the making of today's technical standards has been EPA's attempt to minimize the regulatory impact on small businesses without compromising the statutory requirements to protect human health and the environment. EPA's efforts to minimize the regulatory impact are discussed in a Regulatory Flexibility Analysis conducted for this rule, as specified by the Regulatory Flexibility Act of 1980, and a summary of that analysis is presented later in this preamble.

Specifically, the Agency is convinced that the national UST standards must be kept simple and implementable by state and local officials because many UST facilities are owned and operated as small local businesses, such as "Mom and Pop" gasoline service stations and convenience stores. These small entrepreneurs, who are used to operating their business with minimal regulation, will be significantly affected by environmental regulations for UST systems. The experience of state and local agencies with UST programs is that large national businesses that own tanks are generally willing and have already begun to comply with UST requirements. Owners of small businesses, however, generally need constant reminders and technical assistance to bring them into compliance. Given the nature of this regulated community, a regulatory program often will be most effectively carried out by the level of government closest to the problem, and thus able to respond quickly and to create a visible presence.

7. Emerging State and Local UST Programs and EPA's Approach to Regulation

Many states and localities have adopted requirements applicable to UST systems. Although these state and local requirements are diverse and vary in stringency, EPA believes that the formulation of federal standards should build upon the many effective state and local programs now in operation or about to begin operating in order to utilize this reservoir of accumulated UST experience in a way that can rapidly develop into a strong federal-state partnership for addressing this national concern. Section 9004 also indicates Congressional intent that states with effective programs are to play a major role in implementing the program.

At least 18 states and hundreds of local programs are currently addressing the ground-water contamination and cleanup problems posed by leaking UST systems through established regulatory programs. Several states, such as California, New York, and Florida, and local UST programs such as those in Suffolk County (New York), Dade County (Florida), and Austin (Texas), have established specific UST system regulations that include standards for design, construction, and installation of new UST systems; closure, retrofitting, and repair of existing UST systems; and release detection and corrective action requirements for all UST systems. EPA believes this type of state and local UST program activity nationwide will increase significantly with today's promulgation of EPA's technical standards. Similar to the experiences in the three lead states identified above, other states will begin to wrestle for the first time with the reality of how to implement their UST programs. As the dangers posed by existing UST systems become more widely known, local UST programs and involvement should increase significantly over current levels.

Given the large number of UST facilities, tank systems, and potential cleanups needed, EPA is convinced that many aspects of this regulatory program will be most effectively carried out at the state level of government. Local government involvement in this regulatory program will be important. For example, a small city with about 700 facilities and 2,000 tank systems within its jurisdiction should be able to implement a manageable regulatory program. If each of those 700 facilities installs one new tank during the next five years, that would be about three installations per week. If that small city requires a city inspector to be present at each installation, an inspector must be in the field three times a week for this task alone. In addition, the inspector could be required to be present for periodic tank testings, closures, upgrading or retrofit, and cleanups.

Confronted with the above implementation realities, EPA has developed a more decentralized approach for addressing the realities of the national UST regulatory program. This approach is based on several critical factors. First, as more and more state and local governments become involved, the work of the UST program must be routinely carried out in thousands of jurisdictions nationwide. Several operating state and local UST programs already report that they are very busy "running the store," expressing surprise at the size of the regulated community, and that fairly

simple tasks must be routinely repeated numerous times for the implementing agency to be successful in bringing UST systems into, and maintaining, compliance.

Second, visits to several state and local UST programs have shown that they have often developed their own unique requirements and methods of implementation, adapted to the types of tanks, physical environment, and regulated community with which they are concerned while they are, at the same time, all geared toward solving similar technical problems. They need the flexibility to continue and to improve upon approaches which address the specific environmental needs of their communities. They have common implementation problems, however, and have expressed the need for better technical aids, such as data management tools.

Third, many state and local governments that already implement UST programs report a significant level of visible on-site monitoring, requiring a constant "regulatory presence" to effectively ensure this regulated community's compliance with UST requirements. A significant environmental gain is achieved through implementation at the local level by these individual UST programs. Thus, improving their performance will produce maximum environmental benefits and best ensure the success of the UST program nationwide. As the head of the "distribution system" of UST-related technical information and implementation tools, EPA believes that its implementation efforts should be focused on serving the network of state and local programs through listening to their concerns and helping them solve implementation problems with tools that improve the effectiveness of their programs.

Finally, EPA believes that a more decentralized approach to the federal implementation of the UST program is needed to ensure real gains in protection of human health and the environment. Because there are so many UST sites nationwide, it would be very difficult to establish a credible federal implementation presence through compliance monitoring and enforcement at the federal level. A more realistic and effective approach is for EPA to provide support tools and guidance to state and local regulators that can be used to improve their programs compliance performance.

In adopting this role, the Agency has recognized that it must not only establish sound national standards but, more importantly, must focus on improving the performance of the state and local implementing agencies. Approval of state programs to operate "in lieu of" the federal program takes on a new meaning under this approach because it becomes a basic soundness test to ensure that the work associated with implementation of these state or local requirements will, in fact, cause the needed level of improvement in UST system management when carried out by the regulated community. The requisite state enforcement authority and technical standards must be ensured and will be the focus for approval by EPA. Thus, overall successful performance and implementation of this new national program is less focused on implementing detailed, national technical standards than it is on establishing the national UST program in a way that ensures effective, environmentally protective programs at the grassroots level and improving the performance of these programs over time. EPA's final requirements for state program approval are presented in detail elsewhere in today's **Federal Register**.

Thus, in recognition of its approach to UST implementation, EPA has attempted to establish final technical standards that are protective of health and the environment but, at the same time, are simple, understandable and implementable by state and local officials. EPA also recognizes that there is often more than one proper way to address specific technical problems that are the focus of the final regulations. Therefore, the Agency has attempted to identify and offer as many effective alternative technical approaches as possible particularly where this flexibility can be applied in the future by the implementing agencies. In this way, the final technical requirements remain focused on the key environmental problems which the implementing agencies face. Promoting the network of state and local implementation is the best way to ensure that significant protection of human health and the environment will be achieved by today's final requirements.

G. Conclusions Since Proposal

EPA has drawn several conclusions from the influences discussed above and in the background sections of the preamble to the proposed rule (52 FR 12663–12671). Some of these conclusions support the direction and emphasis set forth in the proposal, and others indicate a need for change in the final rule.

Given the large size of the existing regulated universe and the proportion of these UST systems that have leaked or are presently leaking, there is a need to finalize today's rules as an important step to alleviate this important threat to the nation's ground-water resources. The number of sites needing significant cleanup due to a number of poor past UST management practices is expected to be in the tens of thousands nationwide.

Cause-of-release information related to unprotected tanks supports EPA's proposed approach for upgrading of unprotected tanks. The new information, however, indicates a need for more frequent monitoring of unprotected tanks than was proposed. By contrast, protected tanks appear to need less frequent monitoring than proposed. Also, pressurized piping systems need more stringent monitoring than was proposed.

Increased activity in the review and improvement of national consensus codes supports EPA's proposed reliance on these codes as providing the most up-to-date consensus practices and expertise concerning what constitutes proper UST system management. The nationwide increase in the use of protected systems, the recent number of tank closures, and the development of new prevention, detection, and corrective action technologies are encouraging. The final rules must be designed to foster and take advantage of these trends. They must be simple and easily implementable by the regulated community to ensure the maximum level of voluntary participation by tank system owners and operators. The Agency continues to believe that the size and nature of this regulated universe presents several unique regulatory challenges that necessitate the phase-in of some of the requirements for existing UST systems to ensure that genuine implementation is accomplished.

The continuing and rapid emergence of numerous state and local UST programs is expected and will be encouraged by EPA because this is where the "real work" of this new national program must actually take place. The Agency's approach to UST program implementation must start with a technically sound set of national standards. These requirements, however, must be kept simple and implementable because most improvements in actual UST performance (and protection of human health and the environment) are expected to be achieved by working closely with state and local governments over time to increase the level of the effectiveness of their UST programs.

III. Today's Final Rule

This section provides a summary of EPA's final rule. It also identifies and describes several major points of departure from the proposed rule, several alternative strategies, public comments on them, and the Agency's rationale for the direction of the final rule in several other key areas. More detailed summaries of all the public comments and the Agency's responses to them can be found in the "Comment and Response Summaries Background Document" that has been placed into the public docket in support of today's final rule.

A. Summary of Today's Final Rule

EPA is today promulgating regulations for underground tanks storing either petroleum or hazardous substances other than hazardous wastes regulated under Subtitle C of RCRA. These requirements establish measures for both new and existing UST systems to prevent, detect, and clean up releases from these systems. These final requirements of Part 280 fulfill the mandates of RCRA sections 9003 (a), (c), and (e), and sections 9009 (a) and (b). The major elements of today's final rule are noted below.

- New UST systems must be designed and constructed to retain their structural integrity for their operating life, in accordance with national consensus codes of practice (see Table 1 provided earlier in this preamble). All tanks and attached piping used to deliver the stored product must be protected from external corrosion. Cathodic protection must be monitored and maintained to ensure that UST systems remain free of corrosion.
- Nationally recognized industry installation standards must be followed in placing new UST systems in service (see Table 1). Owners and operators of new USTs must certify that proper installation procedures were followed and identify how the installation was accomplished.
- Owners and operators of both new and existing UST systems must follow proper tank filling practices to prevent releases due to spills and overfills. In addition, owners and operators of either new or upgraded UST systems must use devices that prevent overfills and control or contain spills.
- Tanks must be repaired in accordance with nationally recognized industry codes (see Table 1). These national codes include several tests that must be conducted to ensure quality repairs.
- To close UST systems, industry-recommended practices must be followed: the UST system can be removed from the ground or left in place after removing all regulated substances and cleaning the tank, filling it with an inert substance, and closing it to all future outside access (see Table 1). In addition, owners and operators must perform an assessment at the time of UST closure to ensure that a release has not occurred at the site. If a release has occurred, then corrective action must be taken.
- Release detection must be instituted at all UST systems. For petroleum UST systems, several methods will be allowed, although tank owners and operators must adhere to requirements concerning their use. In addition, owners and operators must follow special requirements for pressurized delivery lines. Petroleum UST systems are not required to have secondary containment with interstitial monitoring. All new or upgraded UST systems storing hazardous substances, however, are required to have secondary containment with interstitial monitoring, unless an alternate release detection method is approved by the implementing agency. The owners and operators must demonstrate to the implementing agency that a release detection method will detect releases of the stored substance in a manner no less stringent than the release detection methods allowed for petroleum USTs and that a method of corrective action is available to clean up a release of the hazardous substance should one occur.
- Generally, release detection at existing UST systems must be phased in over a 5-year period based on the age of the tank. The oldest UST systems (usually unprotected from corrosion) are required to phase in release detection within 1 year, and the newest tank systems (usually protected from corrosion) by the end of the 5-year period. Release detection for all pressurized delivery lines must be retrofitted within 2 years.
- Periodic tank tightness testing (every 5 years) combined with monthly inventory control is allowed at new or upgraded UST systems for 10 years after new tank installation or existing tank upgrade. After 10 years, monthly release detection is required.
- Either monthly release detection or a combination of annual tank tightness testing with monthly inventory control is required of substandard existing USTs until they are upgraded. Existing UST systems must be upgraded or closed within 10 years of the effective date of the final rule, or within 1 to 5 years if a release detection method is not available that can be applied during the required phase-in period for release detection. Upgrading of petroleum UST systems includes retrofitting of corrosion protection and both spill and overfill controls at all tanks. Upgrading of hazardous substance UST systems also includes secondary containment and interstitial monitoring or an alternate release detection method approved by the implementing agency.
- Tank owners and operators must report suspected releases. Indications of a release must be reported to the implementing agency, including positive results from release detection methods, unless the initial cause of the alarm has been immediately investigated and the alarm is found to be false. After reporting suspected releases, owners and operators must perform release investigation and confirmation tests and, where a release is confirmed must begin corrective action.
- Owners and operators of leaking UST systems must follow measures for corrective action. Immediate corrective action measures include mitigation of safety and fire hazards; removal of saturated soils and floating free product; and an assessment of the extent of further corrective action needed. A corrective action plan would be required for long-term cleanups addressing ground-water contamination, although these cleanups could begin upon notification of the implementing agency by the owner and operator. Cleanup levels would be established on a site-by-site basis as approved by the implementing agency.

B. Major Points of Departure from April 17 Proposal

Today's final rule includes four release detection requirements that represent significant changes to the proposed rule:

(1) More frequent tank tightness testing (annual) of unprotected tanks during the initial 10-year upgrading period;

(2) Less frequent monitoring of new and upgraded tanks until age 10;

(3) Phase-in of release detection over 5 years at existing tanks based on age; and

(4) More stringent release detection for all pressurized piping systems.

The final requirements in each of these areas, and EPA's rationale for revising the proposal, are summarized below and shown graphically in Figure 3. The shaded areas indicate the major changes from the proposed approach. More detailed discussions of these major points of departure are also provided in later sections of today's preamble.

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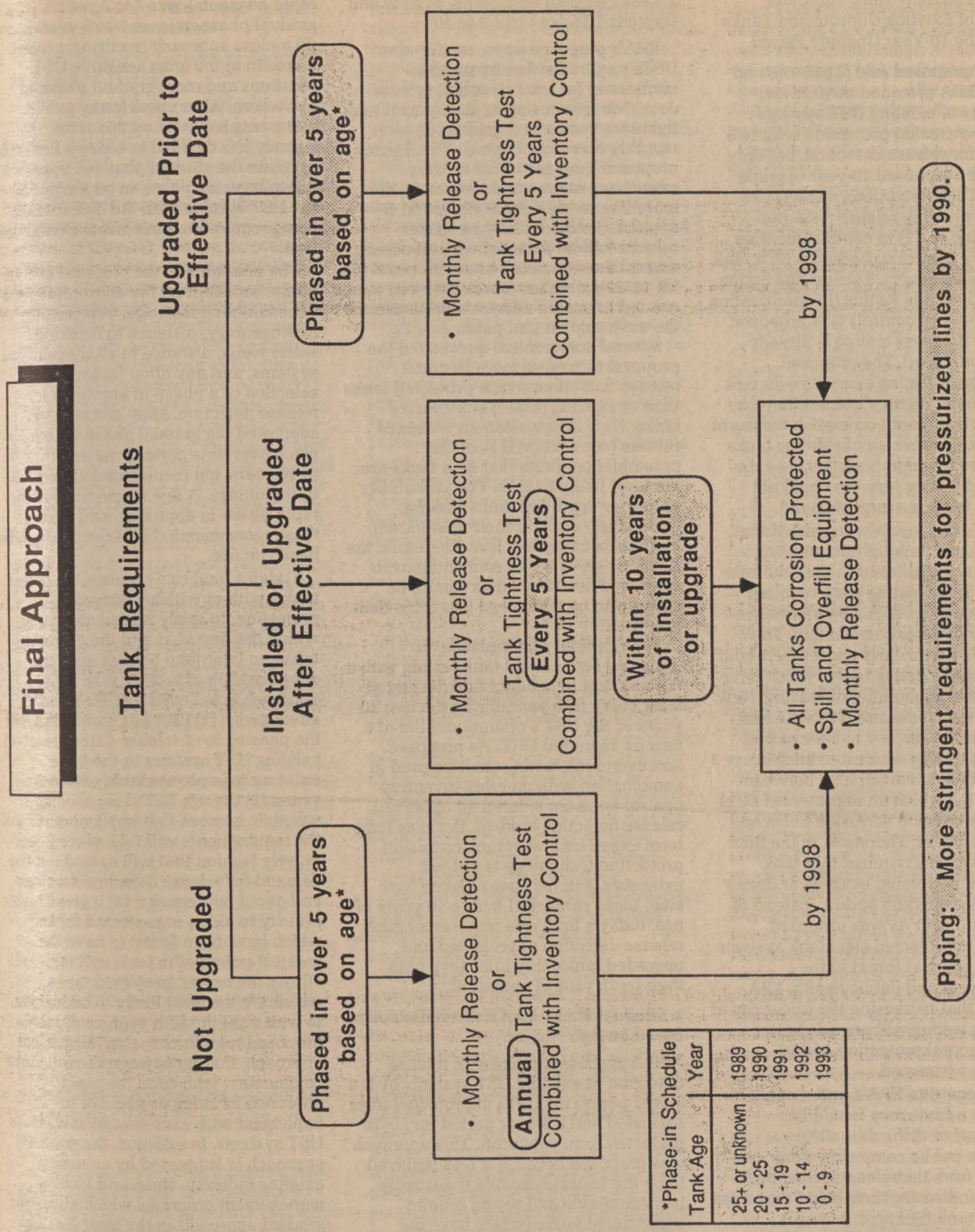

Figure 3

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1. More Frequent Tank Tightness Testing of Existing Unprotected Tanks During the 10-Year Upgrade Period

In the proposed rule (§§ 280.40 and 280.41), EPA provided owners and operators of existing UST systems without corrosion protection with two options for release detection, but only during the proposed 10-year upgrade period. The two options were: (1) To perform monthly release detection monitoring or, (2) to conduct monthly inventory control combined with a tank tightness test every 3 years. The option of tank tightness testing (in combination with inventory control) was proposed because tightness testing is already widely practiced. The proposed frequency of testing every 3 years was based on the Agency's belief that the industry could not accomplish testing of such a large universe of existing tanks on a more frequent basis because the supply of testing services could not respond to such a large demand.

Several commenters suggested that the proposed tank tightness testing alternative be allowed in the final rule but only if the testing were required more frequently. EPA now shares the concerns of those commenters. The Agency is particularly concerned about unprotected existing tanks, which have the greatest probability of leaking. New information on causes of release has prompted the Agency to believe that tightness testing conducted once every 3 years leaves too much time between tests during which an unprotected steel tank may develop corrosion holes and release product. Therefore, in the final rule the Agency requires that tank testing be performed every year during the 10-year upgrade period, instead of every third year as was proposed. Because unprotected steel tank systems pose the greatest threat to the environment and public health, EPA believes that increasing the frequency of tightness testing will provide better environmental protection and is therefore warranted.

With regard to EPA's initial concern that such a frequency would be impractical or difficult to achieve, numerous public comments were received from the release detection industry indicating their belief that more frequent tank tightness testing is feasible. Commenters also verified that tank tightness testing is already a commonly used release detection method, and its technology and resources are currently widely available.

2. Less Frequent Monitoring of New and Upgraded Tanks Until Age 10

EPA's proposed approach for new USTs required either frequent-to-continuous (at least monthly) release detection monitoring or semiannual tank tightness testing in combination with monthly inventory control. The Agency proposed frequent-to-continuous monitoring at new tanks because, the more frequently release detection is applied, the more likely an actual release will be detected when it occurs, as explained in detail in the proposal (52 FR 12720), and thus it was believed to be needed to ensure adequate protection of the environment and public health.

Several commenters questioned the proposal to require more frequent release detection at new protected tanks than at existing (older) unprotected tanks. New information on causes of release (see section II.F. of the preamble) confirms that new tanks are the least likely to leak. The probability of new or upgraded tanks leaking, particularly early in their operational lifetime, is extremely low. Therefore, the Agency agrees with commenters who suggested that new tanks should be allowed to be monitored less often than proposed.

Today's final rule replaces the proposed semiannual tank testing with a requirement to conduct tank testing at least every fifth year during the first 10 years of the UST's operational life at a new or upgraded UST. As proposed, however, tank testing must be used in combination with monthly inventory control to be considered an approved release detection method. Because long-term experience with tank corrosion protection technology is not yet extensive, and because existing bare steel tanks rarely fail before 10 years of age, today's final rule requires monthly release detection at protected and upgraded tanks only after they pass their tenth year of operation.

3. Gradual Phase-in of Release Detection Based on Age

EPA proposed to phase in release detection at existing UST systems over a 3-year period for USTs unprotected from corrosion and a 5-year period for USTs protected from corrosion. This approach was proposed because it was believed to be the fastest schedule reasonably implementable and would require unprotected tanks (which have the greatest potential to leak) to have release detection in place sooner than protected tanks. In the preamble to the proposal (52 FR 12677), the Agency identified three approaches towards phasing in of release detection: (1) A rapid phase-in (over 1 to 2 years), (2) a gradual phase-in (over 3 to 5 years), and (3) a class approach requiring a rapid phase-in at the most sensitive UST locations and more gradual phase-in elsewhere. After considering public comments received on this issue, the Agency has decided in today's final rule to retain the gradual phase-in approach but to base the phase-in on the age of the UST system, with the oldest tanks being required to have release detection first.

The preamble to the proposal solicited public comment on the appropriateness of considering tank age, vulnerability of hydrogeology, distance to drinking water wells, distance to vital ecological systems, and any other factors in the selection of a phase-in approach for release detection. Most commenters supported the gradual phase-in to take place over time periods ranging from 3 to 10 years, but recommended that it be based on age. A few recommended the rapid phase-in approach, and most of those recommended that the phase-in be based on age.

Today's final rule requires the oldest tanks, with or without corrosion protection, to apply release detection within the first year and the newest tanks no later than 5 years after the effective date of today's rule. This approach is believed to offer several advantages: (1) EPA has concluded that the phasing in of release detection at all existing UST systems in the large universe is implementable within 5 years; (2) the age-based sequencing schedule ensures that implementation of the requirements will take place in an orderly fashion that will spread out the demand for release detection services and avoid bottlenecks; (3) it gives higher priority to older, unprotected tanks, which have been found to have the greatest potential to leak; and (4) it still allows the newer, protected tanks, which are the least likely to be leaking, to wait until the fifth year, as did the proposed rule. In choosing the gradual approach, the Agency agrees with those commenters who cited the rapid approach as being impossible to implement with such a large universe of UST systems. In addition, the gradual approach is supported by numerous existing industry, state, and local management programs which utilize the gradual approach as the most feasible phase-in approach. The reasons the Agency is taking this gradual phase-in approach are discussed in more detail later in this preamble (section IV.D.2.). The class approach was deemed unimplementable for other reasons

discussed in more detail later in this section of the preamble.

4. More Stringent Requirements for Pressurized Piping

The proposed rule contained release detection requirements for pressurized piping in addition to those requirements for new tank systems. Specifically, automatic release detection and shutoff devices were proposed for the pressurized piping at new tank systems unless continuous release detection or interstitial monitoring was installed. Suction piping systems were exempt from the proposed requirements if other minimum construction requirements were met (see 52 FR 12774). Information obtained by the Agency at the time of the proposal indicated that 20 to 30 percent of all reported releases are due to piping failures. EPA also suspected that pressurized piping systems, which are reportedly the most commonly used withdrawal system at new retail motor fuel installations, were responsible for the larger releases.

Information obtained by EPA after publication of the proposal (see section II.F. of today's preamble) indicates that piping system failures are responsible for a much greater percentage (80 to 85 percent) of release incidents than previously thought. Public comments received by EPA confirmed the Agency's belief that failure of pressurized piping systems frequently results in large releases.

In today's rule, EPA has set forth more stringent release detection requirements for pressurized piping systems. Systems must be: (1) Equipped with automatic shutoff devices or automatic flow restrictors and use either annual line testing or monthly release detection monitoring; or (2) have continuous interstitial or vapor monitoring combined with either shutoff devices or alarms. These requirements will ensure that product releases from the most vulnerable portion of the UST systems are minimized. (Today's preamble section IV.D.3.b. discusses these requirements more fully.)

C. Alternative Approaches Considered

1. New UST Systems Containing Petroleum

In the preamble to the proposed rule (52 FR 12673–12675), EPA described three basic regulatory options that were considered for new petroleum tanks: (1) Protected single-walled tanks with release detection; (2) secondary containment with interstitial monitoring; and (3) a class approach under which more protective requirements would apply to UST systems located where a release could pose a particularly high risk. The Agency solicited comments on each of these general approaches to regulate new petroleum tanks, and announced that, based on comments received and on any additional data gathered prior to promulgation, it would give further consideration to each of them before finalizing today's rules. Numerous comments were received concerning these options, and EPA developed additional information after the proposal that is relevant to this issue. (EPA solicited comment on this new information in the December 23, 1987, Supplemental Notice and in the March 31, 1988, Notice of Availability.)

Based on EPA' s information and on public comment, the Agency has decided to proceed with the proposed approach of protected single-walled tanks with release detection for new petroleum UST systems. The Agency's basic rationale for this choice as explained in the preamble of the proposal remains unchanged. The following discussion briefly highlights some of the concerns raised by commenters and the influences that the new information had on this final decision.

a. Option 1: *Protected Single-Walled Tanks With Release Detection.* Several commenters supported EPA's proposed approach of allowing protected single-walled tanks with release detection to be used at all new petroleum UST systems. They agreed that this approach is protective of human health and the environment, confirmed that it is already widely in use by industry and in numerous state programs, and that it is available as a viable and effective alternative to interstitial monitoring.

Some commenters, however, suggested that the approach of protected single-walled UST system with leak detection approach is not as implementable as secondary containment. They stated that secondary containment is a more straightforward technical approach because, in the long run, it simplifies implementation by allowing relatively easy determination of the UST's compliance status. Another disagreement with this option is the belief expressed by some commenters that the probability of releases to the environment occurring at single-walled tanks with release detection is much greater compared to UST systems with secondary containment and interstitial monitoring.

EPA agrees with those commenters who suggested that there will probably be more releases to the environment from protected single-walled UST systems with release detection than from systems equipped with interstitial monitoring. One of the advantages of secondary containment is the potential for detecting a leak before a release to the environment actually occurs. Secondary containment thus provides a second barrier against release.

Although there are several reasons why EPA has not mandated secondary containment with interstitial monitoring at new petroleum UST systems, the most important reason is that it is not believed to be necessary to protect human health and the environment at such systems (in contrast to hazardous substance UST systems, discussed in section III.C.3. below). The new causes of release information (discussed previously in today's preamble) shows that the use of new, protected, single-walled USTs has, so far, resulted in the virtual disappearance of failures, because these new USTs have preventive controls for the main cause of past tank failures: Corrosion of unprotected, bare steel. This new information also revealed that protected UST piping that is carefully installed and immediately tested is expected to significantly reduce the occurrence of release incidents from this other major component of the UST system (a reduction of at least two-thirds according to experienced installer estimates). Piping failures will not, however, be prevented to the same degree as tank failures.

Thus, the Agency has concluded that petroleum releases will be dramatically reduced using protected UST systems. This fact must also be considered with the knowledge that numerous effective methods of release detection are available and are being used at petroleum UST systems nationwide. These methods of detection will enable actions to be taken that will minimize the extent of the few releases that do occur. Also, the nature of petroleum products and the widely available technologies for their clean up provides the means to ensure that adverse impacts from such releases (when they occur) can be managed and remediated.

In consideration of all of the above factors, the Agency has concluded that single-walled protected UST systems combined with the release detection required today will adequately protect human health and the environment.

Note: As discussed earlier in this section of the preamble, today's final approach to new petroleum UST systems has been further tailored to allow infrequent tightness testing of protected or upgraded tanks (combined with inventory control) for the first 10 years of their operating life, with more release monitoring required of the UST system

piping—including continuous monitoring of pressurized lines.

b. Option 2: *Secondary Containment With Interstitial Monitoring.* Several commenters supported the use of secondary containment with interstitial monitoring for various reasons, including: Product releases would be completely contained and prevented from adversely impacting the environment and public health; it is a more rapid and reliable form of release detection; the cost is comparable to single-walled UST systems with release detection; and the need for conducting site assessments and corrective action would be avoided. Others, however, opposed its required use with new petroleum tanks for reasons such as: The greater capital and installation costs do not justify the environmental gains that would be achieved (in comparison to the single-walled approach); and this approach is not compatible with current trends in industry that are well underway in upgrading existing UST systems.

As previously stated, EPA agrees that secondary containment with interstitial monitoring would most likely result in fewer releases to the environment compared to protected single-walled UST systems with release detection. UST systems having secondary containment and interstitial monitoring are not perfect, however, and failures of these systems will also occur and result in some releases into the environment that will have to be remediated. Although protected single-walled systems would result in more releases, the Agency has concluded that this increase is not a significant added threat to human health and the environment given that release detection will minimize the extent of these additional releases, and the availability of petroleum cleanup technologies is widespread and capable of alleviating any resultant adverse impacts. In addition, the Agency is concerned that many owners and operators would delay upgrading their existing petroleum UST systems to the extent allowed by law or even to the point of noncompliance, because of the perception on the part of many commenters of the significance of higher capital and installation costs that would result from requiring secondary containment and interstitial monitoring (compared to protected single-walled USTs with release monitoring).

c. Option 3: *Classification Approach.* EPA recognized from the outset that releases from petroleum UST systems located in certain sensitive areas pose a greater risk of harming human health and the environment than others. As a consequence, one of the regulatory options the Agency considered extensively in developing the final rule was a federal classification approach based upon the potential impact of a release. Under this approach, a class or classes of UST systems located in high-risk areas would be subject to more protective requirements than UST systems located in less sensitive areas.

Although the proposed baseline standards for prevention and detection of releases made no differentiation based on class, the Agency requested comment in the April 17 proposal on the general desirability and feasibility of a classification approach to regulating UST systems. EPA also sought comment on a specific, two-tiered classification scheme. Under this scheme, owners and operators of UST systems located in high-risk areas, defined as the area within a specified distance of a public drinking-water well, would be required to use secondary containment. The baseline standard of protected, single-walled tanks with release detection would be allowed in low-risk areas.

EPA received several comments that favored or opposed inclusion of a federal classification approach in the final rule. Several commenters in favor of a class approach suggested, and the Agency has considered since proposal, alternative regulatory schemes with respect to how requirements should differ among UST systems in different classes. The schemes examined included accelerating the schedule for upgrading of existing UST systems to new tank standards or for compliance of existing UST systems with release detection requirements in high-risk areas; imposing more stringent design requirements (e.g., secondary containment) in high-risk areas; and imposing more stringent design requirements in all areas except those designated as low risk by the implementing agency. The Agency also explored several potential criteria proposed by commenters for differentiating among classes. Hydrogeologic criteria, such as proximity to ground water used for drinking water, were considered most extensively. The criterion EPA selected for detailed analysis was distance to a public water well. (For discussion of the results of the analysis see the Regulatory Impact Analysis for the Technical Regulations.)

As pointed out by several commenters, the concept of a classification approach to regulating UST systems is appealing for many reasons. Because the potential impact of a release is greater in more sensitive areas, a classification approach tailors the level of protection to the risk posed in a particular area. EPA's analyses of various classification schemes indicated that, without considering the costs of implementation, the benefits of a classification approach, primarily in terms of corrective action costs avoided, could be significant. Cleanup of contamination is especially difficult and expensive in sensitive areas, such as where ground water used for drinking water is affected. Classification could also provide a priority-setting scheme for enforcement and corrective action.

Despite the advantages, EPA has not included a classification approach in the final rule. Commenters' arguments against a Federal classification approach influenced the Agency's decision. EPA agrees with commenters that the baseline requirements set by the final rule will adequately protect the environment in all areas while also encouraging timely voluntary compliance by avoiding unnecessary additional complexity and providing reasonable flexibility for UST system owners and operators. Although EPA supports the concept of differential protection based on the potential impact of a release, the Agency believes that, for this program, classification at the Federal level is neither feasible nor practical. EPA is particularly concerned about the potential hindrance to state program approval and the difficulties of implementing a classification approach at the federal level.

Due to the size and nature of the community to be regulated, the success of this program depends largely upon implementation at the state and local levels. Most states, however, have not developed classification systems. Development of appropriate and workable classification schemes could take significant time and resources given the number of environmental and other factors that must be considered. The Agency is concerned that the steps necessary to define criteria and then identify high-risk and low-risk areas in states that have not yet done so could delay implementation of the program and divert scarce resources from efforts to achieve the improvements of the baseline UST regulatory requirements, which will provide most of the benefits. This additional complication may discourage states from seeking approval altogether. The Agency has concluded that the potential reluctance of states to implement this program as a consequence of requiring a classification approach could result in less successful

protection of the environment and human health.

In addition, even without implementation delays, a federal classification scheme is not likely to provide significant real additional protection. Several commenters stated (and the Agency has concluded) that, at the federal level, any criteria used to classify would have to be simple (such as specified distance to a water well) because implementation of a classification scheme based on more complex criteria would not be feasible. Yet, given the diverse hydrogeologic conditions that exist in the United States, no single, simple classification criterion would be appropriate everywhere. For example, a distance to drinking-water well criterion, as presented in the preamble to the proposal, is meaningless in locations such as Phoenix, Arizona, where the depth to ground water is so great that releases from UST systems will rarely contaminate drinking-water wells; or in places like Dade County, Florida, where ground water may move so fast that a release could travel the standard distance within a short period of time. Because defining and identifying high-risk areas is so highly dependent on local (site-specific) hydrogeologic and other factors, EPA believes that state and local implementing agencies can make the most meaningful determinations of classes.

Although the Agency has concluded that a classification approach at the federal level is neither feasible nor desirable, EPA believes that a classification approach to regulating UST systems at the state or local levels, where local environmental conditions are better known, may be both feasible and appropriate. Under today's approach, the Agency allows but does not require states to use a classification approach if it is appropriate for the conditions in the state. For example, states that have already developed a classification scheme may decide to use it to regulate USTs. For such states, the potential difficulties associated with implementing a classification approach to regulating UST systems may be significantly reduced.

2. Existing UST Systems Containing Petroleum

a. *Mandatory Upgrading or Replacement of Substandard UST Systems.* In the preamble to the proposal, the Agency identified four regulatory approaches to scheduling the upgrade or replacement of substandard existing UST systems: (1) Rapid upgrade or replacement (within 3 to 5 years of final rule promulgation), (2) gradual upgrade or replacement (within 6 to 12 years of final rule promulgation), (3) no required upgrade or replacement, and (4) scheduling of upgrade/replacement based on a class approach (upgrade or replace tanks located in environmentally vulnerable areas first). EPA proposed to implement scheduling of mandatory upgrade/replacement using the gradual approach (within 10 years after the effective date of the final rule) and has retained this requirement in today's final rule.

Many commenters supported the proposed 10-year compliance period for the reasons identified in the preamble to the proposal (52 FR 12676). However, some recommended a shorter time period, stating their belief that industry resources could meet the demand and that a faster upgrading schedule would prevent a significant number of future product releases. In contrast, other commenters suggested a longer compliance period than proposed and argued that more time was needed to become familiar with the UST regulations, that owners of multiple tank systems would not be able to finance upgrades/replacements in 10 years or less, and that the service industry would need more time to implement upgrades for this large universe of existing tank systems.

As stated in the proposal, the Agency agrees that if upgrading could be completed in the shorter compliance period (3 to 5 years) it would decrease the number of product releases and thereby provide greater protection of human health and the environment. However, the Agency also agrees with those commenters who believe that the large number of existing UST systems essentially precludes industry from implementing upgrade requirements faster than the proposed 10-year period. Furthermore, EPA is in agreement with many of these same industry commenters who indicated that a 10-year compliance period is a reasonable time period and would not be overly burdensome. EPA is aware of numerous industry upgrading programs that have already started and will be completed within this time frame.

EPA continues to believe that the alternative of not requiring upgrade/replacement of substandard systems is simply unacceptable because the Agency has concluded that UST owners probably would not upgrade if it is not required. The universe of 1.4 to 2 million UST systems largely consists of unprotected, bare steel tanks. The new causes of release information summarized previously in this preamble (and derived from the "Causes of Release from UST Systems" report) confirms that the unprotected segment of the UST universe is very likely to leak due to corrosion and piping failures and, therefore, presents a significant threat to the public health and environment. Historical tank replacement rates, established trends in the closure of existing retail motor fuel businesses over time, and the imposition of this new regulatory program are expected together to result in rapid decrease in these substandard UST systems nationwide. However, a totally voluntary program of UST system upgrading is not expected by EPA to result in the timely upgrade or replacement of UST systems on a nationwide basis, particularly given the large number and heterogeneous nature of this universe of existing UST systems. In order to ensure human health and the environment are protected, the Agency has established a clear national goal of upgrading all substandard UST systems within 10 years that rejects a purely voluntary approach as inadequate. This goal is intended to prompt all UST owners and operators to plan for and undertake the upgrading steps that are needed to protect human health and the environment.

Another option considered by the Agency in development of the proposal was to further require upgrade and replacement based on the use of a class approach that scheduled more rapid UST system upgrades/replacements in the most vulnerable areas (e.g., ecologically sensitive sites or sites in close proximity to drinking water sources) while allowing other UST systems to be phased in on a more gradual basis. Many commenters recommended staggering the implementation schedule for upgrade/replacement based on other factors (besides class) such as tank age, tank size and type, proximity to human populations, and the measured corrosivity of a site. The common concern among these commenters was that a staggered schedule would prevent all owners from being allowed to wait until the last minute to bring their existing substandard tank systems into compliance and would, thereby, ensure a more even, implementable, and serviceable demand for tank upgrade/replacement over the 10-year period.

The Agency has decided not to require the phase-in of upgrading based on the class approach strategy, or on the basis of any other factor, for several reasons. Although many factors on which to base tank upgrade/replacement have been identified, because of the serious ramifications to

the owner and operator associated with the technical requirements for upgrading. EPA believes no single risk-based factor is appropriate or applicable to mandate nationwide for all existing UST systems. Today's general 10-year requirement in the final rule also allows implementing agencies in approved states, or under State law, the opportunity to decide the staggered schedule on which upgrades should be conducted and what factor(s) are most applicable to their tank population. Regardless of what type of state action is taken, upgrading is already rapidly taking place through numerous industry programs. Today's final approach allows them to continue to use the numerous different phase-in approaches that are already successfully underway. EPA believes this flexibility should also encourage others to upgrade because they can set their own schedules to meet the 10-year deadline. Thus, EPA has concluded that much of this regulated community will have completed these voluntary programs of closure and upgrading within the mandated 10-year period, and, therefore, the number of existing USTs that otherwise will have to be upgraded by the end of this upgrading period is expected to be relatively small. The implementation of today's final requirements for release detection (and the financial responsibility requirements to be provided later) are also expected to prompt rapid upgrading and should work to ensure that the implementation difficulties at the end of the 10-year period that were cited by some commenters are not encountered due to a backlog of upgrading demand.

In summary, EPA believes that the 10-year upgrade requirement will not present an undue burden on industry and is implementable, but is needed to prompt a significant portion of this regulated community into making the upgrades and improvements necessary to protect human health and the environment. It will also provide industry and the states with some flexibility that will allow (and thereby encourage) them to determine their own approaches and schedules for ensuring tank upgrade/replacement programs are implemented expeditiously within the nationally mandated timeframe.

b. *Methods of Release Detection.* The majority of existing UST systems are not currently being monitored for releases to the environment. Therefore, EPA continues to believe that a fundamental goal of today's regulatory approach must include the establishment of reliable release detection at all UST systems. In the proposal (52 FR 12676), the Agency required all existing substandard UST systems to comply with one of the six release detection methods proposed for new USTs (52 FR 12713). The dual objective of this proposed approach was to allow for the continued development of release detection technologies and also to ensure that only sound and reliable release detection methods were used. Particularly for petroleum UST systems, the Agency believed many releases would be detected if an appropriate method was selected and properly used.

In the preamble to the proposal (52 FR 12676), EPA identified that a wide variety of release detection methods (applied either internally or externally to the tank) were currently on the market but with limited data available concerning their performance. This lack of performance data and field experience was corroborated by many commenters. Although numerous comments were received regarding the release detection methods proposed (see section IV.D. of today's preamble for a summary and discussion of these comments), the Agency did not receive any comments that opposed the general approach of mandating the use of at least one of the allowed methods at existing UST systems. Other commenters noted their successful use of different types of methods.

Performance data obtained from commenters and from EPA-sponsored research since proposal support the Agency s decision to retain the proposed approach in the final rule. (EPA solicited public comment concerning this new information on March 31, 1988; 52 FR 10403.) The Agency is convinced that the proposed release detection methods, when properly applied and performed as specified in the final rule, will successfully detect the large number of leaks believed to already have occurred. For example, over the past year in California and Florida, several thousand UST system releases have been identified using these methods of release detection, and there appear to be few instances where releases have been later discovered through other means (e.g., off-site impacts) when release detection was being properly conducted at a site.

3. Hazardous Substance UST Systems

UST systems containing hazardous substances were proposed to have secondary containment with interstitial monitoring unless the owner or operator obtained a variance by demonstrating that another release detection method would be effective in detecting releases of that substance from a single-walled UST (see 52 FR 12677, April 17, 1987). The reasons for selecting this proposed approach were: (1) Information is not available on the applicability and demonstrated reliability of release detection methods at most hazardous substance USTs, and (2) few industry and state and local agency UST programs yet apply to hazardous substance USTs and, thus, there is little collective experience on management of such USTs. The Agency recognized that some release detection methods for petroleum UST systems might also perform well at some hazardous substance USTs. Hazardous substance USTs, however, store an array of individual chemical compounds that vary widely in their physical and chemical characteristics and that may not be readily or reliably detected using release detection methods developed for single-walled UST systems storing petroleum products. They also may not be able to be as readily addressed by corrective action technologies that are already widely available for petroleum releases. Therefore, the proposed approach required secondary containment at all new hazardous substance UST systems, unless owners and operators could demonstrate that an alternative release detection method could be reliably applied and operated.

Several commenters were opposed to the proposed secondary containment approach at new hazardous substances UST systems because: (1) They do not believe that chemicals designated as hazardous substances are any more hazardous than petroleum products (and, therefore, should not have to meet more stringent requirements), and (2) EPA has not provided a technically valid explanation of why single-walled USTs are appropriate for petroleum products but not for hazardous substances. It was also suggested that, instead of having a lengthy and costly variance procedure on a case-by-case basis, the Agency should incorporate a variance in the final rule for certain classes of hazardous substances.

The Agency has decided to retain secondary containment for all new hazardous substance USTs in today's final rule because EPA has not received any additional information or data since proposal to convince the Agency that reliable and appropriate release detection methods are generally available for hazardous substance USTs. The Agency continues to believe that under certain conditions, hazardous substances will pose a greater risk to human health or the environment than petroleum products. Furthermore, there are proven, reliable and available release detection methods and cleanup

technologies for petroleum, whereas the applications of these same release detection methods and cleanup technologies are neither proven nor available for hazardous substances.

Also retained in the final rule is the proposed exception for those owners and operators who, by means of a variance, can demonstrate that a release detection method (other than interstitial monitoring) can be successfully installed and operated at a specific hazardous substance UST system to detect releases of the stored substance. An additional requirement in the final rule is that an owner and operator must also demonstrate that a corrective action method is available to clean up the release. The Agency decided not to structure the variance procedure by classes of hazardous substances because physical properties of chemicals within a class can be quite variable (for example, wide ranges in solubility and volatility) and require different corrective action approaches, and one release detection method would not reliably detect all of the chemicals within that class. (A more detailed discussion on the final rule regarding hazardous substance USTs is presented in section IV.D. of today's preamble.)

A detailed discussion of the methods of release detection allowed for existing petroleum UST systems is also presented in section IV.D. of today's preamble.

4. Corrective Action

An important facet of today's final strategy for regulating underground storage tanks is to ensure that public and private drinking water supplies are protected, and that necessary steps are taken to abate other health and safety threats (such as fires and explosions) due to present and future releases from UST systems. As described previously in this preamble, tens of thousands of UST systems are believed to have already leaked substantial quantities of regulated substances into the environment and numerous public and private wells have already been threatened or destroyed. As discussed in the preamble to the proposal (52 FR 12678), the development of a regulatory program for corrective action started with three assumptions: (1) The need to implement the requirements through the extensive participation of state and local UST programs; (2) the approach taken must be able to work as the nature of the UST corrective action problem changes over time; and (3) a process must be set up that ensures owners and operators get quickly to the task of cleaning up all releases, although the completion of corrective action may take a long period of time at any one site.

The proposal provided for separate but very similar corrective action processes for UST systems that contain petroleum and those that contain hazardous substances. In the proposal, the Agency solicited comment on whether the proposed requirements should be integrated into one subpart. The proposal also divided the regulatory requirements for corrective action into two stages: (1) Immediate abatement actions that all owners and operators must take in response to a release; and (2) long-term investigation and remedial action measures that may be taken on a site-specific basis to protect human health and the environment. The Agency solicited public comment on the approach taken to these immediate abatement (Stage I), and long-term remedial action (Stage II) issues in the proposal. These and numerous other corrective action issues are discussed in more detail in the following section of this preamble that addresses the section-by-section analysis of the final corrective action rules (see section IV.F.). The following discussion briefly highlights the major decisions and influences (including public comment) that went into the development of the Agency's final approach to corrective action for UST systems storing regulated substances.

a. *Corrective Action for Regulated Substances.* The proposal provided separate corrective action processes for UST systems storing petroleum and those storing hazardous substances (proposed Subparts F and G). The stated purposes of this approach were: (1) To avoid confusion over which procedures must be followed at a release site; and (2) to construct an approach towards hazardous substances corrective action that was very similar to the one for petroleum, except that it was intended to move the owners and operators more quickly to collect, array, and assess the information needed to determine the nature, extent, and hazard of the corrective action release (52 FR 12682). The dividing line between Stage I and Stage II of the process was intended to occur earlier in the response to a hazardous substance release, thus following more closely the RCRA Subtitle C hazardous waste tank approach to corrective action. This proposed approach was an attempt to provide a response process for hazardous substances that recognized the relatively greater hazards that could be posed by hazardous substances releases, and that ensured that there was consistency with the corrective action approach required for hazardous waste tanks. EPA solicited comments on whether the petroleum and hazardous substance requirements for corrective action should be merged in the final rule.

In response to public comments received, and several other revisions made in the final corrective action rules, the Agency has decided to consolidate the requirements for UST corrective action into Subpart F for all regulated substances (both petroleum and hazardous substances) for the reasons discussed below. All of the comments received by EPA concerning the merging of the two proposed subparts were in favor of it, although they made different suggestions on how to accomplish this consolidation (discussed in more detail later in the section-by-section analysis of this preamble).

Although the preamble to the proposal described the Agency's intention to foster quicker investigatory and cleanup actions at hazardous substances release sites, as was pointed out by some commenters, the few differences in the actual regulatory language between the two separate subparts was not likely to attain this end. In fact, most of the requirements within the two proposed subparts were the same. The most significant differences were that a free product investigation was not a required step for hazardous substance responses, and a more rapid (within 30 days) and detailed reporting of certain information was required by owners and operators with hazardous substance releases (see proposed § 280.74(b)) than for those with petroleum releases. Prompted by these public comments, additional review of these proposed differences has led the Agency to agree that they do not necessarily lead to faster corrective actions at hazardous substance release sites. Furthermore, even if this end was achieved somewhat for hazardous substance releases, the Agency does not believe it would protect human health and the environment to move less quickly towards the remedial actions required with petroleum releases. Thus, in the merger of the two subparts in today's final rules, the Agency has developed a process that ensures the most rapid reporting, investigation, and corrective action at all UST release sites that is believed to be attainable (the details of today's consolidation are discussed in more detail later in section IV.F. of today's preamble).

Because the requirements of the two proposed subparts were largely the same, EPA also believes that today's merger of them into one consolidated Subpart F for all regulated substances

avoids a significant source of potential confusion within the regulated community. Despite the slight procedural differences between the two subparts, the Agency is now convinced that the work involved in investigating petroleum and hazardous substance releases will be very similar. Also, given that the similarities in the characteristics of different petroleum products are expected to lead to more rapid and widespread understanding of how to respond routinely to petroleum releases (mostly gasoline), the actual investigation, initial abatement of hazards, and the availability of corrective action technology for petroleum releases may result in more rapid and effective release responses at sites with petroleum releases than those with a hazardous substance release.

The Agency continues to believe that under certain conditions, hazardous substance releases can pose a greater hazard to human health and the environment than petroleum releases. However, the consolidated requirements in today's final rules have been designed to allow the implementing agency to cause the owner and operator to move as rapidly as is necessary to identify and control any such additional potential threats. For example, under the final rules, the identification and recovery of free product now must be considered at both petroleum and hazardous substance release sites. This required consideration of free product recovery, however, does not hinder the progress of corrective action at sites with releases of hazardous substances because the presence and recovery of free product is already something that must be commonly considered at all release sites (whether petroleum or hazardous substances). The final rule allows enough flexibility to ensure that this type of action is tailored, under the direction of the implementing agency, to site conditions and the type of substance released.

b. Stage I: *Investigation of Releases and Immediate Corrective Action.* EPA proposed requirements for the first stage of the corrective action process (Stage 1) by establishing immediate steps that must be taken to abate imminent health and safety hazards whenever a release is confirmed. The basic approach assured that the following activities were undertaken by the owner and operator at all sites with a confirmed release: (1) Immediate notification of the implementing agency; (2) actions needed to stop further releases; (3) mitigation of safety hazards due to fire and explosion; (4) removal of contaminated soils; (5) investigation of the existence and extent of floating free product; and (6) initiation of the removal of free product and submittal of free product recovery plan unless directed to do otherwise by the implementing agency.

Numerous public comments on issues related to these proposed requirements are discussed in more detail later in this preamble. In general, many commenters believed the proposal was unclear as to what exactly had to be done, and by whom, to comply with the requirements. EPA, in response to these commenters, has revised the language in the final rule to clarify which elements of the initial response actions are mandatory and which are discretionary. The mandatory requirements are intended to ensure three goals are accomplished:

- To bring leaking UST sites under control with respect to immediate health and safety hazards;
- To stabilize the site so that contamination will not worsen as investigation and potentially long-term remedial actions are considered; and
- To be self-implementing in that these measures emphasize the responsibility of the owner and operator to take immediate action without awaiting approval of the implementing agency.

All sites with releases of regulated substances must investigate the area around the UST system to be able to characterize the size and nature of the release (e.g., a small spill or a large, continuing slow release). The findings of this initial investigation must be reported to the implementing agency, which has the discretion to require a more extensive site characterization based on these initial findings. The proposal has also been revised to make this more extensive examination of ground-water and soil contamination mandatory when the initial investigation reveals that a significant release has occurred (e.g., free product floating on the ground water or saturated soils in the subsurface), even in the absence of direction from the implementing agency. Thus, today's final rule requires all releases that seriously threaten or impact ground water to be automatically investigated by the owner and operator to characterize the extent of ground-water contamination and any soil contamination remaining at the site.

c. Stage II: *Long-Term Corrective Action Options.* EPA also proposed requirements for the second stage of the corrective action process (Stage II) addressing long-term remediation of contaminated soils and ground water. The Agency solicited public comment on three regulatory options for establishing long-term cleanup requirements: (1) National cleanup standards, with a variance provision; (2) site-specific standards to match the risk presented; and (3) a predetermined class approach. The proposal emphasized the second approach, with its site-specific cleanup targets based on (1) the data from the detailed site investigation of soil and ground-water contamination performed by the owner and operator and (2) the site-specific risk present as determined by the implementing agency using exposure and risk assessment techniques.

EPA received public comments for and against each of the three options for establishing cleanup levels. The majority of commenters preferred the proposed site-specific approach as the best way to accommodate the diversity of UST releases nationwide. Those in favor of establishing national cleanup standards in the regulations expressed the opinion that this would expedite cleanups and provide greater national consistency in cleanup results. Supporters of the class approach cited the wisdom of tailoring cleanup efforts to a predetermined assessment of risk based on prospective classifications tied to ground-water vulnerability. EPA has decided to retain the site-specific approach in the final rules.

For the same reasons that were cited in the preamble to the proposal (52 FR 12680–12682) and supported by most commenters, EPA continues to believe that the site-specific approach is the most appropriate because it allows implementing agencies the necessary flexibility to address corrective action based on the unique circumstances of the site. It also enables state and local governments to build upon their own experiences when assessing the need for and extent of corrective action. EPA is not convinced that a national standards approach will result in more rapid and consistent levels of corrective action. No data were provided that demonstrate this position. In fact, the information available to the Agency about UST cleanup technologies indicates that the level of actual cleanup achieved is much more dependent on the limitations associated with current corrective action equipment and the problems posed by individual site conditions, than it is on the cleanup levels established in a corrective action plan (or by regulation). In selecting the site-specific approach, the Agency notes that it does not preclude the use of the other two approaches by implementing agencies. Some states already are using a statewide standards approach.

The Agency continues to believe that the site-specific risk assessment process

can be streamlined to ensure that the corrective action needed at a site can be identified rapidly and initiated quickly. EPA maintains the position expressed in the proposal's preamble (52 FR 12681) that site-specific cleanup levels will have to account for potential exposure of the public to contamination at the site. If a drinking water supply, public or private, is affected or threatened by the release, then the cleanup levels in the corrective action plan should be established using health-based levels as the target for cleanup of the release, unless an alternative source of drinking water can be provided to the potentially affected public. The Agency is developing further guidance concerning the use of risk assessment and exposure assessment techniques for releases at UST sites. These efforts are expected to further streamline the site-specific approach to regulation promulgated today. (Further discussions of the site-specific approach to standard setting and corrective action plans are provided later in the section-by-section analysis in section IV.F. of today's preamble.)

IV. Analysis of Today's Rule

A. Program Scope

1. Applicability

As described previously, this rule generally applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under Subtitle C). The following sections discuss the tank systems subject to exclusions from today's requirements and the deferral of regulation for other UST systems.

2. Regulatory Exclusions

The regulatory exclusions in today's final rule are based on a number of statutory provisions and regulatory considerations. Section 9003(a) of RCRA requires the Administrator to establish an UST program "as may be necessary to protect human health and the environment." In addition, section 9003(b) allows the administrator to consider such factors as tank size and quantity of substances stored when establishing necessary requirements. The Agency believes that this statutory language allows some flexibility for EPA to concentrate its resources on tanks that pose the greatest potential environmental threat. Section 9001 defines the universe of the UST program and indicates that EPA should regulate tanks containing an "accumulation" of regulated substances. Section 9001 also excludes tanks regulated under Subtitle C from the jurisdiction of Subtitle I. Finally, section 1006 of RCRA generally requires integration of RCRA with the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; and the Atomic Energy Act.

Based on these provisions, the Agency is today excluding from regulation several types of tank systems. These exclusions will decrease the regulatory burden on implementing agencies so they can focus their resources on types and classes of tanks that pose a significant threat to human health or the environment. Unlike statutory exclusions, regulatory exclusions may be modified by the Agency in the future should new information show that regulation of such an excluded tank type is necessary.

Four classes of tanks are excluded from regulation in the final rule: UST systems containing mixtures of hazardous waste and regulated substances; equipment and machinery that contain regulated substances for operational purposes; wastewater treatment tanks regulated under the Clean Water Act; and UST systems excluded via one of three *de minimus* exclusions. A specific regulatory exclusion for UST systems containing mixtures of hazardous waste and regulated substances was included in the proposed rule (52 FR 12687). The preamble of the proposal also discussed *de minimus* exclusions. The other two regulatory exclusions were regulatory deferrals in the proposal. The rationale for these exclusions is discussed below.

a. *Tanks Regulated Under Subtitle C of RCRA.* Because USTs containing a mixture of hazardous wastes (regulated under Subtitle C of RCRA) and regulated substances (regulated under Subtitle I) are subject to dual jurisdiction from Subtitle C and Subtitle I, EPA is today excluding these tanks from Subtitle I regulation. As evidenced by the exclusion of substances covered under Subtitle C within the statutory definition of "regulated substance," the Agency believes that this exemption is consistent with Congressional intent not to have redundant requirements under these two programs. Because of the continued coverage of these tanks by Subtitle C, the exclusion of these tanks from Subtitle I regulations will not present a risk to human health and the environment, and, thus, Subtitle I regulation is not "necessary to protect human health and the environment."

Several commenters pointed out that in the proposed rule this exclusion applied only to mixtures of hazardous wastes and hazardous substances. This wording would subject tanks that contain mixtures of hazardous wastes and petroleum to regulation under both Subtitle C and Subtitle I. The commenters requested that the wording be changed so that all mixtures with hazardous wastes regulated under Subtitle C would be excluded from these regulations.

The original wording in the proposal was based upon the statutory jurisdiction of the program. Under section 9001(2)(A), the exclusion of tanks regulated under Subtitle C pertains only to tanks containing hazardous substances, not to tanks containing petroleum. EPA, however, agrees with the commenters that dual regulation of tanks containing hazardous wastes and petroleum is not necessary and has changed the wording of this exclusion appropriately. This exclusion now applies to all tanks subject to regulation under Subtitle C that contain mixtures of hazardous wastes and either petroleum or non-petroleum regulated substances.

b. *Equipment and Machinery That Contain Regulated Substances for Operational Purposes.* Equipment and machinery that contain regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment, are excluded from today's regulations. These specific tank categories were deferred from regulation in the proposal, and the Agency requested comments on whether, and to what extent, these tanks should be subject to regulation under the UST program. Several commenters responded to this request and gave several reasons why these tanks should not be regulated as USTs. Their comments included three main points: The tanks are self-monitoring; the tanks pose a minimal risk to human health and the environment; and there have been few leaks.

Because these tanks contain regulated substances solely for operational purposes, the commenters argued that the loss of regulated substance would be accompanied by faulty operation of the equipment or machinery and thus the equipment is "self-monitoring." Second, the threat to human health and the environment was judged to be minimal because the tanks contain small amounts of regulated substances. Also, the commenters said that these devices rarely leak. Data submitted for leaks from electrical equipment, for example, show a leak incidence much lower than that for other types of tanks such as those at service stations.

This category of tanks includes hydraulic lifts and electrical equipment. Although commenters did not suggest other specific types of tanks that would fall within this class, EPA believes that other tanks of this type would also be included, provided that the tanks meet two major criteria: The equipment or machinery contains small amounts of regulated substances solely for operational purposes; and a loss of regulated substance is accompanied by faulty operation of the equipment or machinery, such that a loss of fluid causes knowledge of the loss.

In excluding this category of tanks, the Agency agrees with the commenters that these types of tank systems pose a relatively low level of risk compared to other types of storage tanks for the reasons given above. Moreover, the Agency recognizes that these tanks, although within Subtitle I jurisdiction, are not central to the Congressional concerns that created this program. Thus, regulation of these tank systems appears at this time to be unnecessary under section 9003(a).

EPA also believes that this potentially overwhelming large universe would require considerable effort on the part of implementing agencies even for just notification, with very little discernable environmental benefit. For example, the universe of hydraulic lift tanks alone has been estimated at 350,000 to 600,000 lifts. These figures do not include elevator lifts. Regulation of these types of tanks would unnecessarily divert implementing agency resources from other, more serious health threats. Therefore, today's final rule excludes such tanks.

c. *Wastewater Treatment Tanks Regulated Under the Clean Water Act.* The Agency is today excluding all wastewater treatment tanks, including any oil-water separators, that are subject to regulation under either section 402 or 307(b) of the Clean Water Act (CWA) (33 U.S.C. 1151 and following). These tanks, including tanks at most publicly owned treatment works and many private treatment facilities, would otherwise be subject to dual regulation. Because these tanks are subject to regulation under the CWA, further regulation under Subtitle I is unnecessary to protect human health and the environment and would be inconsistent with section 1006(b) of RCRA. This exclusion is analogous to the "wastewater treatment unit" exclusion under the RCRA Subtitle C program (see 40 CFR 260.10, 264.1, and 265.1).

In addition, tanks that treat wastewater or storm water, but which are not covered by the applicable sections of the CWA, are being deferred from today's final regulations. Such tanks might include many oil-water separators found at various facilities. Further discussion of these tanks can be found under the deferral section of this preamble.

d. *De Minimis Exclusions.* Today's final rule has been modified to exclude the following tanks: (1) Those that have a capacity of less than 110 gallons; (2) those holding a very low concentration of regulated substances; and (3) those that serve as emergency backup tanks, hold regulated substances for only a short period of time, and are expeditiously emptied after use.

The statutory definition of tank includes all devices that "contain an accumulation of regulated substances." Although legislative history provides no guidance on the meaning of the phrase "accumulation of regulated substances," the Agency believes the statutory language provides some flexibility to define the universe of regulated facilities in a manner that focuses regulatory resources on the tanks posing substantial risk from storage of regulated substances and, thereby, fosters development of a program that most effectively protects human health and the environment. Thus, sections 9001 and 9003(a) authorize EPA to exclude from its regulations tanks containing *de minimis* amounts of regulated substances. EPA requested comment in the proposed rule concerning *de minimis* exclusion criteria.

A number of comments addressed the issue of including a *de minimis* exclusion in the rule for tanks that hold a small quantity of regulated substances. The overwhelming majority of the commenters believed that such an exclusion should be part of the final rule. Some commenters suggested that a small-capacity exclusion would reduce the regulatory burden on the implementing agencies and, thus, result in a more effective program. Some commenters believed that a small-capacity exclusion was justified because small quantities of regulated substances pose less of a health risk than do larger quantities.

In deciding to include a regulatory exclusion for tanks that contain small quantities of regulated substances in today's rule, the Agency had to balance the benefits and drawbacks of such an exclusion. The Agency agrees with the commenters who thought that without an exclusion such as this, the regulated universe could be overwhelmingly large. Such a large universe would require considerable efforts by the implementing authorities even for notification, diverting their attention away from other, more potentially environmentally hazardous classes of tanks. The Agency agrees that small tanks pose less danger to the environment than larger tanks, generally, due to the smaller quantity of regulated substances available to leak. In certain cases, however, the mismanagement of even small quantities of regulated substances could pose serious danger to human health and the environment. Nevertheless, the Agency has decided that the detriments of attempting to regulate these small tanks greatly outweigh any potential benefits from regulation of this class of tank and has, therefore, adopted this exclusion.

Several comments were received with suggested sizes for a *de minimis* cutoff. These sizes ranged from 100 gallons to 5,000 gallons. State and local agencies with *de minimis* exclusions use cutoffs that range from 60 to 2,100 gallons. Because it was apparent that there was no standard size for the *de minimis* exclusion, the Agency chose the size limit of 110 gallons capacity. According to one commenter, this size is below the smallest petroleum product tank routinely mass produced (275 gallons), and a 110-gallon level coincides with the Department of Transportation definition for minimum portable tank for the transportation of hazardous materials. Tanks likely to be exempted under this exclusion include many small sumps and other atypical tanks.

The Agency is also today excluding tanks that contain *de minimis* concentrations of regulated substances. Because "an accumulation of regulated substances" could include within the regulated universe USTs holding regulated substances in *any* amount, no matter how small, the regulated universe could include a vast number of tanks that contain regulated substances only in small concentrations. These very small concentrations could occur accidentally (through contamination) or by design (for example, underground tanks storing food that contains a preservative that is a regulated substance). The Agency has not included a specific percentage threshold as the *de minimis* cutoff because of the many difficulties with measuring tank contents for low concentrations. Instead, on a case-by-case basis, the implementing agencies will determine if tanks that hold very low concentrations of regulated substances are excluded via the *de minimis* concentration rationale. Tanks that are likely to meet this criteria include those that are used to treat storm water and municipal wastewater, tanks that store potable water that has

been treated with chlorine, and in-ground swimming pools. EPA believes that such tanks pose a minimal threat to human health and the environment, and the inclusion of such tanks in the regulated universe would impose an undue burden on the implementing agencies because of the potentially large numbers of such tanks. Other types of tanks with very low concentrations of regulated substances may also be excluded.

The third *de minimis* exclusion included in today's rule pertains to tanks that are emergency spill protection tanks or overflow tanks, and are emptied expeditiously following use. This exclusion is analogous to the exclusion for emergency response treatment and containment under the RCRA Subtitle C program (see 40 CFR 264.1 and 265.1). Included in this category are many types of sumps and secondary barrier tanks. This exclusion does not specify a maximum time a tank may hold material, but applies only to tanks that are rarely used and are emptied shortly after use. The purpose of this exemption is to allow appropriate immediate response to emergency situations. These tanks are used for temporary storage of substances in response to a leak, spill, or other unplanned occurrences. Regulation of such tanks is unnecessary because they are rarely used and expeditiously emptied and, therefore, are unlikely to have any long-term leaks. Many of these tanks may also be able to be visually inspected because they rarely hold regulated substances. Several commenters expressed concern that the way the proposed rule was written, the Agency may have been requiring infinite layers of secondary containment. For example, in the proposal, an UST system was defined to include a secondary containment system, but there were references to requiring secondary containment for a hazardous substance UST system. Thus, it appeared that secondary containment was required to surround secondary containment. By including this exclusion in the final rule, the Agency believes that any potential confusion regarding the need for secondary barriers (containment) for secondary barrier (containment) systems has now been eliminated.

Sumps designed to store petroleum or hazardous substances during periodic cleaning or maintenance of machinery or equipment are not included in this exclusion. An example of this type of sump is turbine oil sumps that are used during maintenance of electric power generation turbines.

3. Deferral of Regulations

In the proposal preamble (52 FR 12687), EPA discussed its proposed deferral of requirements for the following categories of UST systems: wastewater treatment tanks, sumps, systems containing used oil, systems containing radioactive waste, systems containing electrical equipment, underground bulk storage tanks, and hydraulic lift tanks. The Agency requested comments on whether the deferrals were appropriate for each category and, if not, what regulations would be necessary.

In today's final rule, the Agency has revised the proposal in several ways. As a result of these revisions, tanks in some of these categories will fall within the scope of the regulatory exclusions described above, some will be subject to full regulation, and some will continue to be deferred from regulation. Tanks that are deferred rather than excluded are subject to interim UST requirements, but excluded tanks are not subject to any regulatory requirements. These revisions are briefly summarized below:

- Wastewater treatment tanks now fall under two parts of today's final rule. Wastewater treatment tanks, including oil-water separators, that fall under the jurisdiction of section 402 or 307(b) of the CWA are excluded from today's regulatory requirements (as discussed above in IV.A.2.). The remaining wastewater treatment tanks continue to be deferred from Subparts B, C, D, E and G of today's regulations, but are subject to interim requirements under Subpart A and corrective action under Subpart F.
- Many sumps are excluded from regulation under the CWA-regulated wastewater treatment exclusion, and others via one or more of the *de minimis* exclusions; others may be excluded as part of the statutory exclusion for storm-water and wastewater collection systems. Many of those that are not excluded continue to be deferred from Subparts B, C, D, E and G under the "field-constructed tank" deferral. Such UST systems are subject to the interim prohibition under Subpart A and corrective action under Subpart F. Sumps that are neither excluded nor deferred from regulation are subject to today's regulation.
- Field-constructed tanks, which include many tanks classified as underground bulk storage tanks in the proposal, are deferred from Subparts B, C, D, E and G but are subject to interim requirements under Subpart A and corrective action under Subpart F.
- UST systems that contain radioactive wastes and other radioactive materials have been deferred from Subparts B, C, D, E and G but are subject to interim requirements under Subpart A and corrective action under Subpart F.
- UST systems containing electrical equipment and hydraulic lift tanks, which had been deferred in the proposal, are both examples of equipment or machinery using regulated substances for operational purposes. As discussed above in IV.A.2., both types of tanks have been excluded from regulation under Subtitle I.
- Tanks containing used oil are no longer deferred but are subject to full regulation under today's final rule.

Today's final rule also includes deferral of some subparts of the regulations for the following additional categories of tanks:

- Airport hydrant fueling systems and tanks storing diesel fuel for emergency power generation at plants regulated by the Nuclear Regulatory Commission are deferred from the technical standards set forth in Subparts B, C, D, E and G but are subject to interim requirements under Subpart A and corrective action under Subpart F.
- UST systems that store fuel solely for use by emergency power generators are deferred from the release detection requirements under Subtitle D. All other regulatory requirements apply to these tanks.

EPA's decisionmaking on these various tank types is discussed in more detail in the sections below.

a. *Wastewater Treatment Tanks.* In the proposal, EPA deferred wastewater treatment tanks from UST regulation in order to gather more information on the need to regulate these tanks and the appropriate type of regulation. EPA included oil-water separators (which are considered treatment tanks) within the scope of wastewater treatment tanks.

In the proposal preamble, EPA specifically requested comments on whether wastewater treatment tanks should be regulated under Subtitle I (52 FR 12687). Almost all comments submitted were opposed to regulating wastewater treatment tanks under UST regulations. The commenters stated that wastewater treatment tanks are process devices and flow-through process tanks, not storage tanks; thus, they should not be regulated under the UST program. Several commenters also stated that wastewater treatment tanks contain large volumes of water and only small amounts of oil or hazardous materials and, thus, pose no major threat to human health or the environment. It was also stated that wastewater treatment tanks that are currently excluded by RCRA are, however, currently covered

by the CWA. They should not, therefore, be regulated under UST regulations. In addition, several commenters pointed out that if wastewater treatment tanks were to be included in the final rule, there is presently no practical method of performing a tightness test on these tanks because the tanks are typically open to the atmosphere. Inventory reconciliation is not feasible because the very high throughput would require more accurate metering than is currently available.

EPA does not agree with the commenters who argued that wastewater treatment tanks are outside the scope of Subtitle I as "flow-through process tanks" or part of a storm-water or wastewater collection system, which are excluded from the jurisdiction of this program under section 9001(1). Wastewater treatment tanks are not part of a production process, nor are they part of a collection system. See section IV.A.2. for further discussion of the scope of the flow-through process tank and storm-water and wastewater collection system exclusions. EPA does, however, agree with commenters that the universe of treatment tanks could add a large administrative burden that could reduce the ability of the implementing agencies to regulate more serious threats to the environment.

After review of all available information, EPA now believes that wastewater treatment tanks that are currently covered by sections 402 and 307(b) of the CWA should be excluded from UST regulations as discussed in the previous section. In addition, some of these treatment devices, such as those treating municipal sewage, typically contain *de minimis* concentrations of regulated substances and are therefore excluded under today's rule.

Wastewater treatment tanks not covered by the CWA or otherwise excluded will continue to be deferred under these regulations. Oil-water separators and other similar treatment devices fall under the definition of "wastewater treatment tank" under today's rule. The deferral for those wastewater treatment tanks not regulated by the CWA reflects the Agency's uncertainty regarding the nature of this tank population and the appropriateness of some of the UST regulations for these tanks. For example, some types of leak detection (such as tightness testing) and inventory reconciliation would not appear to apply to treatment tanks.

b. *Sumps.* In the preamble of the proposal (52 FR 12687), the Agency requested that commenters submit information on the number, location, and substances stored in sumps; how sumps are protected to prevent releases from occurring; leak history; and whether the proposed UST regulations would be appropriate for sumps. Most of the commenters who responded believed that regulations for sumps should continue to be deferred because sumps are small, temporary storage facilities that are frequently visually monitored and that contain mostly water and only small amounts of petroleum or hazardous substances. Also, commenters stated that regulation of sumps would pose an unmanageable regulatory burden for the implementing agencies and would require an individualized approach for each location. Some commenters suggested that *de minimis* size, time, and throughput exclusions be developed to prevent sumps from becoming subject to the regulations. The only commenters who supported regulation of sumps did not believe that Subtitle I was the appropriate regulatory authority.

Although commenters did not submit data that would enable EPA to determine the total number of sumps nationwide, the Agency realizes that the number of sumps potentially subject to Subtitle I is very large and could pose an unmanageable regulatory burden. In addition, the Agency agrees with the commenters that many sumps are small, temporary storage facilities that contain only small amounts of petroleum or hazardous substances. No information was submitted concerning whether sumps pose a significant threat to human health or the environment.

As discussed above, today's final rule contains *de minimis* size, time, and concentration exclusions that are expected to apply to many sumps. Also, sumps that are part of a storm-water or wastewater collection system are excluded by statute from UST regulations. These exclusions will allow the implementing agencies to focus their resources on UST systems that are a more significant threat to the environment and human health. The Agency believes, however, that large sumps that contain significant quantities of regulated substances over a period of time do not warrant such exclusion, because they are indistinguishable from other regulated tanks. Therefore, factory-built sumps are subject to all requirements under today's final rule if they are not subject to any other exclusion. Field-constructed tanks, including field-constructed sumps, are deferred until information can be obtained on what regulations (if any) are appropriate for these systems as discussed in the following section. Therefore, the final rule no longer contains a deferral for sumps.

c. *Field-Constructed Tanks.* In the proposal preamble, EPA specifically requested comments concerning the applicability of Subtitle I (52 FR 12688) to underground bulk storage tanks (UBSTs). In the proposal preamble, EPA considered UBSTs as those tanks whose total capacity was 20,000 gallons or greater. Several commenters stated their belief that because UBSTs pose a major environmental concern and are closely related to other USTs, they should be regulated under Subtitle I in the final rule. It was also stated by some commenters that secondary containment of UBSTs is feasible and other existing leak detection methods are applicable to UBSTs. On the other hand, there were some commenters who opposed the inclusion of UBSTs in the regulation stating that the differences between UBSTs and normal USTs are too great and that many leak detection and leak prevention methods are not applicable to UBSTs. There were also requests by some commenters that the definition of UBST be clarified and included not only in the preamble but also in the final regulation.

After reviewing the comments, EPA has modified the deferral of UBSTs to a deferral for tanks that are field-constructed. Although many bulk tanks are expected to be deferred because they are field-constructed, the capacity of these tanks no longer determines their regulatory status.

Field-constructed tanks are usually constructed of steel or concrete, shaped like flat vertical cylinders, and have a capacity of greater than 50,000 gallons. In contrast, factory-constructed bulk tanks are typically long, horizontal cylinders and are less than 12 feet in diameter. Tanks that are principally factory-built but are assembled in the field are considered factory-built tanks. For example, welding two halves of a factory-constructed tank together in the field does not qualify the tank as a field-constructed tank.

The deferral of regulation for field-constructed tanks is largely based on the fact that design and construction methods for field-constructed tanks are different from those for factory-built tanks. EPA has not had sufficient time to develop appropriate regulations related to design and construction for such tanks.

Comment was divided on the applicability of present leak detection and leak prevention methods to bulk tanks. Some commenters argued that existing leak detection methods are applicable to UBSTs, while others stated

that the differences between UBSTs and normal USTs are too great to use most presently available leak detection and prevention methods for such tanks. EPA believes that the division of bulk tanks into field-constructed and factory-built tanks simplifies this issue.

EPA believes that because of the different design and construction methods used for field-constructed tanks, as well as the very large size of some field-constructed tanks, the majority of the leak detection methods presently available do not work for such tanks. Leak prevention methods may also differ for such tanks. The deferral for these tanks is due in part to this restricted availability of appropriate leak detection methods.

By contrast, EPA believes that currently available leak detection methods are applicable to factory-built tanks. Factory-built tanks, even those that are very large, generally conform to standard design and construction methods that allow the use of widely available leak detection methods.

EPA agrees with commenters that tanks that hold large amounts of regulated substances do pose a relatively larger potential danger to human health and the environment than other, smaller tanks. However, until regulations are developed to govern design and construction of field-constructed tanks, they will be deferred.

d. *Systems Containing Radioactive Materials.* At proposal, the Agency requested comment on the issue of whether tanks containing radioactive materials, including high-level radioactive waste and tanks containing mixtures of low-level radioactive waste and other materials, should meet the proposed standards or whether separate standards should be developed. No commenters supported regulation of these USTs under Subtitle I. The commenters stated that radioactive waste and materials tanks at nuclear facilities are regulated by the Nuclear Regulatory Commission (10 CFR 50.34a) and that further regulation of these tanks under Subtitle I would be duplicative and possibly inconsistent. One commenter noted that these tanks are typically made of stainless steel and have a capacity of approximately 1,000 gallons. The tanks are pressure tested before the nuclear facility is licensed to operate and are retested every 10 years. In addition, they are constantly monitored for loss of pressure and radiation leakage. Commenters also noted that the current Department of Energy management program for tanks containing high-level radioactive waste is as stringent as, and in some cases exceeds, the proposed UST rule.

Because tanks containing radioactive wastes and other radioactive materials at nuclear facilities are regulated by the Nuclear Regulatory Commission, these tanks could be subject to overlapping jurisdiction under Subtitle I and the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following). The Agency, however, lacks complete information on whether these regulations fully cover all appropriate areas addressed under Subtitle I. The Agency, therefore, is deferring regulation of these tank systems until more information can be gathered.

e. *Systems Containing Electrical Equipment.* Under the proposed definition of "tank," large numbers of utility units in urban and residential areas (e.g., underground transmission cables and vaulted transformers for large trunk lines) could be subject to regulation. At the time of the proposal, the Agency deferred regulation of these structures based on its belief that inclusion of these structures in the UST program would be impractical and unnecessary. EPA requested that commenters submit information on the number, location, and substances stored in these units; how they are protected to prevent releases; leak history; and whether the proposed regulations would be appropriate for these units.

All of the commenters in this area were opposed to inclusion of electrical equipment structures in the UST program. The commenters stated that these units are not primarily used for storage and that the utilities industry already takes many precautions to prevent releases. Dielectric fluids, typically naphthenic mineral oil and synthetic fluids such as polybutene or alkylbenzene, are used in underground cable piping and vaulted transformers to prevent the cables and transformers from overheating. Underground cable piping is cathodically protected and is coated to prevent corrosion. The piping is subjected to pressure tests both before and after insertion of the cable and addition of the dielectric fluid. Electronic monitors at the utility's control center indicate potential releases of fluid (i.e., when the required oil pressure cannot be supplied by the associated pumping station). In addition, transmission line routes are routinely inspected to identify potential sources of piping damage, such as the misuse of construction equipment. Information submitted by commenters showed that from 1978 to 1985, utilities nationwide reported an average of less than 1 leak per 100 circuit miles of cable. In 1985, there were 23 reported leaks involving low-pressure systems and 6 reported leaks involving high-pressure systems. Of the low pressure system leaks, only one occurred belowground.

The Agency believes that there are already strong incentives for the utilities industry to prevent releases from underground equipment because these leaks could result in system malfunctions and widespread power outages. The industry has developed release response procedures for notification, containment, and cleanup in the event of a release. In addition, despite its widespread use, underground electrical equipment appears to pose a minimal threat to the environment because of the low leak incidence for such UST systems. Moreover, many of these systems also fall within the statutory exclusion for storage tanks situated on or above the floor of underground areas, such as basements and cellars. Therefore, to allow the implementing agencies to focus their limited resources on more significant potential threats, the Agency has decided to exclude underground electrical equipment from the final rule as equipment and machinery that contain regulated substances solely for operational purposes.

f. *Hydraulic Lift Tanks.* In the proposal preamble, EPA deferred the application of the proposed technical standards to hydraulic lift tanks; however, these tanks would have been subject to Subparts F and G of the proposed rule (i.e., corrective action). "Hydraulic lift tanks" are those tanks used to store fluid used in hydraulic lifts at service stations and similar devices such as lubrication oil reservoirs for elevators. After review of all available information, EPA has now decided that, like the electrical equipment tanks discussed above, hydraulic lift tanks will be excluded in the final rule as equipment or machinery that contain regulated substances solely for operational purposes.

In the proposal preamble, EPA specifically requested comments on whether hydraulic lift tanks should be regulated, and if regulated, to what extent (52 FR 12689). In response, several commenters stated that hydraulic lift tanks should not be regulated under the final rule because they are not used for storage and many of them are almost completely aboveground. It was suggested by several other commenters that hydraulic lift tanks not be regulated because they pose either minimal or no threat to human health or the environment and are self-monitoring. If problems do arise, the lifts cease to operate when they lose fluid. It was also mentioned by several commenters that due to the location of

hydraulic lift tanks (e.g., under buildings), the cost impact involved in bringing these tanks under regulation would be substantial. Finally, several commenters stated that the inclusion of hydraulic lift tanks in the regulation would cause severe impacts on the implementing agency; the number of hydraulic lifts has been estimated at over 800,000. Several commenters suggested, however, that special standards be developed specifically for hydraulic lift tanks. It was also suggested that only those hydraulic lift tanks that exceed 100 gallons be regulated under the final rule.

EPA deferred regulation of hydraulic lift tanks at proposal to allow time to gather additional information on the subject. In the preamble to the proposal, however, EPA identified several reasons why, based on preliminary information, the Agency felt that regulation of such tanks would be unnecessary. After reviewing all comments submitted, EPA believes that it is appropriate to exclude all hydraulic lift tanks from regulation. EPA agrees with those commenters who stated that hydraulic lift tanks pose a minimal threat to the environment and are self-monitoring. The Agency is today excluding these types of tanks as equipment that contains regulated substances solely for operational purposes (see section IV.A.2.b. above).

g. *Used Oil USTs.* The Agency proposed to defer regulation of used oil USTs. The Agency indicated, however, that it might apply the proposed technical standards to used oil USTs in the final rule following public comment on the appropriateness of the technical standards for used oil USTs. EPA considered the many comments received on this issue and has decided to include used oil USTs in the final regulation. Public comments received by EPA and proposed revisions to the final rule as they relate to the appropriateness of the technical standards for used oil USTs are discussed below.

In the preamble to the proposed regulations, EPA requested comments on the following issues relating to used oil:

- Are the petroleum UST requirements appropriate for recycled used oil and/or used oil bound for disposal?
- Do the minor constituents found in used oil (such as water and metals) alter the appropriateness of the requirements?
- Is it appropriate to have different standards for relatively smaller tanks, such as those used by used oil generators and burners, than for larger tanks, such as those used by used oil processors?

In addition, EPA also requested comment on the impact of the proposed regulations on the recycling of used oil.

In a supplemental **Federal Register** Notice (52 FR 48638, December 23, 1987), EPA requested comment on the appropriateness of using alternative methods of release detection for used oil USTs, to supplement those listed in § 280.41 of the proposed rule. The Agency specifically requested comments on the use of static inventory control as a method of release detection for smaller used oil USTs. This request was prompted by the Agency's belief that some of the release detection methods proposed in § 280.41 may not be practical or effective for used oil USTs due to the physical characteristics of used oil. On the other hand, the Agency believes that the static inventory method of release detection may be very effective and practical for use with small used oil USTs. "Static inventory control" has been renamed as "manual tank gauging" in the final rule and in the rest of this preamble's discussion of this method of release detection.

The Agency believes that the risks associated with releases from used oil USTs may be different from those of other USTs, but the overall level of risk is similar to that of other petroleum products. Releases from used oil USTs may be less likely to occur than from petroleum USTs, but the health risks posed may potentially be greater because of the possibility of contaminants in the used oil. The appropriateness of further regulation, under RCRA Subtitle C, will be determined by results of studies currently in progress. At this time, the Agency has determined that used oil USTs should be regulated under Subtitle I because there is evidence of leaks that indicates a significant threat to human health and the environment.

In reply to EPA's request for comments about the appropriateness of the proposed regulation for used oil USTs, public comment was divided. Several commenters stated that used oil USTs should be covered by Subtitle I regulations because the risk to ground water was essentially the same as for other petroleum products, and that management of all underground tanks at a facility that had both used oil tanks and other Subtitle I regulated tanks (e.g., a service station) would be facilitated by a single, inclusive regulation (Subtitle I). In contrast, some commenters stated that the risk from used oil USTs was insignificant and, thus, used oil USTs should permanently be exempted from regulation. Others stated that used oil USTs should be regulated under RCRA Subtitle C because the hazardous constituents in used oil make it more dangerous than other petroleum products.

The Agency agrees with those commenters who noted that used oil presents risks similar to other petroleum products and that Subtitle I regulations are appropriate. Today's final rule reflects this by applying the petroleum UST requirements to used oil USTs, with limited exceptions discussed below. Releases from both used oil USTs or other petroleum USTs can be prevented, or at least limited, by sound management practices. As a result, the Agency has decided to require used oil USTs to meet the same upgrading, operation and maintenance, corrosion protection, corrective action, and closure requirements that are applicable to other petroleum USTs.

The Agency received comments requesting an exemption from Subtitle I regulations for small tanks. Recommended cutoff sizes ranged from 100 to 3,000 gallons. In addition, several commenters also requested regulatory exemptions for small vessels used to trap used oil, as well as tanks holding regulated substances for short time periods. As discussed above, in today's final rule EPA is exempting from the regulations USTs that are 110 gallons or less. Thus, small traps are excluded from regulation. With respect to tanks that hold regulated substances for short periods of time, today s rule includes an exemption for emergency spill collection tanks. The regulations do, however, apply to any other used oil USTs, the majority of which are the 500- and 550-gallon tanks often found at gasoline service stations. Most of these USTs are old and are believed to be a common source of releases of used oil. USTs that contain used oil that is used as substitute for heating oil are excluded.

The Agency received several comments noting particular characteristics associated with used oil or used oil USTs that make some of the proposed technical standards in Part 280 inappropriate for used oil USTs holding less than 1,100 gallons. In response to these comments, today's final rule contains different requirements for small used oil USTs in two areas: Release detection and overfill/spill protection. First, with respect to release detection, many commenters noted their support for manual tank gauging (formerly called "static inventory control") by itself as an alternative leak detection method for used oil USTs. Today's final rule allows the use of this alternative release detection method as the sole method of release detection for any petroleum UST with a capacity of 550 gallons or less.

Manual tank gauging may be used in combination with periodic tank tightness testing on petroleum tanks with a capacity between 55 and 1,000 gallons. (These provisions are discussed in more detail in section IV.D. of this preamble.)

Today's final rule also provides an exemption from the rule's spill and overfill protection controls for USTs that are filled in small increments. (This is also discussed in more detail later in this preamble under spill and overfill prevention for new USTs.) The Agency agrees with the commenters that used oil USTs that are filled manually in small increments do not pose the same risk to human health and the environment from spills and overfills as other USTs.

The Agency received additional comments related to design standards and agrees with those who requested cathodic protection for new used oil tanks. In addition, EPA is requiring that owners and operators upgrade or replace their used oil USTs according to the time period of today's final rule (10 years). EPA disagrees, however, with the commenters who argued that these tanks should be subject to secondary containment. Because the physical and chemical characteristics of used oil are similar to petroleum products, the release detection and corrective action technologies should be similarly applicable to used oil. Thus, the final rule subjects used oil USTs to the release detection requirements applicable to petroleum UST systems rather than secondary contaminant required for hazardous substance UST systems.

h. *Airport Hydrant Fueling Systems.* A number of commercial airports and airports at Department of Defense bases use hydrant fueling systems. These systems generally consist of one or more bulk storage tanks that may be either below or aboveground and that are connected by underground piping to various aircraft fueling locations on the airport. Hydrants, otherwise known as fuel dispensers, are connected to the pipe networks and dispense fuel into aircraft. These systems are, in some cases, very large in size and contain great volumes of fuel. Many airports have miles of piping, which is typically 8 to 24 inches in diameter, and the total capacity of the systems can be many millions of gallons.

Through a brief investigation of these systems, the Agency believes that some of these systems do not meet the statutory definition of an UST system, and are thus outside of the jurisdiction of Subtitle I. Hydrant systems that have aboveground storage tanks are not regulated tank systems unless 10 percent or more of the capacity of the system is in the belowground pipelines.

However, hydrant systems with belowground storage tanks and those with aboveground storage tanks but whose pipelines account for 10 percent or more of the system's capacity are within to Subtitle I jurisdiction as UST systems. The special problems posed by requiring hydrant systems to meet many of the requirements in today's final rule have motivated the Agency to look further at these systems, and have led to today's deferral of regulations for these systems.

The Agency continues to examine questions regarding the construction, operation, maintenance, and monitoring of hydrant systems. Preliminary information indicates that hydrant systems typically have cathodic protection, and are monitored for leaks on a daily, monthly, and annual basis. Inventory monitoring is often used, but the sensitivity of this technique is very limited due to the large volume these systems typically handle. No single leak test, however, appears to be an industry standard.

Since proposal, the Agency has become aware of several leak incidents from hydrant systems that resulted in environmental damage. Because of limited information on this subject, however, the Agency is unclear about the extent of this problem. In addition, to the nature of these systems, especially the typically large amount of piping, certain requirements in today's rule (such as leak detection for piping systems) may not be feasible for hydrant systems. For these reasons, the Agency is deferring regulation of Subparts B, C, D, E and G for all airport hydrant systems, including the underground tank portions of those systems, to allow more time to gather information.

i. *Backup Diesel Tanks at Nuclear Facilities.* Following publication of the proposed regulations, a commenter raised the issue of the applicability of the UST regulations to tanks at nuclear power plants that store diesel fuel for use in emergency situations. According to the commenter, these tanks are already extensively regulated by the Nuclear Regulatory Commission (NRC), and further regulation by EPA could result in an overly burdensome program if the regulations were inconsistent. Not only would these nuclear facilities be required to meet dual regulatory programs, but structural changes to the systems as a result of the UST regulations could result in an amendment to the plant's license, according to a commenter. The commenter also pointed out that any shutdown of the backup fuel system (e.g., for retrofitting) could result in the entire nuclear power plant being shut down.

The Agency is today deferring the requirements of Subparts B, C, D, E and G for these tanks pending completion of a review of the NRC regulations (10 CFR Part 50 Appendix A) governing these tanks to determine whether further regulation is necessary to protect human health and the environment or would be inconsistent with NRC regulations for proposes of section 1006. If this research indicates that the NRC regulations are not adequate or are not as complete as the UST regulations, EPA may require these tanks to be subject to Subtitle I regulations, or it may develop a separate set of standards applicable to this class of tank.

j. *UST Systems Associated with Emergency Generators.* In today's rule, EPA is deferring Subpart D requirements for UST systems associated with emergency power generators. Such tanks are common in the telephone industry and the electric utility industry. These tanks often store diesel fuel which serves as a source of backup power in remote locations (for example, at telephone switching locations). This is a deferral of the release detection requirements only; owners and operators of these systems must comply with all other subparts of this rule.

Several commenters argued that these tanks should not be regulated at all for the following reasons: they are generally small in size (typically under 500 gallons); most are less than 5 years old; they are often at unmanned stations in remote locations; they contain diesel fuel, which is less mobile than gasoline due to its higher viscosity; and many are filled only annually.

The Agency does not agree that these reasons merit an exclusion from the UST regulations. The requirement that these tanks be monitored each month is unworkable, however, because they are often located in remote areas and are visited very infrequently. Therefore, EPA is deferring Subpart D requirements for these tanks to allow time to develop workable release detection requirements for these tank systems.

4. Definitions

The following sections address many of the terms that are used in the statutory language and elsewhere in the final regulations. Since proposal, many terms have been redefined or clarified as a result of comments. The following sections contain the revised definitions,

the rationale for the changes, and the Agency's interpretation of these terms.

a. *Definitions of Terms in the Statute.*

(1) Underground Storage Tank. *Underground storage tank* is defined in the statute as any one or a combination of tanks (including *underground pipes connected thereto*) that is used to contain an accumulation of *regulated substances,* and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more *beneath the surface of the ground.*

Today's rule sets forth the following definitions for terms used in the statutory definition of underground storage tank:

(a) Tank is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

Several commenters stated that the definition of tank in the proposed rule was too broad, and included devices that do not store regulated substances but rather use, treat, collect, or capture regulated substances. By expanding the scope of tank beyond just storage tanks, say the commenters, EPA departed from its Congressional mandate and created a program that is overly inclusive and difficult to manage. The commenters also argued that the inclusion of hydraulic lift tanks, electrical equipment, oil-water separators, sumps, treatment tanks, and other devices not normally regarded as storage tanks would overwhelm the Agency's ability to adequately enforce the regulations. Also, the added burden of regulating these devices would be disproportionate to their potential environmental harm. Few of these devices have documented leak histories, according to the commenters.

Throughout the development of the UST regulations, where there has been ambiguity in the terms defining the jurisdiction of the Subtitle I program, it has been the Agency's policy to define the scope of the UST regulations broadly and interpret the exclusions relatively narrowly. By taking this approach, the Agency hoped to avoid prematurely eliminating from its jurisdiction tanks that may pose an environmental threat. This policy has afforded the Agency the opportunity to gather more information on the various classes of tanks in the potential regulated universe. EPA has retained the prerogative to narrow the scope of the program by regulation rather than statutory interpretation, taking into account potential environmental and health risks, implementability, and administrative burden. The Agency decided that this approach would result in a program that provides maximum protection to human health and the environment while taking into account the regulatory burdens associated with the program. Further explanation of these regulatory exclusions is found earlier in this preamble under IV.A.2. Regulatory Exclusions, many of which deal with precisely those tanks about which commenters expressed concern.

Accordingly, EPA disagrees with commenters who argued that EPA's definition of "tank" results in an unauthorized expansion of its regulatory program under Subtitle I. Although EPA acknowledges that this program includes only "storage" tanks, Congress defined "storage" in section 9001 of RCRA as "containing an accumulation of regulated substances." EPA's interpretation of the Subtitle I jurisdiction to encompass any devices holding an accumulation of any regulated substances (unless subject to a statutory exclusion) is thus not inconsistent with the statute. Moreover, this definition is the same as that which has been used in the Subtitle C tank program for years.

(b) Underground pipes connected thereto means all underground piping, including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between the systems. Tanks that are simply manifolded together are considered as one UST system. However, if an exempt tank is connected by piping to a regulated tank, half of the piping is allocated to each tank system. This allocation of connected piping is an attempt to reconcile two conflicting statutory provisions: Section 9001(1) states that an UST system includes the tank and all underground pipes connected thereto but also states that a statutorily excluded UST system also includes all of the piping connected to it. As a result, half of the piping is allocated to the regulated tank system and half to the excluded tank system if two are connected.

In the RCRA Subtitle C tank rules, the starting point of the "connected piping" is the point at which the contained substance is initially considered to be a hazardous waste. It should be noted that the above terms as they apply here, while similar, are different than the Subtitle C definition.

(c) Regulated Substance. Today's definition of "regulated substance" in the final rule codifies the statutory definitions of "regulated substance" and "petroleum" and provides additional clarification concerning the coverage of certain substances and mixtures of these substances under the regulations.

(i) *Overview.* In the April 17 proposal, the Agency codified the statutory definition of regulated substance. Thus, "regulated substance" was defined to include: (1) Any substance listed under section 101(14) of CERCLA, except those regulated as hazardous waste under Subtitle C of RCRA; and (2) petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure. The term "petroleum" was also separately defined as crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels. The proposal addressed mixtures of petroleum and any hazardous substance with a "50 percent rule," and under which, for example, an UST system containing a mixture that was 50 percent or more petroleum was proposed to be a "petroleum UST system."

In the Supplemental Notice of December 23, 1987, the Agency proposed further clarification of these definitions by requesting public comment on a specific list of substances and blends that would be subject to the petroleum UST requirements. This list was intended to be comparable to the list of CERCLA hazardous substances (not including hazardous wastes). Thus, an owner or operator would have to comply with the UST regulations only if one or more of the stored substances were on either of the two lists of regulated substances. The proposed list of petroleum substances would also be used to determine, for purposes of release detection requirements, if a substance would be regulated as a petroleum UST system.

The few comments the Agency received about the proposed definition of regulated substance asked for further clarification of the term petroleum. The commenters' concern was whether the release detection requirements for new hazardous substance USTs (i.e., secondary containment), or those for new petroleum USTs, applied to particular substances. EPA also received numerous comments on the proposed list of petroleum substances contained in this Supplemental Notice. In general, most commenters expressed preference for this proposed list because it was more specific and clarified which substances had to meet the release

detection requirements for petroleum USTs. However, some other commenters questioned this approach because of the difficulty in preparing a complete list and the loss of flexibility such a specific list would entail as the composition of petroleum products changed over time. Numerous commenters provided suggestions for adding or deleting specific substances from the list.

In today's final rule, the proposed list of petroleum substances in the Supplemental Notice is not used, although the general categories from the list have been included in the final definition of regulated substance. Thus, the definition of regulated substance retains the statutory language that was originially proposed, except that it has been revised to reference the petroleum refining process and include a list of seven basic categories of petroleum or petroleum-based substances considered by EPA to be "regulated substances." This addition to the federal definition is intended to respond to those commenters who requested more clarity about the scope of petroleum substances included within Subtitle I jurisdiction. The final rule also includes definitions for hazardous substances UST systems and petroleum UST systems for the purpose of clarifying, as requested by some commenters, which regulated substances are subject to the secondary containment requirements for new USTs storing hazardous substances and which are subject to the release detection requirements for new USTs storing petroleum or petroleum products. (These terms and their use to discern how mixtures are treated are discussed in section IV.A.4.b.)

(ii) *Revisions in the final rule and public comments on the proposal.* In the final rule regulated substance is defined as: "(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C), and (b) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The 'regulated substance' includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils." In summary, the proposal's codification of the statutory definition of "regulated substance" has been retained in sections (a) and (b) of the final definition (see above). Also, the proposal's elaboration of the meaning of petroleum in a separate definition of the term has been deleted (see section (iii) below), but several general categories in that proposed definition have been listed in the final definition of regulated substance to respond to some commenters' requests for clarification of the scope of the substances covered by the regulations.

The first part of today's final definition of regulated substance (section (a)) refers to the specific list of substances (both chemicals and discarded chemical products) that are defined by regulation under CERCLA (see 40 CFR Part 302). The Subtitle I program covers all hazardous substances except those that are hazardous wastes. Few comments were submitted concerning this list or section (b) of the proposed definition (the statutory definition of petroleum). The two questions raised in most public comments were (1) whether the storage of a particular substance was regulated under Subtitle I, and (2) what release detection was required for new UST systems storing a particular substance (see section (iii) below).

EPA originally proposed to define petroleum as crude oil, any fractions of crude oil and refined petroleum fractions, such as gasoline, kerosene, heating oils, and diesel fuels. In the Supplemental Notice to the proposal, EPA requested comment on the appropriateness of adding to the definition a specific list of substances that was based on the fundamental petroleum refinery process. Many commenters agreed with the proposed use of the crude oil separation processes as the basis for determining which substances should be subject to petroleum UST standards. However, others believed that basing the definition of petroleum strictly on the steps in the separation process was inappropriate. These commenters pointed out that this approach could result in similar substances being regulated differently, such as unleaded motor gasoline being considered a petroleum substance and leaded motor gasoline a hazardous substance because lead is added in steps subsequent to basic separation processes. Other commenters pointed out the difficulty in determining the exact point in the refinery process at which a substance is considered petroleum and at which point it becomes a chemical product distinct from petroleum.

In the refinery process, separation involves two steps: atmospheric and vacuum distillation. Heat is applied to crude oil, which separates into individual fractions because of differences in boiling points or boiling ranges. Some of these fractions can be used directly from a distillation tower; however, many of the products must go through further treatment. This treatment is known as conversion, which includes such processes as hydrocracking, catalytic cracking, coking, and alkylation. These processes are used to change the molecular weight and boiling ranges of the fractions. Upgrading is the process of improving the quality of the petroleum fraction by removing sulfur, nitrogen, and oxygen. The heating involved with this process adds stability and removes waxes, allowing lower pour points. Finishing does not mean distillation to pure chemical products, but is the final step before a petroleum product is sold at retail. An example of finishing is the addition of certain chemicals to motor gasoline. Additives may include octane enhancers, which either raise or lower octane ratings, dyes for product identification by color, and detergents that remove deposits from engines. These additives may be listed hazardous substances. The complexity of this process, the variety of chemical products produced, and the variety of chemical additives mixed with petroleum products in the refinery process has led to some confusion about which substances are "petroleum" or "hazardous substance" under Subtitle I.

To overcome this confusion and respond to comments received on the proposal, the final rule does not include a separate definition of petroleum. Instead, the final rule language for "regulated substance" has been amended to clarify what petroleum and petroleum-based substances, hazardous substances, and mixtures are within the regulated universe.

The final definition of regulated substance has been revised to refer to products from the refinery process, and it lists seven general categories of petroleum and petroleum-based substances so that the breadth of the coverage of the regulations is clear. Each of these general categories in fact consists of many specific individual products or substances. By not individually listing these different products and grades, EPA intends that any future adjustments in specific product composition (for example, changes made to respond to market demands) will not affect the product's classification as a "regulated

substance." These seven categories correspond to the major categories in the list of petroleum substances and mixtures proposed in the Supplemental Notice. Nearly all petroleum products in use today are included in the seven categories listed in the definition. The general reference in the definition to the products from the refining process (discussed above) will aid in identifying the remaining unlisted regulated substances. Under this approach, EPA will not need to continually update the list (for example, motor gasolines is a category of regulated substance now and in the future, although new blends of motor gasoline, such as "mid-grade," may be developed or new additives may be used).

The Agency believes that this approach will make it easier to determine the regulatory status of an individual substance or blend under Subtitle I and ease the implementation burdens on the UST owner and operator, and the implementing agency. Any owner or operator trying to determine whether a tank system contains "regulated substances" and is subject to Subtitle I requirements must first determine if the substance belongs to one of the seven general categories of regulated petroleum substances. If not, then the owner or operator next must determine whether the stored material is included within the production process and physical properties description for petroleum products. If not, then the owner or operator must finally determine whether the substance is listed as a hazardous substance under section 101(14) of CERCLA (see 40 CFR Table 302.4), except for those listed as "hazardous wastes" under Subtitle C of RCRA. If the substance has not met one of these three definitions, then it is not a regulated substance.

(iii) *Petroleum.* The proposed definition of petroleum has been deleted from the final rule. A separate definition of petroleum was not included in the final rule because now no regulatory distinctions are based solely on whether the stored substance is "petroleum" or a "hazardous substance." However, regulatory distinctions concerning the selection of release detection equipment are based on whether a new tank system is a "petroleum UST system" or a "hazardous substance UST system." All other technical requirements are the same for all UST systems storing regulated substances.

In response to commenters' concerns about how to determine what type of release detection is applicable to a new UST system, the final rules include definitions that distinguish between "petroleum UST systems" and "hazardous substance UST systems." Owners and operators of new petroleum UST systems may utilize a variety of release detection methods because petroleum or petroleum-based substance releases are more predictable in their fate and transport underground, create relatively well-known exposure risks, and are subject to more widely available release detection and corrective action technologies. For regulatory purposes, petroleum UST systems may store petroleum or petroleum-based substances, petroleum and *de minimis* hazardous substance mixtures (e.g., used oil), or hazardous substances with properties similar to petroleum products. Thus, the types of stored substances subject to the release detection requirements for new petroleum UST systems are somewhat broader in scope than what constitutes simply "petroleum." This is reflected in a revised definition of "petroleum UST system," which includes a replacement of the proposal's 50-percent rule for petroleum-hazardous substance mixtures with a *de minimis* rule. (See the discussion in section IV.A.4.b. concerning the definitions of "hazardous substance UST system" and "petroleum UST system.")

The Agency will continue to use the statutory definition of "petroleum" for purposes of the LUST Trust response program under section 9003(h). Except for the requirement that petroleum must be a liquid at standard conditions of temperature and pressure, the term has the same definition as the term "petroleum" defined under CERCLA sections 101(14) and 101(33). The Agency interprets these terms to include the same substances, i.e., crude oil and refined fractions of petroleum, including gasoline and diesel fuels. The term "petroleum" includes the inherent "hazardous substance" constituents in crude or refined oil but does not include contaminants present in or mixed with the petroleum. Under section 9003(h), the Agency may undertake or order corrective action with respect to a release of petroleum from an UST system. The response program, however, is not limited to UST systems containing solely petroleum but, rather, requires only that the release from the UST *contain* petroleum. Thus, petroleum-hazardous substance mixtures would also be subject to the section 9003(h) corrective action authorities. This is consistent with Congressional statements concerning the jurisdiction of the section 9003(h) program. (See H.R. Conf. Rep. No. 962, 99th Congress, 2d. Sess., p. 228 (1986).)

(d) A tank is 10 percent or more *beneath the surface of the ground* if its volume (including the volume of its connected underground piping) is 10 percent or more beneath the ground surface or otherwise covered with earthen materials.

This definition reflects the intent of the UST regulations to govern underground tanks that could leak directly into the ground undetected. Thus, the following types of tanks are included within UST jurisdiction: Tanks that are underground; in-ground open-top tanks; and tanks that are above grade but are covered with earthen materials (for example, to comply with fire codes). Tanks that are above the ground surface and are covered with non-earthen materials are not included within the scope of this definition.

The phrase "so that physical inspection is precluded" has been removed from this definition since proposal. One commenter argued that this phrase could be construed to bring under the jurisdiction of the UST program any totally aboveground tank that is permanently covered or shielded from view (e.g., by insulation). EPA agrees with this commenter that such tanks, as long as their volume, including the volume of connected underground piping, is not 10 percent or more beneath the surface of the ground, are not the focus of this program and should not be subject to UST regulations. These tanks are not subject to the same corrosive forces as are underground tanks and may be more easily inspected visually than other belowground tanks.

Other commenters referred to aboveground tanks that are enclosed in concrete vaults and are surrounded by inert material such as sand or vermiculite. The commenters believed that these tanks should not be defined as USTs. Under the changes to this definition in today's rule, aboveground tanks surrounded by sand would be within the scope of these regulations, because sand is an earthen material and has the potential to create corrosion. Vermiculite is not considered an earthen material and would not promote corrosion, and, therefore, tanks that are covered by this material are not considered USTs.

The statute excludes nine types of tanks from the definition of underground storage tank. Eight of these nine types of exclusions are described below. The ninth, on septic tanks, is not discussed because no changes have been made to the proposal and no comments were submitted to EPA on this exclusion.

(2) Farm or Residential Motor Fuel Tank Exclusion. The first group of tanks

excluded by the statute is *"farm or residential tanks* of 1,100 gallons or less capacity used for storing *motor fuel* for *noncommercial purposes."* Following are definitions for the key terms of this exemption.

(a) A *farm* tank is a tank located on a tract of land devoted to the production of crops or raising of animals, including fish. To be exempt from UST jurisdiction, a farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations.

"Farm" does not include laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. Moreover, this definition does not include retail stores or garden centers where the product of nursery farms is marketed, but not produced. This definition, as promulgated, is unchanged from the proposal.

One commenter argued that tanks at golf courses are essentially the same as tanks at sod farms; both types are used to hold fuel in support of sod and turf development. For these reasons, the commenter contended, these tanks deserve to be included under the farm exemption. The Agency does not agree that the similarities between sod farms and golf courses merit inclusion of tanks at golf courses within the farm tank exclusion. The Agency does not believe the term "farm" under section 9001 of RCRA, reasonably interpreted, includes golf courses or other places dedicated primarily to recreational, aesthetic, or other non-agricutural activities.

(b) Motor Fuel in today's rule means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

As originally proposed, motor fuel was defined as petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo. In the general interpretation of this phrase, motor fuel was limited to motor gasoline and diesel fuel used in automobiles, trucks, and buses. Many commenters felt that gasohols should be added to the list of motor fuels, because alcohol-type fuels are an alternative energy source encouraged by many states such as California. Commenters also felt that the term motor fuel should not be restricted to vehicles used for transportation purposes because some motors are stationary engines. The Agency agrees that the proposed definition was unnecessarily restrictive.

The final rule lists five types of motor fuel that are typically used to operate motor engines. Gasohols are included as motor fuels because EPA agrees with public comment that these are commonly used as and understood to be motor fuels. The proposed language restricting "motor fuel" to fuels used in transportation has been deleted from the definition because the term "motor fuel" does not in itself describe a *use* of the fuel, but rather describes a *type* of fuel. The statutory exclusion already contains a "use" limitation by restricting the exclusion to motor fuels stored for "noncommercial" purposes.

Accordingly, today's final rule defines motor fuel in terms of specific types of fuel. The definition lists typical uses to give descriptive, not restrictive, information about these substances. The final rule thus includes fuels used in stationary motors. The structure of this definition parallels that of heating oils.

(3) Heating Oil Tanks Exclusion. The second group of tanks excluded from UST jurisdiction by statute are tanks used for storing *"heating oil* for *consumptive use on the premises where stored."* Following are definitions for key terms of this exclusion:

(a) Heating Oil means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

The proposed rule defined heating oil as either one of eight technical grades of fuel oil (No. 1; No. 2; No. 4-light; No. 4-heavy; No. 5-light; No. 5-heavy; No. 6; and residual) or fuel oil substitutes such as kerosene or diesel when used for heating purposes. This definition has been revised in the final rule to clarify which technical grades of fuel oil the Agency believes are heating oil. In addition, the definition has been revised in response to comments on the use of heating oil substitutes.

The list of grades of fuel oils has been reworded because, since proposal, the Agency has discovered that "residual" is not a specific technical grade of fuel oil, but refers to several grades of fuel derived from certain operations in the refinery process. Also, Navy Special Fuel Oil and Bunker C are included in the final definition as examples of residual fuels.

Several commenters suggested changes to the definition to modify the applicability of the heating oil exclusion to tanks storing fuel oil substitutes. Several commenters stated that both No. 2 diesel fuel and kerosene should be included as heating oil because their chemical makeup is similar to each other and No. 2 fuel oil. Additional commenters thought that the exclusion should not be limited to oil used for heating purposes. The Agency agrees that the heating limitation is inconsistent with the statutory language of the exclusion that limits "use" only by requiring "consumptive" use. The final rule definition, therefore, includes heating as a typical use of the fuels but does not limit the exclusion to fuels so used. The exclusion does, however, limit the use of substitutes to those situations where the substitute is actually used in place of one of the technical grades of fuel oil. For example, tanks that contain used oil at a typical retail gas station are not excluded unless the used oil is consumed on-site as a substitute for fuel oil (burned in an on-site space heater, for example). Tanks that store used oil awaiting recycling pickup are not heating oil tanks. Another example of a tank that is not a heating oil tank is one that stores diesel fuel for an on-site motor generator. Even though diesel fuel is sometimes burned in boilers as a substitute for heating oil, it is the fuel of choice for internal combustion engines. It is, thus, not a substitute for one of the technical grades of heating oil in this situation.

Thus, heating oil is defined in the final rule in terms of specific grades of oil or their substitutes. A sentence has been added to the definition listing typical uses of heating oil. This list provides descriptive, not restrictive, information about these substances and parallels the definition of motor fuel.

(b) Consumptive use means used on the premises. Accordingly, this exclusion applies to tanks at residential, commercial and industrial facilities storing heating oil that is used at the same site. The heating oil exclusion does not apply to the storage of heating oil for resale, marketing, or distribution.

In the preamble to the proposed rule, EPA stated that "consumptive use" was not intended to be limited to only space heating purposes, and described other uses of heating oil that would qualify for this exclusion. This definition has been modified since the proposed rule to clarify that tanks holding heating oil for any on-site use, such as heating or to power a generator, are exempt from regulation.

Several commenters supported this interpretation of consumptive use. Heating oil used to produce steam, process heat, electricity, and emergency power were among the consumptive uses that the commenters thought should be included in the heating oil exclusion. Today's definition clarifies

that these uses are within the scope of this exclusion.

Several commenters argued that tanks storing diesel fuel for use in emergency generators should be exempt as tanks storing heating oil. As explained above, no restrictions are being placed on the use of the heating oil under this exclusion, except that it be used consumptively on-site.

(c) On the premises where stored means tanks located on the same property where the stored heating oil is used. Tanks are excluded as long as the oil is stored anywhere on the same property. "On the premises" is not limited to the building where the heating oil is stored. Thus, centralized heating units using heating oil that serve more than one building on the same property would be excluded.

In addition, several commenters provided suggestions that would result in narrower interpretations of this exclusion by regulating one of the following segments: All residential and commercial tanks; all commercial tanks; all tanks at commercial and government buildings; all residential buildings of six or more units; or all tanks above a certain size. The Agency recognizes the concerns expressed by these comments but believes that the statutory language prevents adoption of such suggestions. Under the statute, the exclusion of heating oil tanks is not limited to certain categories of heating oil tanks (e.g., only residential or only tanks less than 1,100 gallons). Congress did recognize, however, that heating oil tanks may require some regulation and required that EPA study this universe of exempt tanks and make recommendations concerning regulation (section 9009).

(4) Pipeline Facilities Exclusion. The fourth exclusion covers "any *pipeline facility (including gathering lines)* (1) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), (2) regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or (3) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the laws referred to above.

"Pipeline facilities (including gathering lines)" include new and existing pipe rights-of-way and any equipment, facilities, or buildings used in the transportation of gas (or hazardous liquids, which include petroleum and any other liquid designated by the Secretary of Transportation) or the treatment of gas or designated hazardous liquids during the course of transportation.

The definition of pipeline facilities was adapted from the definition of that term as used in the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquid Pipeline Safety Act of 1979. "Pipeline facility" may also include any such intrastate facility as defined and regulated under state laws comparable to these two federal statutes. This definition includes sumps, drip tanks, skimmer pits, lubrication oil collection devices, and any other containers that are directly connected to regulated oil or gas pipelines or gas plants. This equipment would qualify as equipment used in the transportation of gas or hazardous liquid or the treatment of gas or hazardous liquids during the course of transportation.

One commenter pointed out that the definition of pipeline facilities in this rule differs from the definition which appears in the NGPSA. This commenter believed the Agency was mandated by Congress to adopt the definition from the NGPSA. The Agency intended that the definition that appears in these regulations mean the same as that definition that appears in NGPSA; the word changes were only for abbreviation. The Agency has retained the wording from the proposed rule.

(5) Surface Impoundments, Pits, Ponds and Lagoons Exclusion. The fifth exclusion covers any *"surface impoundment, pit, pond or lagoon."* A surface impoundment is defined as a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Since the proposed regulations, this definition has been changed and no longer stipulates that the surface impoundment be designed to hold an accumulation of regulated substances. This phrase created confusion among commenters and was considered unnecessary.

(6) Storm-Water or Wastewater Collection Systems Exclusion. The sixth exclusion covers a *"storm-water or wastewater collection system."* A storm-water or wastewater collection system is defined as all piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation, or domestic, commercial, and industrial waste water to and from detention areas or areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

This definition is substantially the same as the proposed definition, with one addition to clarify that treatment is not included as part of a collection system.

The Agency received several comments on the definition of a collection system and also on the applicability of the UST regulations to wastewater treatment tanks. In general, the commenters were critical of any attempt by the Agency to define collection system so that treatment tanks, including oil-water separators, would be regulated. The various reasons and arguments used by commenters are discussed below.

Several commenters stated that treatment tanks are logically included as part of the collection system, and that Congress intended to exclude the tanks from these regulations. The word "system" implies that everything related to the collection of storm water and wastewater, including piping and tanks, should be excluded, according to commenters.

Two commenters stated that it is illogical to exclude the pipes and pumps of a collection system but not the treatment tanks. The sole purpose of these tanks, one commenter pointed out, is to reduce the degree of contamination of the water and lessen the threat of environmental harm. Another commenter stated that regulation of wastewater treatment tanks would penalize those who pretreat at the request of a POTW, and regulation may discourage on-site treatment. Both comments disagreed with any attempt to regulate these tanks. Several commenters argued that treatment tanks, and in particular oil-water separators, should be excluded because they are flow-through process tanks. Several commenters believe that treatment tanks are already regulated under other federal laws, including the Clean Water Act and the Safe Drinking Water Act. Further regulation under Subtitle I would be unwarranted and unnecessary, according to the commenters.

EPA does not agree with commenters who argued that a collection system includes tanks where treatment is designated to occur. Collection and treatment are separate and distinct functions. The Agency continues to believe that the collection system includes all piping, pumps, and conduits that extend to and from areas where treatment is designated to occur.

The Agency does not believe that it is illogical to regulate wastewater treatment tanks, although their purpose is to lessen the concentration of regulated substances in the water. Such tanks serve as receptacles for regulated substances, and may leak as any other tanks may leak, with adverse results. To categorically exclude all such tanks

from regulation may risk environmental damage.

EPA also does not agree with commenters who argued that treatment tanks, particularly oil-water separators, should be classified as flow-through process tanks and therefore excluded. Treatment tanks do not form part of a production process, so they cannot be classified as flow-through process tanks.

EPA does agree, however, with the commenters who argued that some wastewater treatment tanks are adequately regulated by other Federal regulations. After reviewing the comments, EPA has decided not to regulate any wastewater treatment tanks that are part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act. The primary reason for this decision is that, because such tanks are already subject to regulation under the CWA, additional regulation under Subtitle I is unnecessary to protect human health and the environment. Other wastewater treatment tanks may be excluded because they contain only *de minimis* concentrations of regulated substances. Wastewater treatment tanks that are not subject to regulation by the CWA sections 402 or 307(b) and that contain greater than *de minimis* concentrations of regulated substances will continue to be deferred from regulation. This deferral reflects the Agency's uncertainty regarding the nature of these tanks and the appropriateness of the UST regulations to wastewater treatment tanks. More discussion on wastewater treatment tanks is provided under that heading in section IV.A.3.

(7) Flow-Through Process Tank Exclusion. The seventh exclusion covers any flow-through process tank. Under today's final rule, a flow-through process tank is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

Today's definition differs from the proposed definition in several respects. This exclusion now applies to tanks that are a part of a production process, rather than to tanks that are part of an industrial or commercial process. It now applies not only to tanks with steady or uninterrupted flow, but also to tanks with variable, recurring, or intermittent flow. The exclusion also now applies to tanks that hold intermediates.

The scope of the flow-through process tank exclusion has been one of the most difficult to define and most controversial interpretative issues, due to the lack of legislative guidance and a commonly understood technical meaning, as well as the potential for the exclusions, broadly interpreted, to encompass nearly all of the UST universe.

Although the definition of the terms "flow-through" and "process" have undergone several changes since EPA's first interpretation in the April 1986 guidance, these changes have been intended to clarify the Agency's interpretation of the scope of the exclusion and not to fundamentally alter that interpretation. EPA believes that this exclusion encompasses tanks that are an integral part of a production process and through which materials flow during the operation of that process. Application of leak detection or other tank standards to such tanks would generally be difficult to implement and potentially disruptive to vital production processes. The changes to this definition since the April 1986 guidance have resulted from comments on the April guidance, on the proposed definition, and on the Supplemental Notice. These comments are discussed below.

The original definition of this term that appeared in the April 1986 guidance document defined flow-through process tank to include any tank that was part of a "manufacturing" process that had "steady or uninterrupted flow." The original definition did not refer to tanks that held intermediates. This definition was thought by many commenters to be too restrictive in two respects: They stated that not only manufacturing tanks but also other industrial and commercial tanks should qualify; and that the requirement that the flow be steady would mean many tanks that operate in a batch fashion outside the scope of this exclusion.

The Agency agreed to some degree with these early commenters and, thus, included in the 1987 proposal a different definition than the one that appeared in the 1986 guidance. The proposed definition applied to "industrial and commercial" tanks, rather than to "manufacturing" tanks. The definition continued to restrict this exclusion, however, to tanks with a "steady or uninterrupted" flow of materials but added "during the operation of the process" in an attempt to accommodate commenters' concerns regarding batch processes. The proposed definition also stipulated that tanks that stored intermediates were not flow-through process tanks.

In the proposal preamble, the Agency expressed concern over what types of tanks would qualify as "flow-through process tanks" if the definition were expanded to include non-steady flow. Specifically, EPA was concerned that tanks at gasoline stations, airports, rental car agencies, and other such "commercial" locations could be construed to be flow-through process tanks if the flow of materials was allowed to be recurring. Thus, such an interpretation could exclude most tanks from the regulated UST universe. These concerns, in part, led to the issuance of a supplemental notice requesting comments on clarifying "process" to mean "production process" rather than "industrial and commercial process" as proposed in April 1987.

Several commenters addressed the issue of the types of facilities where flow-through process tanks may be located, in response to requests for comments in both the proposed rule and the supplemental notice. Comments in response to the proposed definition showed general agreement with the change (since the April guidance) to "industrial and commercial" from "manufacturing." One commenter stated that no qualifiers should be included on the term "process." Examples of non-manufacturing processes given by one commenter included oil and gas production, gas processing, wastewater collection and treatment, and recycling tanks. Other commenters suggested that hydraulic lifts, oil-water separators, and electrical equipment should be flow-through process tanks.

Several commenters supported the change proposed in the Supplemental Notice to "production process" from an "industrial or commercial process." According to commenters, this change "makes sense," "is in accordance with Congressional intent," and "clarifies that storage tanks are not flow-through process tanks." Several commenters, however, argued that the change to "production process" would be a narrowing of the exclusion that is not supported by Congressional intent. This change would also not be easier to implement, according to one commenter. One commenter suggested that flow-through process tanks used in the distribution of electric power were an example of a flow-through process tank that is clearly "industrial or commercial process," but is not necessarily "production." Another commenter stated that "production" implies a tangible good is produced, and thus a "production process" is no different than a "manufacturing process." Specifically, this commenter referred to

tanks in the dry cleaning industry, which would be outside the scope of this exemption if a tangible good was required to be produced.

With respect to the interpretation of the term "flow-through," several commenters believed that the requirement that the flow be steady or uninterrupted (during the operation of the process) was too restrictive, and would result in the regulation of many tanks that the commenters believed qualify for this exclusion. For example, these commenters pointed out that many tanks in a process stream are batch tanks, where the flow of materials is recurring or interrupted. Such tanks are common in the chemical industry. The commenters also cited process tanks with variable flows, for which there is no flow some or most of the time, as examples of the type of tank that should be included in this exclusion.

The preamble to the proposed rule discussed allowing tanks that have an interruption in steady flow due to periodic maintenance or emergency shutdown to remain within the scope of this exclusion. The proposal preamble also stated that if a flow-through process tank regularly stores materials during period of interruption, it is a storage tank and not a flow-through process tank. Several commenters stated that tanks that "store" substances under these circumstances should still qualify for this exclusion because it may not be possible to remove all the material from the tank, and that this requirement seemed to imply that these tanks must be completely empty when the process was not in operation.

In the proposal preamble, the Agency also asked for comments on whether "integral to the process" would include governmentally required wastewater treatment tanks that are a necessary part of the industrial or commercial process. Several commenters stated that wastewater treatment tanks, including oil-water separators, should be considered flow-through process tanks because treatment of wastes is a process and is an integral part of any facility. One commenter stated that oil-water separators should not be considered flow-through process tanks because they are covered in UL 1316.

The discussion of flow-through process in the proposal preamble stated that tanks that store intermediates were not flow-through process tanks. Several commenters argued that tanks storing intermediates are a necessary part of the process in order for the process to be conducted safely and to allow for an adequate supply of raw materials to be used in batch-operated processes. They further stated that intermediate tanks store materials on a very temporary basis and consequently do not pose the same hazards as a tank that is in use at all times.

EPA also requested factual information, in particular process diagrams, indicating what tanks should be excluded as flow-through process tanks, given the nature of the specific process and function of the tank. One commenter provided the following examples: Holding tanks; feed tanks; mixing tanks; tanks that hold materials being cut in concentration; and other tanks in the process train.

As discussed above, the definition of flow-through process tank as promulgated today is different in several respects from the proposed definition. The major differences are: The substitution of the phrase "production process" for "industrial or commercial process"; the change to "steady, variable, recurring, or intermittent" flow from "steady or uninterrupted" flow; and that tanks storing intermediates are now included as flow-through process tanks.

With respect to the interpretation of the term "process," the Agency agrees with those commenters who supported the change to "production process" from "industrial and commercial process," and is incorporating that phrase into the definition of flow-through process tank. EPA does not agree with commenters who argued that this wording is an unauthorized narrowing of the interpretation of this term. In response to the commenter who stated that the word "production" implies "making" or "manufacturing," and that the phrase "production process" would then be interpreted as "manufacturing process," the Agency does not intend to limit this exclusion only to manufacturing processes. Rather, any process at manufacturing, commercial, or industrial facilities where a tangible good or service is produced or performed may be considered a production process. Production processes include a wide variety of facilities and processes, including many at petroleum refineries, chemical manufacturing facilities, and automobile assembly plants. EPA does not agree, however, that "process" should be unqualified. Allowing the interpretation of this term to be unrestricted could result in an unreasonable interpretation of this exclusion, which, in effect, removes virtually all tanks from UST regulation since a tank related to *any* process through which there is a periodic flow of materials describes most storage tanks.

The Agency has changed its previous definition to allow steady, variable, recurring, or intermittent flow. Based on comments received on the proposed rule, the Agency realized that the revised definition did not effectively include batch process tanks, contrary to the Agency's intention, because batch processing can involve flows that are other than steady or uninterrupted during the operation of the process. In addition, EPA limited "flow-through" to steady or uninterrupted flow, rather than "recurring" flow to avoid eliminating jurisdiction over tanks with periodic inflow and outflow, including UST systems at gasoline filling stations. The Agency now believes, however, that by allowing variable or recurring flow, but limiting this exclusion to production processes, this concern is no longer relevant. Tanks that do form a part of a production process are often operated in a batch fashion, where inflow and outflow are periodic rather than steady or uninterrupted. EPA believes that the inclusion of such tanks is consistent with the intent of this exclusion, which is to preclude regulation of tanks that form an integral part of a production process.

Under the same rationale, EPA agrees with commenters that tanks that hold intermediates may be an integral part of a production process. Accordingly, tanks that store intermediates as part of a production process are flow-through process tanks. Similarly, the Agency agrees with the commenter who suggested that holding tanks, pulse tanks, feed tanks, mixing tanks, tanks that hold material being cut in concentration, and other tanks in the process stream are flow-through process tanks.

The Agency does not agree, however, that wastewater treatment tanks, including oil-water separators, are flow-through process tanks. These tanks do not form an integral part of a production process. Wastewater treatment tanks typically follow the production process, and in no way contribute to the production itself. Many of these treatment tanks, however, fall within the regulatory exclusion for tanks that are subject to CWA requirements or are excluded because they contain *de minimis* concentrations of regulated substances; wastewater treatment tanks that are not excluded are deferred from these regulations (see section IV.A.3.). For the same reasons, hydraulic lifts and electrical equipment, which commenters suggested should be defined as flow-through process tanks, are not. Hydraulic lift tanks and electrical equipment do not form part of a production process.

One commenter requested clarification on whether processes in

service industries, specifically the dry cleaning industry, would qualify as "production processes." In the dry cleaning industry, the main "product," the cleaning of garments, is really a service. As stated above, EPA does not intend to restrict the phrase "production process" solely to industries where a tangible good is produced. Tanks that contain regulated substances that are integral to the dry cleaning process are eligible for consideration as flow-through process tanks. The tanks in dry cleaning machines, however, store regulated substances prior to their introduction to the cleaning process. Thus, these tanks are not flow-through process tanks.

(8) Liquid Traps or Gathering Lines Related to Oil or Gas Production and Gathering Operations. The eighth exclusion covers "*liquid traps* or associated *gathering lines* directly related to oil or gas production and gathering operations." The liquid trap exclusion refers to sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

This exclusion applies only to traps and gathering lines, and does not include other storage tanks at oil and gas production sites. Similarly, although liquid traps are often used in activities other than oil and gas production, the only liquid traps excluded from UST jurisdiction under this provision are liquid traps used for the purpose of separating oil and gas liquids from water at oil and gas production facilities. Liquid traps used in conjunction with landfill methane gas production facilities are within this exclusion and would not be subject to UST jurisdiction. Liquid traps such as grease and oil traps at gas stations, however, are not within this exclusion.

Gathering lines are defined as any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Several commenters argued that EPA misinterpreted Congressional intent because the proposal preamble implied that this exclusion was limited to unused oil. The commenters suggested it should apply to both used and unused oil at oil and gas production sites. The Agency agrees with these commenters because this exemption is aimed generally at collection traps and gathering lines at oil and gas production facilities and does not distinguish between produced oil, used oil, or unused oil at those facilities.

Although many petroleum pipeline facilities are regulated under the Hazardous Liquid Pipeline Safety Act of 1979, and thus excluded from Subtitle I jurisdiction, tanks associated with gathering lines in rural areas are statutorily exempt from Department of Transportation regulations. Tanks associated with rural oil and gas pipelines, however, are exempted as "gathering lines" under this exclusion. Thus, tanks associated with rural pipelines that are not excluded from Subtitle I jurisdiction via the exclusion for pipeline facilities would be subject to this exclusion.

(9) Underground Areas Exclusion. The ninth exclusion covers "storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor."

This exclusion applies to "underground rooms" in which tanks are located on or above the floor surface. The purpose of this exclusion is to remove from UST jurisdiction tanks that are technically underground but that also are, in a practical sense, no different from aboveground tanks. They are situated so that, to the same extent as tanks aboveground, physical inspection for leaks is possible. Thus, the requirement to be able to physically inspect the tank for leaks is consistent with the purpose of this exclusion.

Tanks located in a below-grade structural vault, cellar, basement, mine or other underground room would be included in this exclusion if the tanks sit upon or above the surface of the floor and there is sufficient space to enable physical inspection of the tank, but not necessarily the tank bottom. An underground tank that has a secondary containment system that allows physical inspection of the tank would also qualify for this exclusion.

b. *Definition of Terms Used in the Regulations.* In addition to the preceding definitions of terms that clarify the statutory exclusions in section 9001 of Subtitle I, the Agency is setting forth the following definitions of terms used in the rule. This section today contains several terms that were not defined in the proposed rule. These terms have been included today in response to requests from commenters or to clarify other terms used in today's rule. These terms include cathodic protection tester, dielectric material, maintenance, pipe or piping, repair, and upgrading. Several terms that appeared in the proposed rule do not appear in this section of the preamble because they are no longer defined in the final rule. These terms are discussed (along with comment summaries and responses) in section IV.D. of today's preamble and include interstitial monitoring, inventory control, secondary barrier, and tank tightness testing. Also, liquid trap is now defined and discussed in the statutory exclusion section in IV.A.1.

Finally, several terms have not changed, did not receive public comments since proposal, and thus are not included here: Electrical equipment; operational life; overfill release; positive sampling, test, or monitoring results; release detection; and underground release. Explanations of these terms are found in the preamble to the April 1987 proposal.

(1) Aboveground Release. "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

Two commenters asked if the applicability of this term is determined by where the material escapes the UST or where it is eventually found. Commenters stated that a release from below the ground may eventually migrate to the surface, and a spill to the ground could infiltrate into the subsurface. The Agency has interpreted this term to apply to all leaks from the aboveground portion of an UST, including spills and overfills. The source of a leak, rather than its ultimate destination, is the determinant in assigning a leak to this category.

(2) Ancillary Equipment. "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that are used to distribute, meter, or control the flow of petroleum or hazardous substances to and from an underground storage tank.

This definition has not changed since the proposed rule. Some commenters asked if certain equipment, such as aboveground meters and pumps, was considered to be ancillary equipment, and to what extent such equipment would be regulated. EPA has clarified the discussion of ancillary equipment in the section on release detection to address the commenters' concerns.

(3) Belowground Release. "Belowground release" means any

release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

This definition is slightly different from the proposed rule, which contained different definitions for this term in the preamble and the rule. EPA has adopted the more general definition set forth in the proposal preamble. The definition in the final rule has also been clarified by substituting the term "regulated substance" for "petroleum" to include all regulated UST systems.

(4) Cathodic Protection. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

The phrase "for example" has been added to this definition since the proposed rule to emphasize that cathodic protection may be provided by either galvanic anodes or impressed current, but is not required to be one of the two. Any other technique that provides cathodic protection may also be used.

(5) Cathodic Protection Tester. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurement of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. This person must have education and experience in the measurement of cathodic protection of buried metal piping and tank systems. This definition was also added to the final rule in response to comments on the qualifications necessary for corrosion protection test personnel and is discussed in more detail in section IV.C.2. of this preamble.

(6) Compatible. "Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

One commenter suggested that the proposed definition, which based compatibility upon whether substances could maintain physical and chemical properties "upon contact with one another for extended periods of time and under varied environmental conditions (i.e., at different temperatures)," was ambiguous due to the phrases "extended periods of time" and "varied environmental conditions (i.e., at different temperatures)." The Agency agrees that these terms were vague and has replaced the phrase with "for the design life of the tank system under conditions likely to be encountered in the UST."

(7) Corrosion Expert. A "corrosion expert" is a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. This person must be accredited as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

As proposed, this definition required NACE certification. One commenter pointed out that NACE provides accreditation, not certification of corrosion expertise. NACE does in fact accredit and certify corrosion expertise. The final definition has been modified to take this into account. NACE also has recently introduced a certification program for cathodic protection specialists and cathodic protection testers.

Several commenters argued that the requirements for a corrosion expert were unnecessarily strict, and that their use would exclude many qualified people from work on UST systems. Many people, the commenters argued, did not have NACE certification or a professional engineering degree but were highly qualified based on their experience. The requirements of the definition (specifically, that a corrosion expert be accredited by NACE or have other types of licensing or certification) are not expected by EPA to exclude such qualified persons from work as corrosion experts unless they cannot satisfy the tests for accreditation. Thus, they are intended to provide some type of assurance to tank owners and operators, as well as implementing agencies, that a corrosion expert actually has achieved a minimum degree of expertise and experience needed to ensure corrosion is managed in a way that prevents leaks from UST systems and hereby protects human health and the environment. People who have attained the necessary qualifications through experience should be able to easily become NACE accredited.

(8) Dielectric Material. A "dielectric material" is one that does not conduct direct electric current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (i.e., tank from piping). This definition was added to the final rule in response to comments; see section IV.B.3.b. of today's preamble for further discussion of this issue.

(9) Excavation Zone. "Excavation zone" is defined as the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

The Agency has changed this term in the final rule from excavation "area" to excavation "zone" to indicate measurement in three dimensions.

(10) Existing Tank System. "Existing tank system" means a tank system used to contain an accumulation of regulated substance or for which installation has commenced on or before the effective date of this regulation. Installation is considered to have commenced if: (1) The owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and (2) if either: (a) A continuous on-site physical construction or installation program has begun, or (b) the owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction at the site, or installation of the tank system, to be completed within a reasonable time.

Existing tanks that are converted from tanks storing non-regulated substances to tanks storing regulated substances after the effective date of the rules are considered "new tank systems" and are required to meet new tank standards.

One commenter stated that the language in the preamble to the proposed rule implied that UST systems that were permanently taken out of service or decommissioned before the effective date of the regulations are "existing tank systems." Tanks that have been taken out of service would not meet the definition of "existing tank system" if they contained no regulated substances. However, the definition of "existing tank system" is only relevant to the determination of when certain requirements must be met, not which requirements apply. Certain regulatory requirements apply to out-of-service

tanks that were used in the past for the storage of regulated substances. Subpart G (§ 280.70) addresses out-of-service tanks, and this issue is addressed in section IV.G. of this preamble.

(11) Free Product. "Free product" refers to a regulated substance that is present as a non-aqueous-phase liquid (e.g., liquid not dissolved in water).

The proposal defined free product as "regulated substance in the non-aqueous phase (e.g., liquid not dissolved in water) that is beneath the surface of the ground." One commenter suggested that this phrase should include a non-aqueous phase regulated substance that is on surface water. The Agency agrees that this is free product and has modified the definition accordingly. Other commenters suggested that EPA clarify the definition to clearly exclude vapors from this definition. The Agency agrees that vapors are not free product and has added the term 'liquid' to the definition. Another commenter suggested a lower thickness limit of one-eighth of an inch be used as a cutoff; any layer of product with thickness lower than this should not be considered free product. The Agency does not agree with this concept because in some instances very thin layers may still be retrievable. The regulations require that free product must be removed to the maximum extent practicable as a part of the total site cleanup.

Other commenters suggested that the definition be modified to include a field criteria for use in corrective action. The Agency has chosen to not include this type of criteria because determining the presence of free product and the extent to which it can be removed depends on site conditions and the technology employed. EPA believes that it is preferable to leave this determination to the discretion of the implementing agency. This issue is discussed in more detail in section IV.F. of this preamble.

(12) Hazardous Substance UST System. "Hazardous substance UST system" means an UST system containing either (a) hazardous substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or (b) any mixture of such substances and petroleum that is not regulated as a petroleum UST system. Thus, the final rule, in effect, defines a hazardous substance UST system as any UST system storing regulated substances which is not a petroleum UST system. It is essentially a catchall for any UST system for which the effectiveness of petroleum release detection and corrective action technology is uncertain. By contrast, in the proposed rule, a hazardous substance tank system was defined as a system containing an accumulation of hazardous substances or a mixture of such substances and petroleum in which hazardous substances comprise greater than 50 percent of the weight or volume of the mixture. The change from the proposed to the final definition eliminates the proposed 50-percent mixture rule for distinguishing tanks subject to the petroleum release detection requirements.

Many commenters agreed with the Agency's proposal in the Supplemental Notice that a substance not found on the petroleum list but listed under CERCLA should be regulated as a hazardous substance. Other commenters felt that if a hazardous substance was a constituent in petroleum, then that substance should be regulated like petroleum when it is stored in its pure form. Other commenters stated the converse argument: That because some hazardous substances are constituents in petroleum, then petroleum should be regulated as a hazardous substance.

The final rules distinguish petroleum and petroleum-based substances from other hazardous substances or mixtures for the purposes of determining which type of release detection requirements apply to new UST systems. UST systems storing petroleum, including its natural or refinery-added "hazardous substance" constituents (and stored materials with petroleum-like characteristics), are allowed to use a wide range of release detection methods in today's rule because petroleum has chemical and physical properties that make it highly detectable and amenable to a wide array of available corrective action technologies. A hazardous substance in its pure form, however, does not necessarily retain the same characteristics when it is a constituent in petroleum. Thus, the storage of such hazardous substances in new UST systems is governed by the release detection requirements for non-petroleum regulated substances, i.e., secondary containment. In the final rule, the determination of which type of release detection requirement is appropriate at an UST storing a regulated substance is not based on the Agency's interpretation of the definition of "petroleum" or "hazardous substance." (For further discussions of the differences between petroleum and hazardous substance USTs and their associated release detection requirements, see also section IV.D.2. on hazardous substance release detection, and section III.C.3. on alternative approaches to hazardous substance UST systems.)

In the proposed rule, an UST system was regulated as either a petroleum or hazardous substance UST system based on whether "petroleum" or "hazardous substances" were stored in the system. The problem of how to regulate a mixture of petroleum and hazardous substance was addressed in the proposed definitions of hazardous substance UST and petroleum UST by the "50-percent rule." A mixture of regulated substances was subject to either the petroleum UST system requirements or hazardous substance UST system requirements depending on which of these substances comprised more than 50 percent of the mixture. At proposal, the Agency thought this was a straightforward way to decide which release detection requirements for new UST systems were applicable to a mixture or blend of petroleum and hazardous substances. After proposal, however, the Agency became concerned that this approach would prove to be unworkable because of the difficulty of measuring constituent concentrations and the uncertainty of how to address constituents of petroleum that are also hazardous substances. In addition, there is not a single percentage value that is applicable to all mixtures and blends for determining when the substance will no longer be reliably detected by one of the release detection technologies allowed under the rule for petroleum USTs, and there is a wide variation in the degree of "hazardousness" among the many substances listed in section 101(14) of CERCLA.

For these reasons, in the Supplemental Notice, the Agency considered replacing the 50-percent rule with a specific list of all substances and blends of regulated substances that would be regulated under petroleum UST requirements. Any other blend or mixture of regulated substances would be subject to hazardous substance UST requirements. Many commenters supported the proposed 50-percent rule because it was clear and because it would be difficult to list all petroleum substances. Others supported the 50-percent rule approach but recommended alternative percent values ranging from 1 percent to 50 percent. Many commenters, particularly state agencies, supported the idea of a list because it would lessen the need for determining how to regulate a particular stored mixture, and thereby decrease the burden on the implementing agencies. It was also believed to give the owner and operator clear guidelines in determining the status of blends and, therefore,

which release detection method to use. These commenters said that any percentage method would be cumbersome and difficult to enforce because it would be difficult to measure concentrations in the UST system.

After consideration of all of these comments, EPA concluded that neither a percentage rule nor a comprehensive list of petroleum or petroleum-based substances is a practical solution to the problem of how to determine which blends and mixtures of regulated substances must meet the release detection standards for new UST systems storing hazardous substances. (See the discussion concerning "regulated substance" in section IV.A.4.a. earlier in this preamble for the reasons why the Agency rejected the proposed comprehensive list approach.) The main drawback to the percent approach is the variability of a meaningful value. For example, 5-percent pesticide mixed in oil or 5-percent pentachlorophenol mixed in mineral spirits for application purposes should be stored in USTs with secondary containment and interstitial monitoring because of the high toxicity of these substances and the unavailability of highly effective corrective action technologies and release detection. In contrast, a hazardous substance such as methanol that is highly flammable as a pure product can be blended in relatively high proportions with motor gasoline and not change the flammable nature of the motor gasoline. It can be safely stored in a protected single-walled tank because release detection and corrective action technology are available for the petroleum-methanol mixture; and these methods are the same or very similar to those used for petroleum products. Thus, the appropriate percentage value to use in determining the release detection requirements that must be used at a new UST storing a mixture of regulated substances should be determined by the implementing agency based on a consideration of the following factors: The availability of reliable and sensitive release detection, the availability of effective corrective action technologies, and the inherent toxicity of the substance stored.

The final rule, therefore, does not contain a "50-percent rule" to determine how mixtures of petroleum and hazardous substances should be regulated. Rather, the final rule lists specific substances subject to the petroleum UST system requirements and uses a *de minimis* standard to determine when other mixtures of petroleum and hazardous substances are subject to petroleum UST system standards. A "petroleum UST system" is, thus, one which contains petroleum or petroleum and *de minimis* amounts of other regulated substances. Any other UST system is a hazardous substance UST system and must be provided with secondary containment or obtain a variance. The *de minimis* amount of hazardous substance mixed with a petroleum product is that amount in which the additional hazardous substance does not alter the detectability, effectiveness of corrective action, or toxicity of the petroleum to any significant degree.

(13) Hydraulic Lift Tank. "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

One commenter stated that the definition of this term in the proposal did not include elevator lifts. In response, the Agency changed this definition to include lifts that operate by compressed air or hydraulic fluid. This change properly includes all elevator lifts within the hydraulic lift definition.

(14) Implementing Agency. "Implementing agency" means EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

As the definition states, section 9004 empowers the Agency to approve a state program to operate in lieu of the federal program. The state agency responsible for carrying out an approved program is the lead implementing agency for the UST program. A state may decide to work through designated local agencies to carry out the approved program. It is important to note that the local or state agency responsible for the enforcement of the UST regulations, particularly once the state program is approved, is expected to be an owner and operator's first contact in any situation involving a leaking UST system. The state and local agencies could then contact EPA if necessary.

(15) Maintenance. "Maintenance" is the normal operational upkeep to prevent an UST from releasing product. This definition has been added since proposal in response to requests by several commenters for clarification of this term. The comments and the use of this term are discussed further in section IV.C.2. of this preamble.

(16) New Tank System. "New tank system" means a tank system that will be used to contain an accumulation of regulated substance and for which installation has commenced after the effective date of this regulation.

Existing tanks that are converted after the effective date of this regulation from tanks storing non-regulated substances to tanks storing regulated substances are considered new UST systems and are required to meet new tank standards.

(17) Petroleum UST System. "Petroleum UST system" means an UST system containing petroleum or mixtures of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, or used oils.

In the proposed rule, a petroleum UST system was defined as a system that contained an accumulation of petroleum or a mixture of regulated substances and petroleum in which petroleum comprised greater than 50 percent of the weight or volume of the mixture. In the Supplemental Notice, the Agency proposed the development of a list of petroleum or petroleum-based substances subject to the petroleum UST system requirements. Based on public comment, however, the Agency has decided that it would be unworkable, time consuming, and largely unnecessary to specifically identify all possible petroleum products, petroleum-based substances, and mixtures of these substances with hazardous substances that should be subject to petroleum UST standards.

The definition for petroleum UST systems has been revised in two ways in the final regulation. The 50-percent rule for mixtures has been deleted and replaced with a limitation of non-petroleum regulated substances to *de minimis* levels. Use of this approach is intended to better determine if an UST system qualifies for the new petroleum UST release detection methods (see also definition of hazardous substance UST system). In addition, a list consisting of seven general categories of substances has been added to the petroleum UST system definition to more clearly identify the major types of petroleum and petroleum-based substances that may be stored in new protected single-walled tanks with release detection rather than only in UST systems that meet the secondary containment requirements. These categories are not substances that necessarily must be defined as petroleum under CERCLA, but instead are substances for which the Agency has determined single-walled tanks with cathodic protection and

monthly release detection are adequate to protect human health and the environment. Other mixtures of regulated substances (for example, petroleum products mixed with non-indigenous hazardous substances or contaminated petroleum products) will have to be considered on a case-by-case basis by the implementing agency, using the *de minimis* rule. The EPA anticipates that few blends and mixtures will present interpretation difficulties. See part (12) of this section for an explanation of the application of the *de minimis* rule.

(18) Pipe or Piping. A "pipe" or "piping" is any hollow cylinder or tubular conduit that is constructed of non-earthen materials. This definition has been added since the proposed rule at the suggestion of a commenter (see sections IV.B.1. and IV.C.5. of this preamble for further discussion).

(19) Repair. "Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

This term has been added since proposal in response to public comments requesting additional clarification concerning the differences between repair, upgrading and maintenance. Refer to section IV.C.5. of today's preamble for further discussion of this issue.

(20) SARA. "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(21) Sump. This term has been deleted from the final rule.

Several commenters stated that this definition was ambiguous due to the inclusion of the term "temporarily." They suggested it be removed or that an actual time be substituted. The Agency agrees and has eliminated the definition from the final rule. This definition is no longer needed because the final rule no longer contains any requirements or provisions specific to sumps.

(22) Upgrade. An "upgrade" is the addition or retrofit of some portion of an UST systems, such as cathodic protection, lining, and spill and overfill controls, to improve the ability of the UST to prevent the release of product in accordance with § 280.21.

Although this term was not defined in the proposal, it has been added at the recommendation of commenters. Further discussion of upgrading is presented in section IV.B.3. of today's preamble.

(23) UST System or Tank System. "UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any. This definition has been changed to include within the UST system only underground ancillary equipment.

Two commenters suggested that the phrase "underground piping" be defined to exclude any non-wetted piping such as vent lines. EPA does not agree with the commenters. Because such "non-wetted" piping can contain regulated substances, particularly when the tank is overfilled, EPA believes that certain requirements in this rule are applicable to this type of piping. Clarification has been added in today's rule regarding which requirements are applicable to "non-wetted" piping.

(24) Wastewater Treatment Tank. "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

This definition has been changed since the proposal so that it no longer includes only tanks regulated under the Clean Water Act. This term now refers to any tanks that are designed to treat wastewater. Of these, only some are regulated under the CWA. This change was required due to the different regulations for CWA-regulated and non-CWA-regulated wastewater treatment tanks.

B. UST Systems: Design, Construction, Installation, and Notification

The following sections present major issues raised by public comments and new information gathered since proposal concerning the design, construction, installation, and notification of UST systems. Also, these sections discuss changes in the final rule based on these public comments and this new information.

1. Design and Construction Requirements (§ 280.20)

As discussed in the preamble to the April 17 proposal (52 FR 12695), EPA concluded that national design and construction requirements are needed for new UST systems, especially with regard to corrosion protection. In discussing general approaches to design and construction standards, EPA concluded that industry codes of practice adequately address proper design. EPA invited comments on the methods that should be used to recognize development of future codes of practice that meet the intent of the requirements of the proposed rule concerning the design, construction, and protection from corrosion of UST systems. Many comments were received by EPA on this issue.

Many commenters suggested that EPA set detailed design standards in the final rule. Some new or alternate methods for tank design, fabrication, or protection techniques were suggested. For example, a few commenters suggested that concrete tanks should be more explicitly allowed. One suggested adding unbonded polyethylene wrap as an option for corrosion protection. EPA still believes, however, that the general approach taken at proposal of relying on industry codes of practice, rather than specifying detailed regulatory standards, is more appropriate because this approach allows new and effective technologies to be developed and put into use.

In today's final rule, EPA simply requires that all new tanks be designed and manufactured according to standards of a nationally recognized organization or an independent testing laboratory. These requirements also allow the use of concrete or stainless steel tanks if the implementing agency determines that the design, construction method, and corrosion protection system would prevent the release of any stored regulated substances in a manner that is no less protective of human health and environment than tanks allowed by the requirements of § 280.20(a) (1)–(4). Specific design and construction issues are discussed in detail below.

a. *Tank Requirements (§ 280.20(a)).*

(1) Fabrication. As discussed in the preamble to the April 17 proposal (52 FR 12696), EPA proposed to require one of three fabrication techniques for tanks: Fiberglass-reinforced plastic (FRP), coated and cathodically protected steel, and steel-fiberglass-reinforced plastic composite. The allowed fabrication techniques were chosen to provide protection of buried structures from galvanic corrosion by using either a cathodic protection system or noncorrodible materials. Although comments were submitted suggesting flaws in each of the UST types listed in the proposal, the data submitted indicate excellent performance of all these protected tanks. Recent studies sponsored by EPA have yet to identify a documented case of failure by corrosion of these protected, "new generation" tanks having in-service ages of up to 30 years. Therefore, today's rule is unchanged with respect to these new tank fabrication requirements.

Information obtained by the Agency since proposal on performance of each of the three fabrication techniques specifically allowed in the final rule is briefly summarized below. Additional discussion is presented earlier in the Causes of UST Releases section of today's preamble.

FRP Tanks. Nearly 200,000 FRP tanks have been installed nationwide, with

some as old as 22 years old. There were some failures of these tanks when first introduced; however, modification of installation practices and tank design has reduced the annual failure rate to less than 0.05 percent. If the tank fails, failure usually occurs soon after installation and is due to improper installation.

Coated and Cathodically Protected Tanks. Approximately 100,000 of these tanks have been installed at UST sites. Though some of the tanks are over 20 years old, the majority have been installed within the last 5 years. There have been very few failures of these systems to date. None of the failures have resulted in a warranty claim. The few failures that did occur were due either to improper installation practices or to not following monitoring procedures correctly. Cathodic protection technology has been widely applied to pipelines and other buried metal structures for over 30 years. A dramatic reduction in failures has resulted from the use of cathodic protection on pipelines.

Composite Tanks. This tank type is not as popular in this country as the other types of protected tanks, but has been widely used in Europe. Approximately 65,000 composite tanks have been installed in the U.S. and have been in use for about 25 years without a single reported corrosion-related failure. The current manufacturing standards for these tanks are much more stringent than they were in the past. Even though there is not as much historical performance data on composite tanks as there is for FRP or coated and cathodically protected tanks, EPA has confidence in their future performance because of the fault-free performance of the older tanks of this type and the more stringent manufacturing standards that are now in use.

(2) Corrosion Protection—Corrosion Experts. EPA proposed in § 280.20(a) that field-installed cathodic protection systems should be designed by an independent corrosion expert. The Agency requested comments on the merits of this approach, and several comments were received by EPA on this issue. Most of the comments strongly opposed the requirement of an "independent" corrosion expert because they felt that this requirement would place an unnecessary financial burden on owners. In addition, they pointed out that the term "independent" should not be required because very few independent corrosion experts are available. Some suggested that the term "independent" should be replaced with "certified" or "qualified." Others suggested the use of "in-house" expert because an "in-house" corrosion expert would have better working knowledge of the systems to be protected, condition of use, and the surrounding environmental condition.

Although no clear evidence was submitted to indicate that corrosion protection systems that are designed by independent experts would perform better or worse than systems designed by non-independent experts, information obtained from public comments indicates that relatively few independent corrosion experts are available to fulfill the large demand for system designs. In the final rule, EPA has, therefore, deleted the requirement that the corrosion expert must be independent. Thus, the use of in-house personnel is acceptable provided that they meet the definition of "corrosion expert."

Composite Tanks. In the preamble to the proposal (52 FR 12698), EPA invited comments, standards, and documented performance data for FRP-steel composite tanks (also called "clad" tanks). Several comments were received by EPA on the issue of whether or not cathodic protection is needed for composite tanks.

EPA believes that cathodic protection for this type of tank is not needed because the exterior of the steel tank is bonded to a thick fiberglass shell that has inherent corrosion resistance properties. EPA was unable to identify one case where this type of tank has failed due to corrosion and also noted that one major manufacturer of this type of tank recently began to offer lifetime guarantees from failure for its tanks. Thus, in the final rule, EPA has retained the provision that, as long as these tanks are designed and manufactured according to a recognized national standard of practice, FRP-steel composite tanks do not require cathodic protection.

At proposal, industry codes for composite tanks were still in draft form. Commenters suggested that composite tanks should be excluded from the final rule until UL 1746 is final. EPA disagrees with this comment because manufacturers are now being approved under this standard in its draft form. Moreover, EPA has amended the rule to reference a new industry consensus design standard, ACT-100, "for the fabrication of FRP clad or composite underground storage tanks" submitted by a commenter. Accordingly, EPA has concluded that it is unwarranted to delay allowing the use of composite tanks given their outstanding performance to date and the availability of the ACT-100 design standard and the draft UL 1746 performance standard.

No 12,000 ohm/cm Exclusion. As discussed in the preamble to the April 17, 1987, proposal (52 FR 12698), EPA had proposed dropping the 12,000 ohm/cm exclusion for underground tanks contained in the Interim Prohibition (see section 9003(g)(2) of RCRA). As stated in the proposal, this measurement alone does not adequately define a soil's propensity to corrode. Soil resistivity varies with depth and moisture content, and corrosivity has been demonstrated in soil with a 30,000 ohm/cm reading.

Many comments were received by EPA on this issue. Some requested that EPA retain the 12,000 ohm/cm exclusion in the final rule. Others agreed with the proposed approach stating there is no technical basis to establish a single number by which the corrosivity of all soils can be measured. EPA continues to believe that use of a single resistivity variable is inadequate to measure the propensity to corrode. Therefore, EPA has decided not to include the 12,000 ohm/cm exclusion in the final rule.

Some commenters suggested that there are situations where the surrounding soils are not corrosive and requested that a mechanism for relief from the corrosion protection requirements be provided for those situations; for example, a soil that is uniform and very dry (low moisture content), where the ground-water table continuously stays several feet below the bottom of the UST installation, and the area above the installation is paved to prevent percolation of rainfall and runoff. EPA agrees with these commenters and is including § 281.20(a)(4), which allows an exemption for metal tanks from the requirement that all UST systems be corrosion protected provided that a corrosion expert determines that the site is not corrosive enough to cause a release during the tank's operating life. In addition, owners and operators must retain records of this determination for the operational life of the tank. These records should include evidence of the corrosion expert's qualifications and the results of the site assessment.

Alternative Designs. In the proposed rule (§ 280.20(a)(4)), other tank designs are allowed if the implementing agency determines them to be no less protective of human health and the environment. In response to the proposal, commenters requested approval for several types of tanks including those constructed of concrete, stainless steel, and steel encased in polyethylene. Several other commenters reported to the Agency

other potentially useful designs such as nylon tanks.

As a result of these comments, EPA sought information on several of these alternative designs and continues to believe that, with certain materials of construction and under certain site-specific soil conditions, alternative systems can be designed that will adequately protect human health and the environment. In addition, EPA is aware of new design techniques being researched that appear promising but are not commercially available. The Agency does not desire to restrict or eliminate emerging technologies and recognizes the numerous site-specific factors that may allow for the use of alternative designs. Therefore, today's rule continues to provide that the implementing agency may approve alternatives that are no less protective of human health and the environment than the specified designs.

The Agency has not, however, added any of these alternative designs to the designs specifically allowed by the regulation because there is not enough documented history about the performance of these systems or industry consensus codes governing their fabrication and use. One system, for example, consists of a steel tank surrounded by a thick, high-density polyethylene "jacket." The "jacket" is intended to provide both corrosion protection and secondary containment. It has been reported to EPA that over 1,000 of these tanks have been installed. Some local and state implementing agencies have been approving this design. Sometimes, specific monitoring or demonstrations have been required to ensure that the design provides protection equal to that provided by the other types of protected tanks. It has also been reported that several manufacturers of this type of tank have begun the process of working with independent testing laboratories toward developing testing and evaluation methods for steel tanks encased in noncorrodible secondary containment structures. This process may take several years to complete however. The Agency does not wish to unduly restrict the use of this type of product in the interim and recognizes that the manufacturers need to have continued product sales to be able to fund the needed development and testing of these evaluation methods. Thus, EPA views the type of approval allowed under § 280.20(a)(4) as essential to the continued development of such new tank systems. For example, the long-term performance of a system is difficult to establish in the absence of allowing actual installations in the field. Accordingly, the final rule preserves the proposal's allowance of the use of alternative new designs as long as they are approved by implementing agencies to adequately protect human health and the environment.

Implementing agency approval of alternative new tank designs, or special designs for specific sites, will only be provided if the UST system is determined to be no less protective of human health and the environment than the other types of tanks already listed in today's rule. Accordingly, an alternative design must meet the two basic criteria that all of the other methods meet: (1) It must be designed and constructed to prevent releases due to structural failure for the operating life of the system, and (2) it must be designed to prevent releases due to corrosion for its operating life. For example, the "jacketed" tanks described earlier obviously meet the structural criteria because each inner steel tank is built to the U.L. 58 standard. These types of tanks are also designed to prevent releases due to corrosion because the secondary containment jacket isolates the steel tank from the surrounding soil. However, in the absence of an existing consensus code applicable to the jacket, or a long-term performance record, it is difficult to determine if releases due to corrosion will be prevented for the tanks' operating life. Thus, the implementing agency could allow the use of this type of tank if a national consensus code is eventually developed for the jacket or this outer jacket is determined to be free of holes at least as frequently as cathodically protected tanks are checked (after installation and every 3 years thereafter). The integrity of this outer jacket can be ensured in several ways, including several methods of interstitial monitoring or the periodic performance of a tank structure-to-soil potential measurement by a cathodic protection tester.

b. *Piping Requirements (§ 280.20(b)).* The proposed rule (52 FR 12693) required the same corrosion protection for piping systems as used for the underground storage tank itself. Two types of protection systems were allowed: fiberglass piping, or coated and cathodically protected steel piping. The same as for the tanks, provisions for approval of alternative piping methods were also proposed. Today's rule remains largely as proposed, although the requirement for an "independent corrosion expert" has been revised to delete the requirement for independence, and an option for approval of alternative designs by a corrosion expert has been added. These issues are discussed below. In addition, the extent of corrosion protection of components and possible alternate materials of construction were highlighted as issues in the proposal for public comment and are discussed in detail below.

(1) Independent Corrosion Expert. EPA proposed in § 280.20(b) that steel piping coated and cathodically protected with a field-installed cathodic protection system must be designed by an independent corrosion expert. The Agency requested comments on the merits of this approach. Several comments were received by EPA regarding the need for an independent corrosion expert concerning the protection of steel tanks. (See section IV.B.1.a.(2). for a discussion of this issue.) In response to these comments, EPA has removed the requirement that the corrosion expert must be independent.

(2) Corrosion Protection of Tank System Components. The Agency invited comments on which tank components, if any, should be cathodically protected and, if cathodic protection is not required, what form of corrosion protection is appropriate. Several comments were received by EPA on this issue. Some suggested that EPA should require cathodic protection on FRP-steel composite tanks as well as any steel fittings on FRP tanks. Some suggested that all metallic components of the UST system, including metallic connectors, swing joints, flexible connectors, and riser connections should be coated or cathodically protected. Other commenters suggested that cathodic protection on steel fittings on FRP tanks is unnecessary and that components like bung hole plugs and pump housings do not need cathodic protection.

EPA agrees with the commenters who stated that cathodic protection of tank fittings is not needed because these components are located at the top of the tank and rarely contact the stored product. Section 280.20(a) of the final rule has been modified to restrict the applicability of the corrosion protection requirements to "any portion underground that routinely contains product."

EPA's causes of release study indicates that the operational piping portion of UST systems is twice as likely as the tank portion to be the source of the release. Piping failures are caused equally by poor workmanship and corrosion. Threaded metal areas made active by threading have a high propensity to corrode if not coated and

cathodically protected. Today's rule specifically requires the corrosion protection of operational underground piping and components that are in contact with the soil and convey product to or from the tank (e.g., flexible connectors, swing joints, pipe fittings, and impact valves), whether in metallic or FRP piping runs. Nonoperational components, such as vent and vapor recovery lines, on the other hand, need not have corrosion protection because these components should never contain free liquid product, particularly under today's requirements for overfill prevention (see § 280.30). Metallic components, such as swing joints, do not need cathodic protection if they are placed in pump housings and are not in contact with the ground.

The Agency also invited suggestions on the use of pipes other than FRP and corrosion-protected steel pipe. One commenter suggested use of copper tubing. Today s rule allows copper tubing under two circumstances. First, copper piping would be allowed if a corrosion expert determines that the site is not corrosive enough to result in a release during the operational life of the piping. Second, copper piping would be allowed if the design and construction methods and corrosion protection are determined by the implementing agency to prevent the release of any stored substances in a manner no less protective of human health and the environment than the requirements in § 280.20(b) (1), (2) and (3).

c. *Spill and Overfill Control (§ 280.20(c)).* Design and construction requirements for new UST systems include spill and overfill equipment requirements. These additional requirements are discussed below in section IV.C.1., "Spill and Overfill Control."

d. *Other Issues. (1) Internal Corrosion.* In the preamble to the April 17 proposal (52 FR 12699), EPA solicited comments on whether internal corrosion could become a major source of failure. EPA requested comments based on the industry's field experiences with internal corrosion protection systems in terms of design, installation, efficacy of performance, and problems found. EPA also requested information on the need for internal corrosion protection and whether it should be required, particularly for all new steel UST systems.

The Agency has received several comments on this issue. Many expressed the opinion that internal corrosion is one of the causes of tank leaks. Some suggested mandating internal tank lining to reduce or to eliminate internal corrosion and thereby prevent leaks. Some suggested that EPA require the use of striker plates below fill and gauge fittings. A few suggested requiring the use of soft-tipped inventory dipsticks. Some commenters took the position that internal corrosion is not a problem and should not be regulated.

EPA agrees with the commenters who argued that tank lining will reduce the incidence of failures resulting from internal corrosion. The Agency is not, however, mandating the requirement of tank lining on new tanks because it has concluded that striker plates, now required under the consensus codes, solve the problem. At present, evidence is limited concerning the potential of internal corrosion to cause newly constructed tanks to fail. Estimates of the incidence of internal corrosion-induced tank failures range from 5 to 60 percent of the total steel tank population. Several tank lining companies submitted data that indicate internal corrosion is a significant cause of release. By contrast, internal corrosion was not found to be a significant cause of release in an EPA-sponsored study of over 400 tank closures carefully investigated by Suffolk County, New York, health department officials. The results of this study and other information lead the Agency to believe that the incidence of steel tank failures due to internal corrosion is probably less than 10 percent of the total tank universe, that it occurs most often in smaller tanks, and that it takes place later in the operational life of these tank systems. The few cases of internal corrosion holes that were witnessed in this study appeared to be generally located at the bottom of the tank fill pipe opening and often could have been prevented if striker plates had been used. These findings are corroborated by numerous tank manufacturers who submitted comments on the proposal, citing their collective experiences that internal corrosion is not a problem on tanks equipped with striker plates. Many of them suggested that the use of striker plates below the fill and gauge fittings will protect the primary location where internal corrosion occasionally breaks through.

EPA agrees with the commenters who believe that striker plates can largely eliminate the internal corrosion problem. The final rule, however, does in effect, require the use of striker plates because they are standard on new steel tanks and included in the referenced codes of practice developed by nationally recognized associations or independent testing laboratories. The Agency agrees with commenters who suggested that the use of soft-tipped dipsticks will also reduce internal corrosion. The final rule does not, however, include this alternative because it is not needed with striker plates now standard on all tanks.

(2) Manways. The Agency requested comments and information about the required use of manways on top of new tanks and whether traditional "bunghole" systems of tank entry would result in a significant reduction in releases. Several comments were received by EPA on this issue. Commenters were divided on the requirements of manways. Some of them felt that manways do not reduce the number of leaks, but may instead add another potential source of release. Some felt that the requirement of manways is necessary because a number of costly release investigations can be avoided by manual inspection from inside a tank. A few commenters supported manways but felt that their use should not be mandated.

EPA agrees with the commenters who recommended manways as a sound practice but believed they should not be required in the final rule. Although manways facilitate the manual inspection of the interior of a tank, other forms of release detection make internal inspections and, thus, the use of manways unnecessary (see discussion in section IV.B.2.g.(2). concerning internal inspections and release detection).

2. Installation (§§ 280.20 (d) and (e))

a. *Overview.* As was discussed in the preamble to the April 17 proposal (52 FR 12700–12702), improper installation is often a cause of release from various components of the UST system. The public comments on the original proposal and on the Supplemental Notice (December 23, 1987) have reinforced the belief that proper installation is critical to preventing releases from the UST system. The new causes of release information obtained by the Agency since proposal (which is discussed in section II.F.2. of this preamble) indicates that improper installation is one of the major causes of underground storage tank and piping failures. Additionally, the majority of industry experts felt that improper installation causes many of the piping failures. Though the reported failure rates of FRP and protected-steel tanks are very low, failures that have occurred are usually related to improper installation.

Some of the installation practices that have been identified as leading to UST system releases include: Non-homogeneous backfill, which is often

cited as causing localized corrosion of unprotected steel tank system components; improper selection and placement of backfill, which leads to structural failure in FRP tanks; loose fitting in the bungs and vent lines, which leak when the tank is overfilled; and improper layout, fabrication, and installation (backfill placement and inadequate cover) of the delivery piping, which can lead to loose or broken pipe and fittings.

The proposed rule addressed these installation problems in § 280.20 (c) and (d). Section 280.20(c) listed the specific requirements for conducting a proper installation. Section 280.20(d) required owners and operators to indicate on the notification form how proper installation was ensured. The comments and revisions for the final rule on both of these sections are discussed in more detail below.

b. *Installation Practices.* EPA proposed in § 280.20(c) that all tanks and piping be installed in accordance with the manufacturer's instructions and nine specific requirements that were based on the major installation steps outlined in two industry codes: Petroleum Equipment Institute RP100–86 and American Petroleum Institute 1615. The Agency requested comment on this approach, in particular the use of a final system test, after backfill is placed around the storage system but before it is placed into operation, to ensure proper installation.

Comments were received that supported the proposed approach. Many commenters, however, suggested refinements or exceptions to several of the nine specific requirements. In addition, the industry consensus codes from which the nine requirements were derived have been revised and reissued since the proposal. These two codes are now in substantial agreement, and their recommended practices are reported to be widely used by installers. One of the reasons that the Agency included the nine specific installation provisions in the proposal was to emphasize certain important basic points already set forth in the national consensus codes.

EPA now believes that the recently revised codes addressing proper installation practices are even closer in representing a national consensus and provide appropriate guidance for proper installation. The nine specific requirements have, therefore, been deleted from the final rule as unnecessary and are replaced with a more general performance standard (in § 280.20 (d) and (e)) that simply requires that owners and operators ensure that the UST systems are installed in accordance with nationally accepted codes of practice and the manufacturers' instructions (if any).

An example of an installation practice that requires the consideration of both the national consensus codes and the manufacturer's instructions is the joining of FRP piping to metallic components. The consensus codes provide general guidance concerning where and how to make such joints, but the two major FRP piping manufacturers provide specific instructions concerning the details of fabricating this type of joint.

c. *Ensuring Proper Installation.* EPA proposed in § 280.20(d) that owners and operators indicate from a list of methods on the proposed notification form which method they used to ensure proper installation. Also, proposed § 280.20(d) required that owners and operators obtain the installer's signature certifying which method was used to ensure proper installation. EPA requested comment on the advisability of requiring owners and operators to use one or more of these methods and the relative merits of each method.

In general, all comments supported EPA's contention that requirements for ensuring proper installation are warranted. Each approach that EPA had identified to ensure proper installation was favored by at least one commenter. No data were submitted to EPA in response to the proposal that showed any of these methods to be unworkable, ineffective, or preferred over all the others. Therefore, all but one of them have been retained in today's final rule, and they have been renumbered as § 280.20(e).

The one method that has been deleted from the final rule was the testing for leaks during and after installation. This method was deleted because all national consensus codes for installation require such testing during and after installation and thus this testing is part of proper installation under § 280.20(d), and not an optional method of certification as required under § 280.20(e).

Other methods of ensuring proper installation were suggested by commenters. The first suggestion was to certify owners. Although the certification of owners could improve installation practices, the Agency is concerned that the implementation of an education and testing program of this magnitude would be very difficult to accomplish and not likely to be very effective, because owners do not usually install their own tanks. Some commenters suggested that EPA develop a national installer certification program. EPA believes, however, that implementing such a program at the national level, particularly given the large number of installers necessary, would be unworkable and would delay implementation of this rule. Also, the fact that proper installation can be effectively ensured by a variety of approaches makes a national program for certification of installers unnecessary. EPA believes that state and local governments are in a much better position to develop such programs as they deem necessary.

Some commenters suggested requiring certification of installers by a professional organization. EPA is not aware, however, of any professional association that is in a position currently to certify the large number of installers expected to be needed in the following years and, therefore, has not required such certification in the final rule.

Section 280.20(e) of the final rule requires owners and operators to indicate on the notification form which method for ensuring proper installation was used. Although EPA believes that the use of one or more of the methods allowed (i.e., manufacturer or implementing agency certification of the installer; inspection of the installation by a professional engineer or the implemental agency; completion of manufacturer's installation checklist; or another method as approved by the implementing agency) will improve installation practices, today's allowance of a variety of methods will give owners, operators, and implementing agencies flexibility to choose the most appropriate methods.

EPA has also retained the requirement in the final rule that owners and operators obtain the installer's certification that the installation was properly performed. Thus, § 280.22(f) of the final Notification Requirements requires owners and operators to have the installer certify on the notification form that the UST system was installed in accordance with the performance standards of § 280.20(d). A signature block is provided on the notification form for the installer. EPA intends that owners and operators will obtain the signature of the person primarily responsible for the installation of the tank and piping system. In cases where the owner functions as the general contractor, hiring several parties to conduct the tank and piping installation, then the owner could be considered the installer.

In the proposal preamble, comments were requested on the advisability of requiring a site plan and, if it were required, what level of detail was necessary. Most commenters favored the requirement for a site plan but

differed on the level of detail required for the plan. Some commenters favored a simple sketch and others favored an engineering drawing that would locate the tanks and the piping, indicate the sizes and routing of the piping, and indicate the location of structures on the site. Information obtained from the "Causes of Release Study" (see section II.F.2. of today's preamble) indicates that site plans are prepared voluntarily by most major corporations and are required in some jurisdictions when applying for building permits.

The Agency has determined that it will not make site plans a required record because it is not necessary to ensure compliance with the technical requirements promulgated today. A site plan is, however, a useful tool for owners and operators. The Agency notes that site plans are recommended in recent updates of national codes addressed to the installation of new UST systems.

3. Upgrading of Existing Systems (§ 280.21)

EPA proposed in § 280.21(a) that, within 10 years after the effective date of the final rule, all existing UST systems comply with the requirements for new UST systems under § 280.20 and have a field-installed cathodic protection system designed by an independent corrosion expert. If these requirements could not be met, these UST systems would have to be closed. The Agency requested comments on these proposed requirements and the need for upgrading UST systems to prevent releases (see 52 FR 12702–12705).

a. *Mandatory Upgrading Schedule. (1) Overview.* EPA concluded in the proposal (52 FR 12702–12704) that the universe of 1.4 to 2 million existing UST systems presents a significant threat to the public health and environment from product releases due to spills, overfills, and corrosion of unprotected steel tank systems. Presently, the majority of existing UST systems are not equipped with any of the release prevention or detection features that were proposed. The Agency also concluded that if these existing systems were retrofitted with safeguards proposed for new UST systems, a significant number of product releases could be prevented or minimized.

EPA proposed two different schedules for implementing UST system upgrades: One for installation of release prevention (corrosion protection and spill/overfill controls), and another for release detection.

- Corrosion protection (which would consist of cathodic protection for bare steel tanks, for example), and spill and overfill controls were proposed to be installed at all existing UST systems within 10 years (see 52 FR 12774 and 12779).
- Release detection at unprotected and protected existing UST systems was proposed to be phased in at 3 and 5 years, respectively, with monthly release detection monitoring proposed for all UST systems after 10 years.
- UST systems that could not implement a reliable and effective release detection method, or that did not meet upgrade requirements for corrosion protection and spill and overfill controls, within the required time frames proposed were to be replaced (to meet new tank standards) or permanently closed.

The proposed implementation schedule for release detection has been changed in the final rule to require existing UST systems to phase in release detection based on age over the first 5 years after the rule's effective date. (Further discussion about the Agency's rationale for changing this proposed requirement is presented in section IV.D.3. of today's preamble.) In today's final rule, the Agency has retained the proposed requirement that all substandard existing UST systems be closed, replaced, or retrofitted with corrosion protection and spill and overfill control equipment within 10 years after the rule's effective date. The final requirements concerning the upgrade of corrosion protection and spill and overfill controls (indicating public comments on this issue) are discussed below. The schedule issues are discussed first, followed by the upgrading methods.

(2) Approaches to Today's Rule. During development of the proposed rule, the Agency considered several approaches and requirements for scheduling upgrade and replacement of existing substandard UST systems, including: rapid upgrade and replacement (e.g., within 3 to 5 years), gradual upgrade and replacement (within 6 to 12 years), and no required upgrade and replacement of existing UST systems. EPA selected the gradual approach, proposing that all existing UST systems storing regulated substances be required to either upgrade to new tank standards within 10 years (through retrofitting or replacement) or be permanently closed.

Many commenters, including several segments of the UST service industry, supported the 10-year upgrade period, believing that this is a reasonable time frame to allow their industry to respond to the large universe of existing tanks that will need to be upgraded, replaced, or closed. As discussed in the preamble to the proposal (52 FR 12704), one important advantage of this approach is that it appears to complement current industry trends towards upgrading or replacing voluntarily, while setting a clear target date by which all upgrades and replacements must be completed. This approach provides flexibility to implementing agencies by allowing them to choose from numerous alternative phase-in approaches (e.g., based on tank age, tank type, or environmental vulnerability of the site) the most appropriate and applicable method to achieve an orderly transition in meeting the 10-year compliance deadline. In summary, both EPA and many commenters believe that the proposed 10-year compliance period will provide time that is adequate to implement the required improvements at the 1.4 to 2 million UST systems nationwide.

Other commenters stated that the 10-year mandatory upgrade period is too ambitious and should be relaxed (or lengthened) for those owners and operators with multiple tanks, with financial limitations, or in states where upgrade/replacement programs have already been implemented. EPA continues to remain unconvinced, however, that extending the proposed compliance period will significantly lessen the burden on multiple tank owners or on owners and operators with limited financial resources because if bare steel tanks are allowed to continue operation after 10 years, many will eventually leak and require corrective action that is much more burdensome than upgrading. EPA also expects that most UST owners and operators will make the decision to upgrade or replace existing UST systems within 10 years anyway (see 52 FR 12671). For example, many owners and operators will choose to conduct their upgrades prior to implementation of release detection (within the first 5 years) because it is more cost effective and practical to implement all required upgrades at a site at the same time, *before* the tank system leaks.

Many owners and operators are currently upgrading or replacing their existing UST systems in response to pressures other than Federal regulatory requirements (for example, voluntary upgrading programs, insurance and liability concerns, and State and local upgrading requirements). For this reason, some commenters suggested that the 10-year mandatory upgrade requirement is unnecessary and should be deleted from the regulations. The Agency agrees that these positive upgrading and replacement trends will

probably continue over the next several years, even without a regulatory requirement. EPA is concerned, however, that reliance only on these voluntary activities, without the added incentive of a regulatory deadline, will result in a significant number of UST systems not being upgraded or replaced over the next 10 years. EPA has concluded that this is a situation that would not protect human health and the environment nationwide.

Some commenters supported a phase-in period that is more rapid than the proposed 10 years because the longer it takes to upgrade, the more releases to the environment that will occur, posing additional risk to the public health and environment. More than half of all existing UST systems are over 10 years old and constructed of unprotected, bare steel without any spill and overfill prevention equipment. EPA's information on causes of release (see earlier discussion on causes of release) confirms that these tank systems are the most likely to have releases due to corrosion, piping failures, and spills and overfills. Therefore, the Agency recognizes that a more rapid upgrade schedule will, at least theoretically, prevent a significant number of release incidences that may occur at existing substandard UST systems.

Other information obtained by the Agency during development of the proposal (see 52 FR 12704), however, indicated that not even the most aggressive State, local, or industry UST programs have required upgrading or replacement in as short a timeframe as 3 to 5 years because it is universally accepted as unimplementable given the nature and size of the regulated community. The Agency believes that a mandatory, rapid upgrading approach could not be successfully implemented because a large portion of the regulated community consists of small businesses that, if faced with a shorter deadline, would continue their substandard operations resulting in widespread noncompliance. Thus, while a shorter upgrade period appears theoretically advantageous in terms of the environmental and health risks avoided, EPA has concluded that it is unlikely to genuinely achieve more protection of the public health and environment than the proposed approach because it is unimplementable by significant portions of this regulated community.

Many commenters (those supporting the proposed 10-year mandatory upgrade period, as well as the other approaches) recommended that UST system upgrades and replacements be phased in using a staggered approach over the upgrading period. They believe that this would lessen the burden on the UST service industry by preventing numerous owners from waiting until the end of the 10-year compliance period to complete their upgrades or replacements. Tank age was the factor most frequently suggested as the basis for phase-in of UST system upgrades because of the belief that older UST systems have the greatest probability of leaking due to corrosion. Others suggested that the corrosive nature of a site, the presence or absence of corrosion protection, or the environmental vulnerability of an area should be used as the basis for determining the upgrade schedule.

Given the enormous size of the existing UST system universe and the practical implementation difficulties that owners and operators face as they upgrade necessary improvements to prevent future releases, EPA agrees that the implementation of the upgrade/replacement requirements should be phased in. The Agency decided, however, not to require the phase-in of UST system upgrades or replacements based on tank age or any other factor in the final rule for several reasons. First, EPA believes that numerous UST systems will be upgraded or closed over the next 10 years even in the absence of any Federal deadline in the regulations. Upgrading programs are already well underway in numerous companies, and more are expected to begin nationwide in response to these regulations. As discussed earlier in the background section of this preamble, numerous system closures will also occur because of this new regulatory program. Thus, EPA has concluded that only a portion of the existing UST system owners and operators are likely to wait until the end of 10-year compliance period to complete their upgrades or replacements. Second, upgrading or replacement represents a significant undertaking for UST system owners and operators and the Agency has identified many appropriate factors (including, for example, tank age, site location, and other business-related reasons) already being successfully used by owners and operators to schedule replacements/upgrades. In an attempt to stimulate scheduled actions and company programs in this area, the Agency does not want to artificially restrict them to phase-in programs based on age. Third, the Agency has concluded that a simple deadline provides a clear national goal, and that this is all that is necessary to prompt the required upgrading/replacement actions over the 10-year period. Finally, today's approach of a 10-year deadline provides implementing agencies with the freedom to decide whether State or local UST programs should have a scheduled phase-in period and, if so, the methods they will use to do it.

Finally, some commenters recommended that EPA provide variance procedures in the final rule that would enable the avoidance (or delay) of implementation of the upgrading requirements for owners and operators who show reasonable progress in upgrading, for those lacking financial resources to upgrade, for protected tanks installed prior to final rule promulgation, and for States where UST upgrade programs have already been implemented. The use of such variances in the final rule was rejected, however, because the Agency believes that where upgrading has been allowed to be phased in over 10 years, there is no justification for further delay in bringing substandard systems into compliance with requirements necessary to ensure protection of human health and the environment.

b. *Tank Upgrading Methods for Corrosion Protection (§ 280.21(b)).* Today's final rule allows three methods of tank upgrading for corrosion protection, as suggested by a number of commenters. EPA believes that each of the upgrading methods described below has been demonstrated to be protective of human health and the environment.

(1) Interior Lining. The first of the options for upgrading a tank is to internally line the tank in accordance with the tank repair provisions of § 280.33. To use this technique as the sole method for meeting the corrosion protection upgrade, the tank must be internally inspected after 10 years and every 5 years thereafter. The inspection must be conducted in accordance with a code of practice developed by a nationally recognized association or independent testing lab to ensure that the lined tank is performing adequately. Interior lining used as the sole method for corrosion protection is not regarded as a permanent upgrade, but is adequate if it continues to meet original lining design specifications as determined by periodic inspections. If the lined tank does not meet the original design specifications, it no longer meets the upgrading requirements and, if it cannot be repaired in accordance with industry codes, it is subject to the unprotected tank requirements and must be replaced after 1998.

Numerous comments were received suggesting that the use of internal tank lining of existing UST systems should be more clearly allowed as an upgrade

option. Data submitted by the commenters and data developed by EPA since proposal indicate that lined tanks rarely cause releases to the environment, even in the absence of external corrosion protection measures. Tank lining has been reported by lining companies as already having been used to repair or prevent releases in over 300,000 heating oil tanks and over 70,000 motor fuel tanks during the last 25 years. Last year, an EPA-sponsored study of UST programs outside the U.S. revealed that internal lining of tanks has been in wide use in Europe and Canada for the past decade. At least one major insurer of USTs in the U.S. requires that unprotected steel tanks over 15 years of age be lined as a preventive measure for internal corrosion.

Several experienced tank operators commented that if steel tanks are properly lined their life can be extended for at least 10 years with leak-free performance. They noted significant economic and operational advantages to lining alone as an upgrade (e.g., it avoids the need to reinstall the tank and can be done relatively quickly), and they suggested that EPA allow tank lining as an upgrade option. EPA now believes that either tank lining alone or tank lining combined with external cathodic protection is a reliable upgrade measure. Accordingly, the final rule has been revised to more clearly indicate that these are acceptable upgrade options under specific guidelines and requirements.

EPA also agrees with commenters that internal corrosion is a potential problem for tanks in the future but does not believe enough evidence is available to suggest that requiring tank lining for all steel tanks is warranted at this time. Although commenters submitted data that demonstrated the existence of internal corrosion, there were conflicting views as to its frequency and causes and the severity of its effects. Some commenters stated that all tanks more than 15 years old should be lined because of the potential for failures due to internal corrosion. Other commenters stated that modern fuels and tank management practices have virtually eliminated internal corrosion.

As previously addressed in the discussion of internal corrosion under the new tank standards (section IV.B.1.d.), EPA believes that most internal corrosion incidents have been due to dip-sticking tanks without striker plates. Now that striker plates are standard equipment on tanks, the problem of internal corrosion for newer tanks has been substantially resolved. In the final rules, tanks over 10 years of age must be either internally inspected or lined to meet the upgrade requirements. If internal corrosion is occurring, the internal inspection will detect it. The lining codes require the installation of striker plates. Although EPA will continue to study this potential problem in the coming years, the final rule does not require internal corrosion protection practices beyond what is now contained in industry codes.

(2) Cathodic Protection. A second option for upgrading a tank is cathodic protection. Section 280.21(b)(2) describes requirements for upgrading an existing UST by cathodic protection. The cathodic protection system must meet the requirements for new tank systems, except that the tank and piping do not need to have an external dielectric coating. These cathodic protection requirements for existing USTs were included in the proposal and were supported by the commenters. Several commenters, however, expressed concern that not all existing USTs are sound enough to be upgraded.

Concern was expressed over allowing cathodic protection retrofits on old tanks that could have one of the following: Plugged corrosion holes (see new causes of release information in section II.F.2. of this preamble); severe external pitting corrosion that leaves a lower margin of safety in the event that the cathodic protection system fails; and internal corrosion. The Agency agrees with these commenters that only sound tanks should be upgraded with cathodic protection and is including inspection and testing requirements for upgraded tanks in the final rule. Review of industry standards for internal inspection to assess the need for repair of USTs has convinced EPA that tanks can be safely upgraded if these industry standards are followed.

There are three ways to ensure that tanks are safely and correctly upgraded with cathodic protection. First, tank tightness testing may be used to judge the structural integrity of newer tanks that are upgraded with cathodic protection, because EPA has concluded that newer tanks are much less likely to have corrosion holes than older tanks. This option for tank tightness testing may be used only on tanks under 10 years of age. EPA concluded in "Causes of Release from UST Systems" that corrosion breakthrough is unlikely in unprotected tanks under 10 years of age. For example, in one study less than 2 percent of tanks tested which were under 11 years of age were found to be leaking. Tightness testing will, therefore, adequately identify the few younger tanks that may be currently leaking or have corrosion holes. However, the younger tanks must be tightness tested *twice*. The first tightness test must be performed before the installation of cathodic protection to ensure that the tank is not currently leaking. The second tightness test must be performed between 3 and 6 months after the initiation of cathodic protection to ensure that the cathodic protection has not opened any holes that were previously plugged with corrosion products. Information obtained from EPA-sponsored expert panels and public comments indicated that corrosion holes often do not leak because the corrosion byproducts plug the holes. This information also indicated that cathodic protection can cause these "rust plugs" to loosen and begin leaking soon after the protection is applied. Although EPA does not have data on how often this loosening occurs, this phenomenon appears to have occurred in a few cases when cathodic protection was applied to gas pipelines. EPA believes that performing a second tank tightness test 3 to 6 months after cathodic protection is applied will usually detect this type of leak before significant releases occur.

A second way to ensure this type of upgrading is successful is to use monthly monitoring. Like the tightness testing option, this method may be used only on tanks under 10 years of age. EPA believes that very few tanks under 10 years of age will leak after cathodic protection has been installed. The Agency believes, however, that some method of assessment is needed to protect human health and the environment in the unlikely event that an unsound tank is retrofitted with cathodic protection. As discussed in section III.D. of this preamble, monthly release detection provides highly reliable indications of tank integrity.

A third method applies to older tanks. For tanks 10 years of age and older, these two methods above (either a pair of tank tightness tests or monthly release detection monitoring) are inadequate to ensure structural soundness before the cathodic protection system is installed. These older tanks must instead be internally inspected and assessed. As described above, unprotected tanks often corrode through but do not leak because the corrosion product, backfill, and interior sludge seal the hole. EPA concluded in "Causes of Release from UST Systems" that about 50 percent of the corrosion holes in tanks are plugged and do not leak. The study also showed that approximately 7 percent of the tanks of 12 to 15 years of age leaked. EPA has concluded from these data that as many

as 7 percent of existing USTs are corroded through, but not leaking. Many more existing tanks may be heavily corroded and not suitable for cathodic protection alone as an upgrading measure.

EPA understands that several firms that offer cathodic protection upgrade services use other methods to ensure that the tank is structurally sound before this upgrade option is recommended. These procedures appear to vary somewhat from firm to firm. One component of the approach commonly involves a statistical analysis of the likelihood of the tank having corrosion holes based upon the characteristics of the site soils and the age of the tank. The database for this analysis varies, but usually contains large numbers of tank failures from Canada and the United States.

This approach appears to have merit, but it is not included explicitly in the final rule because its effectiveness was not fully demonstrated. The Agency was unable to evaluate its effectiveness for two reasons. First, EPA does not have long-term performance data for a large number of tanks that have been assessed in this way prior to upgrading. Second, these practices vary from firm to firm and are not established in an industry consensus code. Such options for assessment may be used, however, where they have been determined by the implementing agency to prevent releases in a manner that is no less protective of human health and the environment than internal inspection or tightness testing.

EPA proposed that the cathodic protection system for upgraded tanks be designed by an independent corrosion expert. Commenters opposed to the requirement that the corrosion expert be independent were concerned that this was precluding the use of in-house personnel. The issue of independence is discussed earlier in this preamble in relation to the design of field-installed cathodic protection systems for new tank systems (section IV.B.1.). EPA agrees with these commenters that companies should be able to use their own qualified or trained employees. Accordingly, EPA has dropped the requirement that the corrosion expert be "independent."

Commenters also suggested that, because the proposed rule required that a corrosion expert design the retrofit cathodic protection system, the final rule should not dictate a particular cathodic protection system design. EPA agrees with these commenters and has decided not to require a specific retrofit cathodic protection method in the final rule provided that a corrosion expert determines the appropriate method based on the conditions at the site.

(3) Cathodic Protection and Internal Lining. A third option is to both line and cathodically protect the tank. The lining is intended to provide protection from internal corrosion; the cathodic protection prevents exterior corrosion. Because internal corrosion rarely occurs above the bottom third of the tank, a full lining may not be required if an internal inspection shows a sound tank exterior. The cathodic protection system must meet the same requirements as the new tank cathodic protection system except for dielectric coatings. The lining must be installed in accordance with the requirements of § 280.33.

c. *Upgrading Piping (§ 280.21(c)).* Upgrading of an UST system requires upgrading the system's piping as well. Metal piping must be upgraded in accordance with the requirements for new piping, except that a dielectric coating is not required if the existing piping is not upgraded by replacement. Pipe lining is a developing technology that may eventually become a viable option for upgrading some types of steel pipes; however, the technology requires more development and testing to prove its effectiveness for use on small-diameter pipes and thus is not an option for upgrading in the final rule.

d. *Tank Upgrading Methods for Spill and Overfill Control (§ 280.21(d)).* To prevent spills and overfills associated with product transfer to the UST system, all existing UST systems must comply with the requirements for new UST system spill and overfill prevention equipment, as specified in § 280.20(c). These additional requirements are discussed below in section IV.C.1.

4. Notification (§ 280.22)

Section 280.22 of the proposed rule included notification requirements for new and existing UST systems. These requirements are substantially the same in today's final rule. Sections 280.22 (a), (b), and (g) have been deleted because their effective dates have passed. Section VII of the notification form (certification of compliance) has been revised to reflect changed language in the installation, release detection, and corrosion protection requirements. The five tank columns on this section of the notification form have been deleted to simplify the form. EPA believes that the same installation assurance, release detection, corrosion protection and financial responsibility measures will usually be used at all of the new tank systems at any one location. Any sites where different measures are used for each tank can be certified with copies of this form.

C. General Operating Requirements

1. Spill and Overfill Prevention and Control (§§ 280.20 and 280.30)

a. *Introduction.* The surface spills and overfills that occur at UST systems are usually the result of human error, not equipment failure. There are two major types of surface releases: (1) Spilling, which results from improper dispensing practices such as disconnecting the delivery hose from the tank's fill pipe before the hose has drained completely, and (2) overfilling, which occurs when the tank liquid level exceeds tank capacity and product escapes through tank bung holes, vent lines, or fill ports. Spills and overfills occur on a relatively frequent basis; however, they are usually not reported because they are typically small in volume—less than 25 gallons—and can be easily contained and cleaned up.

Basically, the proposal required owners and operators to follow procedures and provide equipment to prevent these releases or to immediately contain and clean them up. In the proposed rule, proper transfer procedures had to be followed during all deliveries. For new UST systems, the Agency proposed the installation of alarms in conjunction with liquid level sensors, automatic shutoff devices that halt further delivery of product into the UST at a predetermined level, or the installation of catchment basins to contain overfills or spills (e.g., product left in delivery hoses at the time of disconnect). EPA also proposed requiring the immediate installation of spill and overfill equipment on any UST system that used external leak detection devices. Existing UST systems not using external leak detection devices were allowed up to 10 years to come into compliance with the proposed requirements for spill and overfill equipment.

In the Agency's study of the causes of releases from UST systems completed since proposal, many people contacted and interviewed in the field ranked spills and overfills as the most frequent cause of release rather than the distant third identified in the preamble to the proposal (52 FR 12667). For example, spills and overfills are reported in Dade County, Florida, to be the leading cause of release from UST systems. Experienced installation contractors reported that they repeatedly and frequently observe various indicators of spill and overfill problems, such as discolored soil above and around the tank and the dissolving of the tank's bituminous coating below the drop tube connection to the tank fill opening. Field

observations also implicated nonoperational components such as bung hole plugs and vent lines as a frequent cause of release in overfills. In addition, most experienced hands in the field felt that spills and overfills were two separate problems that must be addressed separately.

Based upon public comments and new findings on causes of product release, the Agency has made several changes in today's final rule for spills and overfills: The rule has been reorganized to address apparent confusion voiced by commenters concerning the presentation of requirements for new and existing USTs; an exemption from equipment requirements is provided for UST systems filled with small volume delivery of no more than 25 gallons; and the physical presence of an attendant is not required during the filling of the UST system as long as the transfer operation is otherwise monitored by mechanical or electronic means. Although EPA recognizes that the owner and operator may, through private agreement, ensure that ultimate responsibility for the exercise of proper delivery techniques is borne by the transport carrier, the final rule still holds the owner and operator responsible for preventing damages to human health and the environment due to spills because the Agency does not have jurisdiction over transport carriers.

The specific spill and overfill equipment requirements of the final rule are discussed below. These requirements apply to all new UST systems as of the effective date of this rulemaking, and existing UST systems must meet the requirements within 10 years of that effective date (see section IV.C.1.e. below). In addition, general operating procedures for spill and overfill control are applicable to both new and existing UST systems as of the effective date of the rule (see section IV.C.1.f. below).

b. *Spill Prevention (§ 280.20(c)(1)(i))*. The Agency has concluded that repeated spills can frequently cause significant environmental damage. Although most surface spills are small in volume, because they are often repeated they can eventually contaminate soil and ground water. Thus, the final rule requires use of spill prevention equipment (such as a small catchment basin around the fill port) at all new and existing UST systems. Catchment basins are the most prevalent form of spill prevention used today.

The proposed rule specified that when catchment basins were used they would be large enough to contain the volume of the hose. In response, several commenters objected to EPA relying on this larger sized catchment basin technology because of concerns about the potential fire or explosion hazard resulting from the buildup of petroleum fumes in the catchment basin area, the cracking of catchment basins due to freezing of accumulated water, or the potential that these containment devices would provide the deliverer with a false sense of security that would prompt carelessness during delivery. However, no commenters provided any data to EPA that indicated the occurrence of any fires or explosions due to vaporization of product in a basin, regardless of its size. In any event, EPA believes that compliance with the proper transfer procedures required in § 280.30(a) will prevent fuel from frequently collecting in the basins, and normal maintenance suggested by the equipment manufacturer will prevent water from accumulating and freezing. Several commenters said that small spill catchment basins are preferred in many circumstances. They also said that if overfill prevention equipment is also used, the problem of emptying a full transfer hose should rarely be encountered. Overfill prevention devices currently available in the United States either allow the transfer hose to drain at a very slow rate into the tank or can be manually overridden to empty the hose contents into the tank. As a consequence, today's final rule deletes the proposed size specification for spill catchment basins, thus leaving the determination of the appropriate volume to the discretion of the owner and operator. The design or size of the catchment basin (combined with the type of overfill prevention equipment also being required today) should be of sufficient size to contain spills and prevent releases to the environment. For example, if the catchment basin has a means for releasing its contents into the tank or another containment structure in order to provide more room in the catchment basin, a smaller volume catchment basin (e.g., the standard 5-gallon size) should be adequate equipment for preventing spills. Catchment basins without any means for drainage and requiring manual unloading may need to be of larger volume.

For those concerned that the use of catchment basins of any size or type may present a safety hazard, EPA allows use of alternative devices to prevent spills if they are approved by the implementing agency as preventing spills in a manner that is no less stringent in protecting human health and the environment. For example, a device that would prevent release from the transfer hose when detached from the fill pipe, such as a dry disconnect coupling, could satisfy this requirement. This provision is intended to provide flexibility in a rapidly developing technological area that will allow continued development of new and improved spill prevention equipment.

c. *Overfill Prevention (§ 280.20(c)(1)(ii))*. Agency data show that overfill prevention is also very important, not just for the prevention of large overfills released from the top of vent or fill lines, but also overfills that slowly leak out from the fittings at the top of the overfilled tank, such as the bung connections. In today's final rule, therefore, all new UST systems are also required to use overfill prevention equipment.

All new UST systems must be equipped with overfill protection by installing one or more of the following:

- A device that will alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm;
- A device that will automatically shut off flow into the tank when the tank is no more than 95 percent full; or
- An equivalent device approved by the implementing agency.

These alternatives are essentially the same as those presented in the proposed rule except for the clarification that flow restrictors (i.e., ball float valves) are also allowed. Although not specifically mentioned in the proposed rule, several commenters felt that flow restrictors were adequate for spill and overfill prevention and are the most widely used method at present. Flow restrictors do not shut off inflow completely but instead significantly reduce the rate at which product enters the tank. The transporter can tell when the flow is reduced and stop delivery. Some commenters emphasized that many USTs are already using flow restrictors successfully. Upon review of these devices, the Agency has concluded that the flow restrictors are protective of human health and the environment, particularly if they are coupled with the requirement of § 280.30 that all transfers be closely monitored. The final rule allows the use of flow restrictors for overfill prevention.

EPA is concerned, however, that this type of overfill prevention may jeopardize the integrity of the tank if a pressurized product delivery system is used. Pressurized transfer of up to 30 psi is sometimes used with heavier fuels. Most tanks can safely withstand pressures of only 5 psi, and flow restrictors may allow a much higher pressure to develop during pressurized delivery, causing tanks to rupture. The

Agency has no information to indicate that such failures are common. Almost all of the UST systems addressed in today's rule are not filled by pressurized delivery. The delivery hose connection for this type of delivery usually includes a back-pressure sensor that automatically disconnects the hose if pressure develops in the tank.

EPA has decided that if an owner and operator uses either a high-level alarm or a flow restrictor, the devices must be activated at 90 percent of tank capacity. In the proposal, the high-level alarms were required to be activated at 95 percent of tank capacity. EPA has decided on the stricter standard for both of these devices because neither device is a total shutoff device. Also, both devices are subject to the operator's response to terminate the transfer.

Automatic shutoff devices do not require operator action to prevent overfills. Automatic shutoff devices prevent overfilling by automatically shutting off flow at the fill pipe before the tank fills up to the top. Already in widespread use in Europe, this approach is designed to completely eliminate overfills due to human error. The Agency believes this is the simplest type of overfill device for new and existing UST systems installing overfill prevention equipment. Inexpensive shutoff devices that are easy to install have recently become available to the U.S. market, with the potential for additional innovative technology to enter the market soon. Those who wish to use an overfill prevention device other than those mentioned in the rule may satisfy the overfill prevention requirement with use of alternative devices approved by the implementing agency as being no less stringent in protecting human health and the environment.

d. *Exemptions (§ 280.20(c)(2)).* Several commenters pointed out that infrequently filled UST systems pose less risk of releases from spilling and overfilling than systems filled on a more regular basis and, therefore, should be exempt from spill and overfill prevention equipment requirements. Other commenters suggested that UST systems filled manually in small increments, such as most used oil tanks, pose significantly less risk than those receiving large-volume deliveries.

The Agency is continuing to require spill and overfill prevention equipment on infrequently filled tanks in the final rule. Though a tank may be filled only occasionally, it is the potential size of overfills that concerns EPA. Although infrequent filling reduces the likelihood of a spill or an overfill release somewhat, it does not guarantee that a spill or an overfill that does occur would be of small quantity. In addition, EPA feels that in the future, as today's requirements are implemented, carriers of product may become accustomed to (and dependent on) devices such as high-level alarms or shutoff devices and would, therefore, be less attentive during product delivery due to reliance on prevention equipment to indicate completion of the delivery. Finally, the implementing agency would often be unable to determine the actual filling frequency for purposes of determining whether a particular UST system should be exempt from spill and overfill requirements, creating compliance monitoring difficulties. Consequently, the Agency has retained the required use of spill and overfill prevention equipment for infrequently filled tanks.

The final rule does not, however, require new UST systems filled through transfers of no more than 25 gallons to use spill or overfill prevention equipment (§ 280.20). The 25-gallon limit was selected because the Agency understands it is a common industry practice at automotive service centers to use containers up to this volume for handling used oil prior to putting it into the UST. EPA has concluded that the likelihood of overfilling the tank is small because the volume of the transfer is much smaller than the volume of the tank. In addition, the maximum size of the spill or overfill that could occur from a 25 gallon transfer is 25 gallons. This quantity is easier to contain and clean up than the maximum size spill or overfill that could occur from a transfer of several thousand gallons. EPA has concluded that proper operating practices and procedures (required under § 280.30), such as checking the available tank volume before each transfer, will adequately protect human health and the environment.

e. *Compliance Schedule for Initial Spill and Overfill Equipment (§§ 280.20 and 280.21).* In the proposal, the schedule for compliance required use of spill and overfill prevention equipment at the time of installation of all new UST systems. All existing UST systems must be upgraded within 10 years of the effective date of the final regulations. EPA has retained this 10-year requirement as an adequate period of time to retrofit existing UST systems.

EPA has deleted the proposed requirement to partially phase in the use of spill and overfill equipment whenever any external method of detection is installed at an existing tank. Some commenters expressed confusion about when such equipment would have to be retrofitted to tanks that already have installed external monitoring methods. EPA agrees that mandating this phase-in approach does present such implementation problems and unnecessarily hinders owner and operator flexibility in selecting their own schedule for compliance within the 10-year deadline. This proposed approach could unduly discourage the use of external methods of detection. Furthermore, research completed by EPA after proposal (and made available for public comment on March 31, 1988) has convinced the Agency that spills and overfills do not pose insurmountable problems to the use of external methods of detection that require the immediate retrofit of spill and overfill equipment.

As suggested by commenters, EPA considered requiring retrofitting spill and overfill prevention devices earlier, for example, at the time of installation of all release detection equipment or during a scheduled general system upgrade. The Agency decided against such earlier deadlines primarily due to the implementation difficulties this would pose. EPA believes that the limited population of installers precludes the rapid installation of spill and overfill controls at all of the UST sites nationwide. Although EPA has decided to retain the 10-year time period, the Agency expects that many tank owners and operators will retrofit these devices in less than 10 years even though it is not mandatory to do so. In many cases, retrofit of spill and overfill equipment at the time of release detection retrofit or of corrosion protection upgrading will be more cost effective. Finally, the less stringent release detection requirements that are allowed in today's final rules for fully upgraded tanks will actually provide an incentive to initiate earlier retrofitting to meet spill and overfill prevention requirements. The discussion of release detection requirements for upgraded tanks is provided in section V.D. of today's preamble.

f. *General Operating Procedures for Spill and Overfill Control (§ 280.30).* In addition to installation of release prevention equipment, the Agency has retained in the final rule the general operating procedures for both new and existing UST systems that were proposed to prevent spills and overfills.

Proposed § 280.30(a) stated that the owner and operator must ensure that releases do not occur and must be physically present to observe the transfer of product. Many commenters suggested that the driver of the delivery vehicle should be held responsible for any releases during delivery, and that having someone physically present who

represents the owner and operator during all deliveries is impractical and costly. Although EPA agrees that responsible carriers are the primary agents in the field to prevent spills and overfills, for the purpose of complying with today's requirements, the UST system owner and operator is responsible for preventing spills and overfills. The Agency must take this approach because it has no legal authority to regulate transporters under Subtitle I. Thus, regardless of whether the owner and operator decides to share (by contract) responsibility for the monitoring of the transfer with the carrier, under today's final regulations the owner and operator will continue to be responsible in the event that there is a release during delivery. See section IV.E.2.d. of the preamble and § 280.53 of the final rule for the requirements of owners and operators in the event of a spill or overfill.

The proposed rule required that a person be physically present at all times during the transfer of product to be able to respond quickly to a spill or overfill (proposed § 280.30). Some commenters suggested, however, that many UST systems are in large tank farms where it would not be feasible or economical (especially during multiple filling operations) to have someone present at each tank during the time it was being filled. In response to these suggestions, EPA is changing this requirement in the final rule to simply require that all deliveries be monitored constantly. This change allows for a person at the site (but not necessarily at the transfer point) to monitor a transfer using remote sensing equipment that can prevent a spill or an overfill from occurring. This change will continue to meet the intent of the proposed requirement, that delivery be monitored, and will also accommodate operations encountered at large tank farms where it is difficult for a person to be at every tank. Many of these installations have central monitoring stations where all the tanks can be supervised through remote control monitoring and shutoff equipment.

2. Operation and Maintenance of Corrosion Protection (§ 280.31)

As discussed in the preamble to the April 17 proposal (52 FR 12666–12667), corrosion was found to be one of the common causes of release in existing underground tank and piping systems that are unprotected from corrosion. The consensus of experts in the field contacted by EPA indicates that the installation and proper operation and maintenance of corrosion protection systems can significantly reduce the incidence or volume of release due to corrosion. Officials in Ontario, Canada, Denmark, and Sweden have cited the success of such corrosion protection programs initiated in their respective countries during the early to mid-1970s. The proposed rule addressed operation and maintenance of corrosion protection systems in § 280.31 (see preamble discussion in 52 FR 12707).

a. *Extent of Corrosion Protection (§ 280.31(a))*. EPA proposed in § 280.31(a) that all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to buried metal components of the UST system. Public comments on proposed § 280.31 supported the necessity of routine maintenance of the corrosion protection systems by qualified field personnel.

The Agency also invited comments on which components, if any, should be cathodically protected; whether there are noncorrodible metal alternatives for that component; and what form of corrosion protection is appropriate if cathodic protection is not required (52 FR 12707). Many comments were received in this area. In summary, some commenters suggested that all corrosion-protected metal components of UST systems, including swing joints, flexible connectors, and riser connections, should be monitored regularly. Other commenters suggested that some components, such as bung plugs and the pump housing, do not need cathodic protection and maintenance. (As discussed in more detail earlier in this preamble in the section on new piping design and construction requirements (section IV.B.1.b.(2).) In the final rule, EPA requires protection of delivery piping and that portion of the tank routinely storing regulated substances. Requirements for spill and overfill equipment and practices will prevent releases from the top of the tank and vent piping.

EPA agrees with commenters who found it unnecessary to require protection for portions of the system that would not regularly contain product or are not in contact with the soil, even if situated underground. Bung plugs are inserted into unused openings at the top of a tank and are not subject to releases except in the event of overfills. Delivery piping is defined as that portion of the UST system piping through which product is introduced into the tank or delivered from the tank. Cathodic protection is not required for the fill pipes of tanks that have a drop tube because the drop tube is the part of the tank that routinely contains product. The drop tube is not in contact with the soil and thus does not require cathodic protection. Vent piping is not used for delivery of product and presents a minimum risk for release to the environment. In fact, vent piping would be a potential release source only in the event of overfill conditions. The release potential from bung plugs and vent piping will be eliminated or substantially reduced by the requirements for overfill prevention equipment required in § 280.30 of today's rule and, therefore, the Agency has not required their cathodic protection in today's rule.

Pump housings, when contained in the equipment manway at the top of a tank, do not come in contact with the soil and thus do not require cathodic protection. Other pump housings are often isolated from the soil by being submersed in the product in the tank or situated in the dispenser housing above grade and, therefore, do not require cathodic protection. Only those pump housings that are in contact with the ground and potentially contain product require cathodic protection.

b. *Qualifications for Corrosion Personnel (§ 280.31(b))*. EPA proposed in § 280.31(b) that all cathodic protection systems be inspected and designed by an "independent" corrosion expert. Most of the comments received by EPA in this area strongly opposed the requirement of an "independent" corrosion expert. EPA agrees that the proposed requirement for the independence of the expert is not needed and has deleted this term from the final rule. (See section IV.B.1.a.(2) above for a discussion of this issue.)

Other commenters pointed out that the maintenance, operation, and inspection of an installed cathodic protection system could be performed by people who have much less training than a corrosion expert. EPA agrees with these comments, recognizing that most of these inspections are now being conducted by trained specialists. Thus, EPA has replaced the term "independent corrosion expert" with "qualified cathodic protection tester" in the final rule. Cathodic protection testers must be able to demonstrate education and experience in the measurement of cathodic protection of buried or submerged metal piping systems and metal tanks. A definition to this effect has been added to the final rule. The National Association of Corrosion Engineers (NACE) has developed an examination that can be used to ensure that cathodic protection testers are qualified.

c. *Inspection Schedule (§§ 280.31 (b) and (c))*. EPA proposed a minimum

inspection schedule for cathodic protection systems in § 280.31(b). For field-installed cathodic protection systems, the proposal required that the system be tested within 6 months of installation and at least annually thereafter. For factory-installed cathodic protection systems, it was proposed that each system should be tested within 6 months of installation and at least every 5 years thereafter. For all impressed current systems, the proposed requirement was inspection and/or testing as appropriate, and at least annually. The Agency invited comments on the advantages and disadvantages of allowing less frequent inspections/testings for those tanks that are equipped with premanufactured corrosion protection (52 FR 12707).

Several comments were received in these areas. Some commenters felt that the proposed testing requirements for field installation were excessive and that there is no technical reason to differentiate between field- and factory-installed systems. After consultation with groups of industry experts during the public comment period, EPA now agrees with the commenters who recommended that all cathodic protection systems should be tested at the same frequency and the Agency is now requiring in the final rule that all cathodic protection systems be tested within 6 months of installation and at least every 3 years thereafter. These intervals are sufficient to detect any damage or failure of the system and to take remedial action in time to prevent structural failures due to corrosion. EPA understands that this time interval is consistent with sound practice as is now recommended in the recently revised NACE code and by major tank manufacturers.

EPA proposed in § 280.31(c) that all UST systems with impressed current cathodic protection systems must be inspected every 60 days to ensure that the equipment is running properly. This equipment inspection is required in addition to the testing of the cathodic protection. EPA has received many comments on this section. Several commenters supported the proposed approach, with some further suggesting that impressed current systems must be inspected six times a year with intervals not exceeding 75 days. Some commenters suggested monthly inspection of all systems while others suggested immediate testing after installation for all impressed current systems and annually thereafter. No commenters stated that periodic testing of an impressed current system should not be required.

EPA agrees with the commenters who said that inspection at 60-day intervals is protective of human health and the environment because loss of power to the anodes for 60 days is very unlikely to result in corrosion failure. Thus, the proposed inspection approach has been retained in the final rule. This inspection is conducted to simply ensure that the equipment is running properly and is relatively straightforward for most impressed current systems. Most of these systems include a light on the control panel that indicates proper operation. No special training is required to perform this inspection.

d. *Recordkeeping (§ 280.31(d)).* EPA proposed in § 280.31(d) that records documenting the proper operation of corrosion protection systems must be maintained. EPA requested comments on this proposed requirement, and none were received. The Agency has made slight changes in the wording of this requirement to make the intent of the final requirement clear. This minor change does not change the substance of the proposed requirement. The records that are maintained must provide the results of testing from the last two service checks required in § 280.31(b) (which must be performed by a corrosion protection tester) and the last three inspections required under § 280.31(c) (which can be performed by the owner and operator). EPA believes that this record will provide sufficient information to demonstrate that the proper operation and maintenance of the cathodic protection system is being carried out.

e. *General Performance Standards for Testing.* Section 280.31(e) also proposed three criteria to be used while testing cathodic protection systems. EPA received several comments regarding this approach, with most of them suggesting that EPA should include all of the five criteria as defined in NACE RP-02-85. Based on the suggestions of these commenters, EPA now believes that industry codes, such as NACE RP-02-85 and API's "Guide for Inspection of Refinery Equipment," developed by nationally recognized associations provide clearer and more complete guidance about the use of these criteria to determine the adequacy of cathodic protection. These criteria are also better explained in technical documents such as these industry codes. In addition, these criteria are subject to continued review and can be revised to reflect new measurement techniques that result from increased understanding of corrosion phenomena.

Accordingly, § 280.31(e) has been deleted, and there is no explicit listing of the three criteria from the proposed rule. The proposed criteria have been replaced with a more general performance standard (in § 280.31(b)) that requires the service checks be performed in accordance with a nationally accepted code of practice. This approach accommodates the concerns of the commenters who recommended that all five of the NACE criteria should be allowed to be considered. At the same time, this approach encourages the application of the proper standard because these national codes are presented within the context of significant technical guidance as to the proper use of each criteria. Thus, in the final rule, owners and operators are being held to the use of at least these criteria as recommended in these national codes.

f. *Notification Requirement.* EPA proposed in § 280.31(f) that owners and operators of new UST systems must certify compliance with the corrosion protection requirements on the notification form submitted pursuant to § 280.22. No comments were received by EPA on this requirement. In the final rule, this section has been moved for clarity to § 280.22(e), which identifies notification requirements.

3. Inspection and Maintenance of the Tank System (§ 280.31)

In the preamble to the proposed regulation, the Agency discussed three alternatives for the required maintenance and inspection of the tank system (52 FR 12707). EPA proposed requirements for the maintenance and inspection of corrosion protection systems and requested comments and information on the need for broader requirements. Two alternatives were described that addressed the maintenance and inspection of the entire site or other tank system equipment in addition to the corrosion protection system.

a. *Site or System Inspections.* Many comments were received by EPA on these alternative inspection requirements. Some commenters felt that inspection of the entire site or of the tank system is of little practical benefit and unnecessary because such an inspection alternative would be duplicative of the leak detection requirements. One commenter suggested conducting inspections of the entire UST site.

EPA agrees with commenters who stated that site inspection is duplicative of leak detection. Institution of release detection systems should provide effective warning of releases from most of the components of the tank system,

thereby eliminating the need to require the general inspections. Also, the majority of USTs are completely underground and inaccessible to inspection, rendering total system inspection impractical.

b. *Inspections for Tank Deflection.* Small distortions of the tank diameter are expected at the installation of USTs, and the tanks are designed with an allowance to withstand them. Improper backfill or failure to install foundation anchors (or failure of the anchoring system) can lead, however, to excessive distortion resulting in rupture of the tank. One way to verify this distortion is by measuring tank deflection (variation from true diameter). EPA had requested comments on periodic tank deflection measurements for steel or FRP tanks as a means of preventing tank failures. Many comments were received by EPA on this inspection method. Some requested EPA to mandate periodic deflection monitoring for FRP tanks in the final rule. Others stated the view that FRP tanks do not require periodic deflection monitoring because virtually all deflection ceases after the first year. Some also recommended vertical diameter measurements for all new tanks to verify initial installation results.

The Agency disagrees with commenters who suggested periodic tank deflection monitoring for FRP tanks. The low incidence of failure in FRP tanks (less than 0.5 percent), which has been declining substantially over the last 10 years, argues against the need for periodic deflection measurements. The Agency has, therefore, chosen not to mandate periodic deflection measurement in the final rule. The Agency believes that excessive deflection in FRP tanks is usually due to improper installation and occurs soon after the installation is complete. Deflection measurements during and immediately following installation are required by the tank manufacturers for purposes of warranty validation. EPA believes that these are sufficient for the protection of human health and the environment.

In addition, investigators conducting a study of deflection monitoring of FRP tanks in Suffolk County (New York) have reported to EPA that the deflection measurement is often difficult to obtain unless special provisions are made for taking this measurement when the tank is installed. Special tools and training are required to prevent damage to the fill pipe tank seal (53 FR 10403) when obtaining access to the tank for conducting the test.

c. *Monitoring Corrosion Protection at Composite Tanks.* The Agency had also requested comments on requiring corrosion protection inspections for composite tanks. Some commenters stated that composite tanks should be monitored to ensure the integrity of the FRP coating, using the same criteria used for the cathodic protection inspections. Others felt that inspections of composite tanks are unnecessary after installation. The Agency disagrees with the commenters who recommended that composite tanks be periodically monitored to ensure the integrity of the FRP coating. It has been reported to EPA that most composite tanks pass when tested through the measurement of electrical continuity between some structure of the tank and the soil; however, the tanks that have "failed" this test showed no evidence of external corrosion once they were excavated and inspected. This is a point of continuing controversy within the National Association of Corrosion Engineers. Based on the superior performance of composite tanks to date (no documented failures due to external corrosion), EPA has decided not to mandate the corrosion protection monitoring of composite tanks in the final rule.

4. Compatibility (§ 280.32)

In the proposed rule, EPA set forth a general performance standard requiring owners and operators to use an UST system made of or lined with materials compatible with its stored substances. Incompatibility could result in the structural deterioration of the containment vessel or piping and cause releases into the environment (see 52 FR 12708–12710). Because EPA has found no significant evidence that incompatibility is a cause of release from USTs, the final rule contains no additional requirements and thus remains the same as proposed.

a. *Compatibility of FRP Tanks with Alcohol-Blended Fuels.* Since the proposal appeared, EPA sought additional information on problems reportedly caused by incompatibility of FRP tanks and alcohol-blended fuels. This search included conversations with several groups very familiar with these fuels and the FRP tank industry. In all of the information reviewed, only one release case was suspected to be caused by incompatibility problems. In addition, EPA has been unable to find any demonstrated incompatibility problem with 10-percent alcohol-blended fuels and FRP tank systems.

There are two types of FRP tanks. The standard FRP tank is compatible with up to 10-percent alcohol-blended fuels. The second type of FRP tank is manufactured with a special resin that ensures compatibility with blended fuels containing greater than 10-percent alcohol. Although the higher percentage alcohol-blended fuels (11 to 100 percent) might, over long periods of time (at least theoretically), pose compatibility problems in standard FRP tanks, the actual threat posed is believed to be very small for two reasons. First, the current and projected use of oxygenated fuels shows a trend that will increase the use of 10-percent alcohol-blended fuels but that will not increase the percentage of alcohol in the fuels. Second, information provided to the Agency indicates that numerous facets of industry (tank manufacturers, tank owners, and distributors) are very aware of and concerned with alcohol-blended fuels and FRP tank and piping compatibility problems. Industry practice is for the tank owner or operator to contact the manufacturer when a different product is to be stored, thus allowing the manufacturer to check its records concerning the compatibility of the stored substance and existing tank system. Numerous tanks have been relined with different resins that are compatible with the new fuels. EPA has added a note to the performance standard which refers to industry codes that can be used as guidance to help owners and operators with alcohol-blended fuels satisfy the compatibility requirement.

5. Repairs (§ 280.33)

In § 280.33 of the proposed rule, EPA proposed conditions under which repairs to an UST would be allowed. As discussed in the preamble to the proposal (52 FR 12710–12711), numerous state UST programs already address this topic in their regulations. Eight state programs refer to industry guidelines that should be followed in making repairs. Since proposal, EPA has continued to investigate the subject of UST system repairs. Numerous commenters on the proposal addressed this subject. It is obvious from the response received and other work undertaken by the Agency that there is a great deal of interest and ongoing activity in the field of UST management concerned with UST system repairs (including the development of new codes and practices). As discussed below, today's final rule incorporates several changes to the proposed requirements concerning UST repairs, including the deletion of, revision of, and addition to several of the conditions in the proposal.

a. *Repair and Lining (§ 280.33(a)).* Under § 280.33(a), EPA proposed to allow the repair and lining of a tank if four requirements were met: (1) A vacuum test was conducted, (2) the

lining material was compatible with the regulated substance stored, (3) the tank was inspected internally and ultrasonically tested, and (4) the tank had not been repaired or relined previously. Today's final rule revises some of these proposed requirements as discussed below.

In § 280.33(a)(1), EPA proposed requiring that a vacuum test be conducted on repaired tanks. This requirement was intended to ensure sound repairs (52 FR 12711). The vacuum test is no longer required for reasons that are discussed in more detail in subsection d. below.

In § 280.33(a)(2), EPA proposed requiring that the lining material applied to the interior of the tank be compatible with the regulated substance stored. All commenters agreed that this provision was necessary and pointed out that it is one that is already being followed in current industry practice. The specific requirement has, therefore, been deleted but the lining material is still required in the final rule to be compatible with the regulated substance stored in the tank because this concern is incorporated into all current codes and practices and one of these must be followed under the final rule.

In § 280.33(a)(3), EPA proposed internal inspection and ultrasonic testing of a tank to determine that it was structurally sound. Under today's final rule, the tank must still be internally inspected and determined to be structurally sound, but the ultrasonic test is no longer required. EPA received comments concerning the methods to test a tank to ensure that it is still structurally sound. These comments indicated that alternative tests were available to determine the structural integrity of the tank. National codes, including API 1631 and NLPA 631, provide alternative methods. Currently available data submitted and developed independently by EPA concerning field performance of tank lining indicate that if these codes are followed, the lined tanks will perform very well (see the discussion of interior lining under the upgrading section presented earlier in this preamble). EPA has learned that Underwriters Laboratories is currently developing a performance test (Subject 1856); however, it is still in the draft stage at this time. Consequently, today's final rule reflects the conclusion that it is not necessary to require a specific test to ensure structural soundness. Thus, EPA has substituted a performance requirement in § 280.33(d)(1) of the final rule that the internal inspection be conducted in accordance with codes of practice developed by a nationally recognized association or independent testing laboratory.

For purposes of assisting implementation of this general requirement, the final rule includes the note that the lining and repair procedures described in API 1631 and NLPA 631 may be used to comply with § 280.33(a). These codes describe test protocols for inspecting tanks to determine the structural soundness. The use of the ball peen hammer test is described, as well as the use of ultrasound. The codes include criteria for minimum allowable remaining thickness and maximum number of perforations per unit area in determining the condition of the tank. The codes also specify tests to ensure that the repair or lining has been performed correctly. EPA intends by this approach to allow other applicable national codes (such as UL 1856) developed in the future to be used in meeting this requirement.

In § 280.33(a)(4), EPA proposed limiting UST repair to only tanks that had not been previously repaired. In other words, a tank could be repaired only once so as to avoid continued repair of an UST that was fundamentally unsound (52 FR 12711). Some of the commenters suggested that, under this approach, EPA needed to resolve definitional questions concerning what constitutes a repair versus simple preventive maintenance. They expressed concern that the proposed one-time repair provision might preclude the use of preventive maintenance that would otherwise prevent leaks. Other commenters opposed this requirement, stating that structurally sound tanks could be repaired repeatedly; they also provided extensive data showing that repaired tanks had an excellent performance record. Other commenters opposed allowing any repairs to tanks that had leaked.

After study of the comments, review of the submitted performance data on repaired tanks, and further study of the codes, EPA agrees that restricting repair to a single time is unnecessary. The submitted record of repaired tanks was found to be very good and numerous EPA contacts with tank lining users and regulators have generally confirmed the accuracy of this performance record. Therefore, EPA has concluded that the tank repair codes already in existence (and in use for years) provide adequate standards and guidelines for determining if a particular tank qualifies for repair. Consequently, EPA has not included the one-time only repair requirement in the final rule and will allow tanks to be repaired more than once provided that they meet the standards for repairability in the applicable codes and that the repair is completed in compliance with these standards. If a tank has leaked product, however, the requirements for corrective action must be met and will sometimes require removal of the tank in order to complete the appropriate cleanup measures even if it is determined to be structurally sound and repairable.

b. *Cathodic Protection (§ 280.33(e))*. In § 280.33(b), EPA proposed that all steel tanks with corrosion holes that are subsequently repaired be retrofitted with a cathodic protection system that is designed by an independent corrosion expert and operated and maintained in accordance with § 280.31. Again, comments were received objecting to the requirement of the use of an "independent" corrosion expert on the grounds that many companies employ corrosion experts and that requiring an independent expert would be unnecessary and burdensome. As discussed earlier in this preamble in section IV.B.1.a., EPA is dropping the requirement for an "independent" corrosion expert in the final rule.

Comments were also received indicating that the addition of a cathodic protection system to a tank that was repaired by lining was not necessary and represented a significant additional expense. In view of the excellent performance record to date with relined tanks, EPA agrees with this point to some extent. Accordingly, in the final rule, EPA will allow lining alone as an upgrade alternative for corrosion protection provided that it is done within the confines of one of the national codes. In other words, a tank that is determined to be structurally sound under the criteria in the codes may be upgraded by lining alone for a 10-year period. The interior of the tank must be reinspected at the end of the 10-year period following the lining. If this inspection shows the tank is still sound, again in conformance with the existing codes, the upgrade can be extended for use for another 5 years. Thus, in the final rule, lining alone (without cathodic protection) provides an allowable upgrade for corrosion protection for a 10-year period. This period may be extended in 5-year increments by inspecting the tank according to the codes and demonstrating that the tank is still sound and that the lining can prevent releases for another 5 years.

c. *Authorized Repair for FRP Tanks (§ 280.33(b))*. In § 280.33(c), EPA proposed that repairs to FRP tanks be made only by the manufacturer's authorized representatives. Many

comments were received opposing this proposed requirement.

Commenters argued that qualified in-house personnel should be allowed to perform repairs and that such a restriction would limit the opportunity for private enterprise and small businesses to enter into the FRP repair industry. They also expressed concerns that restricting repairs to the manufacturer's authorized representatives would increase the cost to the owners and operators. Finally, they believed that such a restriction could result in insufficient repair capability and cause delays in repair, particularly in less populated and more remote regions.

Several comments were also received that supported the proposed requirements stating that long-term repair of FRP tanks requires the use of proper repair materials and techniques. Commenters in favor of this position argued that only the manufacturer has the requisite knowledge of the appropriate materials and methods to repair the specific composition of FRP used in its tanks. They pointed out that these manufacturers have already established authorized representatives trained in the proper methods and supplied with the quality-assured and correct materials. They also suggested that, because the manufacturer bears continuance of product liability, only the manufacturer's authorized representatives should be allowed to repair FRP tanks.

After carefully considering the arguments on both sides, EPA has decided to change the proposed requirement to allow not only the manufacturer's authorized representatives to repair FRP tanks but to also allow qualified in-house personnel to conduct repairs if a code of practice developed by a nationally recognized organization or independent testing laboratory is followed.

Information presented by commenters convinced the Agency that there are other qualified and competent individuals who could provide reliable and proper repair services for FRP UST systems. Though there are no currently established industry standard codes for repair of FRP tanks, at least one nationally recognized organization is presently developing such a code. Therefore, the Agency believes it would be imprudent to restrict repair services to only manufacturer's authorized representatives. The Agency also believes that allowing repairs to be conducted by other qualified in-house personnel in accordance with an industry code of practice will help ensure that there are adequate repair personnel available to provide competent repair services in a timely manner.

d. *Vacuum Test.* In § 280.33(d), EPA proposed requiring that a vacuum test (at 5.3 in. Hg) be performed on the tank following repair. Section 280.33(f) proposed the added requirement of having a tank tightness test performed within one year following the repair of a tank. Comments were received on the technical details of these tests and on whether they were really needed to determine that the repaired tank was sound and would not release product to the environment. Several commenters questioned the technical adequacy and appropriateness of the use of a vacuum test, objecting to this requirement as possibly damaging some types of tanks.

As a result of the technical information supplied by these commenters, EPA agrees that release detection (see § 280.43 (d)–(h) of the final rule), and quality control inspections performed according to established industry standards, should provide sufficient ensurance that the repair or lining of the tank was performed correctly, and thus, a vacuum test is not necessary. The current good performance of repaired tanks, most of which were not vacuum tested, points to the validity of these comments. In addition, EPA agrees that the test could be harmful in some cases. Consequently, the Agency has dropped the requirement of a vacuum test from the final rule.

EPA has also decided that the proposed requirement for a tank tightness test within one year following repair is not always necessary because it duplicates the industry practice of internally inspecting lined tanks and the release detection requirements that apply to the repaired tank. The good performance record of repaired tanks makes such an additional requirement unnecessary.

e. *Pipes and Fittings (§ 280.33(c)).* In § 280.33(e) of the proposal, EPA required replacement of pipes and fittings from which a release had occurred due to corrosion. The proposal did allow the tightening of loose fittings and joints for purposes of repairs. Comments were received indicating that FRP piping could be satisfactorily repaired and that some types of valves could also be repaired adequately without replacement. EPA believes that replacement of metal pipe sections and fittings that released product because of corrosion or other damage is still necessary but, in response to the issues raised by several commenters, will allow repairs of FRP piping in the final rule. The final rule does not prohibit repairs of metal valves provided that these can be done in a manner that provides sufficient protection against releases. To ensure that these allowable repairs are carried out according to sound practice, EPA requires that all of the repaired sections be tested and shown to be tight so that they will not have a release after they are put back into service.

f. *Recordkeeping (§ 280.33(f)).* In § 280.33(g) of the proposal, EPA required owners and operators of a repaired tank to maintain records, including signed certification, capable of demonstrating compliance with the requirements of this section.

Comments were received suggesting that a log should be required for each tank which would document installation, repairs and maintenance, products, tests, and results. EPA agrees that such a log would be a useful means for owners and operators to document their compliance with UST management requirements and would encourage it. EPA believes, however, that specifically requiring a log as opposed to other methods of recordkeeping is unnecessary.

The final rule retains the general requirement that owners and operators maintain records demonstrating compliance with this section for the operating life of the UST system.

6. Reporting and Recordkeeping (§ 280.34)

a. *Introduction.* In the preamble to the proposal (52 FR 12711), the Agency identified the importance of the retention by the UST system owner and operator of key records of operation on site, and reporting of significant events to the implementing agency. Because routine reporting would create an overwhelming burden for the implementing agency due to the size of the large regulated universe, records will often be the only way for implementing agencies to determine that certain important regulatory actions actually took place. Such recordkeeping also prompts the owner and operator to carry out regularly scheduled actions that are necessary to protect human health and the environment. Reporting of significant developments (such as leaks and large overfills) provides information to implementing agencies early enough for them to ensure effective action is taken by owners and operators to correct the problem. In general, the proposal consisted of simple but essential recordkeeping and reporting requirements: Recordkeeping that is sufficient to ensure each owner and operator can demonstrate the recent compliance status of the facility; and

reporting that allows for early involvement of the implementing agency should an UST system failure need to be corrected.

The proposal required owners and operators to report three significant events to the implementing agency: (1) New UST system installation; (2) final closure; and (3) a suspected release from an UST system and any subsequent actions needed to contain, correct, and clean up a release. An UST system owner and operator who experiences no problems in the operation of the UST system would only have minimal reporting requirements, imposed at the installation and closure of the facility. Only in the event of system failure and a confirmed release would the reporting requirements substantially increase, and the level of this increase would be directly related to the significance of the threat posed to the environment. Recordkeeping was proposed that would demonstrate the use of requisite prevention and monitoring equipment as well as the facility's recent compliance status, as displayed through recent release detection, maintenance, and testing results.

Public comments on the proposal generally supported the Agency's proposed approach to recordkeeping and reporting although some concerns were raised about the scattered placement of these requirements throughout the rule. Some commenters stated that this format made it difficult for them to find and made it confusing to determine all of the owner and operator's recordkeeping and reporting responsibilities. In response to this concern, the final rule includes in one section of the rule (§ 280.34) a reference or directory to all of the reporting and recordkeeping requirements found elsewhere in the rule.

Other commenters suggested that additional and, in some cases, more complete records be required in the final rule. As explained below, however, today's recordkeeping and reporting requirements have remained essentially the same as were proposed. A few minor recordkeeping requirements have been added, and a few additional pieces of information must be reported during corrective actions to assist the implementing agency's assessment of the release problem. These few changes to specific recordkeeping and reporting requirements are discussed elsewhere in today's preamble as part of the more detailed analysis of the final rule's technical requirements for closure; release detection; tank system repair, operation and maintenance; and corrective action.

b. *Summary of Final Approach.* EPA received widespread support for the general notion that at least some recordkeeping and reporting is essential to ensure owners and operators adhere to the technical standards being promulgated today. EPA did not receive any information or comments to persuade it that a significant departure from the proposed approach was necessary or appropriate. Thus, the final rule essentially retains the proposed approach.

As discussed in the preamble to the proposal (52 FR 12712), recordkeeping is necessary to ensure compliance with the technical standards for release detection, closure, operation and maintenance of corrosion protection systems, and UST system repair. The Agency, as well as many commenters, believes, however, that demonstration of compliance of all requirements over the total operating life of the facility is impractical and unnecessary to protect human health and the environment. Today's approach is predicated on the intent to impose the minimum burden on the regulated community while at the same time ensuring that all owners and operators will be able to demonstrate at the request of the implementing agency whether their UST system is being managed in a manner that will protect human health and the environment. For example, the time frames for record retention were established to enable a demonstration of recent facility compliance status prior to an on-site visit. EPA is convinced that today's final recordkeeping requirements are essential and serve both the implementing agency's and regulated community's mutual interest. Many owners and operators may decide to keep more detailed records than are required or retain records for longer than today's minimum time frames. State and local governments may want to require additional recordkeeping.

Today's final reporting and notification requirements are also intended to foster the self-implementation that underlies today's final technical standards. Under today's reporting requirements, an owner and operator do not have any reporting obligations over the entire service life of the facility beyond the initial notification at installation and the final notification of permanent closure unless a suspected release in the environment has occurred. Given the enormous size of this regulated community, the Agency has concluded that it is impractical and unnecessary to overburden implementing agencies with periodic or routine reports from UST facilities that are operated properly and have no adverse environmental impacts. The Agency expects that most UST systems will rapidly improve and move into this category during the coming 10-year upgrade period.

Reporting of releases and corrective actions taken is explicitly required under section 9003(c) of RCRA. Although EPA expects numerous releases will be identified within this large regulated community, the Agency has concluded that reporting them to the implementing agency is a necessary first step to ensure protection of human health and the environment. Today's final approach to the reporting of releases and corrective action is based on the simple assumption that the more serious a release and its impacts are, the greater the necessity for interaction with (and reporting to) the implementing agency. The implementing agency is expected to ensure that the public interest is represented during cleanup decisionmaking and actual corrective action activities. The greater the threat to human health and the environment, the more reporting and governmental oversight that is needed.

Public comment on recordkeeping was generally favorable. Some commenters, however, objected to the differentiation between on-site and off-site record maintenance and availability. Under the proposal, records kept off-site had to be available within 24 hours while on-site records had to be immediately available. Other commenters objected to the requirement for providing off-site records within 24 hours, noting that sometimes important records are retained at corporate headquarters far removed from the UST sites. EPA agrees that there should be no real distinction for availability of records and that the 24-hour allowance may seem inequitable to those who must maintain records that are immediately available on-site. However, the provision in the final rule remains unchanged. Records retained at the site must be available immediately because EPA has concluded that there is no reason that they should not be except that they are not present or up-to-date when requested. When records are maintained at a business office off-site, they must be located at a readily available site and provided upon request (§ 280.32(c)). This change to require off-site records to be provided "upon request" responds to those commenters who pointed out that the proposed 24-hour limit was often impossible to achieve when records are stored at off-site locations. This change is also made to provide some discretion to the on-site inspector who can talk to

the owner and operator and determine where the records are stored off-site and decide whether they should be made available for inspection. If the records are easily accessible, the inspector may request that they be made immediately available. This change also responds to the commenter who believed there should be the same time allowed for providing records stored either on- or off-site because off-site records must be provided within the time frame requested by the implementing agency.

EPA believes that, under most circumstances, copies of the originals should be maintained on-site. If copies are not maintained at the sites, the owner and operator will have to take on the added burden of providing the implementing agency with these copies in an expedited fashion when they are requested.

Also, the Agency has determined that it will not make site plans a required record because it is not necessary to ensure compliance with the technical requirements promulgated today. A site plan is, however, a useful tool for owners and operators. The Agency notes that site plans are recommended in recent updates of national codes addressed to the installation of new UST systems.

Finally, as noted above, in response to commenters' confusion over the various recordkeeping and reporting requirements in the proposal, the final rule has been revised to include a directory in § 280.34 that is intended to simply summarize and identify the recordkeeping and reporting requirements. This new section is intended to eliminate the confusion identified by several commenters when trying to locate their recordkeeping and reporting responsibilities in the proposal. Each item of reporting and recordkeeping is identified and listed, including a reference to the section of the final rule in which full details may be found. Requirements with respect to the general availability and maintenance of records are presented along with this directory section and have not changed since proposal, except for the slight extension of the allowable period for making off-site records available to the inspector (see discussion above).

D. Release Detection

This section of today's preamble provides a summary of the Agency's final approach to release detection, the proposed rule, and the major changes from the proposal. A section-by-section analysis of the final rule (IV.D.2.) discusses in detail the final release detection requirements, including highlights of major public comments received.

1. Overview

a. *General Approach to Release Detection.* As described earlier in this preamble, today's requirements that new and existing UST systems be properly installed, protected from corrosion, and equipped with spill and overfill protection will dramatically reduce UST system releases. Release detection is an essential backup measure to prevention, particularly for unprotected steel UST systems (prior to upgrading or replacement) and pressurized piping because they are more prone to releases. A variety of release detection methods have been successfully applied to USTs. These methods can be grouped into six general categories: tightness or precision tests, tank gauging systems, inventory control methods, ground-water monitoring, vapor monitoring, and interstitial monitoring. Each was discussed in the preamble to the proposal (52 FR 12714). State and local programs have chosen to rely on different combinations of these methods. They all appear to be successfully detecting releases when properly applied. To maintain flexibility in the selection of release detection methods, both for the implementing agencies and for the owners and operators, the proposal allowed the selection of release detection to be tailored to the characteristics of each site and, therefore, avoided unnecessary disruption of successful state and local programs. The most important features of the proposed and final rules are summarized in the sections below.

b. *Highlights of the Proposed Rule.* In the proposed rule, the release detection strategy relied on the use of either monthly detection methods or a combination of tightness testing (performed semiannually to every 5 years) and monthly inventory control. Frequent testing dramatically increases the probability of detecting a release and reduces the length of time a release can go undetected. A 30-day frequency was selected as a practical monitoring frequency that was sufficient to protect human health and the environment. The proposed rule required only one release detection method at each UST site, because frequent use of one monitoring method was sufficient to discover releases before they could cause significant damage to the environment.

Current industry practices generally do not include frequent release detection and most releases that are discovered are detected through impacts on the surrounding community or large inventory losses. Consequently, substantial time and effort will be required to reach the goal of monthly monitoring for all UST systems. The proposal phased in detection requirements over 5 years to allow the leak detection industry time to expand and to more evenly schedule the demand for detection equipment. The proposed rule also allowed less frequent use of tank testing (every 3 or 5 years when combined with monthly inventory controls) during the first 10 years of the program. The goal of the proposed approach was the installation of release detection as quickly as possible on the tanks most likely to leak.

To ensure flexibility, all proven methods of release detection were allowed in the proposed rule. In the absence of adequate data, the proposed rule did not set one performance standard for all release detection methods. Instead, each method was required to meet performance and design standards specific to that method. These standards were based on the experience of state programs that indicated these methods were effective under the specified conditions.

c. *Major Changes in the Final Rule.* Although the overall release detection strategy has not changed from the proposal, specific requirements on how and when release detection must be conducted have changed. The four most significant revisions to the proposed regulations include:

- More frequent monitoring of existing unprotected tanks during the 10-year upgrade period;
- Less frequent monitoring of new and upgraded tanks until age 10;
- Gradual phase-in of release detection based on tank age; and
- More stringent requirements for pressurized piping.

These changes, discussed generally in section III.B. of today's preamble, are presented in detail in the appropriate parts of the section-by-section analysis below. Additional revisions made to the release detection requirements are also discussed in the section-by-section analysis.

In addition, three important organizational changes were made in response to commenters' concerns. First, in the proposed rule, the requirements for hazardous substance USTs were in a subsection of the petroleum UST requirements, and several commenters noted that they had difficulty finding and understanding the requirements for these systems. In response to this concern, the release detection requirements for petroleum and hazardous substance USTs have been

separated in the final rule and placed in §§ 280.41 and 280.42, respectively.

Second, tanks and associated piping were treated in the proposed rule as a single unit. Each method of release detection applied to the tank was required also to detect leaks from piping. In another section of the proposed rule, there were additional release detection requirements that could only be applied to the piping. Commenters noted that this structure limited flexibility in meeting the release detection requirements by forcing the same method to be used for tanks and piping. They noted that the same method may not work for both tanks and piping and several viable detection methods for piping were excluded. In addition, the information on causes of release indicates that piping is generally a greater release threat than tanks. Thus, today's final rule treats piping separately from and with equal importance to the tank. The release detection methods for tanks and piping have been separated in the final rule into §§ 280.43 and 280.44, respectively.

Third, in the final rule, the release detection requirements for each type of UST system, including allowed methods and required frequencies of testing, have been consolidated into two brief sections (§§ 280.41 and 280.42). The detailed performance standards for each method of detection are now contained in §§ 280.43 and 280.44. The section-by-section analysis of the preamble parallels this structure so that all discussion of the phase-in schedule, the methods and combinations of methods allowed for each type of system, and frequencies of testing are discussed first (sections IV.D.2. a–c.). Discussion of research and public comments on the technical details of each detection method for tanks and piping is reserved for later sections (IV.D.2. d–e.).

2. Section-by-Section Analysis

a. *General Requirements (§ 280.40).—(1) Use of One Release Detection Method.* In the proposed rule, a single release detection method could be used to meet the requirement to detect releases from both the tank and connected piping. As discussed in more detail in the preamble to the proposed rule (52 FR 12718–12719), the use of redundant methods of release detection was not required at each UST site because the Agency was not convinced that the required use of these "backup" methods would provide significant environmental gains in comparison to the adverse impacts on program implementation. Some commenters opposed allowing only one method of release detection primarily because they believe all the methods are unreliable and insufficiently developed, particularly external methods. Other commenters, however, agreed with EPA's position on this issue and cited their own satisfactory experience with the various methods.

The final rule continues to allow the use of a single properly installed and operated release detection method for tanks when testing is performed monthly. When less frequent monitoring is used it must be backed up by use of monthly inventory control. Owners and operators remain free to use multiple methods if they desire, and state and local programs can require redundant systems.

EPA decided against requiring multiple methods because frequent use of a single detection method, when combined with the prevention measures contained in other sections of the rule, is sufficient to protect human health and the environment. The performance standards, design criteria, and limitations on the methods contained in the rule are intended to ensure that the optimum performance of each release detection method is achieved. Repeating the test monthly dramatically reduces the possibility of failing to detect a leak. Each test serves as a separate check of the integrity of the UST system. Field reports confirm the success of single methods in detecting releases from UST systems. For example, Dade County, Florida, has detected over 350 releases using ground-water monitoring wells. EPA's research on the best ways to use some of the different release detection methods is directed towards improving the field performance of various types of methods. For tanks and suction piping systems, one detection method, combined with prevention efforts, should virtually eliminate undetected releases.

The Agency chose not to rely on one method of detection for pressurized piping, however. Even with good efforts at prevention, these systems may still result in significant releases. Consequently, the final rule requires existing and new pressurized lines to use both automatic line leak detectors and another leak detection method (either monthly monitoring or annual line tightness tests).

(2) Scope of Release Detection (§ 280.40(a)(1)). The proposed rule provided a general requirement that the release detection method be "capable of detecting a release from any portion of the UST system." The purpose of this requirement was to ensure detection of both tank and piping leaks. A few commenters objected to the general nature of the wording of the requirement because it includes some portions of the UST system such as vent lines, fill pipes, and bungs on the top of the tank that do not normally contain regulated substances. Some tank tightness test methods do not test the top of the tank and, thus, do not detect the presence of holes in the vents and bungs. These portions of the tank only leak when the tank is overfilled.

EPA shares the concern of commenters that a strict interpretation of the wording in the proposed requirement could result in some release detection methods, particularly non-overfill tightness tests, not being allowed because they cannot detect releases from portions of the UST system that do not normally leak. The final rule's wording that the methods must be able to detect a release from "any portion of the tank and the connected underground piping that routinely contains product" is intended to make clear that tank tightness test methods that do not overfill the tank can be used, as long as they meet the other applicable performance standards and another acceptable method is used to test or monitor the piping.

Furthermore, releases from the top of the tank or vents occur during overfills, which are not a normal operating condition. Prevention of overfills is addressed in § 280.20(c), § 280.21(d), and § 280.30, which together require that all new and upgraded tanks have overfill prevention equipment and spill catchment devices and that proper filling procedures be followed to prevent these "nonoperational" releases. These requirements are intended to prevent these types of releases; thus, EPA does not believe methods of release detection must be used that will detect them.

The additional information on causes of release that EPA has collected since the proposal (see section II.F. of this preamble) reinforces the fact that piping is a major source of releases. Therefore, the final rule continues to require that the methods of release detection that are used must be capable (either singly or in combination) of detecting a release from both the tank vessel and the piping that conveys product.

(3) Installation, Operation, Calibration, and Maintenance (§ 280.40(a)(2)). To ensure that the release detection method will reliably detect releases once in place, the proposed rule required installation, calibration, operation, and maintenance according to manufacturers' specifications. At proposal, the Agency decided against requiring certification of installers and servicers of release

detection equipment because these programs are not currently developed and there are other effective approaches for ensuring proper installation (52 FR 12719). As discussed below, commenters stated that the rule should require certification of installers and servicers of release detection equipment. After consideration of these comments, EPA continues to believe that such a requirement would hinder rapid installation and flexibility in designing effective ways to regulate installers. Today's final rule will remain as proposed for the reasons discussed below.

The UST release detection field is a new and proliferating area of technology, and, because of this, some commenters suggested that a certification program should be required for installers and operators of release detection equipment to ensure high quality work and to assist owners and operators in selecting qualified personnel. Certification by EPA or state agencies was suggested. Other commenters felt that a state or Federal certification program would limit the number of installers, would increase the cost of release detection provided by those installers who were already certified, and would delay widespread application of release detection methods. Some of these commenters suggested alternatives to state or Federal installer certification.

By including the performance standard in the proposed rule, EPA acknowledged that ensuring proper installation and operation of equipment is important. Although a certification program is a viable approach to achieving this goal, EPA disagrees with commenters who felt that state or Federal certification is the only way to ensure quality installations. Existing state programs that lack certification programs have been effective at discovering releases. As commenters noted, there are numerous possible approaches to ensure proper installation. Mandating certification would unnecessarily restrict states from designing alternative effective ways to regulate installers.

EPA agrees with commenters that the time required to conduct a certification program would seriously hinder rapid implementation of release detection. Installing leak detection quickly on existing tanks, which are primarily unprotected steel, will be of significant environmental benefit, even in the absence of certification. For these reasons, no additional requirements have been included in the final rule to ensure release detection installation and operation.

(4) Meeting the Performance Standards (§ 280.40(a)(3)). In the proposal's preamble (52 FR 12714–12718), the Agency described three possible approaches to ensure the quality of release detection equipment used to meet the regulations. EPA solicited comments on a general performance standard, certification of methods, and a method-specific performance standard. The Agency proposed the method-specific approach because it offered the greatest flexibility and facilitated rapid program implementation. Commenters generally agreed with the advantages and disadvantages ascribed to each approach, and many concluded that the method-specific approach is the best possible at present. The final rule thus retains method-specific standards by requiring each method used meet the standards in § 280.43 or § 280.44.

Commenters generally agreed with both the explanation and the conclusion in the proposal preamble concerning the use of method-specific release detection standards. Many commenters believe that the method-specific approach would be the most realistic approach given our current knowledge and that it would allow the widest range of choices among effective technologies. Some commenters, however, believed a general standard should be formulated based on the standard specified for tank tightness testing (0.1 gallon per hour). Because the method-specific standard would allow varying performance standards, these commenters felt that many owners would simply select the cheapest, least effective method. Other commenters recommended a certification approach, feeling that consistency was less important than ensuring that the regulated community knew exactly what devices met the standards.

The preamble to the proposal contained an extensive discussion of the merits of each of the three approaches to regulating release detection. One approach considered by the Agency was to specify a general standard for the leak rate or quantity which must be detected by a method and not specify individual methods or restrictions on their use. This approach was viewed as providing the most consistent level of performance and the one that best challenged manufacturers to develop defensible performance claims for their equipment. This approach is not used in the final rule for two reasons. First, the Agency does not have sufficient information to relate leak rates to the quantity of product detected by external methods under all possible site conditions. Second, eliminating the specific methods in the rule would slow program implementation by forcing owners and operators to wait for detailed, extensive performance information before conducting release detection. The final rule, however, incorporates the flexibility of a general performance standard by allowing, in addition to specific methods, any method which can detect a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 within a month. For a discussion of this addition, see section IV.D.2.a.4. of today's preamble.

A certification approach applied at the federal level would provide the regulated community with the clearest direction concerning which release detection equipment was acceptable. This approach is not used in the final rule because it would slow program implementation and reduce the choices available to owners and operators over the next several years. Further, it was not viewed as necessary because comparable performance information for each method can be generated by private efforts without federal involvement.

Research results and data submitted by commenters after the proposal have reinforced the Agency's belief that all of the methods that were proposed are effective release detection techniques if used within the context of certain constraints (discussed in the section on individual methods). EPA believes that offering a broad selection of methods will make it easier for owners and operators to comply with the regulation. Also, a broad selection is consistent with the encouragement of existing industry trends and state programs, which have utilized a variety of release technologies and which have been proven effective at discovering leaks. Information gathered by EPA suggests, but does not conclusively prove, that all of the methods included in the rule can detect at least a 0.2 gallon per hour release within 30 days when used in accordance with the restrictions on that method. The Agency believes that all methods will eventually be able to prove they reliably detect 0.2 gallon per hour releases and has included that as a standard for approving new methods. This standard is discussed in section IV.D.2.a.4. Allowing a range of methods with specific standards does not mean the cheapest, least effective method will be selected, because cost and effectiveness are not necessarily related. For instance, under some site conditions

(e.g., ground water within the excavation zone), manual ground-water sampling may be the cheapest method and will reliably detect releases substantially smaller than 0.2 gallon per hour.

(5) Delay in Detection Probabilities (§ 280.40(a)(3)). As discussed in the proposal preamble (52 FR 12719), a complete release detection performance standard includes not only the leak rate or quantity that a method must detect, but also the probabilities of detection (PD) and false alarm (PFA). In the proposed regulations, complete standards of this type were included for in-tank detection methods in the section on specific methods. Research results and commenters' concerns have caused the Agency to make several important changes in the final rule. The probabilities have been moved to the general requirements section (§ 280.40(a)(3)) and changed slightly, and the effective date has been delayed for two years. These changes are discussed below.

The proposal preamble emphasized the statistical nature of detecting leaks and the large number of variables that add to the uncertainty in declaring a leak. The probability of detecting a leak is dependent on its size. All methods are more likely to discover large leaks than small ones. With regard to detecting the smallest leaks, the Agency recognized that good methods properly operated may mistakenly declare a leak when none exists (false alarm) or fail to discover some leaks (missed detection). Consequently, the standards for tank tightness testing and automatic in-tank monitoring included the requirement that methods detect a specified leak rate with a PD of 0.99 and a PFA of 0.01. The Agency remains convinced that specifying probabilities in this manner better defines the performance standards and should help owners and operators make informed choices about leak detection.

The final rule retains the PD and PFA as part of the leak detection performance standard. The probabilities have been removed from the standards for specific methods and placed in the general requirements section. This change expands the coverage of the probabilities to include automatic line leak detectors and interstitial monitors as well as tank and line tightness tests and automatic in-tank monitors. The Agency made this change to clarify that all leak rates or quantities specified as part of a method-specific standard in § 280.43 or § 280.44 must be detected with the same level of reliability.

The proposed rule set the PD at 0.99 and the PFA at 0.01. In the final rule, the PD has been changed to 0.95, and the PFA has been changed to 0.05. The Agency made this change for several reasons.

First, the Agency is not convinced that the 0.99/0.01 specification was a realistic standard given the wide range of variables affecting leak detection results. EPA's study of tank testing methods has attempted to determine performance at this level of precision and only 2 methods of the 25 studied could meet the standard. No study of this sort has been undertaken for the other methods covered by the probabilities in the final rule. Further, EPA does not plan to conduct studies similar to the one for tank tightness testing for other leak detection methods. Rather, the Agency intends that manufacturers should evaluate their methods to prove they meet the standard in the rule. Thus, the change in the final rule will encourage manufacturers to undertake this research. EPA is developing procedures for testing release detection equipment in a common way to help manufacturers in evaluating their equipment. EPA chose the 0.95/0.05 specification in the final rule because it is a level of performance attained by a modified commercial tank test method in the National Motor Fuel Survey. In addition, several commenters felt that a probability of detection of 0.95 was more realistic and was adequate to protect human health and the environment.

Because the final rule requires frequent-to-continuous monitoring, the change in probabilities will have little environmental impact. For example, a test which detects 0.1 gallon per hour leaks 95 percent of the time in one test will discover 99.9 percent of 0.1 gallon per hour leaks in 3 consecutive tests. Further, tests that meet this standard are virtually certain to detect leaks larger than this threshold and will detect a significant number of leaks below the threshold. Under either standard, large leaks will be caught immediately and small leaks will be discovered before they cause environmental damage.

The final change in this section of the final rule is a delay in the effective date of the probabilities. As discussed above, few methods have been proven to meet the complete standard specified in the proposed rule. However, preliminary results from the EPA's tank testing study (Notice of Availability; 53 FR 10403) indicate that several methods could meet the standard with simple changes in procedures and equipment. The Agency also wanted to allow time for manufacturers of automatic tank gauging systems, automatic line leak detectors, and interstitial monitors to prove that their systems meet the complete standard. The Agency believes manufacturers can make the necessary changes to their methods and evaluate their performance in 2 years. Until the probabilities become effective, methods need only detect the leak rate or quantity specified for that method in § 280.43 and § 280.44. Methods installed or conducted during this 2-year phase-in will not need to be performed again or replaced after the probabilities become effective, but all methods used after that period of time will have to achieve the probability standard.

(6) Reporting of Positive Monitoring Results (§ 280.40(b)). The proposed rule contained a provision in Subpart E that the owner and operator must report all suspected releases indicated by the results of release detection monitoring. Perhaps because this release detection reporting requirement was in a different subpart from the release detection technical requirements, commenters stated that it was unclear when a suspected release needed to be reported. To clarify and strengthen the requirement to report all suspected releases, a provision has been added to Subpart D (§ 280.40(b)) in the final rule explicitly stating that any indication by the release detection method that a release has occurred must be reported in accordance with reporting procedures described in Subpart E.

It is intended that all release detection equipment be operated at least at the level of sensitivity indicated in the performance standard. For example, 2 years after the effective date of the rule, the tightness test threshold (i.e., test result that indicates a suspected release) should be set to detect 0.1 gallon per hour leak rates with a PD of 95 percent and a PFA of 5 percent; this threshold value may differ for various tightness testing devices. Manufacturers of the release detection equipment must determine what this threshold value must be to meet the performance standard and inform operators of their equipment. Until the manufacturer sets such a threshold, tank test operators should continue to use the current 0.05 gallon per hour threshold. For most tank testing methods, this will approximate the threshold level for detecting 0.1 gallon per hour leaks. The owner and operator would report a suspected release when a test result exceeds 0.05 gallon per hour or the threshold value provided by the manufacturer in accordance with § 280.50.

It is important to note that the performance standards such as 0.2 gallon per hour or ⅛ inch of product on

top of the ground water are device performance standards set to exclude less effective equipment. The standards are not allowable contamination levels. Owners and operators are still responsible for correcting leaks and cleaning up any product released to the environment. It is in their interest to use the most effective release detection equipment and operate it so the device detects releases as quickly as possible to avoid potentially costly corrective action.

(7) Phase-in of Release Detection (§ 280.40(c)). The proposed rule required a 3- or 5-year phase-in of release detection, with the shorter phase-in period applied to USTs without protection from corrosion and the longer phase-in to those USTs with corrosion protection. These phase-in periods were based, in part, on the experiences of several state and local UST programs in initiating release detection under a phase-in schedule that was typically 3 to 5 years (52 FR 12677, 12703–12704). This phase-in was proposed to ensure that tanks with the greater risk of leaking (those unprotected from corrosion) had release detection installed first. As discussed in the proposal preamble, the total phase-in period covers 5 years to allow enough time for the release detection industry to respond to the demand, owners and operators of existing tanks to plan their needs, and implementing agencies to develop their programs. The proposed rule also required closure of existing USTs that could not meet the phase-in schedule.

Commenters recommended a variety of phase-in periods and generally recommended age as the most appropriate basis for the phase-in. Therefore, § 280.40(c) of the final rule phases in the implementation of release detection over 1 to 5 years based on the age of the system (oldest tanks first). Requiring the oldest tanks to phase in release detection sooner, within 1 year, ensures that those UST systems most likely to leak are addressed first. The final rule also retains the proposed requirement of closure of any USTs that cannot meet the release detection requirements by the phase-in date. A significant addition to the final rule is the requirement that existing systems with pressurized piping must retrofit line leak detectors within 2 years. Comments received regarding the phase-in of release detection are discussed in more detail below.

Commenters recommended a range of time periods from 3 to 10 years for completing the phase-in of release detection. Commenters supporting a longer period believed that the proposed phase-in periods would overburden the release detection industry, resulting in poor quality installations and late compliance, and cause economic hardship to owners and operators. Those commenters recommending shorter phase-in periods believed that a tighter schedule would prevent significant environmental damage. The Agency has decided in the final rule to retain the overall 5-year phase-in time period for the same reasons outlined in the proposal preamble (52 FR 12677, 12703, and 12704). Based on experience at the state and local level, EPA does not believe release detection can be installed and conducted at over 700,000 UST sites nationwide in less than 5 years. Not only will it be difficult to do in less than 5 years, but some of the release detection systems installed on a more expeditious timetable could be lower quality as a result. As discussed above, however, the greatest release potential will be during this interim period. Thus, lengthening the phase-in period would result in unacceptably greater environmental damage. Moreover, even accepting commenters' concerns about economic burdens, lengthening the phase-in would not provide a resolution because retrofitting would still be necessary ultimately and would be coupled with greater corrective action costs brought on by the delay in detection. For these reasons, today's final rule retains the 5-year phase-in period.

During the 5-year phase-in period, it is important to direct release detection efforts at the existing UST systems most likely to leak. Many commenters recommended achieving this goal by phasing in release detection based on the age of the UST system. They pointed out that this approach also has the advantage of stabilizing the demand for release detection, resulting in less burden for both the release detection industry and the owners and operators. It also has the advantage of addressing first the tanks that are most likely to leak. Several commenters pointed out their concerns that if the phase-in is not sequenced in its implementation, the regulated community will collectively wait until the last minute, and unavoidable further delays will ensue. A few commenters opposed an age-based schedule because it was too simplistic or ignored other important factors.

The Agency agrees with commenters suggesting a release detection phase-in schedule based on age. Although age is not the only factor in determining when a tank will leak, it is an important factor that is readily understood and determined and, therefore, easy to implement. This approach is already being used successfully in several state and local programs. The approach in the final rule is not a radical departure from the proposed phase-in schedule. The causes-of-release study indicates that most existing protected USTs are less than 10 years old. Under both the proposed and final phase-in schedules, these tanks must phase in release detection within 5 years after promulgation. EPA believes that the main impact of the revised schedule will be to spread out the phase-in of release detection on unprotected USTs, which represent over 75 percent of UST systems, over years 1 through 4 rather than require it all at year 3, resulting in fewer implementation bottlenecks.

Some commenters recommended a class approach (sensitive areas first) to phasing in release detection. Although the concept of retrofitting release detection in vulnerable areas first is appealing, EPA does not believe it is possible to identify sensitive classes in any meaningful way at the Federal level (see section III.C. of this preamble). States can choose to phase in release detection based on a class approach without losing the ability to receive state program approval (see § 281.33) if they complete a phase-in of release detection at all existing tanks within 5 years and pressurized piping in 2 years.

EPA's information on the causes of release clearly indicates that pressurized piping represents a major source of uncontrolled releases. None of the requirements for existing systems in the proposed rule addressed the threat of catastrophic releases from pressurized piping. Consequently, in the supplemental notice (52 FR 48638), the Agency requested comment on the idea of requiring existing systems to retrofit line leak detectors on pressurized piping. Commenters generally felt that it was appropriate to require such a retrofit and recommended a variety of phase-in schedules. EPA agrees with commenters who recommended a short phase-in schedule because this piping is a significant environmental hazard, retrofitting line leak detectors is relatively easy and inexpensive, the devices are highly effective (see section IV.D.2.e.1. of the preamble), and many systems are already equipped with the devices. Consequently, the final rule requires that existing pressurized piping meet the same standards as new piping 2 years after the effective date of the rule (see section IV.D.2.b.2. of the preamble for piping requirements).

(8) Closure if Release Detection Is Not Installed (280.40(d)). In the proposed rule, EPA required closure of an existing

UST system if a method of release detection was not installed by the end of the specified phase-in period. Most existing USTs are not protected from corrosion and, thus, are likely to corrode and eventually leak. The selected phase-in schedule discussed above is considered the maximum time that these systems should be allowed to operate without release detection. Therefore, the final rule continues to require that UST systems be closed if release detection cannot be retrofitted or applied by the phase-in date.

One commenter noted that the closure procedures of the proposed rule required a site assessment of the excavation zone before closure, the results of which might delay closure beyond the allowable time frame. Although the Agency recognizes that closure can be a time-consuming process, it should not require any more time than the selection and installation of release detection equipment. The final rule requires that, by the phase-in date, the owner must remove the tank or fill it with inert material and complete the site assessment. Should a release be discovered, responding to the findings of the site assessment is part of corrective action and need not be completed by the phase-in deadline. Owners and operators are expected to plan ahead to ensure that they complete installation of release detection or the closure procedures by the specified date. This will allow the implementing agency to ensure compliance with both requirements with a single inspection. For these reasons, EPA has retained in the final rule the provision to complete closure by the end of the phase-in period.

(9) Other Changes. One of the general requirements in the proposed rule required a site assessment prior to the installation of any external leak detection system to ensure compliance with the performance standards for the particular method used. To clarify that the site assessment is intended to include only an analysis of selected factors within or beneath the excavation zone, the general requirement has been deleted, and the only assessment requirements are contained in § 280.43 (e)(6) and (f)(7) of the final rule. These changes are discussed below.

The importance of a site assessment in correctly selecting and applying an external method was discussed in the proposal preamble (52 FR 12720–12722). Although numerous factors were listed in the proposal preamble concerning a site assessment, EPA stressed that the assessment should, at a minimum, ensure compliance with the method-specific restrictions in the proposed rule. EPA requested comment on the proposal to include these or other site variables in the assessment requirement. Some commenters stated their belief that a complete site assessment is too extensive a technique to be required for demonstrating the performance of external release detection and does not provide much useful information because conditions at the site change constantly. Most commenters, however, agreed that a site assessment is appropriate before installation of external release detection systems. In fact, these commenters wanted to extend this provision by requiring site assessments for all release detection methods, thereby requiring a quick national survey of all UST site conditions. Others suggested at least requiring a site assessment periodically at all USTs.

The Agency continues to believe that site assessment of the excavation zone is necessary to ensure the reliability of external methods. The Agency also agrees with comments stating that the site assessment requires no more information beyond checking a site for compliance with the restrictions on the methods. Conditions in and below the excavation zone must be known before an external method is selected or installed because inappropriate excavation conditions can render some external methods ineffective. Internal methods are not typically affected by site conditions, and those methods that are affected (e.g., water table level can affect tightness tests) can account for these conditions without performing a site assessment. The major factors determining the effectiveness of ground-water and vapor monitoring were included in the method-specific performance requirements in the proposed rule, and, for most sites, an adequate assessment will require evaluation of only those factors.

The Agency decided against requiring a more extensive, more frequent, or a more widely applied site assessment because of the unnecessary burden it would place on implementing agencies and the possible delays in release detection compliance it would cause. The Agency believes that the greatest benefit for existing systems, short of upgrade or replacement, will be obtained by conducting release detection as quickly as possible. The site assessment for certain external methods is retained in the final rule in § 280.43 (e)(6) and (f)(7) because EPA believes it is important to ensure that these methods work properly. The site assessment is not intended to be a general search for contamination at the site. Any contamination found, however, must be reported, and the owner and operator must comply with the corrective action requirements of Subpart F. A more detailed search for contamination is required when tanks close under Subpart G.

b. *Requirements for Petroleum UST Systems (§ 280.41). (1) Requirements for Petroleum Tanks (§ 280.41(a))—(a) Overview.* The proposed rule offered a variety of release detection methods for petroleum UST systems. New or existing UST systems could perform accurate monthly monitoring using automatic tank gauges, vapor monitors, ground-water monitors, interstitial monitors, or other methods approved by the implementing agency. The proposal allowed two exceptions to the monthly monitoring requirement. First, when combined with monthly inventory control, tank tightness tests could be performed semiannually at new UST systems. The proposal allowed semiannual tightness testing and inventory reconciliation for new tanks because the combination was believed to be as accurate as monthly monitoring. Second, when combined with monthly inventory control, tank tightness tests could be performed less frequently at existing USTs during the 10-year upgrade period (every 3 years for bare steel systems or every 5 years for protected tanks). Less infrequent tank tests for existing USTs were permitted during the phase-in period because the Agency believed the release detection industry lacked the capacity to perform monthly monitoring at all existing tanks in 3 to 5 years.

The use of monthly monitoring methods has been retained as an option for all petroleum UST systems in the final rule. The final rule also contains two exceptions for tightness testing similar to those in the proposal. An overview of the release detection requirements is presented in Figure 4. During the 10-year upgrade period at

existing tanks that are not adequately protected from corrosion and lack spill and overfill equipment, the rule now requires either (1) annual tank tests and monthly inventory controls, or (2) monthly monitoring. Tanks that meet the standards for new or upgraded tanks are required either (1) to conduct tank tests every 5 years combined with monthly inventory controls for a 10-year period following the date of installation or upgrade or until 1998, whichever is later, or (2) to conduct monthly monitoring. Also, in both cases, by the end of the 10-year period, these USTs must be using an approved monthly monitoring method.

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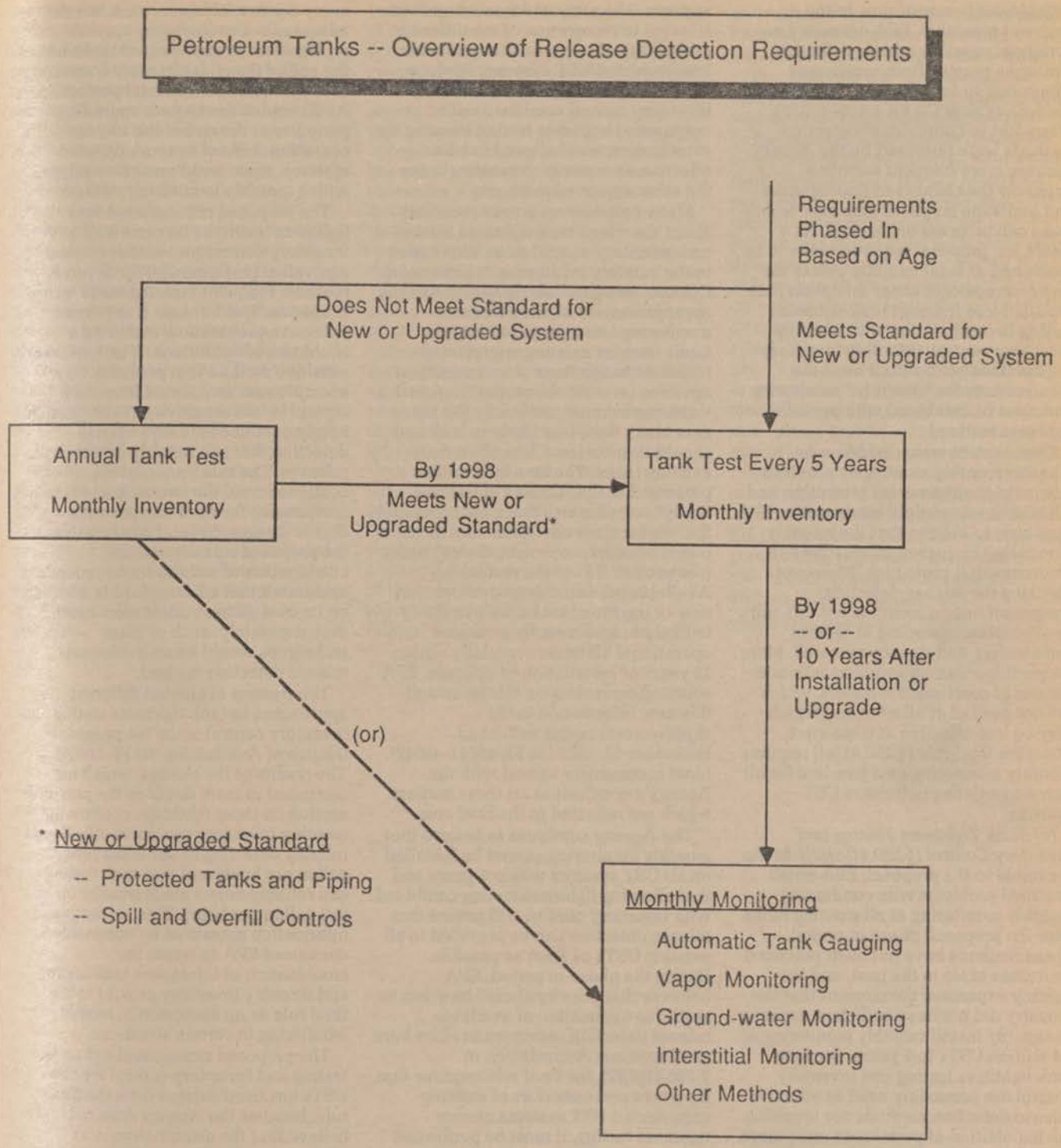

Figure 4

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(b) Monthly monitoring. In the proposal preamble, EPA discussed a variety of possible release detection strategies ranging from continuous monitoring to an infrequent "check" of the tank system (52 FR 12676–12677). "Frequent-to-continuous" detection methods were proposed by the Agency because more frequent sampling improves the chances of finding leaks and limits the length of time over which leaks can progress unchecked. As a result, the proposal required tanks to be monitored at least monthly unless the owner or operator chose an option that included less frequent tank tightness testing in combination with monthly inventory control. (Monthly inventory control does not by itself meet the requirements for "monthly" monitoring and must be combined with periodic tightness testing.)

Commenters were divided over whether monthly monitoring provides adequate environmental protection and whether it was unduly burdensome. EPA continues to believe that the monthly monitoring frequency offers effective environmental protection. Moreover, checking the release detection equipment once a month is not difficult or expensive, according to several commenters and Agency research. More frequent monitoring would necessitate the use of continuous monitors, which are not needed at all sites and which may be less effective at some sites. Thus, the final rule (§ 280.41(a)) requires monthly monitoring as a baseline for all new and existing petroleum UST systems.

(c) Tank Tightness Testing and Inventory Control (§ 280.41(a)(2)). In the preamble to the proposal, EPA noted practical problems with conducting monthly monitoring at all existing tanks over the proposed phase-in period. These methods have not been practiced on a mass scale in the past, and the Agency expressed the concern that the industry did not have sufficient capacity to capably install monthly monitoring at 1.4 million USTs in 5 years. Because tank tightness testing and inventory control are commonly used as effective release detection methods not requiring the installation of permanent equipment, EPA allowed these methods as options for existing USTs during the 10-year phase-in period for upgrading (see section IV.D.2.b.1).

The large number of existing systems to be tested and the limited industry capacity caused the Agency to propose less frequent tank testing for existing systems than for new systems: every 3 years at unprotected existing systems and every 5 years at protected existing systems. The proposed frequencies were selected in recognition of the differing probability of releases at unprotected and protected UST systems. For new tanks, the proposal allowed monthly inventory control combined with semiannual tightness testing because the combination was believed to be as effective as monthly monitoring using the other approved methods.

Many commenters were concerned about the use of tank tightness testing and inventory control as an alternative to the monthly monitoring requirements. Commenters particularly questioned the appropriateness of more frequent monitoring being proposed for new tanks than for existing unprotected tanks. Although there was a variety of opinions on what the proper frequencies were, commenters uniformly felt that new tanks were less likely to leak and should be monitored less often than existing tanks. The new information presented in the "Causes of Release Study" corroborates these concerns that the most serious environmental threat is posed by older, unprotected steel tanks (see section II.F. of the preamble). Available evidence demonstrates that new or upgraded tanks are extremely unlikely to leak over their normal operational lifetimes especially within 10 years of installation or upgrade. EPA solicited comments on this issue and this new information in the supplemental notice published December 23, 1987 (52 FR 48641–48642). Most commenters agreed with the Agency's conclusions on these matters, which are reflected in the final rule.

The Agency continues to believe that monthly monitoring cannot be installed on all UST systems within 5 years and that allowing tightness testing combined with inventory control will ensure that release detection can be provided to all existing USTs as soon as possible. During the phase-in period, EPA believes that priority should be given to requiring application of available release detection resources to older bare steel systems. Accordingly, in § 280.41(a)(2), the final rule requires that if owners and operators of existing unprotected UST systems choose tightness testing, it must be performed yearly rather than every 3 years as proposed. Existing protected systems (with spill and overfill prevention equipment) are required to be tested every 5 years during the 10-year upgrading period, the same as proposed. Because extremely few new or upgraded tanks are expected to leak during the first 10 years of their operational life, under the final rule (§ 280.41(a)(1)), these tanks may also conduct tightness testing every 5 years. This approach has the advantage of encouraging upgrade or replacement of unprotected tanks before the end of the phase-in period, resulting in improved environmental protection. At the end of the 10-year upgrading period or at the end of the 10-year operational life of new or upgraded systems, these tanks must be equipped with a monthly monitoring method.

The proposed rule required tank tightness testing to be combined with inventory control (or another method of equivalent performance) for several reasons. Frequent tank tightness testing is not practical because it requires extensive preparation, including a shutdown of operations. It is, however, a sensitive method that provides very accurate results. Manual inventory control is less sensitive but can provide nearly continuous (daily) release detection that can reliably detect larger releases. The rule proposed the combination of the two techniques to compensate for each component's disadvantages. Several commenters on the proposed rule viewed the combination of techniques as redundant and stated that each method is adequate on its own. Other commenters agreed that, separately, each of these techniques would be an inadequate release detection method.

The Agency evaluated different approaches to tank tightness testing and inventory control since the proposal (Notice of Availability; 53 FR 10403). The results of the studies, which are discussed in more detail in the preamble section on these methods, confirm that monthly inventory control is effective at reliably detecting larger leaks (about 1 gallon per hour) and that tank testing can reliably detect much smaller leaks (0.1 gallon per hour). This research and information submitted by commenters convinced EPA to retain the combination of infrequent tank testing and monthly inventory control in the final rule as an exception to monthly monitoring in certain situations.

The proposed semiannual tightness testing and inventory control for new USTs has been deleted from the final rule, because the Agency does not believe that the combination is as effective as the other monitoring methods. The Agency continues to believe that monthly monitoring is necessary to protect human health and the environment; less frequent monitoring is allowed only as an interim measure. Currently, conducting monthly tank tightness testing is not a practical or economical method. Tank testing methods may be developed in the future, however, that can be performed on a

monthly basis to detect leaks of 0.2 gallon per hour. The final rule allows the use of this method without inventory control once the method is proven to meet the performance standard in the section on other methods (§ 280.43(h)).

(d) Manual Tank Gauging (§ 280.41(a)(3)). In addition to the other release detection methods in the proposed rule, the final rule also includes manual tank gauging. The Agency requested comment on the use of this method in the supplement to the proposed rule (52 FR 48641), citing a study submitted by a commenter on the proposal showing that this method was effective for used oil tanks. EPA conducted an analysis of this study (Notice of Availability; 53 FR 10403) and found that weekly tank gauging can detect 0.2 gallon per hour leaks with a PD of 95 percent and a PFA of 5 percent for tanks smaller than 550 gallons.

Because it provides the same level of protection as other monthly monitoring methods, the final rule allows use of this method for any tank with nominal capacity of 550 gallons or less. Detailed discussion of research and comments on the inclusion of this method is provided in Section IV.D.2.d.(2). of today's preamble.

(2) Requirements for Petroleum Piping (§ 280.41(b)).—(a) Overview. The proposed regulation required that each release detection method chosen for the tank also detect releases from the piping. In addition, new pressurized piping was required to have equipment capable of detecting and shutting off a release of at least 2 gallons per hour unless the piping had continuous or interstitial monitoring. Suction piping that meets certain minimum design specifications was exempt from these release detection requirements.

Commenters agreed that pressurized piping was allowable but that additional release detection requirements were necessary. Some commenters had reservations about automatic shutoff devices and flow restrictors and recommended backup release detection or double-walled piping. New information acquired by the Agency since proposal on causes of release indicates that pressurized piping, along with spills and overfills, is the major source of releases, particularly large-volume catastrophic releases (see section II.F. of this preamble). Because of this new information, the Agency requested additional comment on release detection issues related to underground piping in the supplemental **Federal Register** notice published December 23, 1987 (52 FR 48641–48642).

The final rule has been revised to reflect the importance of preventing and rapidly detecting piping releases by including additional release detection requirements for pressurized piping and further encouraging the use of suction systems. Figure 5 summarizes the requirements for petroleum piping. Pressurized piping must have a release detection device that monitors the line at least hourly and automatically shuts off or restricts product flow or sounds an alarm when there is an indication of a leak. The owner and operator must also conduct either monthly monitoring or an annual line tightness test. The monthly monitoring may include vapor monitoring, ground-water monitoring, interstitial monitoring, or other methods that meet the performance standard or are approved by the implementing agency. The performance standards for the piping release detection methods are contained in a separate section of the rule (§ 280.44) and are discussed in section IV.D.2.e. below.

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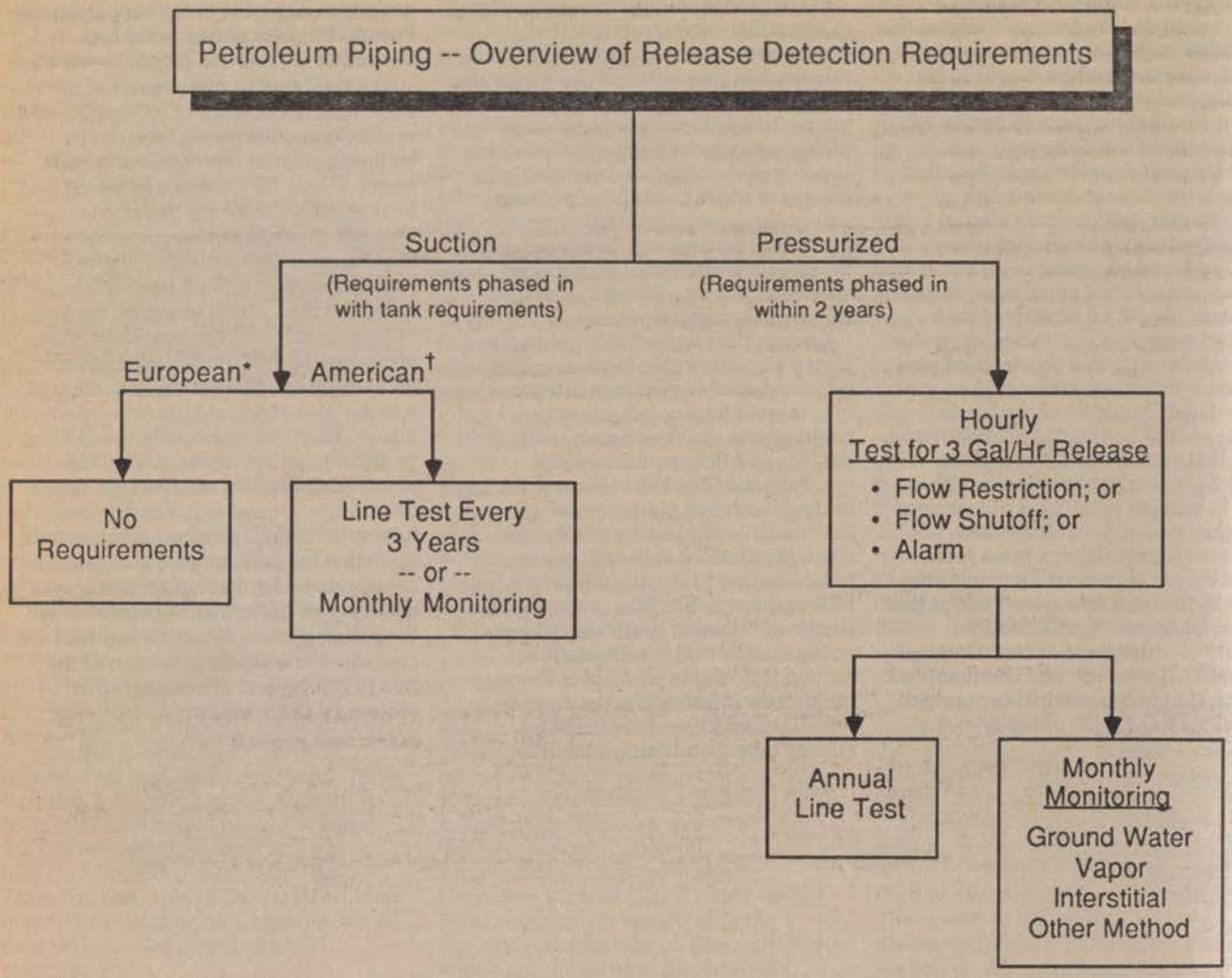

† American : The delivery line has at least one check valve (sometimes called a footvlave) located away from the dispenser, usually near the tank.

* European : The delivery line is intrinsically safe because it is sloped to drain back into the tank and there is only one check valve on the line next to the dispenser unit.

Figure 5

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The Agency notes that one release detection method can be used as the sole method if it can meet both the hourly release detection requirement and the annual or monthly release detection requirements. For example, double-walled piping with continuous interstitial monitoring that meets the performance standard continues to be an acceptable option for pressurized piping and would not require shutoffs, restrictors, or tightness tests. The system must be equipped, however, with an alarm that will indicate when a release into the interstitial space has begun.

Suction piping systems meeting the "no leak" criteria described below in subsection (c) continue to be exempt from release detection. Other suction systems must operate with monthly release detection or a line tightness test every 3 years.

(b) Requirements for Pressurized Piping (§ 280.41(b)(1)). As discussed in the proposal preamble (52 FR 12743–12745), the Agency was concerned that pressurized piping, which uses a pump in the tank to force product through the line to the dispenser, could result in large volumes of product being quickly released to the environment through a hole or crack. In contrast, suction piping appears to be intrinsically much safer because product is transferred at less than atmospheric pressure by a pump near the dispenser drawing product from the tank by suction, and failures will result in air or ground water flowing into the pipe rather than product being released during operation. The Agency considered not allowing pressurized piping at new installations but its widespread use, the availability of release detection technology (see discussion below), and some of the operational limitations of suction piping persuaded EPA to include it in the proposed rule.

Commenters agreed with EPA's position that pressurized piping could result in large-volume releases in the absence of release detection but felt that pressurized piping with release detection should be allowed in the final rule. They noted that pressurized piping is widely used, economical, efficient, dependable, and not susceptible to vapor lock. Commenters also noted that suction piping is more expensive to operate and requires longer times to dispense product and that its use is restricted by elevation above sea level, height differences between storage and delivery, flow rate, temperature, and length of horizontal piping. The Agency has continued to allow the use of both suction and pressurized piping in the final rule subject to the requirements discussed below.

• *Immediate Detection of Large Leaks (§ 280.41(b)(1)(i)).*

At proposal, data received from state agencies indicated that piping was involved in 20 to 35 percent of all releases. Pressurized piping was also identified as the most common petroleum dispensing system at new installations. Documented cases raised the possibility of sudden large releases from these systems. These factors led the Agency to conclude that additional release detection was required for pressurized piping so that large-volume releases could be stopped as quickly as possible. The monthly monitoring frequency required for the tank was considered inadequate given the potential environmental damage due to a release from pressurized piping. At proposal, piping pressure sensing methods were commercially available that manufacturers claimed could detect and shut off a release of at least 2 gal/hr from pressurized piping. Although the performance of these devices had not been evaluated, the magnitude of the problem and the availability of control technology caused the Agency to require shutoff devices in the proposed rule. The proposal preamble requested information on the field performance of pressurized piping release detectors (52 FR 12744).

A variety of approaches are available to rapidly detect large leaks in pressurized lines. Two main types of continuous in-line release detection devices are commercially available for pressurized piping: Flow restrictors and flow shutoff devices. Both devices react to pressure behavior in the line. A flow restrictor monitors the increase in line pressure after the dispenser is turned on. If there is a leak in the line preventing the line from reaching operating pressure, the restrictor allows a limited flow of product through the line to the dispenser, and thereby signals a leak to the operator. An automatic shutoff device monitors pressure changes during periods when the dispenser is off. If the line pressure drops enough to indicate a leak, the pump turbine is shut off, and no product can be dispensed. In addition to in-line detectors, continuous interstitial, vapor or ground-water monitors may also give rapid reliable warning when a leak occurs.

Commenters generally agreed with the need for pressurized piping release detection that was conducted more frequently than monthly. Many felt that only flow restrictors should be required because they are widely available and have proven performance. Based on information from UST installers and on causes-of-release data, flow restrictors operating at a 3 gallon per hour detection limit will eliminate 80 to 95 percent of the volume of releases occurring from piping. These devices have been in use for years and can be immediately installed at a large number of existing or new UST installations.

The Agency recognizes that other methods of frequent piping detection can achieve the same level of performance as flow restrictors, however. The proposed rule allowed interstitial monitoring or continuous ground-water or vapor monitoring instead of automatic shutoff devices but did not include a performance standard for these methods. Research conducted since the proposal (Notice of Availability; 53 FR 10403) shows that under certain circumstances ground-water monitoring will not allow immediate detection of a release. To ensure an equivalent minimum level of protection against catastrophic pressurized piping releases, the final rule includes the requirement that all pressurized piping have automatic line leak detectors that provide warning of 3 gallon per hour releases within an hour. EPA expects that this requirement can be met using flow restrictors, automatic shutoff devices, continuous interstitial monitors, and some continuous vapor monitors. Continuous ground-water monitoring may also meet this requirement under certain site conditions (e.g., shallow water table). EPA expects that some of these devices will be sufficiently sensitive to meet the additional monitoring requirements discussed below. If a device meets both standards, no additional monitoring is required. A detailed discussion of the performance of these systems is contained in section IV.D.2.c. of today's preamble.

• *Additional Monitoring for Smaller Leaks (§ 280.41(b)(1)(ii)).*

Commenters suggested the use of inventory control or line tightness testing in conjunction with flow restrictors, shutoff devices, or continuous monitors. The new causes-of-release information acquired since proposal shows even more strongly that piping is a major source of leaks from UST systems. Because of the importance of controlling pressurized piping releases, EPA agrees that additional release detection beyond the immediate detection discussed above is necessary. Flow restrictors may not detect small releases, so additional monitoring is necessary to detect these releases. Therefore, the final rule has been revised to require an annual line

tightness test or monthly monitoring using one of the accepted methods for tank monitoring. Line tightness testing is more sensitive than the other methods (see section IV.D.2.e. below) and so can be conducted less frequently for equivalent protection. Further, because of the problems cited by commenters with the reliability of flow restrictors and the ability of operators to override them, the final rule also requires that the operation of the line leak detector be checked annually in accordance with manufacturer's requirements. This system of checks will limit the likelihood that pressurized piping will release large volumes suddenly. This approach, coupled with requirements for corrosion protection and careful installation and testing of piping (which will significantly lower the incidence of piping releases over time), will protect human health and the environment.

• *Secondary Containment for Piping.* Some commenters recommended that secondary containment with interstitial monitoring be required for all pressurized lines. The Agency feels, however, that the release detection options described above for single-walled pipes are protective of human health and the environment and that the additional stringency gained by double-walled pipes does not need to be required. EPA also notes that secondarily contained piping is a relatively new technology that would require significant new training of installers to "de-bug" the applications of this technology for widespread use. In any event, the monthly or annual tests will detect the small slow leaks from piping while the shutoffs or restrictors will detect the large releases. EPA agrees that secondary containment for piping is environmentally protective, and owners and operators may choose to install continuous interstitial monitors which meet the above standards.

(c) Requirements for Suction Piping (§ 280.41(b)(2)). In the proposed rule, all release detection requirements were waived for suction piping that meets six design and operating standards concerning pressure, slope, run of the piping system, and use of properly located check valves. This piping design, common in Europe, ensures that little, if any, product will be released if a break in the line occurs. The Agency also felt that this exemption would encourage the use of suction piping over pressurized piping wherever possible, which is desirable because suction systems are less likely to leak than pressurized systems. Suction systems which do not meet the criteria for exemption were required to be monitored in the same manner as the tank, because the Agency believed small, continuing releases were possible from these systems. Changes in the requirements for both exempt and non-exempt systems are discussed below.

• *Design Criteria Revised.* The proposed rule contained design criteria for exempt suction systems concerning the number and placement of check valves and the slope of the piping because small releases can occur in an improperly designed or installed system. Two of these criteria have been deleted and one criterion has been added in the final rule. First, commenters noted that the 2-percent slope mandated in the proposed rule is difficult to meet using current design practices, and the API and PEI codes of practice recommend a 2-percent slope. Commenters also noted that a 2-percent slope decreases the maximum distance between the tank and the pump, thus limiting station design. In the final rule, therefore, the specific value for the slope has been eliminated, and only the general requirement has been retained that the slope be such that product will drain back into the tank when suction is released.

Second, the proposed rule also required that suction systems have only one check valve as close to the pump as possible and not have a foot valve. These criteria overlap, however, and the foot valve restriction has been deleted from the final rule. This change does not weaken the final rule because the requirement for only one check valve near the pump will prevent a large volume of product being held in the portion of the pipe from which a leak could occur.

Finally, today's rule contains an additional provision that exempt suction systems must have a means of verifying compliance with the design requirements. In the preamble to the proposal, the Agency noted that suction systems in West Germany are equipped with a means of ensuring that the contents of the line are under less than atmospheric pressure (52 FR 12745). This serves to ensure that if a hole in the line develops the liquid drains back into the tank and is not released to the environment. Although the Agency received no comments directly related to this issue, commenters did note that service contractors frequently correct operational problems with suction systems by adding additional check valves to the line. An inspector could not easily discover this alteration and the system could begin to leak. Consequently, the Agency decided to require that exempt suction systems be equipped with a means for an inspector to readily determine that the system continues to meet the design requirements.

• *Non-Exempt Suction Systems* Under the proposed rule, American-design suction systems, which commonly have a check valve near the tank or at piping unions, were required to have release detection conducted as frequently as for the tank. Commenters on the proposal noted that eliminating check valves at piping unions or near the tank is not practical in some applications and requested that these systems also be exempt from release detection requirements. The causes of release information acquired by EPA clearly indicates that both types of suction piping are dramatically less likely to have large leaks than pressurized systems. Based on this information, EPA requested comment on the use of less frequent testing (every 1 or 3 years) for suction systems in the supplement to the proposed rules (52 FR 48642). Commenters disagreed on an acceptable testing frequency but generally agreed that all forms of suction line pose a limited environmental threat. EPA agrees with commenters who noted that non-exempt suction systems can have small continuing releases under some conditions and, therefore, should not be exempt from detection requirements. Because the leaks from these systems are limited and will usually be signaled by operating problems, EPA believes that a 3-year frequency, in conjunction with required prevention measures, is protective of human health and the environment. The reduced frequency of testing for these systems should further encourage the use of suction systems over pressurized systems, even for applications where the exempt design requirements are impractical. These incentives add to the environmental protection provided by the piping release detection standards.

c. *Requirements for Hazardous Substance UST Systems (§ 280.42).* The proposed rule required the use of secondary barriers with interstitial monitoring at all new or upgraded UST systems storing hazardous substances, unless the owner and operator: (1) Demonstrated that an alternative method of release detection would accurately and reliably detect a release of the hazardous substance from the UST system and (2) obtained approval to use another method from the implementing agency. Also, in the proposal, owners and operators of existing hazardous substance USTs were allowed during the 10-year

upgrade period to use any of the methods of detection allowed for petroleum USTs, if the performance requirements for that method could be met. At the end of the proposed 10-year upgrade period, owners and operators would have to upgrade or replace this release detection with secondary containment and interstitial monitoring unless a variance was approved.

After consideration of numerous public comments submitted on these issues and additional research, EPA continues to believe that release detection and corrective action technologies are not as readily understood or widely used for the broad range of hazardous substances as they are for petroleum. EPA believes that secondary containment continues to be the most effective demonstrated method of release detection for new UST systems containing hazardous substances. Thus, EPA has retained the proposed approach in the final rule but has revised (1) the performance standards for the secondary containment and (2) the procedures for receiving a variance. In the final rule, in applying for variance, owners and operators of new or upgraded UST systems must provide (in addition to the demonstration of the effectiveness of a release detection method) information about applicable corrective action technologies, the inherent health risks, the chemical and physical properties of the stored substance, and any relevant characteristics of the particular UST site that would impact a future clean-up. These factors will be used by the implementing agency to guide its decision on whether to allow the alternate release detection method for the hazardous substance.

(1) Release Detection Requirements (§ 280.42(a) and (b)). Commenters took a variety of positions regarding the necessity of secondary containment for hazardous substance USTs. Many felt that the approach in the proposal was appropriate while others thought that specific chemicals, or all regulated substances, should be treated in a manner similar to petroleum. Many of these arguments centered on the similarities or differences between certain hazardous substances and components of petroleum. Commenters also disagreed about the most effective form of secondary containment, some favoring double-walled tanks, and others advocating excavation liners. Commenters generally were opposed to allowing soils as an excavation liner due to the difficulty of ensuring that the soils were properly treated and compacted.

The final rule has retained the proposed secondary containment requirement for new and upgraded hazardous substance UST systems with some significant revisions. The final secondary containment requirement is based on both technical and implementation considerations. From the technical perspective, secondary containment is believed desirable because it ensures that all hazardous substance USTs will be provided with effective detection methods, and, if a leak occurs from the primary containment structure into the interstitial space, corrective action will be simplified because it is very unlikely to impact the surrounding environment. As discussed in later sections of today's preamble, EPA has extensive information on the performance of various release detection methods and corrective action technologies already being applied to petroleum tanks. (The Agency allowed single-walled tanks and release detection for storage of petroleum substances because of the detectability of these substances and the belief that small releases could be cleaned up relatively easily.) Information about the performance of release detection and corrective action methods for hazardous substances, however, is not as readily available. Most importantly, there is very limited field experience with detection methods for hazardous substance tanks. This is made more significant by the fact that numerous hazardous substances are more toxic than petroleum and are less likely than petroleum to be detected by smell or taste. It is also important to note that, when replacing these hazardous substance tanks, industry has generally chosen to put them aboveground, in vaults, or in double-walled tanks. This lack of information and experience with effective single-walled tank strategies for hazardous substance USTs has caused the Agency to conclude that secondary containment is the most technically prudent approach to protecting human health and the environment.

In today's final rule, the Agency has given important consideration to both technical and implementation concerns. From an implementation standpoint, the secondary containment requirement is considered feasible by EPA because there are significantly fewer hazardous substance systems subject to regulation than there are petroleum tanks. In addition, secondary containment apprears to be consistent with existing industry practices and state regulations for storage of these substances. As noted in the preamble to the proposal, state and local programs have adopted a variety of requirements for hazardous substance USTs that tend to emphasize secondary containment. In addition, these regulatory programs are generally not as widespread or well established as petroleum tank programs, which makes adoption of the secondary containment standard less disruptive to ongoing implementation. Although EPA recognizes that some hazardous substances can be both detected and cleaned up as easily as petroleum, there are many chemicals that cannot, and specific criteria for distinguishing them for UST release detection purposes are difficult to establish, especially in a rule to be applied nationwide. Commenters did not provide any workable approaches on new information upon which EPA could develop such criteria. Owners and operators are eligible for a variance if they can demonstrate that effective detection and cleanup technologies exist for the specific hazardous substances being stored (see the next section of the preamble).

The specific requirements for secondary containment of hazardous substance UST systems have been revised based on public comment and new information. Many commenters assumed that the proposal's alternative for secondary containment with interstitial monitoring required full secondary containment that would prevent the release of chemicals to the environment even in the event of a catastrophic tank failure. The proposal, however, was intended only to ensure detection of releases and not necessarily to contain them. For example, it allowed both excavation zone liners and double-walled tanks that did not have 360° coverage of the inner wall. Based on commenters' concerns and the preceding discussion, the final rule requires for new or upgraded UST systems storing hazardous substances that the outer barrier be capable of containing a release until it is detected and cleaned up. The effect of this requirement is to require both double-walled tanks and liners to completely surround the inner tank and be checked for releases as frequently as necessary to prevent the release of hazardous substances to the environment should a leak occur. This monitoring would, at a minimum, need to be conducted at least monthly.

In the final rule, the Agency has taken an approach that is based on the one followed for hazardous waste tanks under Subtitle C of RCRA (40 CFR Parts 264, 265; Subpart J). It is the Agency's belief that many of the hazardous substances covered in today's rule have properties that are very similar to those

of hazardous waste. Consequently, both rules require that a leak at any time during the operational life of the facility will be contained until it is detected and removed from the containment system. Because there are significantly more hazardous substance UST systems than hazardous waste tank systems, and because Subtitle I UST systems are not part of a permitting program, the Agency has retained the performance-oriented approach that was proposed. (It is the same general approach used for petroleum tanks.) This performance-oriented monitoring approach is intended to provide enough flexibility to control the greater number and variety of hazardous substance tanks, without the use of permits, while at the same time providing the same level of protection as provided by the tank requirements under Subtitle C of RCRA.

(2) Variance to Release Detection (§ 280.42(b)). As stated in the proposal preamble, EPA recognizes that secondary barriers with interstitial monitoring may not be necessary for all hazardous substance UST systems because there may be alternate release detection methods that, based on the tank system characteristics, location, and the nature of the substance stored (52 FR 12741), adequately protect human health and the environment. The Agency, therefore, proposed to allow the use of other release detection methods if the owner or operator demonstrated that an alternate method reliably detects the release of the hazardous substance from the UST system and obtains the approval of the implementing agency (see proposed § 280.41(b)).

A number of commenters supported the variance provision, while others opposed allowing a variance in any situation. The Agency has concluded that the risks posed by the use of an alternate method will be minimized by requiring the owner and operator to apply for a variance, and by stipulating that an alternate release detection method can be substituted only if it is as reliable as those used for petroleum and petroleum-based substances, and all performance criteria for the release detection method are satisfied at the site. In addition, information about available corrective action technologies, and the inherent health risks and chemical properties of the substance stored, will also need to be provided by the owner and operator to the implementing agency for review. These other factors may override the detectability criteria. For example, if a given vapor monitoring device detects a hazardous substance with better sensitivity, accuracy, and response time than it detects petroleum, and if all the other criteria for the operation of the method are met at the site, then the owner and operator is eligible to apply for a variance from the secondary barrier requirement. However, the implementing agency will approve the alternate method only after considering the additional information about the characteristics of the substance stored and the availability of corrective action methods for that substance if a release occurs at the site. Thus, although an effective and accurate vapor monitoring method is available, the implementing agency may decide not to approve the variance request if the UST is located near a drinking water well or there is no corrective action technology that can be applied to remove the release before this resource is adversely impacted.

For existing hazardous substance USTs, the Agency allows the use of alternate release detection for up to 10 years, at which time owners and operators must have applied for and received a variance and must have upgraded the existing system to new tank standards. Although the application for a variance can be made any time within the 10-year upgrade period for existing USTs, the owner and operator must meet the appropriate performance standards in §§ 280.43 and 280.44 for an alternate release detection method at all times during the 10-year interim period.

(a) Application Process. In the preamble to the proposal, the Agency requested comments on procedures that could be used by owners and operators to apply for a variance (52 FR 12743). Commenters provided a number of suggestions on how the variance application process could be implemented. These suggestions included a variance application procedure similar to the one promulgated in the final rules for hazardous waste tanks (40 CFR Parts 264 and 265), a "nationwide" variance application procedure for single companies storing similar products in tank systems located in several states, or a joint petitioning procedure for different companies in the same state that have similar characteristics of tanks, substances, and release detection methods.

The Agency evaluated all the suggested application procedures and decided to defer the specific implementation details to the implementing agencies. Numerous factors, such as differences among the traditional procedures already followed by implementing agencies, variability of site conditions, and the number and configuration of tanks at each site, suggest that administrative details for dealing with this variation should be left to the specific agency reviewing the request. The Agency plans to develop information about a number of variance application options that can be used by the implementing agencies in designing a variance process in their jurisdiction. The final rule contains only the baseline requirements that the owner and operator must satisfy in order to use a substitute method of detection at new or upgraded hazardous substances USTs; these requirements are to: (1) Demonstrate the detectability of the substance using the alternative release detection method; (2) provide data about the corrective action technology that will clean up a release within the constraints of the UST site characteristics and the inherent chemical, physical and health-risk properties of the substance; and (3) obtain variance approval before the installation and operation of the alternate release detection method.

(b) Evaluation Criteria. In response to EPA's requests for public comment on the type of information and criteria that could be used by the implementing agencies to grant variances (52 FR 12742), commenters recommended that EPA develop a list of hazardous substances that would qualify for variances on a class basis. They also recommended that EPA develop a list of hazardous substances that are petroleum-like substances as well as identify physical properties for hazardous substances that could be considered for variances. No commenters provided a workable set of criteria for doing this, however. Significant new information was not provided by commenters concerning the characteristics of hazardous substances. The Agency proposed to compile a similar list of the specific petroleum substances but rejected this approach in the final rule. (See section IV.A.4. for a discussion of the definition of "petroleum" and "petroleum UST systems.") After considering the different evaluation criteria in a variance program, the Agency decided that a specific set of national evaluation criteria is not workable given the diversity of the chemical properties of the hazardous substances, the USTs in which they are stored, and the variability of site characteristics. The Agency believes that specific variance program implementation details (for example, the use of "class" variances) are best left to the implementing agencies. The Agency does, however, intend to assist the implementing

agencies in their variance program development by providing alternative procedures for simplifying the application and approval process and by providing more information about the general criteria that must be satisifed at a minimum nationally in each variance application.

(c) Specific Changes to the Rule. The final variance requirements only differ in minor ways from those in the proposed rule. The requirement to notify the implementing agency of the intent to conduct a demonstration for a variance has been removed. Instead, owners and operators will be required "to demonstrate that an alternate method can detect a release" before it is used at a new or upgraded UST system. Thus, prior notification is simply an item of administrative convenience that can be required by implementing agencies at their discretion. The final requirements make clear that it is advantageous for the owner and operator to apply as early as possible, because an alternative method cannot be used to meet the new or upgraded hazardous substance UST system release detection requirements without approval of a variance by the implementing agency.

In the final rule, owners and operators are also required to submit to the implementing agency information about the availability of corrective action technologies that could be used should there be a release of the stored hazardous substance at that site, including a consideration of any unusual health risks that are posed by a release of the stored substance. The Agency believes that this additional type of information is needed by the implementing agency to be able to evaluate variance applications. This change is in response to those commenters who believed that the proposed approach was not stringent enough and could result in adverse impacts to human health and the environment. Also, these new criteria provide the further clarification of evaluation criteria that was suggested as needed by other commenters. EPA believes these general criteria will more adequately (than the proposed approach) ensure that only variances will be applied for that, if approved, will protect human health and the environment.

d. *Methods of Release Detection for Tanks (§ 280.43).* The proposed rule presented in one section the release detection options that addressed the complete UST system (both tanks and piping). It also specified in one section the methods that need to be combined, the frequency of testing, and the applicable performance standards. The final rule has been reorganized in response to several commenters who stated that this format was unclear and that it was confusing in the way it combined tank and piping detection methods and petroleum and hazardous substance requirements. All of the general requirements, such as combinations and testing frequencies, are now contained in § 280.41 for petroleum and § 280.42 for hazardous substances. Any substantive changes in these areas are discussed in previous sections of the preamble (IV.D.2. b. and c.). The final rule in § 280.43 now simply lists the methods that can be used for detecting leaks in tanks and the conditions under which they can be used to meet the requirements of § 280.41 and § 280.42. The methods applicable to underground piping are listed seperately in § 280.44 and are discussed in a later section of this preamble (IV.D.2.e.)

(1) Inventory Control (§ 280.43(a)). The proposed rule allowed the use of monthly inventory control in combination with periodic tank tightness testing as a method of release detection. Although listed as a separate method in the final rule, inventory controls still must be combined with another method of detection (see section IV.D.2.b.1. above). The Agency acknowledged that inventory control is affected by many variables but maintained that the technique is effective when correctly performed by trained personnel. The proposed rule contained weekly and monthly performance standards and procedural requirements to optimize the effectiveness of inventory control.

Commenters generally felt that the performance standards and the procedures were too stringent, and that the method was unreliable because the variables were essentially uncontrollable. EPA's research since proposal demonstrates that the proposed rule would in fact result in an unacceptable rate of false alarms; consequently, the final rule has been revised to eliminate the proposed weekly performance standard and to change the monthly performance standard to 1 percent of monthly product throughput plus 130 gallons. In addition, the proposed requirement that only tanks partially within the ground water perform a monthly test for water within the tank has been expanded to apply to all tanks. Also, the proposed limitation on the accuracy of the dispensing meter has been revised to make it consistent with local weights and measures standards. These changes are discussed in more detail below.

(a) Performance Standard. EPA proposed that inventory control be conducted to detect a release of at least 5 percent of flow-through on a weekly basis and 0.5 percent of flow-through on a monthly basis; the latter standard was based on an API recommended practice. The Agency was concerned that having only a monthly inventory control requirement would lead to large releases occurring for a month before detection. Therefore, the proposal included a weekly loss standard that was intended to provide early warning of major losses.

Several commenters stated that the proposed 5 percent weekly and 0.5 percent monthly flow-through requirements were too stringent and too difficult to achieve, particularly the weekly requirement. They also felt that the weekly requirement would result in many false alarms, thus unnecessarily burdening owners and operators and the implementing agencies. They suggested that detection of such small leaks from tanks with low flow-through of product was difficult, that the temperature influences on volume were too great to obtain accurate data, and that the technology was not sufficiently developed to detect small releases and, at the same time, ensure against false alarms. Other commenters supported the monthly flow-through requirement.

In response to commenters' concerns, the Agency has since proposal evaluated several approaches to inventory control to determine the minimum leak rate that could be reliably detected. The evaluation considered basing inventory leak determinations on the percent of throughput, percent of throughput plus a constant volume, or number of days exceeding a given loss. A data base of actual inventory records consisting of over 20,000 measurements at nearly 600 tanks nationwide was used in a computer simulation of leak rates. The study indicated that the proposed monthly standard would result in a large number of false alarms (approximately 30 percent on a monthly basis). The most sensitive of these inventory control methods would detect a loss of about 1 gallon per hour at a PD of 95 percent and a PFA of 5 percent. This investigation revealed that using sophisticated statistical inventory control or pooling the inventory data for several months would improve the sensitivity of all the methods. Notice of this study was published for comment in the **Federal Register** (53 FR 10403). A commenter submitted a study that confirmed the high false alarm rate of the monthly

standard and indicated that the weekly requirement also had an unacceptably high false alarm rate (over 50 percent).

In response to these comments and the studies discussed above, EPA has modified the final rule. The Agency acknowledges that other methods can detect smaller releases, but the final rule allows inventory control combined with tank testing for use during the phase-in period or with new, protected tanks because of its general effectiveness, low implementation costs, and ease of application. As discussed above, however, the proposed 5 percent weekly detection rate produces an unacceptably high false alarm rate, as does the proposed 0.5 percent monthly standard. Consequently, the requirement for weekly inventory control has been omitted from the final rule and the monthly requirement has been changed to 1.0 percent of flow-through plus 130 gallons, which has a false alarm rate of about 5 percent. The Agency believes that owners and operators will take inventory results more seriously when the number of false alarms are reduced. EPA has further concluded that inventory control offers a practical and effective means of detecting releases only when combined with tank testing or automatic tank gauging.

In addition to the performance standard, the proposed rule contained six restrictions that had to be followed when conducting inventory control. The restrictions that received the most comment involved measurement accuracy (to ⅛ inch), the accuracy of the dispensing meters, and the requirement to measure water only when some portion of the tank is below ground water. These restrictions are discussed below.

(b) Dipstick Measurement Accuracy. At proposal, the Agency believed that reading dipsticks to the nearest ⅛ inch could be performed and that reading to this level would reduce major errors involved with the measurement of the stored product's height (52 FR 12727). A number of commenters felt that many factors interfere with precise dipstick measurements, and, therefore, it is not reasonable to require accurate measurements for an imprecise method. Commenters also felt that the ⅛ inch requirement was inconsistent with existing conversion tables, which are usually marked in whole inches. Other commenters suggested reasons why dipstick methods of measurement were inappropriate. The EPA-sponsored research discussed in the previous section indicates that increased stick-reading accuracy down to and including ⅛-inch does improve the performance of inventory control. The Agency also has concluded that existing dipsticks marked to 1 inch can be successfully read to the nearest ⅛ inch to improve accuracy, or that conversion tables can be modified.

(c) Dispensing Meter Accuracy. Accurate metering is essential to inventory control. Therefore, based on the National Conference on Weights and Measures Standard, the Agency proposed that dispensing should be metered to within 5 cubic inches for every 5 gallons of product withdrawn, even if it meant that certain owners and operators would have to install or calibrate dispensing meters. Several commenters preferred the requirement to be 6 cubic inches per 5 gallons, in accordance with the National Bureau of Standards (NBS) Handbook #44, or that it be the same as the local weights and measures standards. EPA agrees with commenters that local weights and measures calibration standards will be adequate to ensure accurate inventory reconciliation where these standards are applicable. At dispensing meters that are not covered by local weights and measures standards, the nationally recognized NBS standard is appropriate. The final rule has been revised accordingly to allow both calibration standards.

(d) Monthly Water Check. The proposal required the measurement of any water in the tank at least monthly if any portion of the tank is within the water table. Water in a tank could result from ground-water intrusion, indicating that there is a hole in the tank. One commenter suggested more frequent measurement of water under all situations rather than only in those cases where the tank is partially within the water table. The Agency agrees that water could enter the tank even when the water table is deep (e.g., when rain water temporarily collects in the excavation pit). The presence of water in a tank can indicate a hole in the tank, whether the water comes from ground water or rain water. The provision now requires the water measurement monthly at all tanks conducting inventory control. The monthly frequency was retained because it agrees with the frequency of other release detection methods, which was selected as the frequency that is protective of human health and the environment. The measurement of water in the tank is a simple procedure routinely conducted by many operators already, so this requirement should not significantly increase the operator's burden.

(2) Manual Tank Gauging (§ 280.43(b)). In the supplement to the proposed rule (52 FR 48635), EPA requested comments on the use of static inventory control (or manual tank gauging) as a release detection technique for used oil (or other types of) UST systems. Commenters generally supported the use of this detection method, although they differed widely on what tanks should be allowed to use this method, how long the test should be, and how frequently it should be performed. Research submitted by one commenter, and EPA's own analysis, indicates that this method is as effective as inventory control at smaller tanks (below 2,000 gallons) and can reliably detect leaks of 0.2 gallon per hour for tanks of 550 gallons or smaller. Consequently, final rule allows its use as the sole release detection method for tanks 550 gallons or less in capacity. Also, manual tank gauging can be used in the final rule for tanks of 551 to 2,000 gallons as a substitute for the inventory control part of the method (that combines monthly inventory control with periodic tank tightness testing). Manual tank gauging cannot be used to meet the release detection requirements at tanks larger than 2,000 gallons.

Commenters were divided over the applicability and effectiveness of manual tank gauging. Some commenters recommended that manual tank gauging be approved because it is effective and inexpensive and because used oil poses less environmental risk than other regulated substances. They also noted that the lack of piping and small deliveries at these tanks made releases less likely. Some commenters opposed the use of manual tank gauging because they believed the method is not sensitive enough and includes too much room for human error. These commenters also frequently recommended requiring secondary containment for used oil because it contains hazardous constituents and no other detection methods are as effective.

As discussed earlier in today's preamble (section IV.A.3.g.), the Agency believes that used oil does not differ substantially from petroleum products and should be regulated in the same manner. Consequently, today's final rule requires that these tanks conduct accurate monthly monitoring using the methods applicable to other petroleum tanks. The Agency requested comments in the supplement to the proposed rule on the possibility of including manual tank gauging as a monitoring alternative; specifically, for used oil tanks or other types of tanks. Commenters recommended a wide range of specific

requirements. Suggested frequencies ranged from daily to every 5 years and suggested test lengths ranged from 6 hours to 72 hours or longer. Some commenters recommended this test should apply to other regulated substances, especially products similar to used oil. Commenters disagreed on the appropriate size limit for tanks allowed to use this method.

In order to determine more precisely the performance of this method, EPA analyzed a report submitted by a commenter. EPA's evaluation (Notice of Availability; 53 FR 10403) indicates that for tanks smaller than 550 gallons, manual tank gauging can detect 0.2 gallon per hour leaks with a PD of 0.95 and a PFA of 0.05 when performed in accordance with today's rule. For tanks between 550 gallons and 2,000 gallons the method achieves the performance of inventory control. For those tanks, the method is capable of detecting leaks of 1 gallon per hour or less with a PD of 95 percent and a PFA of 5 percent, even under extreme temperature conditions. Based on commenters' suggestions and these study results, the final rule includes manual tank gauging as an allowed leak detection method. In today's rule, only tanks of 550 gallons or smaller may use this as the sole method of release detection. Larger tanks (551–2,000 gallons) may use it in place of the inventory control part of the release detection method that combines inventory control with periodic tank tightness testing.

According to the Agency's evaluation, the performance described above can be achieved if the following limitations are met: The test period is at least 36 hours, depth measurements are taken twice and averaged, and the depth is read to the nearest one-eighth of an inch. These criteria have been included in today's final rule.

(3) Tank Tightness Testing (§ 280.43(c)). The proposed rule allowed periodic tightness testing in conjunction with monthly inventory control as a release detection method for all tanks. While acknowledging the uncertain performance of tank testing, the Agency believed that it was a demonstrated and effective method that would be available to meet the large demand for release detection following promulgation. To maximize the performance of tank tightness tests, the proposed rule included a performance standard of 0.1 gallon per hour at a PD of 99 percent and a PFA of 1 percent. Commenters disagreed about whether tightness testing should be included in the rule and what level of performance it should be required to meet. Additional evaluation by EPA indicates that, although few methods can now meet the proposed standard, several methods could make a few changes to equipment and protocol and meet the proposed standards. For these reasons, the final rule retains the proposed tank testing standard of 0.1 gallon per hour.

(a) Performance Standard. At proposal, EPA recognized that many factors such as temperature changes, tank end deflection, and vapor pockets affect the accuracy of tank tightness tests (52 FR 12724–12725). To limit the allowable methods to those that most effectively compensate for these problems, the Agency included a performance standard in the proposed rule. The level of this standard was selected based on the results of the national survey of underground motor fuel storage tanks and the experience of tightness testing practitioners; little evidence was available to support the NFPA 329 criterion of 0.05 gallon per hour. The proposed standard of 0.1 gallon per hour at a PD of 99 percent and a PFA of 1 percent was believed to be the maximum performance achievable on the typical sizes of tanks in use. A high PD was included to adequately protect human health and the environment, and a low PFA was included to prevent a heavy burden on owners and operators and the implementing agencies that is caused by investigating a large number of false alarms.

In the proposal preamble, EPA acknowledged that there was insufficient information on the performance of available tank tightness tests, particularly their ability to meet the NFPA 329 standard of 0.05 gallons per hour with the proposed probabilities of detection and false alarm. It was further stated that the Agency was beginning an investigation to acquire this data (52 FR 12724–12725). Since that time, EPA's research laboratory at Edison, New Jersey, has evaluated 25 tank tightness testing methods representing a wide range of approaches. During each evaluation, blind tests were conducted by company operators, the data were evaluated by EPA, and computer models were used to simulate leak rates and probabilities and compare them to the operational data. The results of these evaluations indicate that, while most of these currently available methods of tank tightness testing are capable of detecting leaks of 0.1 gallon per hour, only a few could presently detect this leak rate at the specified probabilities. Even with the oftentimes simple equipment and procedural changes that are necessary to achieve the needed level of improved performance, some methods probably would not be able to meet the proposed PD and PFA. Notice of the results of this study was published in the **Federal Register** on March 31, 1988 (53 FR 10403).

Some commenters felt that tightness testing is too unreliable to be an allowable release detection method, at least without further evaluation. Several commenters stated that the proposed standard was too stringent to be met with existing technology, particularly for larger tanks. Others recommended a more stringent standard for the release rate, usually citing the NFPA 329 criterion of 0.05 gallon per hour as the way to spur development of the technology. One commenter suggested that the performance standard should become more stringent over time as the methods develop. The proposed standard was supported by some commenters.

Based on the Agency's evaluation of tank tightness test methods and the concerns raised by these commenters, the final performance standard has been revised. Many of the methods evaluated by EPA at its Edison, New Jersey laboratory were able to detect a release of 0.1 gallon per hour so this value was retained in the final rule. The detection probabilities associated with the standard have been moved to the general requirements section (and are discussed earlier in this preamble in section IV.D.2.a.). During the two years before these probabilities are effective, the Agency believes additional standards are needed. Thus, the final rule language has been changed to include the requirement that tank test methods must account for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. These variables have been identified as important in EPA research (Notice of Availability; 53 FR 10403) and in the NFPA 329 recommended practice.

The Agency's evaluation indicates that many tightness test methods can meet the final performance standard with relatively minor procedural or equipment changes. Such changes, however, have not been developed and instituted by the manufacturers of many of the different devices, tried in the field, or evaluated in laboratory conditions. In addition, manufacturers have not described their performance in terms of probability of detection and probability of false alarm in the past. There will be a large demand for tightness testing for release detection and confirmation

following promulgation of the final rule. Tightness testing is the most widely available release detection method and the method that is likely to be used by many UST owners and operators over the next 5 to 10 years. EPA was concerned that, if few or none of the tightness test methods could meet the performance standard, there would be insufficient industry capacity to meet demand for release detection. For these reasons, the final rule has been revised to delay the effective date of the probabilities of detection and false alarm (see discussion of this delay in section IV.D.2.a.5. above).

The Agency decided to give manufacturers 2 years in which to develop and put into operation the necessary procedural and equipment changes or to develop new methods that meet the entire performance standard. Such a delay was recommended by some commenters and will ensure that necessary equipment and procedural changes can be made by method manufacturers. As discussed previously in the preamble, the Agency believes significant environmental benefit can be obtained by conducting release detection quickly. The delay in performance standards should allow more wide spread and rapid testing of tanks.

(b) Relationship of the Final Performance Standard to NFPA 329. As noted above, some commenters felt that the proposed performance standard of 0.1 gallon per hour at a PD of 99 percent and a PFA of 1 percent was too lenient and was a relaxation of the standard currently followed by the industry, which is 0.05 gallon per hour recommended in NFPA 329. However, the Agency has concluded that the final performance standard is not less stringent than NFPA 329. First, the standard in the final rule still requires testers to declare a leak at a threshold value of 0.05 gallon per hour (see section IV.D.2.a.4. above). Second, the NFPA guideline specifies a detectable leak rate but does not specify the probability with which this leak rate must be detected. Most existing volumetric methods will detect 0.05 gallon per hour leaks at least a portion of the time. A relatively poor method that detects a leak of 0.1 gallon per hour with a PD of 50 percent and a PFA of 1 percent could still claim to meet the NFPA criterion because the probability of detecting a leak is not specified. Direct comparison to the Agency's performance standard shows that the NFPA 329 criterion would allow more leaks to go undetected and also cause more false alarms. EPA's final performance standard intended to eliminate the use of poor tightness test methods, ensure that more leaks are detected, and cause fewer false alarms. Thus, it provides for better protection of human health and the environment while ensuring unnecessary or counterproductive burdens on owners, operators, and implementing agencies are minimized.

(c) Large Tanks. In the preamble to the proposed rule, EPA stated its doubts that the performance standard was attainable for large tanks (52 FR 12725). Some commenters agreed and some disagreed. Research at EPA's Edison facility suggests that the 0.1 gallon per hour standard cannot be met for large tanks using current test methods. Rather than allowing less stringent test methods for large tanks, which would create the potential for ignoring large releases, EPA believes that owners and operators of large tanks will have to select other release detection methods besides tank tightness testing unless improved or new methods are developed that allow the standard to be met for the larger tanks. (See section IV.A.3. of this preamble on bulk underground storage tanks.)

(4) Automatic Tank Gauging Systems (§ 280.43(d)). Automatic tank gauging systems (ATGS) were included in the proposed rule as one of the options for release detection (although the name of this option as proposed was "automatic monitoring of product level and inventory control"). These monitors generally have two modes of operation: Leak detection mode (product level monitoring) and inventory control mode. The proposed rule required that the leak detection mode be used at a minimum once a month and meet a performance standard of 0.2 gallon per hour with a PD of 99 percent and a PFA of 1 percent and that the automatic inventory control be conducted to meet the performance requirements for manual inventory control. Some commenters stated their belief that ATGS are unreliable, unproven, and too costly. Other commenters felt that the proposed performance standards were too stringent. Many commenters favored the use of ATGS but suggested changes to the requirements in the proposed rule. As discussed below, the Agency has retained ATGS in § 280.43(d) of the final rule. The proposed leak rate standard has been retained but the probabilities have been revised and their effective date delayed 2 years. The proposed requirement that the tank be 80 percent full at the time of the test has been deleted. These changes and comments are discussed in more detail below.

(a) Performance Standard. At proposal, the Agency recognized there were limited performance data on ATGS, and that there was still significant opportunity for human error. However, ATGS were a relatively commonly used release detection method with the potential to be very sensitive in detecting leaks, and EPA wanted to include as many effective release detection options as possible in the rule to provide flexibility (52 FR 12736–12737). To limit the allowable ATGS to those that effectively control the possible sources of error, the proposed rule included a performance standard of 0.2 gallon per hour with a PD of 99 percent and a PFA of 1 percent. The 0.2 gallon per hour value was based on the equipment manufacturers' claims. This performance standard was intended to challenge manufacturers to prove that their systems could meet the standard.

Some commenters felt that ATGS were unproven and unreliable as a release detection method primarily because of their sophisticated electronic components. Other commenters felt that the PD was too stringent, while others agreed with this part of the proposed performance standard. A commenter provided a study conducted over several months at an operating service station equipped with several ATGS. One of the devices already clearly achieved the proposed performance standard. This study confirmed the Agency's conclusion that ATGS can be effective in field situations; thus, this release detection method has been retained in the final rule.

EPA's own research and the results of the field evaluation of ATGS demonstrate that 0.2 gallon per hour leaks can be reliably detected by several of the difficult types of available devices, and the proposed leak rate of 0.2 gallon per hour has been retained in the final rule, but the PD has been changed to 95 percent and the PFA to 5 percent. In addition, the final rule schedules the PD and the PFA standards to take effect 2 years after the effective date of today's rules (see discussion of this delay in section IV.D.2.a.5. above). Any owner or operator installing an ATGS in the intervening 2 years will not have to replace it after 2 years, unless it does not meet the performance standard. EPA's review of the systems now available indicates that they should be able to meet the standards with only minor adjustments.

Some commenters felt that the Agency should set a detectable leak rate for ATGS of 0.1 gallon per hour rather than the 0.2 gallon per hour requirement in

the proposed rule. EPA, however, does not agree because current equipment as presently used cannot meet such a standard, and the suggested approach would effectively eliminate ATGS as a release detection method. Furthermore, since the product level test is conducted monthly, the performance of this method can statistically equal or exceed the sensitivity achieved by periodic tank testing, even though the monthly performance standard is less stringent. The Agency intends to keep as many effective methods available to the owners and operators so that they will have flexibility in selecting a release detection method that best suits their needs.

(b) 80-Percent-Full Requirement. The proposed rule required that the tank be 80 percent full during the monthly test. This requirement was intended to ensure that a large portion of the tank's surface was checked for releases (52 FR 12737).

Many commenters opposed this requirement because it would be difficult for tanks with low monthly flow-through to implement, and it would also be an impediment to businesses with UST systems that are in use continuously. New information now indicates that this limit on conducting the test is unwarranted. Information from experienced UST field personnel, a study in Suffolk County, NY, and comments received by EPA demonstrate that most corrosion holes occur in the sides and bottom of tanks, not the top, so there is little need to always test the top of the tank for releases.

In the absence of a specific requirement, release detection tests conducted every 30 days are expected to include tests over the range of levels to which the tank is typically filled, so those areas of the tank routinely in contact with product will be tested. The inventory control requirement will also ensure that releases from the top of the tank are detected if they occur. Also, many owners and operators do not keep their tanks 80 percent full during normal operation; if tanks are rarely filled above a certain point, testing above that point is simply unnecessary. Also, the overfill prevention requirements in § 280.20 and § 280.30 of today's rule will prevent product from reaching the very top of the tank. Therefore, the Agency has deleted this requirement from today's final rule.

Although testing at 80 percent of capacity is no longer required, the testing procedure should be conducted when the tank is near its highest level and the testing should be conducted after waiting a sufficient time after the delivery of the product. This waiting period is necessary because, after product is added to the tank, it takes time for the product to mix and achieve the nearly static condition necessary to conduct meaningful product level monitoring (52 FR 12725). EPA anticipates that this waiting period will become a part of the manufacturer's recommended procedures as they attempt to meet today's standard concerning detection probabilities.

(c) Combination with Inventory Control. In combination with ATGS, the proposed rule required inventory control that meets the same performance standards required for manual inventory control. Inventory control was required in addition to product level monitoring because it was believed that product level monitoring was not as accurate as tank tightness testing or external methods and, therefore, a backup release detection method was needed. This requirement is not burdensome because ATGS routinely collect the information needed to conduct inventory control. No comments were received on this issue. Therefore, inventory control is still required in conjunction with ATGS in the final rule. Some of the performance standards for inventory control have been revised in today's final rule and are discussed in section IV.D.2.d.1. above.

(d) Effectiveness with Piping. A commenter was concerned about the effectiveness of ATGS in detecting releases from piping. EPA agrees that, in the leak detect mode, this method will not detect piping leaks, and the inventory mode will detect piping leaks but not with sufficient sensitivity to detect small leaks. The causes-of-release information collected by EPA since the proposal (see section II.F. of this preamble) indicates that piping is a major source of releases. Therefore, the final rule has added several requirements for piping (see section IV.D.2.b.2. of this preamble). The owners and operators of UST systems using ATGS as a release detection method for the tank will have to select an additional means of release detection for the piping, such as line tightness testing.

(5) Vapor Monitoring (§ 280.43(e)). The proposed rule allowed the use of vapor monitoring in the excavation zone as a method of release detection as long as certain conditions and limitations were met that maximize performance. The information available to the Agency at the time of proposal indicated that vapor monitoring was, under optimum conditions, a sensitive and reliable release detection method. Research conducted by the Agency since the proposal, as well as information submitted by commenters, has confirmed that vapor monitoring is capable of detecting extremely small leaks (0.003 gallon per hour) under certain conditions. Some of the proposed conditions concerning the use of this method, however, now appear unnecessary. In summary, the final rule includes vapor monitoring, omits the 500-ppm background restriction, and allows monitoring for selective components of the stored regulated substance, including tracers mixed in the substance.

(a) Effectiveness of Method. Some commenters expressed concern that vapor monitoring was not developed enough to be relied upon as a sole method of release detection. The Agency solicited comments and additional data on the effectiveness of vapor monitoring in the proposal preamble (52 FR 12728). EPA included it as a method of release detection in the proposal because existing data indicated that it should be an extremely sensitive monitoring tool and it has already been used successfully in some state and local UST programs. The Agency has received no research results or data from commenters that would cause it to alter its earlier conclusions. In fact, several commenters submitted detailed field and experimental data verifying the effectiveness of vapor monitoring. A theoretical computer modeling study done by EPA confirms these results (Notice of Availability; 53 FR 10403). Although there are still not enough data to specify a more complete performance standard for this method (in terms of probability of detection, false alarm, and leak rate), the Agency believes this method will provide effective release detection, and has retained it as an option in the final rule, as long as it meets the limitations discussed below.

In response to concerns raised by some commenters, the Agency wishes to note that in the final rule, a vapor monitoring well does not necessarily mean a typical ground-water well. Instead, a vapor monitoring well means any sampling point from which vapors are collected and brought to the monitor by any means.

(b) Background Concentration. In the proposed rule, EPA limited the use of vapor monitoring to those areas with less than 500-ppm background concentration of total organic hydrocarbons in the soil gas of the excavation zone. Many commenters felt that the 500-ppm restriction was too stringent, stating that natural background concentrations of methane, for example, are higher than 500-ppm in

some areas of the country. Other commenters wanted a restriction based on site-by-site evaluations. The 500-ppm background level was originally set as an attempt to recognize that background effects can interfere with effective vapor monitoring (52 FR 12729–12731). Commenters described research and field experience, however, that indicate vapor monitoring should work well at several thousand ppm levels in the soil gas if a volatile substance (such as gasoline) is being stored in the tank. In addition, EPA research has shown that at many sites having no recorded release from the UST system, the total background concentration exceeds the 500-ppm level. This type of background level is probably due to an accumulation of spills and overfills.

To avoid precluding the use of vapor monitoring at many sites where it is potentially applicable, no specific numerical restrictions on background levels is included in today's final rule. Instead, there is now a more general performance requirement that the background concentration must not interfere with the ability of the method used to detect releases. For example, at a site with too high a background level (e.g., over 10,000 ppm for gasoline), leaks may not produce a detectable concentration increase over background. Determining if the background levels are too high depends on the resolution of the sensor, the volatility of the product being monitored, and other site conditions.

(c) Measurable Component. Several commenters expressed concern that the proposal did not allow monitoring for specific components of the stored substance and, instead, appeared to be focusing only on total organic hydrocarbons as the detection criterion. EPA's research indicates that monitoring for specific components or tracer compounds may be very advantageous under certain site conditions because it eliminates some of the difficulties with background interference levels and false alarms. For example, sensors that detect only the lightest components of gasoline (e.g., butanes and pentanes) may suffer fewer problems with high background levels because these constituents vaporize so rapidly that the potentially confounding effects of past spills at the site are minimized.

Monitoring for these components might also allow spills to be more easily distinguished from equipment leaks, because the level of the light chemical components would return to background levels more quickly if it was suddenly elevated due to an episodic event like a spill. Similarly, if a carefully selected tracer compound that is not already present at the site is placed in the tank, background interference problems can be eliminated. Some of the advantages of tracer methods were also discussed in the proposal preamble (52 FR 12730).

For the above reasons, EPA believes that effective vapor monitoring systems can be designed to monitor for specific components, tracer compounds, or total organic hydrocarbons. Consequently, the Agency explicitly allows these additional methods in § 280.43(e) of the final rule.

(d) Sensitivity of the Vapor Monitor. The proposed rule stated that the threshold of the vapor monitor must be preset specifically for the type of regulated substance stored in the UST. This requirement was included in an attempt to increase the sensitivity of the monitor to detect releases in areas with background hydrocarbon levels. Since proposal, however, changes have been made to the vapor monitoring requirements based on public comment and new EPA analysis that make this requirement unnecessary or even undesirable. Tracer compounds may now be used for vapor monitoring, so specificity of the monitor to the regulated substance is undesirable. The EPA-sponsored computer modeling that was conducted on vapor monitoring performance indicated that, in some circumstances, a monitor would be more effective if it monitored for a single component of the stored substance than the complete stored substance because it would be able to differentiate more distinctly between a leak of that component and existing background hydrocarbon levels. Again, specificity of the monitor to the complete regulated substance would be undesirable. The final rule now simply requires that the monitor be capable of detecting a significant increase above background of the regulated substance, a component or components of the substance, or a tracer compound. This change will allow the use of existing sensitive monitors such as those measuring BTX (benzene, toluene, xylene) or "total hydrocarbons" because they can detect components of many regulated substances.

(6) Ground-Water Monitoring (§ 280.43(f)). The proposed rule allowed the use of monitoring for free product on top of the ground-water table to determine the presence of a release from an UST system. Many commenters agreed with this approach to release detection but wanted EPA to ease some of the limitations placed on the use of the method. The final rule still allows monitoring on top of the water table for free product but with several changes: Well placement is no longer limited to the excavation zone; the well screen must be designed to prevent clogging and intercept the water table at both high and low ground-water conditions; and the well must be sealed from the ground to the top of the filter pack.

(a) Effectiveness. In the proposal the Agency recognized that there are several concerns about the use of ground-water monitoring, primarily the fact that the resource being protected (i.e., ground water) is the medium in which the release is detected. The Agency included this release detection method in the proposed rule, however, because this method has been demonstrated to successfully detect small petroleum releases and it is currently in widespread use in several state UST programs, such as that in Florida. EPA proposed limiting ground-water monitoring only to floating free product because its presence can be detected more quickly and reliably following a release than can dissolved product. The proposed rule also contained several limitations on well design, well placement, and equipment performance that together were intended to limit the use of this method to those conditions under which rapid detection could be ensured.

Most commenters supported ground-water monitoring as a release detection method in common use that has successfully detected leaks. One commenter expressed reservations about the method, saying that released product can migrate away from monitoring wells around an UST system and claimed some problems with Florida's program. EPA continues to acknowledge that the method is not completely risk-free and also believes that it provides a level of protection equivalent to the other allowed release detection methods. In addition, not allowing ground-water monitoring in the rule would force states like Florida that depend primarily on ground-water monitoring to completely revamp their programs, thus disrupting established and effective programs, delaying implementation, and unnecessarily increasing expenditures because of the replacement of all the existing wells with other equipment. Therefore, in consideration of the limitations discussed below, EPA has retained ground-water monitoring as an option in the final rule.

(b) Limitations. The limits on well placement in the proposal restricted this method to areas with the water table 20 feet or less below the surface and with soils having a hydraulic conductivity of at least 0.01 cm/sec. Also, the wells had

to be placed within the excavation zone. These restrictions were intended to ensure rapid detection by minimizing the distance that a release must move between the UST and the monitoring point and minimizing the time taken to move that distance. Ground-water monitoring was also limited to use with products that are immiscible in water and lighter than water so the product can be detected by the monitors.

• *Depth to Ground Water.*

Many commenters believed that the proposed 20-foot maximum depth-to-ground-water restriction was too stringent and requested that this maximum value be increased or even deleted entirely from the final rule. Others agreed with the proposed rule. The Agency still believes, however, that increasing the allowable maximum depth would increase the volume of the release that could occur before detection. Detection of releases is also slower and less certain with deeper wells because subsurface geology can inadvertantly direct product away from the monitoring wells, even if they are located close to the UST system. EPA research conducted since the proposal suggests that 20 feet is the maximum depth to ground water that will permit detection in 30 days when the hydraulic conductivity is 0.01 cm/sec (Notice of Availability; 53 FR 10403). Also, once a release is detected by a deeper well, corrective action will be more difficult and costly because more product has been released. Therefore, EPA has retained in the final rule the 20-foot depth-to-ground-water restriction when ground-water monitoring is used as the sole release detection method. If this method is used as a supplemental device to another approved form of leak detection or as a release investigation method, EPA encourages the use of these wells at greater depths or in less permeable soils.

• *Placement of Monitoring Wells.*

Commenters also objected to the proposed requirement that the monitoring wells intercept the excavation zone. One commenter noted that this requirement could result in existing tanks being punctured during drilling of the well. Another commenter said such a requirement violates some existing state laws intended to prevent contamination. The Agency shares this concern as one expressed by numerous regulators in the field. Apparently, not all owners and operators of existing USTs know the orientation and dimensions of their UST system, not all well drillers have the equipment to find the exact location of their UST, and errors in well installation can occur even when the placement of the UST is known.

Although a slight increase in the allowable distance between the UST and the well may result in slightly larger releases before detection, EPA decided that this was preferable to the catastrophic release that would occur if a tank were punctured. Today's final rule has been revised to require that the monitoring wells or devices be placed within the excavation zone or as close to the excavation zone as is technically feasible. This change also applies to new tanks although placing the wells in the excavation zone should rarely be technically infeasible.

The soil hydraulic conductivity limitation is retained in the final rule and will have to be met whether the well is placed outside or inside the excavation zone. Thus, the revision on well placement is not a major change because wells are allowed outside the excavation zone only when the well is in close proximity to the UST system, the soil is very porous, and released product can move quickly to the well. If the soil outside the excavation zone cannot meet the conductivity requirement, the well must be placed inside the zone.

• *Immiscible in Water.*

The proposed rule required that the regulated substance be immiscible in water and have a specific gravity less than one in order to use ground-water monitoring. These requirements were needed to ensure that released product would float on top of the water table, where it could be detected by the monitors. The Agency has retained these requirements in the final rule but notes that ground-water monitoring is intended for use with gasoline and other substances that are, in fact, slightly soluble in water. Thus, the immiscibility requirement does not exclude substances which are in fact slightly soluble. The slight solubility will not interfere with rapid detection because most of the product is still floating on top of the water table where the monitor can sense it. For example, gasoline has been successfully detected by ground-water monitoring in state programs such as Florida's.

(c) Design Specifications. In the proposed rule, EPA did not include any design specifications for the monitoring wells and networks because site conditions vary widely throughout the U.S., and the Agency wanted to allow the implementing agencies and owners and operators as much flexibility as possible in designing the wells and monitoring network to fit the site. Commenters suggested that the rule should contain more specific requirements and restrictions. EPA continues to believe that tailoring the wells and the network to the specific conditions will result in better release detection, so few specific requirements can (or should) be included at the national level. In addition, most states, such as Florida, that are relying on ground-water monitoring as the preferred release detection method have already included detailed design specifications in their UST programs.

However, upon further review of the proposed limitations and capabilities on ground-water monitoring and the experience using this method in Florida, and other areas, the Agency did decide that three well-design criteria should be added to the final rule to prevent common problems. First, if the top of the water table is above or below the screened interval of the well, then the free product floating on top of the water table will not be able to enter the well and be detected by the monitor. For this reason, today's final rule requires that the monitoring well screen must allow entry of regulated substance into the well under both high and low ground-water conditions. Second, the final rule requires that screening be designed to prevent migration of soil or filter pack into the well, which would clog the screen and prevent product from entering and being detected. The third criterion added to the final rule is the requirement that the wells be sealed from the surface to the top of the filter pack, which will prevent possible contamination by hydrocarbons washed from the surface by rain water that might cause a false alarm or mask a future release.

(d) Sensitivity of Monitor. The last limitation included in the proposed rule to ensure rapid detection using ground-water monitoring was a performance standard requiring that the monitoring equipment be capable of detecting the presence of at least one-eighth of an inch of free product on top of the ground water. This value was selected because it is the maximum performance that manufacturers continue to claim can be achieved by existing automated monitoring equipment. This requirement was intended to apply both to automated and manual monitoring techniques. Some commenters wanted to make the standard more stringent by reducing the criterion of one-eighth of an inch of free product in the well to one-sixteenth of an inch or by replacing it with nonquantitative terms such as detection by "sheen" or by human sight or smell. The commenters felt that the Agency did not give enough justification

for selecting the ⅛-inch value and that it is essentially defining the volume of an acceptable release.

The Agency reiterates that the ⅛-inch requirement was selected as the performance standard because it is the sensitivity of existing automated equipment, not because it is an acceptable release. A preliminary EPA analysis indicates that several commercial devices can detect ⅛ inch of product on top of a water table (Notice of Availability; 53 FR 10403). To set a performance standard that is more stringent than can be met by existing technology would eliminate use of this method, which has proven effective in several local UST programs. The Agency considered allowing only manual methods of collecting and analyzing ground-water samples, which may be more sensitive than automated monitors; however, manual methods are very subjective and can only be conducted intermittently, whereas automated methods can be continuous and are less subjective. Therefore, today's final rule retains the ⅛-inch performance standard, and both manual and automated monitoring are acceptable.

(7) Interstitial Monitoring (§ 280.43(g)). Interception barriers and interstitial monitoring were two methods of release detection allowed in the proposed rule. Because they are two distinct methods used to detect releases, they were treated separately. These methods and the requirements that were proposed for them were discussed in detail in the preamble to the proposed rule (52 FR 12735–12739). Commenters were in favor of allowing these methods but suggested changes to some of the requirements. In response to comments on several technical issues raised in the proposal concerning both methods, EPA has changed some of the technical requirements. Based on these comments, the final rule has consolidated the requirements for both methods into one section, eliminated the use of soil/clay liners, and added a requirement to prevent interference with effective cathodic protection.

Section 280.41 of the proposed rule allowed monitoring between an UST and two types of impermeable barriers as two separate release detection methods. The first method, proposed in § 280.41(f), allowed monitoring for liquids in the unsaturated zone between an UST and an interception barrier immediately below it. Interception barriers are basically partial excavation zone liners: they are located immediately below the UST and come only part of the way up the sides of the excavation pit. The second method, proposed in § 280.41(h), allowed interstitial monitoring between an UST and a secondary barrier that surrounds the entire UST system. These barriers are not the partial, catch basin-type of barriers allowed under the first method. These barriers are either integral to the tank system design itself (e.g., double-walled tanks or pipes) or they are located within the UST excavation area along the bottom and sides of the pit and present a barrier between all parts of the UST system and the environment (e.g., flexible membrane pit liners).

Using either of the above barrier-type methods, the interstitial space between the tanks and the barrier can be monitored by a variety of devices designed to detect a variety of changes in operating conditions (e.g., pressure changes with double-walled tanks or presence of liquid or gaseous product in the interstitial space between the barrier and the UST system). Because improper design can make these systems ineffective, the proposed rule included a number of design criteria to ensure effectiveness as a release detection method.

(a) Consolidation of Sections. The proposed rule included a set of general performance standards and design limitations for each method to ensure effective detection of released product. The requirements for the two methods were essentially the same. Despite their similarity, they were included separately in the proposed rule to make it clear that they are two distinct proposed methods and that both are acceptable means of detecting releases. These two methods were not intended to prevent releases, but were intended to contain releases long enough to direct the regulated substance to a monitor for detection; EPA intended that release prevention be covered in the UST design and installation sections of the rule (52 FR 12735–12739).

Today's final rule has been reorganized so that the performance requirements for both of these methods are discussed in a single section (§ 280.43(g)). The Agency has decided to eliminate the separate and duplicative sections in the proposed rule on interception barriers and interstitial monitoring because this appeared to be a source of confusion to some commenters. This is only an organizational change, not a deletion of a possible release detection method, and does not change the substantive intent of the proposal. The consolidated design and performance limitations for both methods remain as proposed with the exception of the changes noted below.

(b) Performance Standard. The proposed rule required that the interstitial monitor between an UST and a secondary barrier be capable of detecting any release from the UST into the interstitial area. One commenter objected to this wording because it requires that the interstitial monitor would be capable of detecting *any* release, no matter how small. The Agency disagrees with the commenter and believes that interstitial monitors should be capable of detecting a release into the interstitial area. The available data on monitor performance indicates that they are very sensitive and will, in fact, be able to detect the type and size of release that is likely to occur from a secondarily contained UST system. Ideally, EPA agrees with the commenter that a performance standard should be included in the rule to define the sensitivity of interstitial monitors. The data are insufficient, however, to determine a performance standard. Secondary containment with interstitial monitoring is a very sensitive release detection method and is believed to provide maximum protection of human health and the environment, and the Agency did not want to eliminate it from the rule for lack of a specific performance standard. Therefore, the final rule continues to require that interstitial monitors be capable of detecting a leak from any portion of the tank that routinely contains product.

(c) Soil/Clay Liners. The Agency solicited comments on the performance of barriers for purposes of UST release detection (52 FR 12736, 12739). The subject the Agency received the most comment on was the question of the use of soil/clay liners. Some commenters approved of the use of soil/clay liners but suggested that these liners needed more stringent limitations. Other commenters recommended that these liners not be allowed in the final rule because they are not impermeable to all gasoline constituents. Recently completed studies by EPA's Office of Solid Waste on the effectiveness of soil/clay liners compared to synthetic liners (Notice of Availability, 53 FR 10403), as well as information submitted by commenters on the proposal, have caused the Agency to delete this proposed technical option from today's final rule. This means that barriers constructed from native soils or artificially treated soils (for example, bentonite-sealed soils) are excluded from use under the revised performance requirements for barriers. In general, soil/clay barriers are not being allowed because there is enough evidence about the inadequate performance of these

materials as reliable barriers to question their reliability for release detection purposes.

(d) Interference with Cathodic Protection. Several other commenters noted that barriers that completely line the excavation might interfere with the cathodic protection system. For example, flexible membrane barriers are usually non-conductive and could electrically isolate the anodes from the tank system, preventing the flow of protective current. The Agency agrees that this could be a problem although no failures of this type have been reported. A general requirement has, therefore, been added to the rule, stipulating that barriers must not interfere with cathodic protection (§ 280.43(g)). EPA believes this can be met in most cases simply by ensuring that the components of the protection system are placed inside the barrier system.

(e) Compatibility of Liner with Product. The proposed rule contained a requirement that the secondary barrier be compatible with the regulated substance to prevent the product from eroding the integrity of the liner over time, causing holes and possible releases to the environment (52 FR 12735, 12736, 12739). The Agency agrees with commenters who noted that a small amount of liner deterioration is inevitable. Accordingly, the wording of the proposed compatibility performance requirement in § 280.43(g) has been changed to indicate that some deterioration is permissible as long as it does not prevent the detection of a release. This requirement was revised to ensure that a basic level of compatibility is achieved and to make the owners and operators responsible for ensuring barrier materials (e.g., flexible membrane liners) are compatible with the product stored (see also § 280.32).

(8) Other Methods of Release Detection (§ 280.43(h)). As discussed in the preamble to the proposal (52 FR 12739–12740), EPA has identified over 250 commercially available release detection devices. The Agency continues to believe that methods of detection other than the seven general methods listed in the rule may also be able to successfully detect releases under certain circumstances. Thus, the proposed rule allowed the use of other methods of release detection if they were approved by the implementing agency as no less stringent than one of the other methods listed in the rule. Commenters generally preferred that any mechanism for approval of a new method be at the federal level (discussed in more detail below). The final rule, however, retains the approval mechanism as proposed but provides an additional mechanism for allowance of other methods. A new method may be used if it can detect a release of 0.2 gallon per hour or 150 gallons within a month with a PD of 95 percent and a PFA of 5 percent. The Agency felt that adding the second alternative mechanism, one which is self-implementing, will provide consistency among methods, offer additional flexibility for owners and operators to choose new or improved technologies of equivalent protection to those specifically allowed in the rule, and spur innovation.

(a) Other Methods Approved by Implementing Agencies. The specific methods EPA proposed have demonstrated effectiveness in the field and are already in extensive use. An important purpose for including these methods was to make it clear that their use was allowed for meeting the proposed release detection requirements and under what conditions they could be used. The Agency intends to continue to develop and provide information helpful to the implementing agencies in evaluating new methods. EPA will also continue to foster identification and development of new methods. Although the Agency wants to allow new methods, it was also concerned that, to protect human health and the environment, they be limited to the methods that are at least as stringent as the methods proposed. Therefore, the proposed rule included a mechanism to allow the use of a new release detection method if the owner or operator could demonstrate to the implementing agency that the method could detect releases before they migrated beyond the excavation zone as effectively as one of the methods already in the rule.

Generally, commenters agreed with the need for allowing new methods but most felt it should be a federal approval process conducted by EPA, not by the implementing agency as proposed. The commenters were opposed to delegating approval authority to the implementing agencies because the lengthy and repeated (for each state or local agency) approvals would discourage method development and because state and local officials do not have the knowledge to make these evaluations. All of the commenters felt that the approval mechanism would be more efficient at the federal level, where approval could be granted one time, rather than 50 times, by means of an approved list or a revised regulation.

As stated in the proposal, the Agency wants to foster innovation and development of new release detection methods and to allow them to be implemented quickly (52 FR 12739). Therefore, the Agency is concerned that the development and publication of a federal list of approved methods or a revised regulation, as suggested by some commenters, would take too long. The Agency could decide, at some future time, to revise the final regulation to add new general methods. The Agency is convinced, however, that allowing approval by the implementing agency, including those at the state and local level, will enable a new method to be used more quickly because the implementing agencies would not have to wait for a Federal approval before a method could be implemented. In addition, the precedent set when a new method passes an evaluation in one implementing agency should facilitate succeeding reviews by other agencies.

Implementing agencies are developing UST programs quickly, and the Agency's primary concern is to meet their needs as rapidly as possible. The Agency's research on release detection methods will provide important information to state and local agencies for use in their decisions on which release detection methods to allow. The Agency will continue to encourage private sector evaluation of new release detection methods and the exchange of this information with the implementing agencies. In addition, as discussed below, the Agency is providing another, self-implementing alternative for use of methods not explicitly included in the rule.

In addition to the reasons given above, a Federal approval listing process or a revised regulation would not ease some of the problems that commenters foresee with delegating approval to the implementing agencies. EPA's inclusion of methods in the final rule, or its subsequent endorsement of a new method, does not automatically make the method acceptable in a state because states or local governments may, under their own authority, impose release detection requirements more stringent than EPA's. Each state can review each method and decide whether or not to allow it. In fact, a number of state and local agencies are already implementing their own UST programs, and some of these programs have more restricted lists of approved methods than the federal rule. Thus, the final rule retains the proposed option of approval of other methods by implementing agencies.

The standard for implementing agency approval has been changed in the final rule to make it consistent with other changes in the rule. The revised ground-

water monitoring standard no longer requires that the monitoring wells pass through the excavation zone. As discussed in section IV.D.2.d.6. above, the Agency did not believe that this requirement was necessary to protect human health and the environment. The revised method can no longer detect a release before it migrates beyond the excavation zone, making the standard for implementing agency approval meaningless. To retain the consistency between this section and the method requirements, the standard for comparing new and existing methods in the final rule has been revised. The standard now specifies that methods approved by the implementing agency must be as effective as one of the other methods allowed in the rule. Methods are considered to be equivalently protective if they can detect a small release as quickly and reliably as other methods included in the rule. This change is consistent with changes in § 280.42(b)(5)(i) (see section IV.D.2.c.2. of the preamble).

(b) Other Methods That Meet a Performance Standard. The Agency included in the final rule a second mechanism by which a new release detection method can become approved. A new method may be used to meet the release detection requirements if it can be demonstrated to detect a leak rate of 0.2 gallon per hour or 150 gallons within a month with a PD of 95 percent and a PFA of 5 percent. This performance standard for alternative release detection methods contains two equivalent leak rates, and the owner or operator may demonstrate compliance with either format. Although external monitoring methods are capable of detecting very small releases, it is more difficult to demonstrate that they meet a small hourly release rate than a larger, though equivalent, volume. The Agency was concerned that, if only the 0.2 gallon per hour release rate was included in this performance standard, manufacturers of new and effective external monitoring equipment or experimental methods would be discouraged from developing the methods or would be unable to demonstrate compliance to the statisfaction of the implementing agency. As discussed previously, EPA wishes to encourage development of new release detection methods.

Unlike the performance standards for the specific allowable release detection methods, the PD and PFA values for the performance standard for new alternative methods are effective immediately. As discussed above in section IV.D.2.a.5., compliance with the probabilities applicable to all methods is delayed for two years. This delay was included in the final rule to allow manufacturers time to modify existing methods, which are already in wide use, and develop the required documentation of performance while still providing the immediate release detection needs required in the rule. These allowable methods were identified in the rule because they are widely used and expected to work well, often without significant improvements. New alternative methods, however, should be developed from the beginning to meet the most stringent performance requirements. In addition, the Agency was concerned that only requiring a leak detection capability of 0.2 gallon per hour could be interpreted to allow imprecise methods such as inventory control to be used alone for the first 2 years of the program. Methods such as ATGS can already operate almost to the required probabilities of detection and false alarm, whereas inventory control cannot come close to these levels, and to allow its use alone even for 2 years would be harmful to human health and the environment.

The evidence gathered by EPA from laboratory evaluations and field experience indicates that the methods specifically proposed (except inventory control) should be able to meet this performance standard now or in the near future (see discussions above for each method). As new methods use this mechanism to become approved, this will ensure consistency of performance among new methods. The net effect of including this alternative in the final rule is to move closer to the general performance standard for all methods considered desirable by many commenters (see discussion in section IV.D.2.a.4. above).

The addition of this alternative will have the effect desired by commenters and EPA of spurring innovation and development of new technology for release detection because there is now a specific and measurable goal for manufacturers to work towards. In particular, this approach will provide flexibility to develop new release detection methods for unusual UST systems such as bulk tanks, for which current methods are inappropriate or expensive. This approval mechanism will have the additional advantage of allowing a new method proven to meet the standard to be used without any approvals in states which allow this approval mechanism.

This approach also clarifies what minimium equivalent performance must be demonstrated to the implementing agency under the other approval procedure for new methods (see preceding section). EPA did not, however, want to make this performance standard the only means by which a new method could become approved because it may not be possible to easily determine a leak rate for some methods within the next few years, particularly external ones. Such methods can still be very effective at detecting releases and the Agency wants to encourage the development of sensitive methods. If method developers can demonstrate to the implementing agencies the sensitivity of their methods in ways other than leak rates, then they should be able to do so. For these reasons, the performance standard approach to approving new methods is included in the final rule in addition to, not in place of, the proposed mechanism requiring review by the implementing agency.

e. *Methods of Release Detection for Piping (§ 280.44).* The general release detection requirements for pressure and suction lines are discussed in section IV.D.2.b.2. of this preamble. This section discusses the performance standards for those required release detection methods.

One commenter noted that piping and tank release detection methods should be separated because not all tank methods apply to piping and vice versa. A separate section addressing piping release detection methods has been added to the final rule to address these concerns. Separating the methods for tanks and piping allows owners and operators greater flexibility in designing a system. For example, at a station with extensive piping, installing flow restrictors and conducting an annual tightness test for the piping and using vapor monitoring for the tanks may better protect the environment and cost less than installing vapor monitoring for both the tanks and piping.

The proposed rule required either continuous monitoring devices or automatic shutoff devices on all pressurized lines as well as a line tightness test in conjunction with scheduled tank tightness tests. The proposed rule established a leak rate for the automatic shutoff device and indirectly required line tests to meet the tank test standard (0.1 gallon per hour with a PD of 99 percent and a PFA of 1 percent) but set no other performance standards. The Agency requested comment regarding the field performance of pressurized piping release detection methods (52 FR 12744). Commenters noted that additional performance parameters should be

provided in the rule, such as detection limits and line operating characteristics. The Agency agrees and has accordingly added further specifications to the piping release detection methods allowed in the final rule to ensure that they meet these minimum performance standards. Thus, probabilities of detection and false alarm have been added for the automatic line leak detectors and line tightness tests; and (for reasons explained earlier) the effective date of these probabilities is delayed for 2 years. Because leak rates depend on the pressure in the line, the Agency agreed with commenters suggesting that the minimum performance standards for line leak detectors, which operate by detecting changes in line pressure, should be specified in terms of the line operating pressure. Each of the piping release detection methods is discussed below.

(1) Automatic Line Leak Detector (§ 280.44(a)). The proposed rule required that the automatic shutoff device be capable of detecting and shutting off a release of at least 2 gallons per hour. This value was selected based on manufacturers' claims. Most commenters felt that the performance standard suggested in the supplemental notice (52 FR 48638) of 0.1 gallon per hour with a PD of 99 percent and a PFA of 1 percent was too stringent, and that 2 gallons per hour was below the detection level of flow restrictors.

The performance standard in the final rule for automatic piping release detection methods (including flow restrictors, shutoff devices, and interstitial or external monitors) has been set at 3 gallons per hour at 10 psi with a PD of 95 percent and a PFA of 5 percent. The 3 gallons per hour value and the probabilities were selected based on a study conducted by EPA's Office of Research and Development of the behavior of pressurized lines, an evaluation performed and submitted by a commenter, and manufacturers' written claims. The value of 10 psi was also selected because it is the pressure at which a typical line leak detector operates. A manufacturer can test a device at any convenient operating pressure and mathematically convert the results to 10 psi to determine if the device meets the performance standard. As discussed elsewhere in today's preamble (section IV.D.2.a.5.), the effective date of the PD and PFA is delayed for 2 years following promulgation.

The final rule also requires that an automatic line leak detector be capable of checking for releases hourly and either restrict or shut off flow of product or be equipped with an audible or visual alarm. The Agency intends the term automatic line leak detector to include a wide variety of devices that meet the standard including automatic shutoff devices, automatic flow restrictors, continuous interstitial monitors, continuous vapor monitors, or continuous ground-water monitors. The hourly detection frequency was selected because pressurized lines can release large volumes of product quickly, so very frequent monitoring is necessary during operation to protect human health and the environment. The equipment currently on the market either operates continuously or conducts a test each time the pump is turned on to dispense product, provided several minutes have elapsed since the previous dispensing, so meeting this requirement should not be difficult. The Agency believes the operators must be alerted immediately to the presence of leaks in pressurized lines. To do this, a clear indication such as flow restriction or shutoff or an alarm is considered necessary.

The final rule also contains the requirement that all automatic line leak detectors be checked annually according to manufacturer's requirements. This requirement was added in response to commenters' concern that line leak detectors can malfunction or be overridden by unwise operators. The possible burden of an annual maintenance check is outweighed by the importance of detecting and stopping pressurized releases.

(2) Line Tightness Test (§ 280.44(b)). The line tightness test that is required in the final rule annually for pressurized piping and every 3 years for American-style suction systems is part of the tightness test option that was proposed for the entire UST system. Work conducted at EPA's test laboratory in Edison, NJ, has demonstrated that line tightness test methods should be able to meet a performance standard of 0.1 gallon per hour with a PD of 95 percent and a PFA of 5 percent with, perhaps, some minor modifications in procedure and equipment (see section IV.D.2.b.2.). Therefore, this performance standard has been adopted in the final rule. As discussed above and in section IV.D.2.a.5., application of the performance standard for line tightness testing has been delayed for 2 years.

As discussed above, the performance standards for line release detection must be stated in terms of the line operating pressure. The value of 1.5 times the operating pressure was selected for the line tightness test because most operators are currently performing tightness tests at this pressure, it is the procedure recommended by NFPA 329 for hydrostatic testing, and it covers the range of line operating pressures, including suction lines. It should be noted that, for safety reasons, all line tightness tests should be performed at positive pressure, not a vacuum, even for suction lines. For example, most suction lines operate at 3 to 5 psi negative pressure; therefore, tightness tests should be conducted at about 7 psi positive pressure.

(3) Applicable Tank Methods (§ 280.44(c)). In the proposed rule, six categories of tank release detection were allowed to meet the monitoring requirement for the "UST system," which included the associated underground piping. As discussed in section IV.D.1.a. above, the final rule now separates the release detection methods for tanks and piping because not all tank release detection methods can be used for piping and vice versa. As noted by commenters, some of the tank monitoring methods are in fact applicable to piping, such as vapor monitoring, groundwater monitoring, and interstitial monitoring, and the Agency wanted to include their use as an option for piping release detection. Therefore, the final rule allows monthly monitoring with one of the applicable tank monitoring methods if it is capable of detecting a release from the portion of the underground piping routinely containing product and meets the restrictions applicable to the use of those methods. This is one of the options for the monthly release detection requirement, in addition to the automatic line leak detector requirement.

f. *Recordkeeping (§ 280.45).* The proposed rule required that all UST system owners and operators maintain records on the release detection systems required in the rule. The requirement to keep records of performance claims, test results, and equipment maintenance was included because of the importance of each of these activities in the successful detection of releases and in demonstrating compliance to the implementing agency. Commenters generally felt that the requirements were too burdensome and would be particularly difficult to achieve if the testing was done by a service company. The main areas of concern were the requirement to keep performance claims and the components of an adequate performance claim.

Today's final rule retains the recordkeeping requirements as proposed with two revisions. First, only release

detection equipment permanently located on-site must have written documentation of calibration, maintenance, and repair on file. Second, manufacturers' schedules of calibration and maintenance for release detection equipment must be retained for 5 years from the date of installation.

The Agency required in the proposed rule that all UST system owners and operators maintain three types of records demonstrating compliance with the applicable release detection requirements: documentation of method performance monitoring results; and general operation, maintenance, and repair. It was felt that these records demonstrate that certain past events important to effective release detection using that method actually took place and could be used by implementing agencies to determine compliance (52 FR 12747). In general, commenters felt that the proposed recordkeeping requirements as a whole were too burdensome. The Agency believes, however, that the requirements are not particularly burdensome because many of the records will be supplied by manufacturers, sales personnel, or service people; not much paperwork is involved and the required records would generally be kept on file anyway; and paperwork will be added infrequently. In general, some records are needed to remind the owners and operators when maintenance is scheduled and to help them keep the equipment under warranty. Finally, properly maintained records are necessary to allow later analysis of the tank systems by either the owners and operators or the implementing agency in the event of a release investigation or system closure. Each of the individual requirements receiving comment or revised in the final rule is discussed below.

The requirement to maintain manufacturers' performance claims and justifications for 5 years was intended to encourage manufacturers to evaluate their equipment and develop documentation of the proof of performance and to cause owners and operators to review this information while selecting an appropriate release detection method. Many commenters expressed confusion over what these performance claims would be and were concerned that the owners and operators were being required to substantiate the claims. It was not the intent of the proposed or final rule to require the owners and operators to provide the proof of performance claims, only for them to ask for and acquire information from the manufacturer. In order to compete and successfully market equipment, the manufacturer will have to develop convincing documentation demonstrating that the release detection method meets the minimum performance requirements.

As discussed in the proposal preamble (52 FR 12719), there are several types of information that the manufacturer should include in this documentation and that the owners and operators should look for. The final rule does not require any specific information, however. EPA recognizes that the level of detail will vary by type of method and that, over time, manufacturers will develop standardized claims that will help guide the owners and operators. This requirement will place owners and operators in the position of having to review the claims and select a system that will meet regulatory requirements. Thus, owners and operators are responsible for achieving the goal of effective release detection and demonstrating to the implementing agency that the owners and operators have made an effort to comply with the regulation. For these reasons, this section of the final rule will remain unchanged from the proposal.

The proposed rule required that all records of calibration, maintenance, and repair be maintained by all owners and operators for at least one year. These are important procedures for the proper functioning of release detection equipment, particularly automated systems, and must be available for inspection to demonstrate that the system is working as well as it can. One commenter noted that the recordkeeping requirements would be difficult to meet for owners and operators who hire release detection services to do the monitoring. EPA agrees with this, and today's final rule states that this requirement applies only to owners and operators of equipment permanently located on-site. Owners and operators who hire release detection services need not retain the servicing records of their contractors. Owners and operators, however, must ensure that the service is performed well and according to specifications and will be responsible for the cleanup of any undetected releases.

Another addition to today's final rule that was not in the proposed rule is the requirement that any schedule of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation. This information should be provided by most manufacturers in the same brochures as performance claims; thus, this new requirement should not result in much additional paperwork. This requirement was added as a clarification to the final rule to remind owners and operators of the importance of maintaining these data. With this requirement, implementing agencies can verify that required maintenance and calibration were performed. Also, if ownership of a site is transferred, the new owner or operator will be able to understand and ensure that the proper schedule is maintained.

g. *Other Release Detection Issues.—(1) Release Detection Variances for Low-Risk Sites.* In the Supplemental Notice (52 FR 48641), EPA noted that protected tanks in some areas of the country may not require frequent-to-continuous release detection. EPA requested comments on whether, within these less sensitive areas, variances should be allowed for protected tanks to conduct internal inspections or less frequent monitoring. EPA requested comment on the appropriateness of these alternative release detection approaches and under what conditions they might be used. There was little agreement among commenters on either issue, and no specific recommendations on how low-risk areas could be defined or identified at the federal level. The final rule does not include a release detection variance for low-risk areas because of the difficulty in operationally defining and implementing a variance procedure which adequately protects human health and the environment.

Commenters who supported the use of the variance felt that it would improve environmental protection by focusing resources on UST systems in higher risk areas. Commenters opposed to the variance noted that leaks can pose environmental problems even in low-risk areas. Their experience suggested that impermeable formations may actually have hidden fractures that allow product to reach deep ground water and necessitating expensive cleanup efforts. They further suggested that, under any circumstance, product leaks may pose an explosion hazard. These commenters also noted the difficulty of managing a variance process.

The Agency agrees with commenters who noted significant problems with a variance procedure. No commenters were able to suggest a manageable variance procedure given the size of the UST universe. As noted earlier in the preamble, defining sensitive or low-risk areas at the Federal level is problematic (see section III. of today's preamble). Because the Agency could not develop reasonable criteria for granting

variances on a case-by-case or prospective basis, no release detection variance is included in the final rule. Consequently, less protective detection options such as infrequent monitoring for protected tanks over 10 years of age will not be permitted in any areas regardless of risk.

(2) Internal Inspection as an Alternative to Release Detection. The Agency also considered the use of internal inspections as a substitute for release detection. EPA solicited comment in the December 23, 1987, supplement to the proposal on the use of internal inspections at low risk UST sites. The Agency received many comments both for and against this option. In general, supporters of internal inspections believe that this would provide important information on the internal and external corrosion and the structural integrity of tanks. Some commenters specifically recommended allowing internal inspection as a release detection alternative at low-risk sites (e.g., sites that are not in vulnerable ground-water supply areas or in close proximity to surface waters and residential areas) while others supported its use at all UST sites. Schedules for conducting internal inspections, such as at periodic intervals (e.g., every 3 to 5 years; or ever 10 to 15 years) or based on tank age, were recommended by several commenters.

Reasons given by commenters not supporting this option included: (1) Not all tanks are constructed with manways, (2) internal inspections are time consuming and would be cost effective only for larger (bulk) tanks, (3) internal inspections do not provide sufficient information on tank integrity, and (4) inspections are a safety risk to the inspector.

The Agency does not have sufficient data on the performance of tanks subject to internal inspection programs that would allow it to determine that such an approach without release detection would be protective of human health and the environment. The Agency is aware that internal inspections are widely used by owners and operators of bulk tanks for evaluating tank integrity. Based on insufficient information on the use of internal inspections with all USTs and the lack of industry consensus codes, however, the Agency has decided not to include this as a release detection alternative in the final rule.

E. Release Reporting, Investigation and Confirmation

1. Overview

Because UST systems are hidden from direct observation, suspected releases must be investigated to identify, or confirm, that an UST system is the source of a release. Monitoring results and other indicators in the environment are the only suggestions of a release. In general, corrective action cannot be started until the UST system and UST site are investigated and a release is confirmed.

The proposed rule required that all suspected releases be reported to the implementing agency (see proposed § 280.50). Suspected releases included: positive monitoring results from testing, monitoring and sampling, unusual operating conditions, and the discovery of regulated substances in the environment. All suspected releases had to be immediately investigated, unless the owner and operator elected to proceed directly to corrective action.

As discussed in the preamble to the proposed rule (52 FR 12747–12751), the development and implementation of criteria and procedures to determine the appropriate circumstances to initiate, conduct and conclude the confirmation process can be technically complex. This situation is further affected by the fact that owners and operators are typically reluctant to begin what they consider to be the costly process of confirmation. Although this testing is inexpensive relative to corrective action costs, owners and operators typically want to avoid all unnecessary costs. The Agency's proposed release reporting and confirmation requirements were established in the belief that nearly all suspected releases must be investigated before conducting even more elaborate and costly abatement procedures. The first step was to quickly establish if the UST system is actually leaking. Prompt reporting of suspected releases also was proposed so that responsible authorities could take action to ensure that investigations are timely, properly designed and performed, and protective of human health and the environment.

The Agency proposed several alternative procedures for investigating suspected releases including: Different combinations of tank and line tightness testing, inventory reconciliation review, testing of secondary containment, checking equipment operation, soil coring and analysis, and other methods specified by an implementing agency. Numerous comments were received in response to the proposed requirements. Most commenters took issue with the proposal's attempt to provide specific direction and guidance and suggested that even more details were needed to successfully implement this approach. For example, several commenters questioned how soil sampling results were to be interpreted and when the soil coring analysis and investigations could be accepted as definitive. In addition, commenters pointed out that the actual steps in confirmation are determined on a site-by-site basis. Other commenters were concerned with the discretion provided the implementing agencies in directing owners and operators in the investigation of off-site impacts.

As discussed elsewhere in today's preamble, EPA has received very encouraging information about the general efficacy of tank tightness testing. Also, it has become clear from comments and information received that tank tightness testing is the most prevalent technique now in use to determine if a suspect system is in fact leaking. Thus, tightness testing is a key confirmatory step in the final rule required of all owners and operators, unless they choose to immediately conduct an initial site investigation instead.

The fact that the overwhelming majority of release investigations are presently conducted using either a tightness test (as suggested by several commenters) or a small-scale site investigation has influenced the final rule as presented today. Accordingly, the five proposed investigation alternatives have been replaced with the requirement to use these two prevalent methods. Alternative methods that are no less stringent and are approved by the implementing agency are still allowed. Today's rule has been revised to more clearly establish the end point for investigation and confirmation procedures. These procedures end when a successful tightness test is obtained or when the data from environmental testing do not significantly exceed background levels. (However, these investigations may resume if additional evidence to the contrary is presented or is discovered.)

2. Section-by-Section Analysis

a. Reporting Requirements (§ 280.50). The proposal (§ 280.50) required owners and operators to report to the implementing agency within 24 hours any monitoring results from any release detection methods specified in Subpart D that indicated that a release may have occurred. Also, the observation of any unusual operating conditions at the UST system that could be indicative of a release, as well as any indication of the presence of released substances in the environment surrounding the UST, had to be reported. The proposed requirement for the implementing agency to be informed early in the confirmation process was believed necessary so that the implementing

agency would be assured that proper investigation procedures were used. Commenters generally responded that it is not necessary to report all suspected releases. They identified situations in which obvious false alarms would have to be reported, and conditions that would be disruptive to the operation of the facility. They pointed out that the large number of what would prove to be unnecessary reports could overwhelm the implementing agency.

The Agency acknowledges that some of the situations brought to its attention could indeed result in a significant number of false (or unnecessary) reports. For example, the erratic behavior of dispensing equipment may warrant further investigation before reporting because this behavior can be caused by more than just a leak in the line. Accordingly, the final regulation has been revised to allow owners or operators to verify the proper operation of their equipment before reporting a suspected release. If the faulty equipment is immediately repaired or replaced and further inspection fails to confirm the initial result, the incident does not need to be reported. In the case of inventory control, the rule now allows a second month of data to be collected to verify the possibility of a release before reporting. This does not mean that all inventory discrepancies must be confirmed by a second month's data. Under some conditions, it may be necessary for owners and operators to immediately report an inventory discrepancy. What level constitutes a suspected loss depends on the size of the tank, monthly throughput, and other operating practices. The appropriate action level must be worked out in advance of using this method.

Other situations such as the physical presence of the regulated substance or unusual concentrations of vapor still require immediate reporting. (The requirement for reporting soil concentrations of 100 parts per million or more has been removed because specific national action levels cannot be established for each affected medium; a more reportable condition is whether new contamination was found based on a change from earlier conditions at this site, rather than arbitrary numerical standards and levels.) Failure to determine that an operational problem is caused by faulty equipment will also require reporting. In addition, as in the proposal, the Agency requires the owners and operators to report off-site conditions that might indicate a release has occurred and that are brought to their attention by a third party. This is intended to expedite the process of quick identification of release incidents by giving the general public additional avenues to report their observations.

b. Investigations Due to Off-Site Impacts (280.51). Under the proposed rule, the owner and operator had to investigate suspected releases that were indicated by off-site impacts and as required by the implementing agency. The unintended interpretation of this requirement was that the implementing agency could direct the owner and operator to conduct off-site investigations in response to the discovery of off-site impacts. Commenters strongly objected to this proposed requirement because they felt that it was improper to conduct investigations on property not under their control and because of the apparent wide discretion given the implementing agency in deciding what confirmation steps are needed in an off-site investigation.

The final rule includes revised language that restates the requirement so it is clear that owners and operators must investigate their own UST system and site when requested by the implementing agency and based on the discovery of off-site impacts. The potential for environmental damage is too great to allow the source of a release to go unidentified and unchecked. Limiting the investigation to the on-site UST system should minimize problems suggested by commenters associated with the investigation of releases on property owned by other parties. The Agency did not intend that owners and operators, under these regulations, must conduct investigations on property belonging to others. In the final rule, the investigation has been limited to the determination of whether the owner and operator's UST system is the source of the off-site impact. If regulated substances have been released from an owner and operator's system, as determined by an on-site investigation and confirmation, then they will be responsible for any necessary corrective action, whether on- or off-site.

c. Release Investigation Procedures (§ 280.52 (a) and (b)). As discussed in the proposal preamble (52 FR 12748–12751), the Agency considered three approaches to release confirmation: detailed, step-by-step procedures; confirmation directed completely by the implementing agency; and a basic, but not detailed, set of requirements. The first approach was rejected because it is not feasible to identify and address all possible types of releases and site conditions in the regulation. The second approach was rejected because implementation of release investigation would be delayed until implementing agencies had the time and resources to determine the appropriate methods for each individual site and because owners and operators would generally delay action until their responsibilities were determined by the implementing agency. Thus, the Agency selected the third approach as providing sufficient guidance as well as flexibility.

To implement this approach, the proposed rule provided five specific procedures for release investigation. Any one procedure could be used depending on the preference of the owner and operator and the way in which a suspected release was identified. These procedures were: (1) Performing a site investigation under the direction of the implementing agency; (2) checking the interstitial area of a secondary containment system; (3) in the case of a failed tightness test, checking inventory records, retesting of each portion of the system, and analyzing soil samples; (4) in the case of an inventory discrepancy, performing tightness tests and analyzing soil samples; and (5) performing any other investigation procedure that is no less stringent than those above if approved by the implementing agency. This selection of release investigation procedures was intended to address all possible situations and allow investigation to begin quickly even in the absence of guidance from the implementing agency (although such an interaction was considered most desirable).

Most commenters disagreed with the proposed approach, particularly the degree of authority given to the implementing agencies. Some of these commenters requested more specific guidance on investigation procedures, particularly what to do given certain findings and when to end an investigation. The specific investigation technique receiving the most comment was the soil coring requirement. Commenters felt it was an expensive and difficult process, the results of which are not definitive in confirming a release as there are many sources of soil hydrocarbons other than a current release. The proposed rule was also unclear about what actions should be taken based on the results of soil sampling. This requirement was proposed to be combined with the tightness test because it was believed that tightness tests might not be determinative and could not detect very small releases. This requirement was deleted in the final rule because it is now apparent (see discussion below) that tightness testing is a reasonably

sensitive and reliable method. Soil sampling and analysis may still be part of the site investigations process as discussed in section (3). below.

(1) Timing of Release Investigation and Confirmation. The Agency required in the proposal that all suspected releases be investigated within seven days of initial reporting. Commenters were equally divided on whether this period was too long or too short. The Agency recognizes that there are some situations, such as the presence of product in the environment, where an immediate response to a suspected release is required. In other cases, such as when relatively small inventory discrepancies appear, greater time intervals may be allowed. The rule has been changed to recognize this: a second month of data collection is allowed for inventory control confirmation; seven days are allowed for testing of the tightness of tanks and lines; and 24 hours are allowed for checking the operation of monitoring and dispensing equipment.

(2) Tightness Test (280.52(a)). Since proposal, the results of three studies have influenced the Agency's thinking on effective release investigation procedures. The evaluation of 25 tightness test methods at the EPA Office of Research and Development's laboratory at Edison, New Jersey (53 FR 10403) indicates that current equipment, operated with some procedural modifications, should be able to detect leaks as small as 0.10 gal/hr (see section IV.D. of this preamble for further discussion of tightness testing and these results). In California, a state with a large UST population and an active UST program (and in numerous other state and local programs), tightness testing is often the preferred approach to release investigation. The new information on the causes of release from UST systems (discussed earlier in this preamble) demonstrates that the most common sources of releases are pressurized piping and loose fittings and bungs on top of the tank, which only leak during tank overfill. The easiest way to detect releases from piping is a line tightness test, and the overfill-type of tank tightness test will identify bad fittings on top of the tank. For all of these reasons, the Agency has concluded that tightness testing is a much more effective method of release investigation than was known at proposal, is often the most logical test with which to investigate a suspected release, and is currently the most practiced confirmation tool nationwide.

Based on the above conclusion that tightness testing is the most effective first step in release confirmation, the Agency revised the final rule to ensure that the appropriateness of this method is highlighted. Consequently, the sections of the proposed rule presenting the several alternative investigation procedures have been deleted from the final rule. (In doing this, EPA agrees with several commenters that some of these procedures were incomplete and unnecessary on a site-specific basis.) In their place are two alternative investigation steps, the first of which is to conduct tightness tests to determine the integrity of the tank and piping. If the test results indicate there is a leak from a portion of the UST system that routinely contains product, the owner and operator must stop the leak and begin corrective action (releases from other portions of the UST system are addressed in reporting and cleanup of spills and overfills in § 280.53). If the tightness test indicates that the UST system is not leaking and there is not evidence of environmental contamination, the final rule does not require further actions of the owner and operator. However, if evidence of environmental contamination is still present and unexplained, the second alternative investigation step must take place. The second step requires conducting an initial site investigation (see section (3) below).

This revised approach is intended to provide clearer guidance and definitive end points as was requested by several commenters. In addition, tightness testing is a familiar technique for many owners and operators and is the most readily available and inexpensive investigation procedure. Therefore, by emphasizing its use as the primary release investigation procedure, many owners and operators will more likely begin investigation quickly on their own without waiting for the implementing agency to direct them. This capability of quick response, plus the sensitivity of tightness testing and its ability to pinpoint all sources of a leak, will minimize the potential damage to human health and the environment from a suspected release. Moreover, tightness testing is frequently the first step in corrective action to determine what must be done to stop a release. Thus, making it a part of release investigation will be cost effective for owners, operators, and implementing agencies.

(3) Site Check (§ 280.52(b)). The proposed rule (§ 280.51(a)(1)) allowed owners or operators to investigate suspected releases by conducting an initial site investigation of the UST site under the direction of the implementing agency. The final rule retains this option as the second step in the release confirmation process. The site assessment requirements in the original proposal, however, have been significantly modified to provide owners and operators greater flexibility in consideration of different site conditions. The requirements have also been modified to be more consistent with the assessment activities required under the closure and corrective action provisions of the final rule.

The initial site assessment allowed under the proposed release confirmation provisions was intended to be similar to the investigation performed under the closure and corrective action provisions. The objective of each of these assessments is to measure for the presence of released regulated substances and provide a preliminary indication of the need for and scope of further corrective action activities. They are not intended to define the full extent or location of soils contaminated by a release.

Despite this similarity in purpose, however, the proposed rule specified different sampling methods and assessment techniques. As a result, a number of commenters expressed confusion concerning the nature and scope of the assessment and requested more specific guidance on investigative procedures. Therefore, to clarify the rule's objectives and ensure that the results obtained from each type of assessment are comparable, similar site check requirements have been incorporated into the release confirmation, closure, and corrective action subparts of the final rule.

The site investigation allowed under the proposed rule had to be conducted under the direction of the implementing agency. As noted above, a number of comments criticized the degree of authority given to the implementing agency under these provisions. EPA agrees that the proposal did not give owners and operators adequate guidance for determining the objectives and goals of the site investigation. This could have resulted in wide variations in the nature and scope of the site assessments conducted under the proposal and in inconsistencies in the resulting data and their interpretation. The proposal also could have inadvertently required the implementing agencies to commit significant resources to the management of site assessments given the large number of assessments, projected to be conducted over the next 5 to 10 years. Therefore, the final rule allows the owner and operator to plan, select methods, and conduct the initial site check. These changes, however, do

not diminish or restrict in any way the authority of the implementing agency to participate in the planning and performance of site investigation activities of the owner and operator. These changes will allow the implementing agency to determine the scope of their involvement in the site investigation program and, at the same time, avoid unnecessary and potentially costly delays in the implementation of each assessment by the owner and operator.

The final rule does not require the owner and operator to use a particular type of measurement method or assessment technique. A number of commenters questioned the applicability and effectiveness of the investigative procedures discussed in the proposed rule, and suggested other methods that may be equally effective in various site-specific situations. EPA agrees that a given sampling method or measurement technique may not provide representative results for all types of regulated substances and site conditions. For example, soil gas sampling may not be appropriate where the regulated substance contains compounds that are non-volatile or where the local geology and hydrology significantly restrict the movement of the volatilized organic species.

To address this problem, the final rule requires the owner and operator to measure for the presence of regulated substances in the area where contamination is most likely to be present. Any factors that may affect the identification of the source or presence of contamination must be considered in order to ensure that the assessment will provide accurate and reliable results. The rule specifies the factors deemed to be the most important in selecting the measurement method and in conducting the initial site check.

Measurements must be taken in the area surrounding the UST system where contamination is most likely to be present. Samples may be collected from any depth as long as they are taken where contamination is most likely to have migrated or accumulated given the specific characteristics of the site and the regulated substance. Most regulated substances will tend to migrate down and, as a result, the Agency believes that samples taken at depths below the UST system's suspect components will generally satisfy the requirements of this subsection. The contaminants in some regulated substances, however, may float on the water table or dissolve in the ground water. Consequently, the nature of the regulated substance and the depth to ground water around the UST system are important factors to be considered when developing an assessment plan.

The owner and operator may also find it necessary to conduct the initial check in an area that extends outside of the excavation zone of the UST system. Although the Agency believes that sampling in the excavation zone will generally provide the most accurate information about the presence and source of contamination at an UST site, it may not be possible to identify the precise location of the excavation zone or gain reasonable access to the areas adjacent to the tank and piping due to interfering structures. In addition, samples taken from the excavation zone will not give any information concerning the extent of contamination. Where contamination poses an imminent threat to human health and the environment on adjacent property, it may be more appropriate to take samples at or near the site's property line that is ajacent to the off-site point of impact. For example, seepage of liquid or vapors into occupied residences or into drinking water supplies may necessitate sampling at the adjoining property line so that corrective action activities can be expedited. In such cases, the mitigation of contamination in the soil or ground water around the building or well may be more important than first identifying the cause of the contamination, particularly where there are several possible sources of suspected releases.

The specific factors identified in the final rule were selected to ensure that representative assessment information is obtained during release confirmation. Consideration of these factors by the owner or operator is deemed by EPA to be the minimum requirements for adequately evaluating the area surrounding the tank. They are not intended to be exhaustive nor should they be given equal weight at all sites. The importance of each of the factors must be evaluated carefully in view of the regulated substances suspected of being present and the specific conditions at the site.

d. *Reporting and Cleanup of Spills and Overfills (§ 280.53).* In the proposal, the Agency specified that spills and overfills which resulted in the release of a regulated substance meeting or exceeding the reportable quantity (RQ) under CERCLA (40 CFR Part 302), or spills and overfills of petroleum exceeding 25 gallons or causing a sheen on surface water, must be reported to the implementing agency within 24 hours. The proposed approach has been maintained in the final rule.

In the preamble to the proposed regulation, the Agency requested comments on the appropriateness of the reporting cutoff of 25 gallons for aboveground releases of petroleum to land and surface water. Commenters were divided on this issue. Many supported the 25-gallon cutoff while some requested that it be raised to much higher levels and a few requested that it be lowered. The Agency has retained the proposed reporting levels while allowing individual state and local implementing agencies the ability to select other amounts under certain conditions. In all cases, the spill or overfill must be immediately contained and cleaned up, and, if it is not, then it must be reported to the implementing agency. The point at which a report must be submitted to the implementing agency is an administrative convenience, and the Agency intends to leave some discretion to the states on this area.

The Agency believes that spills often occur at many of the facilities in this regulated community. In fact, knowledgeable members of the regulated community have reported to EPA that spills and overfills are the second most common source of release to the environment. This conclusion is based in part on observations made during tank removal of obviously contaminated soil around areas of the tank where spills might be expected to occur. This soil contamination can be caused by emptying fill hoses onto the ground after delivery, either by accident when the hose is disconnected from the tank or on purpose when the tank is inadvertently overfilled and the hose cannot be drained into the tank. Although any one incident may or may not result in a significant threat at a particular site, the Agency has concluded that the repeated occurrence of these releases over time does represent a serious threat to human health and the environment.

The concern about spills reporting is that spills appear to occur very frequently, although generally in small quantities. The requirement to report all spills, regardless of their size, could cause the implementing agency to be overwhelmed with reports of numerous small spills that do not represent a significant threat to human health and the environment. The Agency believes very little threat is posed by smaller spills if they are contained and immediately cleaned up, including contaminated surface soils. The installation of catchment basins required in Subpart B in the final rule should reduce the number of releases to

the environment, the cost of cleanup for owners and operators and the number of incidents where reporting is necessary.

The Agency has retained the proposed RQ approach to indicate to the owner and operator when reporting is necessary. For petroleum, this approach requires reporting of aboveground releases to land in excess of 25 gallons, and of aboveground releases to water if the result is an oil sheen on the water, in accordance with the requirements of 40 CFR Part 110. The rationale for this was provided in the preamble to the proposal. The Agency also recognizes that, in some cases, it may not be possible to immediately clean up a spill of less than 25 gallons. When this occurs, the owner and operator is required to report the spill to the implementing agency.

A spill or overfill resulting in the release of a hazardous substance to the environment must be reported if the volume equals or exceeds its RQ as defined under CERCLA (40 CFR Part 302). The RQ for a particular hazardous substance may result in a volume that is less than 25 gallons. The Agency feels it is necessary to place tighter controls on hazardous substances because of their generally greater threat to human health and the environment. An additional discussion of this issue is provided in section VI.A. of this preamble. The release of a hazardous substance equal to or in excess of its RQ must also be reported to the National Response Center immediately (rather than within 24 hours) under sections 102 and 103 of CERCLA and to appropriate state and local emergency response authorities under Title III of SARA. The requirements of today's rule do not change the responsibilities of owners and operators to meet the requirements of these other EPA rules. Thus, in the case of a spill or overfill of a regulated hazardous substance from an UST, the owner and operator is subject to two reporting requirements. The impact of additional reporting, however, is minimal because the goal of The National Response Center is essentially to inform local implementing agencies. This will already have been done when the owner or operator fulfills the requirements in today's rules.

Although reporting triggers have been established for aboveground releases, this does not relieve the owner and operator of the responsibility to undertake all other appropriate elements of the corrective action process under Subpart F for any aboveground release, regardless if it is more or less than the reportable quantity.

F. Release Response and Corrective Action for UST Systems Containing Regulated Substances

1. Background

Release response and corrective action for UST systems include activities to investigate, report, abate, and remedy releases of regulated substances into the environment. To ensure that necessary steps are taken to protect human health and the environment at all sites discovered to have a release, EPA proposed steps that all owners and operators must take quickly to identify and reduce any immediate health and safety threats posed by releases. In addition, proposed requirements mandated the investigation and amelioration of the long-term threats to human health and the environment posed by releases that have migrated beyond the UST system to contaminate surrounding soil and ground water. Long-term actions would begin after an implementing agency determined that additional corrective action was needed to protect human health and the environment. This determination was to be made on the basis of data gathered and submitted by the owner and operator and a site-specific exposure assessment performed by the implementing agency. Finally, the proposal distinguished between releases of petroleum and hazardous substances by establishing separate corrective action requirements for them in different sections of the proposed regulations (Subpart F for petroleum and Subpart G for hazardous substances).

Today's final rule builds upon this proposed approach, but also reflects several important changes that respond to concerns raised by commenters on the proposal:

- The Agency has consolidated the proposed requirements for petroleum and hazardous substances into one section of the final rule in Subpart F. This consolidation deletes the extensive duplication of requirements in the proposal caused by separating them into two sections.
- The proposed basic framework and most of the proposed requirements for the initial abatement steps required at all release sites are retained in the final rule. Changes have been made, however, to some of the proposed requirements in response to public comments. These changes are intended to clarify the owner's and operator's responsibilities for identifying and addressing the initial health and safety threats posed by releases.
- The final rule retains the proposed requirements for long-term corrective actions, which follow a site-specific approach for establishing clean-up target levels. This section of the rule has been amended, however, to clarify that the owner and operator may proceed, under certain conditions, with corrective action before a corrective action plan has been approved by the implementing agency.
- In response to concerns raised by several commenters, EPA has revised several of the proposed requirements to clarify the responsibilities of owners and operators. Some changes clarify when owners and operators must initiate specific corrective action steps, such as detailed soil and ground-water investigations, particularly in the absence of clear direction from the implementing agency. Other changes more clearly identify what owners or operators must do to carry out their responsibilities in such areas as the initial site investigation, detailed investigations for soil and ground-water contamination, and free-product removal.
- The final rule clarifies the requirements concerning the public participation process for corrective action. The final rule emphasizes the need to ensure public access (primarily through existing state procedures) to information pertaining to specific corrective actions.

In the preamble to the proposed UST corrective action rule, EPA requested comments on several corrective action issues: The general scope of the proposed requirements; how explicitly these requirements should be detailed in the rule; whether the proposed minimum site investigation requirements were appropriate; and the desirability of the proposed site-specific approach to setting cleanup goals for UST sites. EPA also requested comment on the definition of free product, the adequacy of existing state administrative authority for public participation in corrective action, and corrective action requirements for tanks containing a mixture of regulated substances (see 52 FR 12678–12683 and 12751–12757). EPA received comments on all these issues, as well as on other issues not raised specifically by the Agency in the proposal.

Although many commenters believed that the proposed corrective action regulations were essentially sound, EPA received a wide array of responses on key issues. For example, although several commenters disagreed with the Agency's proposed requirements for site-specific cleanup standards, others supported this approach. Several general concerns were repeatedly raised by numerous commenters as they

commented on specific proposed requirements: What must be done and by whom, how much discretion should be granted to the implementing agency to change specific requirements, and what minimum objectives must be met during the various steps in the corrective action process. As noted previously, these general concerns have prompted EPA to make several changes in the final rule, and clarifications appear below in the following two subsections of today's preamble.

General concerns raised by commenters are briefly discussed and responded to in the next subsection of this preamble (section IV.F.2.):

- Site-specific approach to corrective action;
- Discretion for implementing agencies;
- Clarification of owner and operator responsibilities; and
- Consolidation of requirements for petroleum and hazardous substances.

Following the discussions of these issues, section IV.F.3. provides a section-by-section analysis that more specifically addresses the changes made to the proposed requirements in the development of today's final corrective action rule, and the highlights of the public response that prompted these revisions.

2. Major Issues Influencing the Final Rule

a. *Site-Specific Approach to Corrective Action.* In the proposed rule, EPA selected a site-specific approach for setting cleanup target levels for long-term corrective actions. These cleanup levels would be keyed to data obtained from a detailed site investigation of soil and ground-water contamination by the owner and operator, and from a site-specific exposure assessment conducted by the implementing agency. As discussed in the preamble to the proposal (52 FR 12680–12682), EPA believed this approach would allow implementing agencies the necessary flexibility to develop their own programs or implement existing programs. Given the size of the regulated community and the diversity of UST environmental settings, EPA concluded that the site-specific approach was the most effective framework for enabling implementing agencies to assess the extent of necessary corrective action in individual cases.

The final rule retains EPA's selection of the proposed site-specific approach for UST corrective action requirements. A central element of this site-specific approach is the establishment of site-specific cleanup standards that adequately protect human health and the environment. In the preamble to the proposed rule (52 FR 12678–12683), EPA asked for comments on whether the long-term cleanup requirements of the UST corrective action rule should be established: (a) On the basis of national cleanup standards, with a variance provision; (b) to reflect ground-water classification schemes where national standards would apply in some settings, and site-specific cleanup levels in others; or (c) as site-specific standards as proposed.

EPA received comments that supported each of these options, with suggestions on how to implement the preferred option. Most commenters who supported establishing national cleanup standards believed that standards expedite cleanups and provide greater consistency in cleanup goals. They did not provide EPA with information, however, that showed that the use of national cleanup standards would substantially hasten the UST corrective action process or relieve administrative burdens. In addition, EPA is not convinced that the use of a single cleanup standard for UST cleanups will achieve greater consistency in the protection of human health and the environment than a site-by-site exposure assessment approach. At the present time, the Agency's assessment of UST corrective action shows that cleanup results are generally limited by the available technology and particular site conditions rather than by a cleanup standard. EPA also believes that the site-specific exposure assessments for UST releases required in today's final rule can be streamlined so that they will not delay corrective action, as some of these commenters feared. The Agency intends to work with implementing agencies to develop methods to streamline site-specific exposure assessments without diminishing protection of human health and the environment.

Some commenters supported the use of a ground-water classification system for UST corrective action decisions. As discussed earlier in today's preamble, however, EPA has concluded that developing a classification system at the federal level is extremely difficult and unworkable. EPA leaves to the discretion of implementing agencies the choice of whether to establish or incorporate existing ground-water classification systems to assist in their UST corrective action decisions. The Agency notes that the required investigations at UST sites and a site-by-site approach for UST corrective action will likely incorporate many of the same factors used in establishing a ground-water classification system.

In developing today's final rule, EPA noted that the majority of commenters preferred the proposed site-specific approach. The primary reasons cited were that this approach best accommodates the diversity of UST release situations and also reduces, in the aggregate, the cost of compliance. EPA notes, however, that its decision to promulgate a site-specific approach to long-term UST corrective action does not preclude states from establishing cleanup standards in their own UST corrective action programs. The Agency recognizes that some states already have elected to develop and use statewide cleanup standards, sometimes in conjunction with site-specific exposure assessments as part of a variance procedure.

b. *Discretion for Implementing Agencies.* The proposed corrective action rule afforded UST implementing agencies considerable discretion and flexibility in developing their own UST corrective action process. For example, EPA proposed language—such as "unless directed to do otherwise by the implementing agency" and "or as directed by the implementing agency"—to indicate that these agencies could add their own requirements or instruct an owner and operator to bypass certain requirements on a case-by-case basis. EPA felt that the diversity of UST settings and release situations required the implementing agency to have flexibility in tailoring many aspects of the corrective action response so that different releases could be cleaned up effectively and efficiently.

EPA received comments regarding the appropriate level of discretion provided to the implementing agencies. Some commenters warned that vague rule language could lead to arbitrary requests by the implementing agency; others suggested that EPA curtail the implementing agency's authority by issuing more detailed requirements. Several commenters were concerned about delays in site cleanups that might ensue because of additional requests by implementing agencies. Another suggestion was to expand the implementing agency's discretion to require the UST owner and operator to start a site cleanup before a corrective action plan is finalized.

In response, EPA has revised the final rule to clarify which elements of the UST corrective action process are mandatory and which are discretionary. As a result, the final rule mandates the response requirements that must be followed for all releases (§ 280.61), the

investigation and cleanup requirements that are mandatory unless otherwise directed by the implementing agency (§§ 280.62 and 280.63), and the additional site-characterization and cleanup steps that may be required of UST owners and operators if certain site conditions exist or that may be required by the implementing agency (§§ 280.64 through 280.66). EPA notes, however, that section 9008 of RCRA enables state and local regulation to be more stringent than the federal UST program. Thus, even if EPA removed discretion from the federal rules, EPA would not have the authority to prevent implementing agencies from imposing more extensive requirements than EPA under state or local law.

Commenters expressed concerns that cleanup of soil and ground water may be delayed due to lengthy reviews of the corrective action plans by the implementing agencies or by uncooperative owners and operators. In response, EPA has made two changes in the final rule. First, EPA has added the phrase "as appropriate" preceding the list of factors that the implementing agency must consider when reviewing a corrective action plan in § 280.66(b). This change makes it clear that the implementing agency need not formally consider all these factors if the agency determines analysis of these factors is not necessary to ensure protection of human health, safety, and the environment. Second, EPA has provided that owners and operators may begin cleanup of soil and ground water before their corrective action plan is approved by the implementing agency subject to conditions described in § 280.66(d).

In addition, under existing law, EPA or authorized UST implementing agencies can intervene to respond to clean up releases from UST systems. Under section 9003(h)(2) of RCRA, EPA and states under cooperative agreement are authorized to step in and take corrective actions for releases of petroleum from USTs in situations including the following: (1) The owner or operator fails to comply with the established cleanup schedule; (2) there is a need to take emergency action; (3) the cost of a corrective action exceeds the resources supplied by the financial responsibility mechanism provided by the owner or operator; or (4) the owner or operator is insolvent. For a release from a hazardous substance UST, EPA has the authority under CERCLA to respond. States are not provided such authority under CERCLA, but may have their own authorities under state law.

c. *Clarification of Owner and Operator Responsibilities.* Many commenters expressed the opinion that the proposed rule was difficult to interpret with respect to what had to be done and by whom to comply with the federal requirements. EPA agrees with these commenters that the language of the proposed rule was sometimes unclear regarding the specific responsibilities of UST owners and operators. The Agency, therefore, has revised the final rule to make clearer which elements of the corrective action rule are mandatory and which are discretionary.

EPA has concluded that the following basic steps are required to ensure an effective response to every release: rapid notification that a release has occurred; investigation to mitigate fire, explosion, and vapor hazards; preventing further release of the regulated substance from the leaking UST system; and removing free product from the environment. These steps are required of every owner and operator in response to a UST release; implementing agencies may not change these requirements.

Similarly, EPA believes that the following initial site investigation and abatement steps are usually necessary to protect human health and the environment: Estimating the nature and quantity of the release; removing as much of the regulated substance from the UST system as necessary to prevent further release to the environment; and gathering information about the locations of wells, subsurface sewer lines, and populations surrounding the release site. Thus, the final rule holds UST owners and operators responsible for these actions unless the implementing agency directs them to do otherwise in response to site-specific considerations.

The baseline requirements for initial release response and corrective action are covered in §§ 280.61 through 280.63 of the final rule. As noted above, the requirements of § 280.61 in the final rule describe mandatory initial response measures to be taken by UST owners and operators without exception. All UST owners and operators are responsible for meeting the requirements of §§ 280.62 and 280.63, unless the implementing agency directs them to do otherwise. Sections 280.64 and 280.65 address those requirements for which owners and operators are responsible if certain site conditions exist. Section 280.66 describes soil and ground-water cleanup steps that may be initiated by the owner and operator or required at the direction of the implementing agency.

d. *Consolidation of Corrective Action Requirements for Petroleum and Hazardous Substances.* In the preamble of the proposed rule, EPA requested comments on whether the corrective action requirements for petroleum USTs (Subpart F) and hazardous substance USTs (Subpart G) should be integrated into one subpart or should remain separate (52 FR 12678). All commenters responding to this request favored the integration of Subparts F and G; they differed only in their suggestions to EPA on how to combine the two rules.

Today's final rule has consolidated into Subpart F all the corrective action requirements for releases from underground storage tank systems storing substances regulated by Subtitle I. The title of this subpart has been revised to make clear that it addresses both release response and corrective action activities. As can be inferred from the new title, an appropriate response to a release, particularly those small in size that were caught quickly and remedied, may not need to include long-term corrective action, if the initial response measures adequately protect human health and the environment.

The general applicability sections of the proposed petroleum and hazardous substance requirements (proposed § 280.60 and § 280.70, respectively) have been replaced with a single new section. This revised section states that where RCRA Subtitle C corrective action requirements apply to UST releases at permitted RCRA facilities, Subtitle I corrective action requirements will not apply. EPA has added this provision to avoid possible duplication of requirements.

The initial abatement requirements have been retained in the final rule. In response to commenters who preferred the more detailed language used in proposed Subpart G, the Agency has carried forward the language emphasizing immediate action to prevent further releases and the containment of visible releases to the environment. The principal change in the initial abatement requirements provides owners and operators and implementing agencies greater discretion for determining the need for and timing of contaminated soil removal and the authority to decide appropriate soil management alternatives on a site-by-site basis.

The proposed rule for hazardous substance USTs had no separate section comparable to the proposed petroleum rule's requirements for free product removal. By merging Subparts F and G, EPA extends the free product removal requirements to all regulated substance

releases, including removal requirements detailing precautions and other measures to follow during recovery operations. EPA recognizes that detection and removal of some hazardous substances can be far more difficult than removal of petroleum free product, especially in areas of complex hydrogeology. The Agency believes, however, that the free product removal requirements allow implementing agencies sufficient flexibility to consider factors that complicate the detection and removal of free product and to adjust the pace of actions to remove free product accordingly.

Both proposed rules had requirements governing additional investigations and the cleanup of contaminated soils and ground water at UST release sites. The final rule also contains these requirements in §§ 280.65 and 280.66, which are discussed in more detail later in the next subsection of this preamble.

Both proposed rules contained reporting requirements. The hazardous substance rule, however, required additional specific reporting items, such as likely migration routes and proximity to population centers. These additional reporting items have not been retained in the initial site investigation requirements of Subpart F because they are largely duplicative of the reporting requirements contained within final § 280.63, which governs initial site characterization. Moreover, implementing agencies continue to have the authority to require the reporting of additional specific information should the need arise.

The public participation requirements of both rules have been combined into a single section of the final rule.

3. Section-by-Section Analysis

In writing the final rule, EPA revised proposed §§ 280.60 through 280.66 to clarify the release response and corrective action steps. Most of the changes are editorial, prompted by concerns or confusion expressed on the part of commenters. Some substantive changes, however, were also made in response to public comments. The following sections discuss in detail the changes made to the proposal as reflected in today's final rules. Issues raised by commenters on the proposed requirements and the Agency's consideration of these issues are also briefly discussed.

a. *General (§ 280.60).* Proposed § 280.60 applied the corrective action requirements of Subpart F to all UST systems except those exempted by statute or regulation. Owners and operators of tank systems for which other subparts of the proposed technical standard are deferred were nonetheless required to comply with the Subpart F requirements in response to confirmed releases.

In the final rule, EPA has added language to clarify the applicability of Subtitle C or Subtitle I requirements to USTs at RCRA-permitted facilities and to avoid potential overlap in regulatory authority. Section 280.60 of the final rule reflects the fact that the Subtitle C corrective action requirements under the authority of RCRA 3004(u) will apply to many releases from UST systems located at RCRA-permitted facilities, regardless of the regulated substance stored. For USTs not covered by 3004(u), including facilities without a final RCRA permit, Subtitle I corrective action standards will apply to releases from all petroleum and hazardous substance tanks covered under Subtitle I. UST corrective actions underway at facilities having interim status under RCRA may be subject to review under the RCRA corrective action program during the development of a final permit, and these ongoing corrective action activities may be incorporated into the facility's RCRA permit.

b. *Initial Response and Reporting Requirements (§ 280.61).* Proposed § 280.61 (initial abatement requirements and procedures) has been separated into three new sections in the final rule: initial response (§ 280.61), initial abatement measures and site check (§ 280.62), and initial site characterization (§ 280.63). These sections, plus free product removal (§ 280.64), encompass the first phase of the UST corrective action process. As with the proposal, EPA intends these final requirements to achieve three goals: (1) To bring UST release sites under control with respect to immediate health and safety hazards; (2) to stabilize the site so that contamination will not worsen as investigations and potentially applicable long-term cleanup plans are considered; and (3) to be self-implementing, in that these measures emphasize the responsibility of the owner and operator to take quick action without awaiting direction from the implementing agency. Thus, §§ 280.62 through 280.64 in the final rule represent the baseline release response and corrective action requirements that are mandatory for all UST owners and operators and all releases, unless the implementing agency directs otherwise. The rule has been reformatted to make this clearer. The initial response requirements of § 280.61 are mandatory for all owners and operators and all releases without exception. In addition, §§ 280.60 through 280.64 have newly added reporting sections. The new placement of these reporting requirements clarifies the owner's and operator's responsibilities with respect to the timing and content of the required reports.

The final requirements of § 280.61 for initial response and reporting are essentially identical to those proposed. The primary difference is that the wording has been changed to make unambiguous the response required within 24 hours. These initial actions include: Reporting the confirmed release to the implementing agency; taking immediate steps to prevent further release to the environment; and mitigating fire, explosion, and vapor hazards. EPA recognizes that, in some cases, it may not be possible to complete these steps within 24 hours. For example, it is sometimes easier to confirm that a release has occurred than to identify the precise location of the release from the UST system. Similarly, it may take longer than 24 hours to adequately vent hazardous vapors from building. In revising this section, however, EPA emphasizes the potential urgency of a release and the responsibility of the owner and operator to quickly respond.

c. *Initial Abatement Measures and Site Check (§ 280.62).* In order to clarify the on-site management steps that EPA believes are necessary to abate hazards and stabilize the site, the Agency has grouped initial abatement requirements into § 280.62. Two of the requirements in this section are carried forward from those in proposed Subpart G. First, § 280.62(a)(1) requires removal of the regulated substance from the tank as "necessary to prevent further release to the environment." EPA has added this phrase to acknowledge—as some commenters pointed out—that some situations may not require complete removal of product from the tank (e.g., if the release is clearly demonstrated to be from one tank that is part of a multiple tank system). Second, § 280.62(a)(2) carries forward the requirement to visually inspect aboveground releases or exposed belowground releases and to prevent further migration of the released substance into surrounding soils and ground water (e.g., by using sorbents and berms to control the flow of product).

Section 280.62(a)(3) has been added to clarify EPA's proposed requirement to "mitigate fire and safety hazards." EPA agrees with commenters who noted that these hazards may persist or reappear beyond the initial response phase and, thus, must be monitored and remedied throughout the cleanup process. The new requirement also emphasizes that,

if present, these hazards may require mitigation both within and beyond the boundaries of the UST site (e.g., in subsurface sewer lines or nearby buildings).

The requirement in proposed § 280.62(a)(4) to remove "visibly contaminated soil from the UST excavation zone" has been deleted. EPA received many comments on this proposed requirement. Most commenters expressed confusion regarding the definition of visible soil contamination and other concerns related to the appropriate timing and extent of soil removal. Commenters identified cases where a strict interpretation of the requirement (e.g., removal of slightly discolored soils) would translate into aggressive soil removal that would be unnecessary, technically infeasible, and very costly. Some commenters noted that extensive soil removal at UST sites could exacerbate problems of the nation's limited landfill capacity, if these soils were taken off-site for disposal. Other commenters suggested that soil removal or treatment (beyond that which is needed to address immediate health and safety hazards) should be considered as part of the long-term plan for corrective action. Many commenters suggested that EPA consider various *in situ* or on-site treatment methods as alternatives to immediate removal and disposal of contaminated soils.

EPA agrees with these commenters. In particular, EPA is concerned that requiring immediate and extensive excavation of contaminated soil may transfer contamination to other media (e.g., air), may transfer risk from one site to another, or may spread contamination at the release site beyond its existing extent. These outcomes are inconsistent with EPA's objective to protect human health and the environment. Further, EPA did not intend to preclude consideration of alternative on-site or *in situ* treatment methods.

As a result, EPA has created a new § 280.62(a)(4) to clarify the objectives of soil management that must be undertaken during the initial phases of corrective action. The new requirement states that UST owners and operators must remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action measures. These hazards include vapor threats and potential leaching of contaminants. EPA believes this new requirement addresses concerns raised by commenters by more clearly stating the scope and the objectives of initial soil management.

In contrast to the proposed requirement for soil removal, EPA has not prescribed a specific management method. The final rule does, however, require that any exposed soils be managed as necessary to remedy hazards such as those mentioned above. EPA expects there will be UST release situations where prompt soil removal and disposal may be the most effective option (e.g., where there are relatively small quantities of contaminated soil in urban areas having high potential for human exposure to vapors, and where excavation equipment is already on-site for use in investigating the tank system). In such situations, soil removal may be necessary to bring the site under control with respect to immediate threats and might also be adequate to complete cleanup at the site. In response to commenter's concerns that soil management not simply transfer risk, EPA has, however, added a new requirement to the rule. If the owner and operator choose to treat or dispose of contaminated soils, they must comply with applicable state and local requirements. (See also section VI.B. of today's preamble: Relationship to Other Agency Programs.)

EPA received comments regarding the explicitness of the proposed site investigation requirements for corrective action, as well as for release confirmation and tank closure activities. Some commenters requested more specificity; others pointed out the difficulty of prescribing uniform requirements for all sites. In response, EPA has revised the rule (adding new §§ 280.52(b), 280.62(b) and 280.72(a)) to make consistent the site investigation requirements for release confirmation, corrective action, and tank closure and to avoid potential duplication of these requirements within the rule. (See section IV.E.2.c. of this preamble for an explanation of these site investigation requirements.) EPA believes this revised statement of site check responsibilities, in conjunction with the new initial soil management requirements, addresses commenters' request for greater clarity concerning their investigation responsibilities without unduly restricting alternative investigative techniques.

EPA recognizes, however, that the primary hazard posed by contaminated soil at some sites will be as a continuing source of ground-water contamination. EPA addresses this concern through the final requirements for site characterization and for delineating the extent and location of contaminated soils (§§ 280.63 and 280.65). As discussed later in this preamble, these investigation results must be considered by the owners and operators and by the implementing agency with respect to site-specific exposure potential and effects on ground-water resources. EPA believes that, in some cases, it may be preferable to treat contaminated soil on-site or *in situ*. The Agency is preparing technical information that will help owners and operators and implementing agencies assess the potential hazards posed by contaminated soils and alternative methods to treat or dispose of them.

Section 280.62(b) in the final rule states that owners and operators are required to report their initial abatement steps to the implementing agency within 20 days of release confirmation. Some commenters noted that this time frame, which was proposed in § 280.61(a)(5), could be interpreted to mean that EPA expected all the abatement measures in proposed § 280.61(a) to be completed within 20 days. EPA expects that many of the initial abatement requirements can and should be completed within 20 days, but that some aspects of soil management and free product investigations and removal may require more time to complete. EPA has thus amended the wording to clarify that the objective of this provision is to require owners and operators to report their *progress* to the implementing agency.

d. *Initial Site Characterization (§ 280.63).* Proposed as § 280.61(b), this requirement has been amended (and renumbered as § 280.63) to clarify the responsibility of owners and operators to collect and submit site information to the implementing agency. Several commenters noted that the same techniques can be used to confirm a release and to investigate contamination at a site. They expressed concern that important information gained while confirming a release or abating immediate hazards should also be included in the information submitted to the implementing agency. Section 280.63 in the final rule emphasizes this point and requires that owners and operators submit all pertinent information about the site and nature of the release.

In addition, §§ 280.63(a) (1) through (4) in the final rule describe the minimum site investigation requirements that the owner and operator must follow in the absence of other direction provided by the implementing agency. Section 280.63(a)(1) is unchanged from proposal, and it requires information on the nature and estimated quantity of the release.

Section 280.61(a)(2) continues to require owners and operators to submit

information from readily available sources or site investigations regarding surrounding populations, subsurface soil conditions, climate, and land use (e.g., from sources such as U.S. Geological Survey maps, Soil Conservation Service maps, and local agencies). UST owners and operators are not automatically required to conduct surveys to collect this information if it is not already available.

In addition, two new requirements have been added to this section. First, information about water quality at all wells potentially affected by the release partially supplants the more general proposed requirement for ground-water and surface water sampling formerly in § 280.61(b)(3). As discussed in more detail in section IV.C.f. of this preamble—investigation for soil and ground-water cleanup—the proposed requirement to delineate the extent and location of dissolved ground-water contamination has been amended. The final rule requires full characterization of dissolved ground-water contamination if certain site conditions are met, or at the direction of the implementing agency. If nearby existing wells are potentially affected, however, EPA requires the owner and operator to immediately characterize their quality and use because they are potential human exposure points and because pumping at these wells can affect contaminant migration. Second, several commenters noted that subsurface sewer lines are often conduits for rapid migration of vapors or liquid product. Thus, EPA now requires owners and operators to submit information on the location of subsurface sewer lines (if any) at the site.

Section 280.63(a)(3) cross-references the site investigation requirements described earlier and requires the owner and operator to submit the results of this investigation as part of the site characterization report. This new section replaces proposed § 280.61(b)(2), which required sampling of surface and subsurface soils. As described earlier, this change clarifies the investigation requirements and eliminates their possible duplication within the rule. The timing and reporting of this investigation is unchanged.

Section 280.63(a)(4) replaces proposed § 280.61(b)(3), which required sampling of surface and ground-water at the site. This new section, in conjunction with § 280.65 (described in subsection f., below), reduces the ambiguity noted by some commenters regarding the scope of site investigations. In the final rule, EPA requires characterization of dissolved ground-water contamination when the following conditions exist: There is evidence that drinking water wells have been affected, free product is detected on the water table or within the aquifer; there is evidence that contaminated soil is in contact with ground water; or as directed by the implementing agency. Thus, the presence or absence of free product at an UST release site is one of the factors used to decide whether further investigations of soil and ground-water contamination are necessary. The requirement to investigate for free product is unchanged from the proposed § 280.61(a)(6). The final rule simply requires owners and operators to submit, as part of the initial site report, their findings that establish the presence or absence of free product. EPA believes this action is warranted for several reasons:

- The requirement reinforces for owners and operators the importance of the free product investigation;
- The free product investigation requirement now also applies to releases from hazardous substance USTs, which may contain products that are denser than water and, therefore, may be harder to detect and locate; and
- The conclusion that no free product is found provides another important consideration for the implementing agency as it decides if a corrective action plan will need to be submitted by the owner and operator.

EPA believes this synthesis of information from the initial site investigation is essential for owners and operators to begin to fully assess their cleanup responsibilities, and it provides the implementing agency with information to decide if a corrective action plan is necessary. Section 280.63(b) replaces the proposed requirement for reporting site investigation results. The new section clarifies that the information must be submitted in a manner that is clear and sufficiently detailed to demonstrate its applicability and technical adequacy, or in a format developed by the implementing agency to achieve these same goals.

e. *Free Product Removal (§ 280.64).* In response to commenters, EPA has made minor revisions to the free product removal requirements. Commenters raised four issues: Applicability, the definition of free product, the extent of removal, and the timing of removal. These issues are discussed below.

First, EPA agrees with those commenters who suggested that free product removal requirements similar to those proposed for petroleum releases should also apply to hazardous substance releases. The final rule's Subpart F merges the proposed rule's Subparts F and G to make free product removal requirements applicable to all releases.

Second, EPA has revised the definition of free product to clarify the scope of free product removal. Several commenters noted that, as proposed, the broad definition of free product could be interpreted to mean that removal requirements apply to product bound to soil particles or present as vapors. EPA notes that these forms of product are addressed, as appropriate, in other sections of today's final rule and has revised the definition of free product to more narrowly refer to a regulated substance that is present as a non-aqueous phase liquid (e.g., not dissolved in water). EPA has also deleted the reference to "floating" free product (from proposed § 280.62) to clarify that product more dense than water is also subject to the free product removal requirements.

Third, other commenters requested clarification on how much free product was required to be removed. In the final rule, the Agency has retained the phrase "maximum extent practicable" as the criterion for free product removal operations at UST release sites. EPA has not specifically defined maximum practicable removal because the extent of removal is largely determined by available technologies and site-specific conditions. Consequently, EPA believes that implementing agencies should have the discretion to develop operational criteria for determining the presence of free product and the extent of its removal (e.g., product that flows in response to gravity or a minimum product thickness observed in wells). EPA has, however, added to the final rule a minimum objective for free product removal operations. This new requirement states that, at a minimum, free product removal systems should be designed to abate further migration of free product (i.e., beyond small seasonal or recovery-related fluctuations).

Fourth, several commenters offered their views about the appropriate timing of product removal. Most commenters agreed with EPA's proposal that free product removal operations should begin as quickly as possible, but cautioned that hasty and improperly conducted removal could spread contamination vertically at the site. In the final rule, EPA continues to require that removal begin as quickly as practicable (§ 280.62(a)(6)). Revised § 280.64(a) emphasizes, however, that free product removal must be conducted in a manner that minimizes the spread of contamination and that is appropriate

to the hydrogeologic conditions at the site. EPA is aware, for example, of site conditions where trenching or vapor extraction to recover free product would be preferable to drawing down the water table—and the free product plume—in order to collect and remove free product. EPA is preparing technical resource documents to assist implementing agencies in advising owners and operators about potential complications when removing free product. Similarly, in response to commenters concerns, EPA has extended the time period for owners and operators to report to implementing agencies concerning their free product removal from 30 to 45 days. This change will allow owners and operators more time to properly plan for free product removal, especially for removal operations involving dense product or at hydrogeologically complex sites.

In addition, some commenters requested EPA clarify permitting requirements for discharges from the product recovery system. Others suggested that EPA exempt UST cleanups from NPDES requirements or establish numerical limits for emergency permits. In response, EPA has revised § 280.64(a) to clarify that all discharges are to be properly treated, in compliance with applicable Federal, state and local regulations. In addition, EPA is investigating methods to expedite, where applicable, the NPDES permitting process for discharges necessitated by UST corrective action.

f. *Investigations for Soil and Ground-Water Cleanup (§ 280.65).* Proposed § 280.63 has been renumbered § 280.65 in the final rule. As proposed, this section required the owner and operator to investigate the extent of soil and ground-water contamination at an UST release site when the initial site investigation showed that contaminated soil remained at the site, or when the required soil removal showed that the released product or product from contaminated soil may have reached ground-water. In addition, the implementing agency could direct the owner and operator to conduct such an investigation.

Several commenters requested that EPA clarify the minimum sampling requirements for these investigations. Other commenters suggested that these more extensive investigations be better coordinated with the soil and ground-water sampling required earlier in the corrective action process. One commenter noted that the phrase "product from contaminated soil" would be difficult to define and might be interpreted to require extensive investigation at virtually all sites. In addition, EPA recognizes that some amount of contaminated soil will be present at most UST release sites, but that the threat posed by this contamination will depend on several factors.

In response to these comments, EPA has revised this section to clarify the situations that trigger more extensive site investigations. EPA notes that the objective of these investigations is to support decisions concerning whether soil and ground-water cleanup or other corrective action measures are necessary at the site. Consequently, EPA has revised the rule to better relate these requirements to site-specific threats to ground-water contamination.

Final § 280.65 describes three specific site circumstances requiring full for characterization of soil and ground-water contamination: (1) When release confirmation or previous corrective action measures indicate that ground-water wells may have been affected by the release, (2) when free product is found on the water table or within the aquifer, and (3) when any other site investigations show that contaminated soil may be in contact with ground water.

EPA recognizes that characterization of soil and ground-water contamination may also be necessary at sites where there are no "automatic triggers." Thus, the final rule retains the authority of the implementing agency to request an investigation. Final § 280.65(a)(4) clarifies that the implementing agency should consider the potential effects of contamination at the site in relation to nearby surface and ground-water resources when deciding whether further investigations are warranted. In particular, EPA expects that information required under § 280.63 will provide implementing agencies with important information for determining if more extensive investigations are required.

In revising the rule, EPA sought to better tailor the investigation requirements to site conditions that pose a potential threat to ground-water resources. EPA believes the final rule clarifies those situations that trigger more extensive site investigations and better coordinates the objectives of the revised corrective action requirements within a site-specific framework.

g. *Corrective Action Plan (§ 280.66).* In the final rule, proposed § 280.64 has been renumbered as § 280.66 and retitled as "Corrective Action Plan." This revised section responds to commenters' requests for clarification of the owners' and operators' responsibilities for submitting corrective action plans (CAPs) and of the implementing agencies' responsibility to request, review, and approve a CAP. Subtitle I of RCRA directs the Agency to promulgate corrective action regulations applicable to owners' and operators' of UST systems. The corrective action plan approval process, however, integrates the responsibility of owners and operators to ameliorate the adverse effects of UST releases with the responsibility of implementing agencies to determine how they will carry out their established public health policies. EPA's role is to: (1) Establish the responsibility of owners and operators to achieve adequate protection of human health, and (2) establish a baseline framework for evaluating and approving corrective action plans.

Several commenters requested clarification of the owners' and operators' responsibilities for corrective action beyond immediate abatement steps and removal of free product. In response, § 280.66(a) of the final rule has been revised to clarify that owners and operators are responsible for submitting, when requested by the implementing agency, a corrective action plan that provides for adequate protection of human health and the environment. Section 280.66(b) of the final rule sets forth the factors that implementing agencies must consider when approving a corrective action plan. Consequently, this section also serves to inform owners and operators of the minimum elements required in the plans they submit.

Some commenters suggested the Agency establish explicit criteria that implementing agencies could use to determine whether a CAP is needed and to evaluate CAPs after they are submitted. As described in the preceding sections, EPA has revised several parts of the proposed rule to clarify the objectives of each step of the corrective action process. Owners and operators are responsible for carrying out and reporting these actions, thus providing the implementing agency with a good basis for determining the necessity for additional cleanup.

EPA believes it would be difficult and unproductive to incorporate more explicit evaluation criteria in today's rule. As described earlier in this preamble, EPA received wide support for the proposed site-specific corrective action goals and has retained this approach in the final rule. Implementing agencies, however, may choose to develop their own site-specific corrective action goals, or they may base cleanup goals on statewide numerical standards or aquifer

characteristics. Rather than develop criteria that may conflict with a state or local agency's preferred method, EPA has chosen to identify in the rule those factors that are generally necessary for carrying out corrective actions regardless of the chosen method for setting precise cleanup goals. For example, these factors include the persistence of the released substance and the hydrogeologic conditions at the site. EPA sees its role primarily as providing technical support for interpreting these factors in the context of site-specific application of corrective action technologies. In particular, EPA is developing technical information and supporting materials to assist implementing agencies in relating site assessment results to the feasibility of alternative technologies, and for evaluating how well these technologies are achieving cleanup at a site. In addition, EPA is beginning to develop methods to expedite exposure assessments. Other programs within EPA, such as the Office of Ground-water Protection, may also be called upon to provide support for evaluating ground-water resources.

The overall objective of longer term UST corrective actions is to adequately protect human health, safety, and the environment from contaminants remaining in soils or ground water after initial abatement measures and free product removal. The Agency prefers that this objective be achieved, where practicable, through reducing contaminant concentrations in soil or ground water to levels protective of health and the environment. In some situations, however, the Agency would require—under the standard in § 280.66(a)—that human health be protected from exposure to contaminants through other appropriate measures, such as providing an alternative water supply.

EPA cannot project the outcome of its site-specific approach to all UST releases because the consideration accorded to some factors, such as aquifer resource value and its current and potential use, is largely left to state and local policy. If an UST release affects a public or private drinking water source, however, the owner and operator must expect that the state's health-based drinking water standards would apply to the cleanup. If the owner and operator cannot meet these standards through cleanup technologies, then they should expect that they will be required to provide an alternate source of drinking water or to provide treatment of the water to the people affected. Similarly, the owner and operator should expect that UST releases that threaten current or potential water supplies will come under close scrutiny by the implementing agency. In these cases, the corrective action requirements will likely be influenced by the mobility of the contaminants at the site and the estimated time and spatial extent over which the remaining contamination may pose a threat. At a minimum, approved CAPs would likely include requirements for long-term monitoring, continued control of ground-water flow at the site, and notice of continuing hazard in the property deed.

The final rule retains the implementing agency's authority to require submission of a CAP based on information received from early corrective action measures. (EPA expects, for example, that implementing agencies might choose this option for UST releases that are of great magnitude or in close proximity to drinking water resources.) Final § 280.66(a), however, has been revised to make clear that the implementing agency must first review the submitted material before requesting the submission of a CAP or additional information. This section also has been revised to enable owners and operators to submit a CAP for soil and ground-water cleanup based on their own initiative and assessment of the severity of the release. They need not wait for the implementing agency to request a CAP.

Several commenters expressed concern that lengthy reviews by the implementing agency might slow the pace of UST cleanups, creating delays that could make implementing the final CAP more difficult, because of the spread of contamination while delays persist. Some commenters also suggested that owners and operators should be allowed—after a specified length of time—to interpret inaction on the part of the implementing agency as approval of the CAP.

Given the number of releases that are expected to be detected in the near future, EPA acknowledges that there is potential for delayed cleanups under the proposed approach if implementing agencies are unable to review all the CAPs in a timely manner. The Agency concluded, however, that the alternatives suggested by commenters were inappropriate. To respond to this issue, however, § 280.66(d) has been added to allow owners and operators to begin cleanup of soil and dissolved contaminants in ground water without CAP approval provided they: (1) First notify the implementing agency of their intention to begin cleanup, (2) comply with modifications imposed by the implementing agency, including halting cleanup activities, and (3) incorporate these initial measures in the CAP to be reviewed and approved by the implementing agency.

EPA has added this provision with the goal of encouraging effective and expedited cleanup of soil and ground water. EPA emphasizes, however, that the implementing agencies remain the final arbiter for approving CAPs. Implementing agencies, therefore, can require the owner and operator to revise their CAPs and to modify the cleanup techniques in use at a site, including mitigating adverse consequences of cleanup activities. Since the implementing agency retains this authority, EPA expects that owners and operators who choose to initiate cleanup prior to approval of this CAP will select cleanup technologies that are widely used and recognized to be effective. EPA believes some cleanup techniques, such as extraction and treatment of petroleum vapors from soils, can be initiated with little risk of worsening contamination at the site. EPA also notes that states need not adopt the policy of owner- and operator-initiated cleanup for state program approval. Moreover, if states choose this option they can tailor its use to best meet their needs. For example, the implementing agency can identify specific cleanup technologies that are widely applicable without prior review or approval and those that always require explicit plan approval. Similarly, implementing agencies can decide to limit this option for use only at releases from certain USTs, such as petroleum USTs.

h. *Reporting (Proposed § 280.65).* The reporting requirements in this section of the proposed rule have been consolidated with the requirements in § 280.51 of the final rule because they are part of the release confirmation process.

i. *Public Participation (§ 280.67).* The proposed public participation rule required implementing agencies to provide opportunity for public review and comment on all CAPs and to consider these comments before approving CAPs.

Although commenters agreed that public participation is desirable, many commenters expressed concern that protracted public participation during the development of *all* CAPs could unnecessarily delay some UST cleanups. For example, cleanup efforts could be delayed while the development of a CAP was submitted to lengthy public review and deliberation. Also,

mandating public participation for all CAPs could divert implementing agency resources from other cleanup activities such as oversight of ongoing cleanup operations.

EPA agrees with commenters who urged that implementing agencies strike a balance between the involvement of the public in corrective action decisions and the sometimes competing need to protect human health and the environment through quick and effective responses to an UST release. To acknowledge these sometimes conflicting objectives, the final rule for public participation establishes a flexible approach that ensures public access to available information on UST cleanups, although the public need not be involved, as a matter of routine, in all CAPs.

Implementing agencies continue, however, to have the responsibility and authority to notify the public about CAPs, to provide public access to the site and cleanup files, and to involve the public in meetings if sufficient interest is demonstrated. The final rule's public participation requirements for UST corrective action stress the need for adequate public notice, particularly to those parties who could be directly affected by the release and the planned corrective action. EPA expects that the public will be provided adequate opportunity to participate in and aid the UST cleanup process.

EPA does not agree with those commenters who opposed including any public participation requirements in the UST corrective action rule. In particular, EPA does not agree with the concerns raised that RCRA does not explicitly require public participation under Subtitle I. EPA believes that section 7004 of RCRA specifically mandates that all of the Agency's RCRA programs provide for the opportunity for public participation, including the RCRA Subtitle I program. This statutory mandate, combined with long-standing EPA policies to involve the public in the cleanup of contaminated sites, has prompted EPA's decision to keep the public participation requirements in Subpart F. In meeting this need, however, EPA has intended to require public notice and participation in UST corrective actions in a form that does not unnecessarily disrupt what state UST programs already require and provide.

The final rule requires public notification and public availability of information on CAPs. The implementing agency must notify the public about each confirmed release requiring a CAP. This notification requirement remains as proposed, although the rule no longer mandates implementing agencies to formally consider and respond to public comment before approving a CAP. The implementing agency must also provide public notice if implementation of the CAP does not achieve the established cleanup levels and the implementing agency is considering terminating the CAP. In most states, those affected by the release are often kept well informed through personal contacts with the state response staff. Today's requirements are not intended to change this practice of personal contact as one of the first points of public notice in the existing state UST programs. This method of notice has been added to the rule to make this clear. The list of public notice vehicles contained in the rule, however, is not intended to be exhaustive.

In addition to this notification requirement, the final rule requires the implementing agency to provide public access to site release information and decisions concerning the CAP. By providing public notification and access to information, implementing agncies ensure the opportunity for public participation in specific CAPs of interest to the affected sectors of the public. Because the Agency considers public notification and public access to information to be the key components of public participation for all CAPs, the final rule emphasizes the importance of these two requirements.

The implementing agency may hold a public meeting to consider public comments on a CAP if sufficient public interest is shown concerning a proposed CAP. EPA uses the phrase "public meeting" in the rule to emphasize that a formal public hearing is not required. EPA intends that a public forum be provided, in keeping with the state's administrative procedures, to inform the public and allow public comment on a CAP. The implementing agency will decide when public meetings are warranted on a case-by-case basis. EPA expects that large releases involving extensive corrective action will include correspondingly more extensive public participation because public understanding and acceptance is critical to the success of these CAPs.

In summary, the final rule emphasizes the implementing agency's responsibility to involve the public in a manner that best serves the environmental goals of the CAP.

G. Out-Of-Service UST Systems and Closures

1. Introduction

As discussed in the preamble to the proposed rule, the principal objective of the UST system closure requirements is to identify and contain existing contamination and to prevent future releases from UST systems no longer in service (52 FR 12757). Available information suggested that UST systems improperly closed in the past have had undetected releases that later required corrective action. More of these systems may be found to have leaked and, in the future, require additional corrective action. Because a large number of existing UST systems are expected to close in the next 5 to 10 years, EPA believes that it is particularly important to require proper management procedures for out-of-service UST systems so that contamination due to improperly closed UST systems can be prevented from posing a threat of additional releases in the future and needed corrective action can be identified and taken. The comments on the proposal generally acknowledged that proper closure is an important aspect of sound UST management.

The closure procedures are covered in §§ 280.70 through 280.74 of the final rule. Section 280.70 describes the requirements that must be complied with at all UST systems temporarily closed for less than 12 months. It also requires tanks that do not meet requirements for new or upgraded USTs, and that are taken out of service for 12 months or longer, to permanently close. Those USTs that do meet requirements for new or upgraded USTs can remain indefinitly out of service. Section 280.71 provides requirements for permanently closing or changing the service of an UST system, including identification of alternative methods for permanent closure and procedures for continuing the service life of an UST system when it is to be used for the storage of non-regulated substances. Section 280.72 describes the requirements for assessing the UST system excavation zone at closure. Section 280.73 requires owners and operators to apply the permanent closure and site assessment requirements of the final rules to UST systems taken out of service before the effective date of the regulations, if so directed by the implementing agency. Section 280.74 lists the recordkeeping requirements. These proposed requirements, highlights of public comments on them, and the Agency's approach to the final UST system closure standards are discussed in more detail below.

2. Temporary Closure (§ 280.70)

To prevent owners and operators from improperly closing UST systems in the future, EPA proposed requirements in § 280.80 (a)–(b) for tanks temporarily

taken out of service for up to 24 months. These provisions only covered UST systems when a regulated substance was left in the tank and did not distinguish between unprotected tanks and protected tanks that met the requirements for new or upgraded UST systems.

The applicability of these requirements depends upon what constitutes temporary closure. Although a number of suggestions were received, generally commenters recommended defining temporarily closed based on both the use of the tank and how frequently regulated substances are typically moved through it. The failure to fill and/or take regulated substances from a tank on a regular basis, however, was not always considered to be a reasonable criterion for determining the tank was temporarily closed. Commenters cited several examples of infrequently used tanks where temporary closure was not appropriate, including emergency generator tanks and backup system tanks from which fuels were not typically dispensed for long periods of time.

The Agency believes that owners and operators will generally pay more attention to tanks that are used frequently than to those that are used only occasionally or are temporarily closed. Thus, the operation and maintenance procedures used to ensure the integrity of a tank and the effectiveness of release detection efforts instituted to identify leaks in and around a tank will be somewhat related to whether the tank is being actively used or not. Other possible factors in determining whether a tank is temporarily closed include adherence to the normal operation and maintenance procedures at the facility, the types and amounts of regulated substances stored at the facility, the likelihood that an undetected leak has occurred or may occur in the future, and the potential that the tank has become a receptacle for illegal dumping. The Agency does not intend that the emergency generator and backup fuel system tanks cited by commenters should be subject to automatic closure requirements merely because regulated substances are not moved through the tanks on a regular or frequent basis. If, however, the infrequent use of such a tank cannot be justified as part of its purpose and/or if the operation, maintenance, or release detection procedures associated with the tank are inadequate or inconsistent with the monitoring procedures required for operating tanks, the tank will be considered temporarily closed and, after 12 months is up, subject to permanent closure requirements in accordance with § 280.70(c) of the final rule.

Several commenters pointed out that proposed § 280.80 (a)–(b), which covered temporary removal from use and temporary closure, only applied at tanks where the regulated substances were left in the tank. As a result, if the regulated substances were removed from the tank, the proposed rule appeared to exclude UST systems from the further application of the temporary closure provisions. EPA intended, however, that the closure requirements should be applicable to all UST systems that are taken out of service regardless of the quantity of regulated substance remaining in the tank. The Agency also believes that continuation of release detection is not necessary when the regulated substances and residual material have been adequately removed from the UST system. Therefore, the revisions to § 280.70(a) of the final rule subject tanks from which the regulated substances have been removed to the temporary closure provisions, but allows the owner or operator to discontinue release detection as long as the UST system is completely empty.

The final rule also does not contain a requirement to test the integrity of a temporarily closed tank before refilling, although several commenters suggested that such a test should be conducted before materials are reintroduced into an empty tank. EPA does not agree that such a requirement would provide significant benefits. There is no evidence that empty tanks are more vulnerable to structural failure than filled tanks. In addition, the Agency believes that the release detection standards set forth in the final rule are sufficient to rapidly detect any leaks or structural failures that may occur once the system is brought back into service.

Several commenters requested guidelines for determining when an adequate amount of the regulated substance has been removed from a tank to preclude the tank from the temporary closure requirements. In response to these comments, the final rule makes it clear all tanks that contained a regulated substance are subject to the temporary closure requirements regardless of the amount of material remaining in the tank when it is taken out of service. If the tank is empty, however, the owner and operator are not required to maintain release detection around the tank. The term "empty" is defined by incorporating the definition of "empty container" set forth in EPA regulations under Subtitle C of RCRA. This definition requires all materials to be removed that can be removed using commonly employed practices. No more than 2.5 centimeters (one inch) of residue or 0.3 percent by weight of the total capacity of the tank can remain in the system. EPA believes that this definition is adequate to ensure that the regulated substances remaining in the tank will not pose an unreasonable risk to human health and the environment if a release occurs during the temporary closure period.

To prevent owners and operators from indefinitely postponing permanent closure, EPA proposed in § 280.80(c) that all tanks be closed that had been out of service for more than 24 months. This period was considered a reasonable time for tank owners and operators to decide whether to permanently close or continue the use of a tank. The period recommended to be allowed for temporary closure by commenters varied greatly. Commenters cited numerous cases where mandatory permanent closure after 24 months of temporary closure was neither appropriate nor justified. Most state regulatory authorities commenting on this proposal recommended a shorter temporary closure period.

One of the principal reasons cited by the commenters recommending extending the temporary closure period was that tanks in compliance with the appropriate corrosion protection and leak detection procedures do not pose a significant threat of future releases. The commenters also argued that the permanent closure of such tanks would create an economic hardship without providing any significant environmental benefit. EPA agrees with these commenters that UST systems that are adequately protected from corrosion and equipped with release detection systems pose a significantly lower threat to human health and the environment than unprotected tanks. This conclusion is also consistent with the comments submitted by state regulatory authorities that recommended a reduction of the closure period. Their recommendations are believed to stem primarily from the states' experience with unprotected, bare steel tanks and, consequently, strongly suggest that significant damage to the public health and the environment could occur if unprotected tanks are allowed to temporarily close and are left unattended for long periods of time. Therefore, § 280.70(c) in the final rule reduces the allowed period for temporary closure of unprotected tanks from 24 months to 12 months. Any temporarily closed UST systems that do not comply with the performance standards for new tanks under § 280.20

or the upgrade requirements for existing tanks under § 280.21 must permanently close after the 12 month temporary closure period ends. However, UST systems that comply with the performance standards for new or upgraded UST systems set forth in the final rule may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance, and release detection requirements of the final rule. Since spilling and overfilling associated with product transfer should not be a problem around tanks that have been temporarily closed, UST systems are not required to satisfy the spill and overfill requirements for new and upgraded systems in order to be excluded from the 12 month permanent/closure provisions in the final rule.

Many commenters also believed that owners and operators should have a mechanism for seeking and obtaining an extension of the temporary closure period (to avoid the permanent closure requirements) on a case-by-case basis. These comments pointed out that the automatic permanent closure of certain types of tanks was not appropriate after 12 or 24 months (for example, where nearby road construction has temporarily closed the business using the tanks). In response to these comments, a provision has been incorporated allowing the implementing agency to approve an extension of the temporary closure period to address situations where permanent closure of an unprotected UST system is not appropriate after 12 months. To ensure that the variance process is not used to postpone corrective action activities, however, the owner or operator must complete a site assessment before the extension can be applied for.

3. Permanent Closure (§ 280.71)

The proposed rule required the owner or operator of an UST to notify the implementing agency and assess the excavation zone at least 30 days before permanent closure. Several of the commenters argued that completion of the site assessment at least 30 days prior to permanent closure was not always appropriate, for example, in cases where a tank is to be closed by removal or when closure is part of a corrective action. In response to these valid comments, § 280.71(a) of the final rule has been revised to allow more flexibility by requiring the owner or operator to conduct an excavation zone assessment after notifying the implementing agency but before completion of permanent closure. The final requirements continue to require notification at least 30 days before completion of premanent closure. To avoid any potential conflict between the notification requirements of this section and the response requirements under the corrective action provisions, closures initiated as a result of corrective actions under Subpart F are not subject to the notification requirements in § 280.71(a) because the implementing agency will have already been notified as part of the corrective action activities.

The methods for permanent closure were proposed in § 280.80(f) and the revised methods are set forth in § 280.71(b) in the final rule. Emptying the tank by removal or filling with an inert solid material was a prerequisite for permanent closure under the proposed rule. The term "empty," however, was not defined in the proposed rule. In response to those commenters who argued that the amount of residual materials remaining in the tank system must be defined in order to minimize any future threat to human health or the environment, the final rule requires the tank to be "emptied and cleaned by removing all liquids and accumulated sludges." In accordance with EPA's effort to build upon accepted industry consensus codes, a note following final § 280.71(c) identifies API 1604 and API 1631 as guidance on cleaning and closure procedures that may be used to comply with these requirements. EPA believes that following these codes concerning the removal of regulated substances and cleaning of tanks before permanent closure will ensure human health and the environment are protected. These codes also address the concerns expressed by a number of commenters regarding the disposal and reuse of tanks that have been removed from the ground. Although not mandated in the final rules, adherence to the guidance in these codes concerning these activities will ensure the safe handling of tanks and will minimize the risk of releases during closure.

The note following § 280.71(c) also contains a reference to the criteria issued by the National Institute for Occupational Safety and Health. These criteria provide guidance concerning the prevention of deaths and injuries to workers involved in the assessment, decontamination, and cleanup of spills and leaks around underground storage tanks. EPA suggests this code is particularly important to consider in the closure of hazardous substance tanks.

The final rule continues to allow owners and operators to permanently close tanks by either removing the tank from the ground or filling the tank with an inert solid material. Several commenters recommended that the rule require removal except when the tank is located under or immediately adjacent to other structures. Their concerns focused upon the potential for releases of residual materials remaining in a tank after it is filled with inert fill and left in place. EPA believes, however, that the final requirement concerning the removal of all liquids and accumulated sludges from the tank (required by § 280.71(b)) and use of the procedures outlined in API 1604 and API 1631 will adequately prevent the future release of residual material after a tank is filled. Therefore, the final rule allows either method of permanent closure.

Several commenters recommended further clarification of the meaning of "inert solid material." The Agency believes that permanent closure in-place will adequately minimize the likelihood of future releases only if the inert fill material specifications and fill procedures used at closure are adequate to prevent the tank from surfacing after closure, will support the structural integrity of the tank as it deteriorates over time (to avoid cave-ins), and will completely seal the tank and associated piping from future use as a tank system. However, the Agency has decided to not specify in detail the materials for filling a tank because of the numerous choices available and the special considerations and problems inherent in each. Sand or concrete, for example, may restrict future construction activities on the site, or may complicate future removal and corrective action activities around the tank. EPA believes that such decisions should be left to the owner and operator to make on a site-specific basis.

EPA also agrees with the commenters who argued that the permanent closure requirements set forth in the proposed rule precluded the reuse of UST systems for unregulated substances. As a result, sound tanks could be forceably discarded even though this would serve no environmental purpose. Therefore, final § 280.71(c) gives owners or operators a third method of closing an UST system. This method allows the owner or operator to complete a change-in-service, which will allow the tank to be used to store non-regulated substances. To complete a change-in-service and avoid the other requirements under permanent closure, the implementing agency must be notified at least 30 days before the change-in-service is completed, and the tank must be cleaned and emptied by removing all liquids and accumulated sludges. In addition, the owner and operator must assess the site in accordance with § 280.72.

4. Assessing the Site at Closure (§ 280.72)

The requirements for assessing the excavation zone around an UST system were proposed in § 280.80(d). Several assessment methods were listed for satisfying these requirements, including the use of external monitoring release detection methods allowed under § 280.41. Several commenters questioned the applicability of one or more of these methods in certain site-specific situations. Some commenters suggested that other equally effective, methods may be appropriate, including internal release detection monitoring. It was also suggested that the nature and extent of the excavation zone assessment should take into consideration various site-specific factors, many of which focused upon whether the tank is closed by removal or by closure in place.

The final rule, as set forth in § 280.72, specifies minimum requirements necessary to adequately characterize the presence of contamination where it is most likely to be present at the UST site. All of the methods listed in the proposed rule have been deleted except the use of external monitoring release detection methods, which continue to be allowed if they are operated in accordance with the final § 280.43 requirements at the time of closure. Some of the other methods suggested by commenters, such as internal release detection monitoring, were not incorporated into the final rule because they do not monitor the condition of the environment outside the tank. EPA remains convinced that this is an important last step before permanent closure is complete to ensure prior releases are not missed or ignored at closure like they have been in the past.

Minimum assessment standards have been set forth in the final rule to coincide with the requirements set forth in Subparts E and F. These standards are designed to ensure that assessment information is representative of the site's condition and is obtained before closure. In order to be representative, the measurement methodology selected by the owner or operator must take into consideration factors such as the nature of the stored substance, type of backfill used around the tank, and the depth to ground water. Any other factors must be considered that may be appropriate for identifying the presence and source of contamination from the UST system. For example, soil gas sampling could be used if the regulated substance contains compounds that are highly volatile and if the local geology and hydrology do not significantly restrict the movement of the volatilized organic species. However, if the regulated substance consists primarily of heavier hydrocarbons and, as a result, the concentration of vapors in the soil is expected to be very low, soil sampling may be needed to provide the necessary representative analytical results.

The site assessment methodology used by the owner and operator must also consider the method of closure. The two allowed tank closure methods may be treated differently because tanks that are removed from the ground enable the bottom of the excavation to be visually inspected. A visual inspection of the tank and excavation zone should provide sufficient information for determining if and where the substances stored in the tank have leaked into the subsurface soil. Using this information, a variety of sampling methods may be adequate to make an initial determination of the presence of contamination and the need for corrective action.

On the other hand, the presence and size of leaks from tanks that are closed in place cannot be visually determined and, consequently, a more comprehensive assessment is necessary. Therefore, several measurement methods may be required to determine if contamination is present around the tank. For example, soil gas samples may be used to help identify where soil samples should be taken. EPA believes that these changes will give the implementing agency greater flexibility to consider a variety of site-specific factors in defining the nature and extent of an assessment. For example, although EPA believes that samples taken below an UST system will generally provide the most representative results, the final rule would allow samples to be taken at any depth or location. However, a state inspection may determine that soil samples taken from the backfill surrounding a tank or soil gas samples taken at depths where significant volatilization has occurred may not be representative and additional testing could be required.

The proposed rule in § 280.80(e) required the owner and operator to comply with the corrective action requirements if a release was discovered as a result of the activities conducted under any of the closure provisions or by any other manner. As a result of comments that emphasized the interrelationship between the corrective action provisions and the closure requirements, the Agency believes that the criteria for initiating corrective action during closure activities should be the same as the criteria for initiating corrective action at any other time during the operational life of an UST system. The final rule sets forth these criteria in § 280.72(b).

5. Applicability to Previously Closed UST Systems (§ 280.73)

To address contamination threats expected to result from past closure practices, EPA proposed in § 280.80(d) that UST systems not properly closed in accordance with recommended industry practices before the effective date of the final regulation be revisited and properly closed. The closure activities were to include a site assessment of the UST system, and notification to the implementing agency. In addition, EPA proposed in this subsection to exept tanks that were previously closed in accordance with one of the existing industry consensus codes from these sites assessment requirements. The Agency specifically requested comments on these previsions in the proposal.

EPA proposed to apply the closure rules retroactively, recognizing that significant manpower and cost could be required to locate all previously abandoned tanks and to conduct site assessments. To reduce this burden and focus only upon abandoned tanks that possed the greatest potential of leaking in the future, the proposed provisions were limited to tanks that had not been properly closed pursuant to one of the industry consensus codes in existence at the time. Those consensus codes were believed to require only removal of the product stored in the tank.

Upon review of numerous public comments received on this approach, it appears that the procedures used to close most abandoned tanks have not been well documented in the past, making it difficult to determine what constituted compliance with this requirement and whether a tank was properly closed. Moreover, several commenters argued that previous industry consensus codes were not designed to ensure containment of the material in the abandoned tank and may have actually facilitated early releases due to the practice of punching holes in the bottom of the tank. Thus, the commenters suggested that tank systems closed by using practices considered state-of-the-art at the time were just as likely to leak as those that were improperly closed. It was also noted by several commenters that the retroactive application of the closure provisions and imposition of site assessment requirements upon owners and operators of abandoned tanks would be costly to implement and would require the commitment of significant resources

by the implementing agencies to track down and enforce.

EPA now believes that many of the concerns raised by commenters are probably well founded if the requirements were applied to *all* USTs closed before the effective date of the regulations. Such a "broad brush" approach would be very difficult, if not impossible, to enforce because of significant problems in locating the large number of tanks abandoned in the past, in identifying previous owners and operators, and in properly apportioning responsibility for the site assessment and closure activities. As noted earlier, the lack of documentation would also make it difficult for the implementing agencies to determine if a tank had been "properly closed."

EPA continues to believe, however, that a number of previously abandoned UST systems still contain regulated substances or may pose a threat to human health and the environment. As discussed in the preamble of the April 17 proposal, state UST program incident reports examined by EPA revealed approximately 300 releases reported between 1970 and 1984 that implicated abandoned UST systems. In addition, EPA expects more releases from the numerous operating USTs closed before the effective date of the notification requirements (May 8, 1986) and before the effective date of today's regulations. Because there is a reasonable probability that releases from such tanks may pose a threat to human health and the environment, the application of the closure provisions to these tanks, and in particular the site assessment requirements, may be necessary and appropriate.

EPA now believes that for tanks closed or abandoned before the effective date of today's regulations, the closure provisions should only be applied selectively under the discretionary authority of the implementing agency. These agencies are in the best position to identify abandoned tanks that may have been improperly closed, and to gauge the nature and extent of the threat posed by those tanks. They are also better able to identify the responsible owners and define the appropriate site assessment techniques. This approach is intended to enable the implementing agencies to effectively allocate their resources and only focus upon abandoned tanks that are suspected of posing potentially significant problems. This revised approach also reduces the unnecessary burden upon owners and operators of the discovered abandoned tanks by eliminating the requirement for them to revisit and conduct a site assessment at all tanks that have been previously closed, and removes the uncertainty associated with the "improper closure" standard.

Therefore, the final rule deletes the proposed requirement to conduct site assessments at all tanks improperly closed before the effective date of the final regulations. The final rule, however, requires owners and operators of abandoned tanks to comply with the closure provisions if so directed by the implementing agency when it determines there is a reasonable probability that the tank poses a potential threat to human health and the environment either now or in the future.

6. Closure Records (§ 280.74)

The recordkeeping requirements associated with closure were set forth in § 280.80(g) of the proposed rule. These requirements have been reorganized in the final rule in § 280.74 but have not been significantly changed. The principal change was the elimination of the reference to § 280.43 concerning the maintenance of release detection records. Because these requirements are in § 280.70(a) of the final rule through the reference to Subpart D, and are thereby made applicable to all out-of-service and closed UST systems, repetition of the reference is not considered necessary.

H. Analysis of Other Significant Comments

1. Reliance on Codes Developed by Nationally Recognized Organizations

As described in the preamble to the proposed rule (52 FR 12696), the regulations required that all UST systems be designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. In today's final regulations, the Agency has also included the use of industry codes for other technical sections of the rule (such as upgrading and repair of existing USTs). The Agency has noted throughout today's final technical regulations specific codes of practice that have or may be developed.

EPA did not receive any comments that were against or critical of the use of industry codes. One commenter did express the need for public input during the development of Federal technical regulations. The Agency agrees that public participation is necessary for the development of sound industry codes and practices. In fact, the Agency wants to expand the use of and reliance on industry codes in order to provide a means for improving existing methods or developing alternative methods of UST system management. EPA does not intend to adopt inadequate codes but wants to provide a flexible approach to codemaking by relying on nationally recognized organizations to develop new and improved codes and practices through a public process.

EPA is today clarifying this issue to alleviate any future misunderstandings. EPA interprets a "nationally recognized organization" to mean a technical or professional organization that has issued standards formed by the consensus of its members. The organization should ensure consideration of all relevant viewpoints and interests, including those of consumers and future or existing and potential industry participants, and the resulting standards should be widely accepted and technically sound. Thus, any code developed by an organization should be based upon a broad range of technical information, and performance crtieria should be central elements of the resulting standards. EPA believes that the following organizations, which have codes and standards referenced in today's regulations, are examples of "nationally recognized organizations":

American Petroleum Institute (API)
Association of Composite Tanks (ACT)
National Association of Corrosion Engineers (NACE)
National Fire Protection Association (NFPA)
National Leak Prevention Association (NLPA)
Petroleum Equipment Institute (PEI)
Steel Tank Institute (STI)
Underwriters Laboratory (UL)

Other similar organizations may also be considered "nationally recognized."

The final rule does not require the use of a particular issue of any code. The consensus codes are frequently revised and updated. The Agency believes that requiring the use of "the most recent edition" would cause undue confusion in the regulated community. For example, a facility may be installed in accordance with codes that are current at the time but may not have the equipment that meets the codes that are current 10 years later. EPA has concluded that the industry codes that are in effect at the date of publication of the final rule are protective of human health and the environment. The use of future editions of the codes in place of the editions that are now in effect is not required, but is encouraged as the updated codes will probably provide for newer, more effective technologies and practices. The use of past codes that have been replaced by new editions by the effective date of this rule is not allowed

because some past recommended industry practices were not fully protective of human health and the environment.

The Office of Management and Budget has discussed regulatory codes and standards (OMB Circular A119, dated October 26, 1982). OMB encourages the reliance on voluntary standards, commonly referred to as industry standards or consensus codes. The developers of such codes are called voluntary standards bodies, and are defined by OMB to include private sector, domestic, or multinational organizations—such as nonprofit organizations; industry associations, professional and technical societies, institutions, or groups; and recognized testing laboratories—that plan, develop, establish, or coordinate voluntary standards. EPA interpretation of the phrase "nationally recognized organization" is intended to encourage the development and use of voluntary standards.

2. Additional Decisionmaking Authority for Implementing Agencies

As discussed elsewhere in today's **Federal Register**, EPA is promulgating requirements (in Part 281) for judging the stringency of state programs to be approved to operate in lieu of "the Federal program." Under section 9004 of RCRA, the state program must contain specific program elements that are no less stringent that the corresponding Federal technical requirements. Instead of requiring a detailed line-by-line review and comparison of state requirements to Federal technical requirements, EPA is today finalizing an approach to program approval that will compare state programs to the attainment of several general Federal objectives that underlie the specific technical requirements provided in Part 280.

In support of this approach, on December 23, 1987, EPA proposed to include additional language in the technical requirements that was intended to ensure this approval process is flexibly implemented (52 FR 48647). In order to establish the Federal objective for each program element, EPA requested comment on the addition of specific language into several sections of the technical standards that would clarify the Agency's intent to allow state implementing agencies to substitute their own procedural and administrative requirements for those set forth in the Federal requirements. Such administrative requirements, while essential for direct implementation of the Federal program, do not represent the only possible approach for protection of human health and the environment, and thus are not part of the Federal objectives for defining what requirements must be "no less stringent" under section 9004 of RCRA.

Today's final technical standards include several of these wording changes proposed on December 23, 1987. A list of the specific sections and the changes that have been made in the final rules are provided in Table 2.

TABLE 2.—WORDING CHANGES IN THE FINAL RULE

Section	Additional language in the final rules
Subpart B—UST Systems Design, Construction, Installation and Notification: Section 280.20 (a)(2)(iv), (b)(2)(iv).	Adding "or according to guidelines established by the implementing agency" at the end of each paragraph.
Subpart C—General Operating Requirements: Section 280.31(b)(1).	Adding "or in another reasonable timeframe established by the implementing agency" to the end of the sentence.
Subpart D—Release Detection: Section 280.45 (a), (b), (c).	Adding "or for another reasonable period of time determined by the implementing agency" after the terms "for 5 years," and "at least one year".
Subpart E—Release Reporting, Investigation, and Confirmation: Section 280.50.	Adding "or another reasonable time period specified by the implementing agency" after the term "24 hours".
Section 280.53 (a), (b).	Do.
Section 280.53 (a)(1), (b).	Adding "or another reasonable amount specified by the implementing agency" after the term "25 gallons".
Subpart F—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances: Section 280.61	Adding "or within another reasonable period of time determined by the implementing agency" after the different reporting periods of 24 hours, 20 days, 45 days, and 25 days, respectively.
Section 280.62(b)	Do.
Section 280.63(b)	Do.
Subpart G—Out-of-Service UST Systems and Closure: Section 280.71(a).	Adding "or another reasonable period of time determined by the implementing agency" after the comma in the first sentence.

In general, the Agency decided to include this additional language in the final technical requirements to ensure that different state procedural and administrative approaches could be judged no less stringent than the corresponding Federal program. As discussed in more detail elsewhere in today's **Federal Register**, EPA has concluded that different state procedural and administrative requirements can be used and still achieve the underlying performance objective being established today for each program element. It is the Agency's intent to allow the states a significant amount of discretion in this matter, as long as they can demonstrate that overall program performance in each program element will not be adversely impacted by their use of differing administrative practices and procedures.

Many commenters were in favor of this more flexible approach to state program approval and most recommended the additional language be provided in the final technical rules to ensure a line-by-line review is avoided. Other commenters expressed concern that additional language in the technical rules would encourage states to ignore the Federal model. Finally, one commenter opposed the flexible approach and stressed the Agency should "hold the line" in maintaining that states adhere to national regulatory decisions, even if only in procedural matters.

EPA disagrees with those commenters who opposed the addition of implementing agency administrative discretion in the technical requirements. They appeared to want to hold states to line-by-line comparisons to the Federal program as the preferred way to determine if they are no less stringent. Thus, they were generally opposed to the use of Federal objectives for purposes of state program approval, as much as to the addition of greater discretion in the technical requirements that would ensure this approach could be implemented.

As is discussed in the preamble to the state program approval regulation elsewhere in today's **Federal Register**, EPA has adopted the Federal objectives approach to assessing state programs for purposes of state program approval. Thus, the final technical standards rule also includes the proposed language providing additional authority to implementing agencies with respect to certain procedural or administrative requirements.

V. Relationship To Other Aspects of the UST System Program

A. Interim Prohibition

Section 9003(g) of RCRA Subtitle I sets forth requirements for tank systems installed between May 7, 1985, and 90

days after today's promulgation of final new tank performance standards. During this period, UST may be installed unless it is corrosion protected, made of noncorrodible materials, or otherwise designed and constructed to prevent releases during the operating life of the facility due to corrosion or structural failure. The tank material(s) of construction must also be compatible with the substance(s) to be stored.

The final standards for new tank systems in today's rule (as discussed in section IV. of this preamble) are designed to replace the Interim Prohibition requirements. These final performance standards address design, construction, installation, release detection, and compatibility for new tank installations. The Interim Prohibition will, however, remain in effect by regulation for those tanks that have been deferred from coverage under the technical standards in Subpart A (e.g., some sumps, and field-constructed bulk tanks).

B. Notification

On November 8, 1985, EPA published the Final Rule on Notification Requirements for Owners of Underground Storage Tanks (50 FR 46602). A form to be used for the required notification was included as part of the rulemaking.

The UST rules and standards for new tanks promulgated today are not intended to affect these established notification requirements except to add to the information required to be submitted with the notification requirements (see section IV.B.). These existing requirements have been recodified into § 280.22 of today's final rule. Owners of existing UST systems were required to notify their designated state agencies by May 8, 1986. Owners of new or replacement UST systems must notify their designated state agencies within 30 days of bringing the tank into use by submission of the November 8, 1985, Federal form, or an approved alternate state notification form.

Section 9002(a)(6) of RCRA requires that, beginning 30 days after the issuance of today's final new tank performance standards, any person who sells a tank intended to be used in a UST system must advise the tank purchaser of the owner's notification requirements. This requirement is effective 30 days after publication of the new tank performance standards that are being promulgated today. This requirement is codified in § 280.22(e) of today's rule.

C. Leaking Underground Storage Tank Trust Fund

Amendments to Subtitle I of RCRA enacted as part of the Superfund Amendments and Reauthorization Act of 1986 (SARA) provide for a Leaking Underground Storage Tank Trust Fund. The amendments (section 9003(h)) provide funds for cleanup of petroleum spills from UST systems and give EPA, and states that enter into a cooperative agreement with EPA, the authority to respond to releases of petroleum from UST systems. Almost all of the states have entered into these agreements with EPA and are now responding to petroleum releases from UST systems using Trust Fund revenues. These amendments to RCRA were necessary because no other Federal environmental program includes specific authority for response to releases of petroleum from UST systems, although releases of petroleum affecting navigable waters can be responded to under section 311 of the Clean Water Act.

Section 9003(h) provides that the Administrator may issue an order requiring corrective action prior to the promulgation of today's final corrective action regulations under Subtitle I. With the promulgation of today's requirements, the Administrator may use this same order authority, as well as the enforcement authority of section 9006, to require owners or operators to undertake corrective action.

The Leaking Underground Storage Tank Trust Fund is being financed by taxes on motor fuels to pay for response costs in a limited set of circumstances. Until the effective date of today's final technical standards December 22, 1988, the Administrator, or states under cooperative agreements, may use the Fund to pay for a particular corrective action whenever the action is necessary to protect human health and the environment. After that date, the statute provides for the use of the Fund primarily where the financial resources of the owners or operators are not sufficient to pay for the costs of corrective action, or if the owner or operator is otherwise unidentifiable, unwilling, or incapable of carrying out corrective action properly. In some cases, an identifiable and solvent owner or operator may be in compliance with all UST financial responsiblity requirements (to be discussed in a later **Federal Register** Notice) but lack financial resources to pay the entire cost of a response. In those cases, the Administrator or a state with a cooperative agreement is authorized to use the Fund to pay the costs that exceed the level of financial responsibility required of the owner and operator by the financial responsibility regulations.

If the owner and operator has failed to maintain the required level of financial responsibility, the Trust Fund may not be used, unless: (1) There is no solvent owner or operator; (2) there is an imminent and substantial threat to human health or the environment; or (3) there is a need to take corrective action outside the facility including the provision of alternative water supplies or relocation of residents.

Ninety days after publication of today's regulations, cleanups under the Trust Fund must be conducted in accordance with the corrective action requirements (Part 280 Subpart G).

D. Exempted Tank Studies

The regulations finalized today do not apply to certain tank systems that were exempted by statute under section 9001 of Subtitle I. Section 9009(d) and (e) of Subtitle I requires that EPA conduct a study of several of these systems and submit a report to Congress that includes recommendations as to whether these tanks should be regulated in the future. The Report to Congress will be issued later this year.

The Report to Congress will cover the following exempted tanks whose volume, including piping, is at least 10 percent belowground:

- Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommerical purposes, and
- Tanks used for storing heating oil for consumptive use on the premises where stored.

VI. Relationship To Other Agency Programs

This section discusses the relationship of today's final rules to certain other EPA regulatory programs. This discussion is for informational purposes only.

A. CERCLA

Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, or Superfund) requires development of a list of national priorities among known sites with releases and threatened releases of hazardous substances, pollutants, and contaminants. The National Contingency Plan (40 CFR Part 300) regulates development of the National Priorities List (of sites with releases) as well as appropriate responses to the most serious releases. These regulations currently apply to releases of CERCLA-designated

hazardous substances from underground storage tanks. CERCLA, however, does not apply to releases of petroleum from USTs or other sources.

Releases of hazardous substances from UST systems may require removal or remedial action responses by federal or state agencies, in accordance with 40 CFR Part 300. Some UST releases of hazardous substances are already included in the National Priorities List. When today's final rules become effective (within 90 days), owners and operators of UST systems that release hazardous substances will be subject to the corrective action provisions of the rules and, in selected cases, the removal or remedial action measures of 40 CFR Part 300. It is the responsibility of the owner and operator of a hazardous substance UST system that releases hazardous substances to consult with the implementing agency to determine the applicability of CERCLA requirements and Subtitle I release response and corrective action requirements under Subpart F.

Under sections 102 and 103 of CERCLA, EPA has promulgated regulations (40 CFR Part 302) that identify hazardous substances and quantities of releases of these hazardous substances that must be reported to the National Response Center. Those regulations contain reporting requirements for releases equal to or in excess of the established reportable quantities (RQs). Under CERCLA, owners and operators of all kinds of storage, transportation, and disposal facilities containing hazardous substances must report releases to the National Response Center. Owners and operators of USTs with releases of hazardous substances that exceed the RQs set forth in 40 CFR Part 302 will continue to be subject to those CERCLA reporting requirements.

Under today's rule, owners and operators that store hazardous substances in USTs are also required to report spill or overfill releases of these substances from USTs that exceed the RQ to the implementing agency within 24 hours, or another period specified by the implementing agency, and immediately begin containment and cleanup of the release. Owners and operators with spills or overfills of hazardous substances from USTs that are less than the reportable quantity will not be subject to the release reporting requirements although they will still be responsible to immediately contain and clean them up.

B. Hazardous Waste Tank Program

Under RCRA Subtitle C, EPA promulgated regulations for tank systems containing hazardous wastes (40 CFR Parts 264 and 265, July 14, 1986) including underground tanks. The RCRA Subtitle I rules promulgated today apply to USTs containing "regulated substances." These regulated substances include petroleum and hazardous substances defined in section 101(14) of CERCLA, *except* for hazardous wastes regulated under Subtitle C. The exclusion of hazardous wastes from the definition of regulated substance avoids most of the overlapping jurisdiction of Subtitle I and Subtitle C. An overlap in jurisdiction does exist, however, for USTs containing petroleum wastes that are subject to the provisions of RCRA 3014. This overlap is discussed in the next section.

There is also a potential overlap in jurisdiction for USTs containing mixtures of petroleum and hazardous wastes. Today's final rules resolve this potential overlap by excluding such USTs from the universe of USTs subject to today's requirements. Unless otherwise exempted, such USTs would be subject to the requirements of Subtitle C. It is intended that today's rules regulate a different set of UST systems from those subject to regulation under Subtitle C.

C. Hazardous Waste Management Regulations

Section 3001 of the Resource Conservation and Recovery Act requires EPA to identify wastes that pose a hazard to human health and the environment if improperly managed. Under the regulatory program established by Subtitle C of RCRA, EPA has developed a process that identifies and publishes lists of hazardous wastes. Generators must determine whether their waste is on one of the lists in 40 CFR Part 261, Subpart D. If a waste is not listed as a hazardous waste, waste generators are required to determine if their waste is hazardous either by testing it to determine if it exhibits any "characteristics," based on knowledge about the physical and chemical composition of the waste. In the latter case, testing of the waste is not necessary if it is believed that it would not exhibit a hazardous waste characteristic. The waste generator, however, remains responsible for making the correct determinations concerning the characteristics of reactivity, corrosivity, ignitability, and extraction procedure (EP) toxicity, as specified in 40 CFR Part 261, Subpart C.

1. Hazardous Substances

Many hazardous substances regulated by the Subtitle I tank rules are currently on EPA's hazardous waste lists of commerical chemical products at 40 CFR 261.33 (e) and (f). The products become hazardous wastes when discarded, including when spilled and then not cleaned up and used for their intended purpose. Soils, water, or other debris contaminated by these products are subject to regulation as hazardous waste (see 40 CFR 261.33(d)). A person removing such contaminated soil or debris during a cleanup is a hazardous waste generator, subject to § 261.5 or Part 262.

2. Petroleum and Petroleum-based Substances

Petroleum-contaminated soils are not an EPA-listed hazardous waste. Based on its physical and chemical nature, petroleum-contaminated soil would not exhibit the hazardous characteristics of corrosivity or reactivity under 40 CFR Part 261. Some state UST programs have reported to the Agency that they require the use of the EPA tests for ignitability and EP toxicity to assist in making decisions about whether to manage the petroleum-contaminated soils on- or off-site. Other states have simply declared that the soils are not a hazardous waste and, therefore, do not require testing or management as a hazardous waste. Other states require management of petroleum-contaminated soils as a "special waste" that must receive special handling to control environmental and human health risks believed to be associated with the volatile organic chemical emissions known to come from such soils.

Although some states require the use of the EPA tests, petroleum-contaminated soils do not satisfy the EPA criteria for an ignitable hazardous waste. A substance is classified as a hazardous waste if it exhibits the characteristic of ignitability according to one of the following four criteria (40 CFR 261.21) as determined by using an ASTM or Administrator-approved testing procedures. The substance must be: (1) A liquid containing less than or equal to 24 percent alcohol having a flashpoint less than 140° F; (2) a nonliquid, but capable under standard temperature and pressure of causing fire through friction, absorption of moisture, or spontaneous chemical changes which burns so vigorously and persistently that it creates a hazard; (3) an ignitable compressed gas, as defined in 49 CFR 173.300; or (4) an oxidizer as defined in 40 CFR 173.151. Gasoline-contaminated soils do not satisfy criteria (1), (3), or (4). They do satisfy the nonliquid requirement of criterion (2); however, the Agency has concluded that they are

very unlikely to ever be capable of causing fire by friction, absorption of moisture, or spontaneous chemical changes. These soils, therefore, should not be a hazardous waste under Subtitle C of RCRA due to ignitability.

Several states contacted by EPA reported that they have conducted thousands of EP toxicity tests on petroleum-contaminated soils and they have never exhibited the characteristic of EP toxicity at numerous sites nationwide where soils were contaminated by both leaded and unleaded gasolines. This result is expected because the extraction procedure is designed to identify individual wastes that are hazardous due to their potential to leach significant concentrations of eight specific metals, four insecticides, and two herbicides in a municipal landfill scenario. When subjected to the EP toxicity test, the only constituent of concern for soils contaminated by petroleum is lead. The extremely high adsorption coefficient of lead, however, indicates that such soils are unlikely to ever exhibit the characteristic of EP toxicity.

In summary, the evidence collected by or reported to the Agency to-date indicates it is very unlikely that petroleum-contaminated soils will be found to exhibit any of the characteristics of hazardous waste as currently defined by EPA regulations. However, EPA is also aware that there are potential threats that need to be considered in the management of petroleum-contaminated soils. For example, petroleum-contaminated soils (particularly motor fuels) can contribute significant amounts of volatile compounds to the air or be the source of dissolved contaminants (such as benzene) in ground-water resources. Today's final regulations leave the off-site management of these concerns to existing state and local requirements. EPA believes there are several ways to properly manage petroleum-contaminated soils that are not hazardous wastes, including the following approaches that are already being used in various states:

- Define petroleum-contaminated soils as a non-hazardous waste that requires disposal into permitted solid waste facilities.
- Define it as a special waste that requires special handling (such as land spreading, heat treating, or disposal in designated fill areas) that is tailored to remove the threats posed by the volatile constituents of the petroleum.
- Define petroleum-contaminated soils as a hazardous waste that must be treated or disposed of under the hazardous waste standards.

EPA intends to study this technical issue further and provide more information to the public and the implementing agencies concerning alternative ways to manage petroleum-contaminated soils when they are managed on-site or removed off-site. This information may include, for example, a description of different test methods that could be used to characterize petroleum-contaminated soils in a more meaningful fashion than present methods. EPA is currently investigating techniques to measure and assess the condition of petroleum-contaminated soils, and handling and treatment alternatives that can be used to properly manage the potential risks they pose to human health and the environment.

Finally, EPA notes that under proposed revisions to the toxicity characteristic under the Agency's hazardous waste regulations (40 CFR 261.24), benzene and a number of other compounds would be added to those constituents that, when measured in waste leachate, will determine whether a waste exhibits a hazardous waste characteristic. (See 51 FR 21648; June 13, 1986.) When these rule revisions are issued in final form, a large amount of petroleum-contaminated soils that are currently considered nonhazardous may have to be managed as hazardous waste. For example, all petroleum-saturated soils may be characterized as a hazardous waste under the proposed revisions. EPA is unsure of the impacts of this proposed rule change at this time, and in fact recently requested additional public comments on the levels for benzene and other constituents. (See 53 FR 18024; May 19, 1988.) However, the public comment period is closed on this issue. The Agency will provide further guidance on this issue at a later date.

D. Used Oil Regulations

Underground tanks storing used oil (e.g., automobile and truck used crankcase oil) are under the jurisdiction of Subtitle I. Pursuant to section 9001(2)(B) of RCRA, underground tanks containing "petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure * * *" are within the scope of Subtitle I. Since used oil is primarily composed of petroleum, although it may contain contaminants due to use of the oil, it is subject to Subtitle I requirements. Owners and operators of UST systems containing used oil were required to notify designated state agencies of the presence of such tanks by May 8, 1986. Owners and operators of newly installed used oil UST systems have also been subject to the requirements of the Interim Prohibition, which has been in effect since May 8, 1985.

As discussed above, however, today's regulations exclude any tanks regulated under Subtitle C of RCRA. Under Subtitle C, EPA has the authority to regulate recycled oil, and to regulate used oil that is disposed of under Subtitle C if such oil is identified or listed as a hazardous waste. Under the authority of Subtitle C of RCRA, EPA proposed to list used oil as hazardous waste (50 FR 49269–49270, November 29, 1985) and has proposed standards for recycled oil (50 FR 49250–49258, November 29, 1985). Since those publications in the **Federal Register**, several important decisions in terms of these proposed rulemakings have been made, namely:

(1) Storage of used oil (even when recycled) will be regulated, and

(2) Recycled oil will *not* be listed as a hazardous waste (51 FR 41900, November 19, 1986).

The storage of used oil, however, is not currently regulated as a hazardous waste under Subtitle C. Unless and until the Agency regulates the storage of used oil as a hazardous waste under Subtitle C, it will be subject to Subtitle I. Accordingly, the Agency is today including application of the technical requirements to used oil UST systems. This is discussed in further detail in section IV.A.

E. SPCC

Under section 311 of the Federal Water Pollution Control Act, EPA has promulgated regulations for the prevention of oil spills into navigable waters. These rules (40 CFR Part 112) known as the Spill Prevention Control and Countermeasure (SPCC) regulations are intended to prevent and contain releases of oil into surface waters which are navigable.

Comparatively few UST systems are subject to SPCC regulations. Only those tanks of greater than 42,000 gallons capacity that are located near navigable waters of the U.S. or adjoining shorelines may be affected. UST systems which, due to their location, could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines and which have a storage capacity greater than 42,000 gallons are subject to both today's rules and the SPCC rules.

F. DOE High-Level Radioactive Waste Program

Under the Atomic Energy Act of 1954 (42 U.S.C. 2001 *et seq.*), the U.S.

Department of Energy (DOE) has promulgated rules for the management of high-level radioactive waste resulting from atomic energy defense activity. DOE Orders 5480.1, 5480.2, and 5820.2 regulate the underground storage of these wastes, including corrective actions in the event of a release.

The UST rules include the storage of radioactive waste because any radionuclide is a "hazardous substance" under CERCLA and thus a regulated substance under Subtitle I. However, in view of the differences in high-level radioactive waste from other RCRA Subtitle I regulated substances and the much larger tanks storing this waste, EPA is today deferring regulatory action on these DOE radioactive waste facilities. Until a determination is made as to whether, and how, the UST rules should apply to DOE facilities storing high-level radioactive wastes, today's UST requirements, except corrective action and the Interim Prohibition requirements, do not apply to these facilities. More details are provided on this in section IV.A.

VII. Economic and Regulatory Impacts

Section VII.A. discusses the Regulatory Impact Analysis of the final rule required by Executive Order 12291. Section VII.B. discusses the analysis of the effects of the final rule on small businesses required by the Regulatory Flexibility Act. Section VII.C. addresses requirements under the Paperwork Reduction Act. (A full draft of the Regulatory Impact Analysis for the final rule is available as part of the background documents supporting this rulemaking.)

A. Regulatory Impact Analysis

1. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires regulatory agencies to conduct a Regulatory Impact Analysis (RIA) for any major rule. EPA has conducted an RIA to assess the regulatory impacts of the technical standards rule for USTs based on the guidelines contained in the Office of Management and Budget's "Interim Regulatory Impact Analysis Guidance" and EPA's "Guidelines for Performing Regulatory Impact Analysis." The objective of the analysis is to examine the anticipated costs, benefits, and impacts of the final rule rather than to select a regulatory option. Based on the results of the analysis, the Agency has concluded that the technical standards regulations being promulgated today represent a major rule that produces significant net benefits to society.

As described in today's preamble, these technical standards pertain to tank system design, construction, and installation, leak detection, recordkeeping, reporting, closure, and corrective action. For the proposed rule (52 FR 12761–12769), EPA conducted an RIA to compare several regulatory alternatives. Each of these alternatives is discussed in detail in the "Regulatory Impact Analysis for Proposed Technical Standards for Underground Storage Tanks" (April 1987). (This RIA for the proposed rule is contained in Appendix B of the RIA for the final rule.) The RIA for the final rule does not consider various options. Instead, it concentrates on the impacts of the provisions of the final rule (see sections III. and IV. of today's preamble for a full description of the requirements of the final rule.)

The final rule refines the proposed rule (April 17, 1987) by phasing in requirements for release detection over a period of 5 years for existing tanks (based on the age of the tank) and by establishing more stringent requirements for pressurized piping. Most of the other requirements in the final rule pertaining to corrosion protection and release detection are the same as in the proposed rule.

2. Costs

Compliance with the rule's requirements for release detection, system inspections and upgrading, and corrective action will require large expenditures by most UST owners and operators. In addition, the large population of USTs means that the total costs for all USTs will be substantial from the standpoint of the economy as a whole.

Table 3, column 2, displays the costs of the final rule for the entire UST population, by category of costs. These cost estimates represent costs calculated using the UST Model, a model developed by the Agency to simulate the release and transport of petroleum products. These estimates assume a total of 1.7 million USTs and a total of 30 years of costs after promulgation of the rule, discounted at a rate of 3 percent annually. Based on EPA's analysis and assumptions, the estimated cost of the final rule is expected to be approximately $69 billion over a period of 30 years, or $3.6 billion per year (discounted at a rate of 3 percent).

TABLE 3.—COSTS UNDER THE BASE CASE AND FINAL RULE

Cost component	Total cost, all USTs		Increment cost	
	Base case (millions)	Final rule (millions)	Total (millions)	Per UST
Component repair replacement, upgrade	$19,890	$32,300	$12,410	$7,300
Leak detection and testing	440	4,980	4,540	2,670
Corrective action in response to releases	[1] 0	31,970	31,970	18,800
Total	20,330	69,250	48,920	28,770

Source: UST Model runs, April 1988.
[1] No cost is ascribed here because no corrective action is required in the base case.

In order to evaluate the incremental costs of the final rule, EPA estimated the costs that would be incurred by UST owners and operators in the absence of any further regulations. These costs are presented in column 1 of Table 3 as base case cost. Subtracting the base case costs from the costs under the final rule yields the incremental cost of the final rule, shown by cost category in Table 3, column 3. This incremental cost is expected to be approximately $48 billion over 30 years, or $2.5 billion on an annual basis (discounted at an annual rate of 3 percent). The administrative costs of implementing the final rule are not included in this analysis.

3. Benefits

The final rule's requirements for leak detection and prevention and corrective action will provide society with a variety of benefits. The benefits are defined as reductions in damages under the rule in comparison to the base case. Two kinds of damages are considered in the RIA: Those that occur before a

release is detected, such as contamination of private and public wells; and those that occur after a release is detected, such as contamination of soil and ground water.

The pre-detection damages are $2.1 billion under the final rule, and $4.8 billion in the base case. The incremental benefits of regulation resulting from this decrease in pre-detection damages are therefore $2.7 billion. The post-detection damages are estimated to be $52.8 billion under the base case, and negligible under the final rule. (Under the final rule, corrective actions must be performed as soon as a release is detected which accounts for this drastic reduction in post-detection costs.) The incremental benefits of regulation resulting from a decrease in post-detection damages are therefore $52.8 billion. The total incremental benefits of the rule, including the benefits from reduction in both pre- and post-detection damages, are $55.5 billion ($2.7 billion due to reduction of pre-detection damages and $52.8 billion due to reduction of post-detection damages). The yield in benefit for each UST is about $31,000.

EPA believes that, in addition to the benefits summarized above, many additional benefits of release detection and prevention cannot be expressed quantitatively or in purely monetary terms. Examples of these important benefits include the prevention of added risks to human health, the value of preventing damage to the ability of streams to support life, and the basic value of preventing contamination of ground-water resources whether or not they are currently being used.

In an attempt to provide some measure of these benefits, EPA has quantified the health benefits of the release detection, prevention, and corrective action portion of the final rule, but has expressed the benefits in terms of cancer cases avoided and the reduction in numbers of USTs posing cancer risks in excess of a specified threshold (Table 4). Of the two scenarios shown in Table 4, one scenario assumes that people will not use water that smells or tastes badly. The other scenario assumes that people will use water whether it seems contaminated or not.

TABLE 4.—REDUCTIONS IN HEALTH RISKS DUE TO RELEASE PREVENTION AND DETECTION IN THE FINAL RULE

Type of benefit	Assuming taste and odor threshold limits exposure	Assuming no exposure limitation
Reduction in population risk (total cases of cancer avoided).	20 cases	87 cases.
Reduction in numbers of USTs posing risks of cancer as high as one chance in 10,000.	8,371 USTs	13,300 USTs.

Source: UST Model runs, April 1988.

4. Cost Effectiveness of the Final Rule

A comparison of the incremental costs of the final rule to its incremental benefits is shown in Figure 6. The figure shows the incremental costs of the final rule to be $48.9 billion, which include repair, system upgrading and replacement, release detection, and corrective action for the entire population of 1.7 million USTs. In contrast, the incremental benefits of the rule are estimated to be $55.5 billion. These benefits consist largely of reductions in damages occurring after releases are detected, but also include reductions in well and vapor damages and lost product occurring before the detection of releases. By subtracting costs from benefits, the net dollar benefits of the final rule over the next 30 years are estimated to have a present value of $6.6 billion, or $4,000 per UST. In addition to the benefits measured in dollar terms, the rule also significantly reduces damages to human health and the environment.

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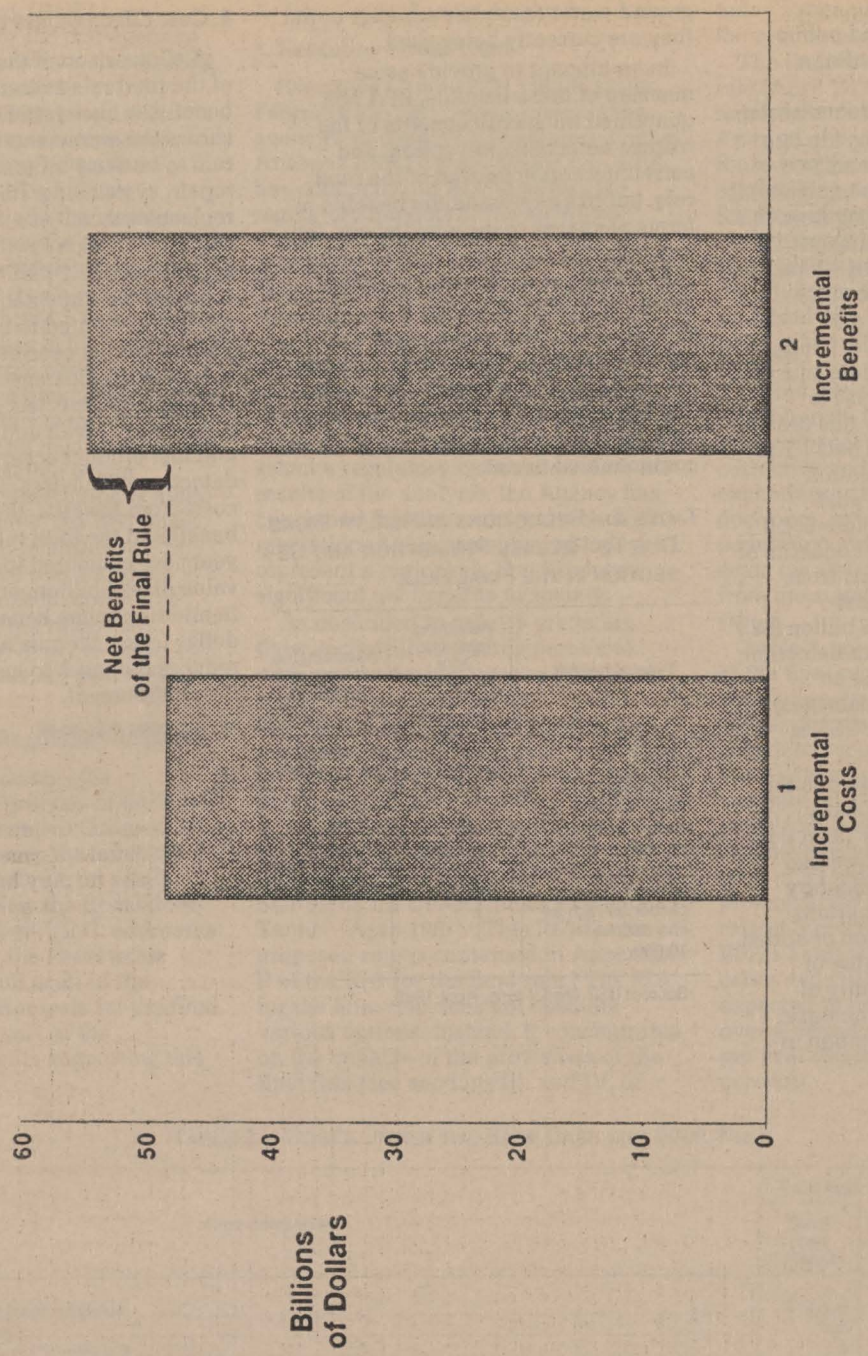
FIGURE 6

Net Costs and Benefits



Source: UST Model runs, April 1988.

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5. Economic Impacts on Existing Facilities

An economic impact analysis was performed for the general industry and retail marketing sectors having petroleum USTs and for firms having hazardous substance USTs. The results of this analysis indicate that firms in the retail motor fuel marketing sector would be most adversely affected, for several reasons: they have a greater number of small firms that are more vulnerable to significant regulatory expenditures; regulatory expenditures in this sector are likely to be greater because motor fuel retail outlets generally have the greatest number of USTs per outlet; and firms in the retail motor fuel marketing sector do not have the option of closing their USTs and using alternative storage methods. The RIA reaches the following conclusions:

- By year ten, 43 percent more small firms are projected to close under the final rule than in the base case.
- Most economic impacts of the final rule occur in the first 5 years after its imposition.
- Most closures of existing outlets are caused by corrective action expenses.
- Were corrective action to be performed in the base case as well as under the final rule, the model predicts that a higher percentage of outlets would survive under the final rule than in the base case.

6. Integration of Technical Standards and Financial Responsibility Rules

EPA prepared separate RIAs for the proposed technical standards and financial responsibility rules in order to estimate the costs and economic impacts of each proposed rule. As many commenters pointed out, a major weakness of this approach was that the two RIAs could not easily be used to assess the combined impacts of the proposed technical standards and financial responsibility rules to construct an "after regulation" picture of the regulated community. Commenters also noted that certain indirect costs that would be imposed on the regulated community were not included in either RIA. They explained that in order to buy insurance to satisfy the financial responsibility requirements, UST owners and operators would have to upgrade their USTs by installing release detection systems sooner than required by the technical standards rule.

In response to these comments, EPA has revised its approach in preparing the RIAs for the final rules, so that the two RIAs now perform the following functions:

- Account for the indirect costs of having to upgrade tank systems sooner to procure financial assurance; and
- Estimate the combined costs and economic impacts of both sets of requirements.

The RIA for the financial responsibility rule assumes the technical standards rule in its base case in order to estimate its costs and economic impacts. The costs incurred in upgrading, replacing, retrofitting, and corrective action are attributed to the technical standards rule. Costs incurred to upgrade sooner than required by the technical standards rule in order to obtain financial assurance are attributed to the financial responsibility rule. By using the technical standards rule as the base case and computing the incremental costs of the financial responsibility rule, the overall costs to the regulated community can be estimated properly.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), agencies publishing a proposed or final rule must prepare and make available for comment a Regulatory Flexibility Analysis that describes the potential impact of the rule on small entities (i.e., small business, small organizations, and small government jurisdictions). The purpose of the Regulatory Flexibility Act is to ensure that regulations do not impose unnecessary costs or other burdens on such entities. As part of its RIA, EPA has examined the potential impact of today's rule on small entities and has concluded that the rule will have a significant impact on a substantial number of small entities, as described below:

1. Small Entities Potentially Affected by the Rule

The Agency divided the businesses potentially affected by the rule into three categories: Firms engaged in retail motor fuel marketing (e.g., gasoline service stations), firms engaged in other businesses (general industry category), and local government entities. EPA focused the emphasis of the Regulatory Flexibility Analysis on the retail motor fuel marketing sector because (1) all firms in this sector *must* store their product in underground storage tanks; (2) about three-quarters of all retail motor fuel outlets are owned or operated by small businesses; and (3) the data base for this sector is reasonably accurate and will capture the most severe small-business impacts likely to occur as a result of the rule.

a. *Small Businesses in the Retail Motor Fuel Marketing Sector.* For this Regulatory Flexibility Analysis, small businesses in the retail motor fuel marketing segment are defined as firms with less than $4.6 million in annual sales and include all firms with only one or two outlets. Firms with $4.6 million in sales will typically have approximately $500,000 in assets and a net worth of about $250,000. EPA estimates that in 1984, small businesses either owned or operated 72 percent of the 193,000 retail motor fuel outlets in the United States.

To examine the rule's potential economic impact on small businesses, EPA estimated the rates at which existing firms in the retail motor fuel marketing sector would leave the industry with and without regulations. For the purposes of this analysis, EPA estimates that these outlets have historically tended to exit the industry at a rate of 3 to 4 percent per year. If releases occur at the level estimated by the RIA and no revenue increases are possible for small businesses, this rate would increase to 6.2 percent per year, assuming average corrective action costs.

b. *Small Businesses in the General Industry Sector.* An estimated 24 to 41 percent of all USTs in the general industry sector are owned by firms with less than $1 million in assets. A typical small firm in this segment was assumed to have $300,000 in assets and net profits of $21,000 a year. Overall, these firms represent about 12 percent of all UST-owning firms in the general industry sector.

The cost of corrective action for non-plume release (i.e., no ground-water contamination) would leave a small general industry firm in severe financial distress, and the cost of corrective action for a plume release (i.e., contamination of ground water) would lead to the failure of the firm. Replacing a tank would cause a small general industry firm a temporary financial hardship; however, this hardship would not seriously threaten the survival of the firm.

c. *Small Local Government Entities.* Local government entities of all sizes own USTs. In 1982, the typical municipality with a population less than 50,000 had general revenues of $1.7 million. The costs of replacing even a single UST would represent 2 percent of the revenue of such a municipality, a significant expenditure that would have to be taken into account when planning. A corrective action that required cleaning up a dispersed plume would represent more than 13 percent of the general revenues of such a community, a sum that would probably cause severe financial distress.

In 1982, of the 38,886 local governments classified as counties, municipalities, and townships, 37,581 (approximately 97 percent) had populations of 50,000 or less. Almost all UST-owning local governments would, therefore, be subject to potentially substantial economic impacts under the technical standards rule if an UST release occurred.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0068. Reporting and recordkeeping burden on the public for this collection is estimated at 8,265,220 hours for the 1,750,000 respondents, with an average of 4 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1360), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202–382–2745); and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 280

Administration practice and procedures, Confidential business information, Ground water, Hazardous materials, Reporting and recordkeeping requirements, Underground storage tanks, Water pollution control, Water supply.

September 8, 1988.

Lee Thomas,

Administrator.

For the reasons set out in the Preamble, Part 280 of Title 40 of the Code of Federal Regulations is revised to read as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h).

Subpart A—Program Scope and Interim Prohibition

§ 280.10 Applicability.

(a) The requirements of this part apply to all owners and operators of an UST system as defined in § 280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.

(b) The following UST systems are excluded from the requirements of this part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater

treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a *de minimis* concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) *Deferrals.* Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;

(4) Airport hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

(d) *Deferrals.* Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.

§ 280.11 Interim prohibition for deferred UST systems.

(a) No person may install an UST system listed in § 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

Note: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.

§ 280.12 Definitions.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b)(1) Either a continuous on-site physical construction or installation program has begun; or,

(2) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical

construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water.)

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Implementing agency" means EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

(a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil though processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment

necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm-water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Subpart B—UST Systems: Design, Construction, Installation and Notification

§ 280.20 Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

(a) *Tanks.* Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4–S615–M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021–86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or

Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "Specification for STI–P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4–S603–M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4–G03.1–M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4–S631–M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP–02–85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

Note: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT–100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraphs (a)(4)(i) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a) (1) through (4) of this section.

(b) *Piping.* The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or guidelines established by the implementing agency; or

Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

Note: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.

(4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b) (1) through (3) of this section.

(c) *Spill and overfill prevention equipment.* (1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1) (i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(d) *Installation.* All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (d) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(e) *Certification of installation.* All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.

(1) The installer has been certified by the tank and piping manufacturers; or

(2) The installer has been certified or licensed by the implementing agency; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by the implementing agency; or

(5) All work listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.

§ 280.21 Upgrading of existing UST systems.

(a) *Alternatives allowed.* Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under § 280.20;

(2) The upgrading requirements in paragraphs (b) through (d) of this section; or

(3) Closure requirements under Subpart G of this part, including applicable requirements for corrective action under Subpart F.

(b) *Tank upgrading requirements.* Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of § 280.33, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of § 280.20(a)(2) (ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with § 280.43 (d) through (h); or

(iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of § 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2) (i) through (iii) of this section.

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of § 280.33; and

(ii) The cathodic protection system meets the requirements of § 280.20(a)(2) (ii), (iii), and (iv).

Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(c) *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of § 280.20(b)(2) (ii), (iii), and (iv).

Note: The codes and standards listed in the note following § 280.20(b)(2) may be used to comply with this requirement.

(d) *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in § 280.20(c).

§ 280.22 Notification requirements.

(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix I of this part, a notice of existence of such tank system to the state or local agency or department designated in Appendix II of this part to receive such notice.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in Appendix I of this part.

(b) In states where state law, regulations, or procedures require owners to use forms that differ from those set forth in Appendix I of this part to fulfill the requirements of this section, the state forms may be submitted in lieu of the forms set forth in Appendix I of this part. If a state requires that its form be used in lieu of the form presented in this regulation, such form must meet the requirements of section 9002.

(c) Owners required to submit notices under paragraph (a) of this section must provide notices to the appropriate agencies or departments identified in Appendix II of this part for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must also provide all of the information in section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.

(e) All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

(1) Installation of tanks and piping under § 280.20(e);

(2) Cathodic protection of steel tanks and piping under § 280.20 (a) and (b);

(3) Financial responsibility under Subpart H of this part; and

(4) Release detection under §§ 280.41 and 280.42.

(f) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in § 280.20(d).

(g) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. The form provided in Appendix III of this part may be used to comply with this requirement.

Subpart C—General Operating Requirements

§ 280.30 Spill and overfill control.

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(b) The owner and operator must report, investigate, and clean up any

spills and overfills in accordance with § 280.53.

§ 280.31 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) *Frequency.* All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP–02–85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with § 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (c) of this section; and

(2) The results of testing from the last two inspections required in paragraph (b) of this section.

§ 280.32 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

§ 280.33 Repairs allowed.

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(d) Repaired tanks and piping must be tightness tested in accordance with § 280.43(c) and § 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d) (1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in § 280.43 (d) through (h); or

(3) Another test method is used that is determined by the implementing agency to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with § 280.31 (b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

§ 280.34 Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) *Reporting.* Owners and operators must submit the following information to the implementing agency:

(1) Notification for all UST systems (§ 280.22), which includes certification of installation for new UST systems (§ 280.20(e)),

(2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

(3) Corrective actions planned or taken including initial abatement measures (§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and corrective action plan (§ 280.66); and

(4) A notification before permanent closure or change-in-service (§ 280.71).

(b) *Recordkeeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (§ 280.20(a)(4); § 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (§ 280.31);

(3) Documentation of UST system repairs (§ 280.33(f));

(4) Recent compliance with release detection requirements (§ 280.45); and

(5) Results of the site investigation conducted at permanent closure (§ 280.74).

(c) *Availability and Maintenance of Records.* Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the implementing agency; or

(2) At a readily available alternative site and be provided for inspection to the implementing agency upon request.

(3) In the case of permanent closure records required under § 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

Note: The recordkeeping and reporting requirements in this section have been approved by the Office of Management and Budget and have been assigned OMB Control No. 2050-0068.

Subpart D—Release Detection

§ 280.40 General requirements for all UST systems.

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in § 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in § 280.43 (b), (c), and (d) or 280.44 (a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in § 280.43 and § 280.44 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with Subpart E.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this subpart by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown.	RD	P			
1965–69		P/RD			
1970–74		P	RD		
1975–79		P		RD	
1980–88		P			RD
New tanks (after December 22) immediately upon installation.					

P=Must begin release detection for all pressurized piping in accordance with § 280.41(b)(1) and § 280.42(b)(4).

RD=Must begin release detection for tanks and suction piping in accordance with § 280.41(a), § 280.41(b)(2), and § 280.42.

(d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subpart must complete the closure procedures in Subpart G by the date on which release detection is required for that UST system under paragraph (c) of this section.

§ 280.41 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) *Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d) through (h) except that:

(1) UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory control requirements in § 280.43 (a) or (b), may use tank tightness testing (conducted in accordance with § 280.43(c)) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under § 280.21(b), whichever is later;

(2) UST systems that do not meet the performance standards in § 280.20 or § 280.21 may use monthly inventory controls (conducted in accordance with § 280.43(a) or (b)) and annual tank tightness testing (conducted in accordance with § 280.43(c)) until December 22, 1998 when the tank must be upgraded under § 280.21 or permanently closed under § 280.71; and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).

(b) *Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with § 280.44(a); and

(ii) Have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with § 280.44(b), or use a monthly monitoring method conduct in accordance with § 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with paragraphs (b)(2) (ii)–(iv) of this section to be readily determined.

§ 280.42 Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.

(b) Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every 30 days.

Note.—The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(2) Double-walled tanks must be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

(i) Contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with § 280.44(a).

(5) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the implementing agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §§ 280.43(b) through (h) can detect a release of petroleum;

(ii) Provide information to the implementing agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,

(iii) Obtain approval from the implementing agency to use the alternate release detection method before the installation and operation of the new UST system.

§ 280.43 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of § 280.41 must be conducted in accordance with the following:

(a) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.

(b) *Manual tank gauging.* Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less.	10 gallons	5 gallons.
551–1,000 gallons.	13 gallons	7 gallons.
1,001–2,000 gallons.	26 gallons	13 gallons.

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in § 280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.

(c) *Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) *Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of § 280.43(a).

(e) *Vapor monitoring.* Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e)(1) through (4) of this section and to

establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(f) *Ground-water monitoring.* Testing or monitoring for liquids on the ground water must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f) (1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) *Interstitial monitoring.* Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

Note: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) *Other methods.* Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The implementing agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

§ 280.44 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of § 280.41 must be conducted in accordance with the following:

(a) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(b) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) *Applicable tank methods.* Any of the methods in § 280.43 (e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

§ 280.45 Release detection recordkeeping.

All UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this Subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the implementing agency, from the date of installation;

(b) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing conducted in accordance with § 280.43(c) must be retained until the next test is conducted; and

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period

determined by the implementing agency. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

Subpart E—Release Reporting, Investigation, and Confirmation

§ 280.50 Reporting of suspected releases.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in § 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,

(c) Monitoring results from a release detection method required under § 280.41 and § 280.42 that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

§ 280.51 Investigation due to off-site impacts.

When required by the implementing agency, owners and operators of UST systems must follow the procedures in § 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the implementing agency or brought to its attention by another party.

§ 280.52 Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with Subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within 7 days, or another reasonable time period specified by the implementing agency, using either the following steps or another procedure approved by the implementing agency:

(a) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in § 280.43(c) and § 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subpart F;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

§ 280.53 Reporting and cleanup of spills and overfills.

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and begin corrective action in accordance with Subpart F in the following cases:

(1) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the implementing agency, or that causes a sheen on nearby surface water; and

(2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or another reasonable amount specified by the implementing agency, and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the implementing agency, owners and operators must immediately notify the implementing agency.

Note: Pursuant to §§ 302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

Subpart F—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

§ 280.60 General.

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

§ 280.61 Initial response.

Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the implementing agency:

(a) Report the release to the implementing agency (e.g., by telephone or electronic mail);

(b) Take immediate action to prevent any further release of the regulated substance into the environment; and

(c) Identify and mitigate fire, explosion, and vapor hazards.

§ 280.62 Initial abatement measures and site check.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable State and local requirements;

(5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by § 280.52(b) or the closure site assessment of § 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with § 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

§ 280.63 Initial site characterization.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in § 280.60 and § 280.61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under § 280.62(a)(5); and

(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under § 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency.

§ 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and Federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) The type of free product recovery system used;

(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) The type of treatment applied to, and the effluent quality expected from, any discharge;

(6) The steps that have been or are being taken to obtain necessary permits for any discharge; and

(7) The disposition of the recovered free product.

§ 280.65 Investigations for soil and ground-water cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) Free product is found to need recovery in compliance with § 280.64;

(3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§ 280.60 through 280.64); and

(4) The implementing agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the implementing agency.

§ 280.66 Corrective action plan.

(a) At any point after reviewing the information submitted in compliance with § 280.61 through § 280.63, the implementing agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the implementing agency. Alternatively, owners and operators may, after fulfilling the requirements of § 280.61 through § 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet this standard.

(b) The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the implementing agency should consider the following factors as appropriate:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding area;

(3) The proximity, quality, and current and future uses of nearby surface water and ground water;

(4) The potential effects of residual contamination on nearby surface water and ground water;

(5) An exposure assessment; and

(6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the implementing agency, owners and operators must implement the plan, including modifications to the plan made by the implementing agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the implementing agency.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

(1) Notify the implementing agency of their intention to begin cleanup;

(2) Comply with any conditions imposed by the implementing agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the implementing agency for approval.

§ 280.67 Public participation.

(a) For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The implementing agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the implementing agency may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The implementing agency must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the implementing agency.

Subpart G—Out-of-Service UST Systems and Closure

§ 280.70 Temporary closure.

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with § 280.31, and any release detection in accordance with Subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, *except that* the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§ 280.71–280.74, *unless* the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with § 280.72 before such an extension can be applied for.

§ 280.71 Permanent closure and changes-in-service.

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service, *unless* such action is in response to corrective action. The required assessment of the excavation zone under § 280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with § 280.72.

Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

§ 280.72 Assessing the site at closure or change-in-service.

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in § 280.43 (e) and (f) is operating in accordance with the requirements in § 280.43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subpart F.

§ 280.73 Applicability to previously closed UST systems.

When directed by the implementing agency, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this Subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

§ 280.74 Closure records.

Owners and operators must maintain records in accordance with § 280.34 that are capable of demonstrating compliance with closure requirements under this Subpart. The results of the excavation zone assessment required in § 280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners and operators who took the UST system out of service;

(b) By the current owners and operators of the UST system site; or

(c) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

BILLING CODE 6560-50-M

Appendix I—Notification for Underground Storage Tanks (Form)

Notification for Underground Storage Tanks

FORM APPROVED
OMB NO. 2050-0068
APPROVAL EXPIRES 9-30-91

EPA estimates public reporting burden for this form to average 30 minutes per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding this burden estimate to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

STATE USE ONLY

I.D. Number

Date Received

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means:

(a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: **1.** gasoline, used oil, or diesel fuel, and **2.** industrial solvents, pesticides, herbicides or fumigants.

What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,
2. tanks used for storing heating oil for consumptive use on the premises where stored,
3. septic tanks,
4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an intrastate pipeline facility regulated under State laws,
5. surface impoundments, pits, ponds, or lagoons,
6. storm water or waste water collection systems,
7. flow-through process tanks,
8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations,
9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Where To Notify? Completed notification forms should be sent to the address given at the top of this page.

When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. **2.** Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or for which false information is submitted.

INSTRUCTIONS

Please type or print in ink all items except "signature" in Section V. This form must be completed for each location containing underground storage tanks. If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.

Indicate number of continuation sheets attached ☐

I. OWNERSHIP OF TANK(S)

Owner Name (Corporation, Individual, Public Agency or Other Entity)

Street Address

County

City | State | ZIP Code

Area Code | Phone Number

Type of Owner *(Mark all that apply ☒)*

☐ Current ☐ State or Local Gov't ☐ Private or Corporate
☐ Former ☐ Federal Gov't (GSA facility I.D. no. _____) ☐ Ownership uncertain

II. LOCATION OF TANK(S)

(If same as Section 1, mark box here ☐)

Facility Name or Company Site Identifier, as applicable

Street Address or State Road, as applicable

County

City (nearest) | State | ZIP Code

Indicate number of tanks at this location ☐

Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands ☐

III. CONTACT PERSON AT TANK LOCATION

Name (If same as Section I, mark box here ☐) | Job Title | Area Code | Phone Number

IV. TYPE OF NOTIFICATION

☐ Mark box here only if this is an amended or subsequent notification for this location.

V. CERTIFICATION (Read and sign after completing Section VI.)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner or owner's authorized representative	Signature	Date Signed

CONTINUE ON REVERSE SIDE

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. ____ of ____ Pages

VI. DESCRIPTION OF UNDERGROUND STORAGE TANKS *(Complete for each tank at this location.)*

Tank Identification No. (e.g., ABC-123), or Arbitrarily Assigned Sequential Number (e.g., 1,2,3...)	Tank No.	Tank No.	Tank No.	Tank No.	Tank No.
1. Status of Tank *(Mark all that apply ☒)* Currently in Use	☐	☐	☐	☐	☐
Temporarily Out of Use	☐	☐	☐	☐	☐
Permanently Out of Use	☐	☐	☐	☐	☐
Brought into Use after 5/8/86	☐	☐	☐	☐	☐
2. Estimated Age (Years)					
3. Estimated Total Capacity (Gallons)					
4. Material of Construction *(Mark one ☒)* Steel	☐	☐	☐	☐	☐
Concrete	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
5. Internal Protection *(Mark all that apply ☒)* Cathodic Protection	☐	☐	☐	☐	☐
Interior Lining (e.g., epoxy resins)	☐	☐	☐	☐	☐
None	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
6. External Protection *(Mark all that apply ☒)* Cathodic Protection	☐	☐	☐	☐	☐
Painted (e.g., asphaltic)	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic Coated	☐	☐	☐	☐	☐
None	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
7. Piping *(Mark all that apply ☒)* Bare Steel	☐	☐	☐	☐	☐
Galvanized Steel	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic	☐	☐	☐	☐	☐
Cathodically Protected	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
8. Substance Currently or Last Stored in Greatest Quantity by Volume *(Mark all that apply ☒)* **a. Empty**	☐	☐	☐	☐	☐
b. Petroleum					
Diesel	☐	☐	☐	☐	☐
Kerosene	☐	☐	☐	☐	☐
Gasoline (including alcohol blends)	☐	☐	☐	☐	☐
Used Oil	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
c. Hazardous Substance	☐	☐	☐	☐	☐
Please Indicate Name of Principal CERCLA Substance	_____	_____	_____	_____	_____
OR Chemical Abstract Service (CAS) No	_____	_____	_____	_____	_____
Mark box ☒ if tank stores a mixture of substances	☐	☐	☐	☐	☐
d. Unknown	☐	☐	☐	☐	☐
9. Additional Information (for tanks permanently taken out of service)					
a. Estimated date last used (mo/yr)	/	/	/	/	/
b. Estimated quantity of substance remaining (gal.)	_____	_____	_____	_____	_____
c. Mark box ☒ if tank was filled with inert material (e.g., sand, concrete)	☐	☐	☐	☐	☐

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. _____ of _____ Pages

VII. CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW TANKS AT THIS LOCATION)

10. Installation (mark all that apply):

- ☐ The installer has been certified by the tank and piping manufacturers.
- ☐ The installer has been certified or licensed by the implementing agency.
- ☐ The installation has been inspected and certified by a registered professional engineer.
- ☐ The installation has been inspected and approved by the implementing agency.
- ☐ All work listed on the manufacturer's installation checklists has been completed.
- ☐ Another method was used as allowed by the implementing agency. Please specify:

_____

11. Release Detection (mark all that apply):

- ☐ Manual tank gauging.
- ☐ Tank tightness testing with inventory controls.
- ☐ Automatic tank gauging.
- ☐ Vapor monitoring.
- ☐ Ground-water monitoring.
- ☐ Interstitial monitoring within a secondary barrier
- ☐ Interstitial monitoring within secondary containment
- ☐ Automatic line leak detectors.
- ☐ Line tightness testing.
- ☐ Another method allowed by the implementing agency. Please specify:

_____

12. Corrosion Protection (if applicable)

- ☐ As specified for coated steel tanks with cathodic protection
- ☐ As specified for coated steel piping with cathodic protection
- ☐ Another method allowed by the implementing agency. Please specify

_____

13. I have financial responsibility in accordance with Subpart I. Please specify

Method _____

Insurer _____

Policy Number _____

14. OATH: I certify that the information concerning installation provided in Item 10 is true to the best of my belief and knowledge.

Installer _____ _____

Name Date

_____

Position

_____

Company

BILLING CODE 6560-50-C

Appendix II—List of Agencies Designated To Receive Notifications

Alabama (EPA Form), Alabama Department of Environmental Management, Ground Water Section/Water Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36130, 205/271-7823

Alaska (EPA Form), Department of Environmental Conservation, Box 0, Juneau, Alaska 99811-1800, 970/465-2653

American Samoa (EPA Form), Executive Secretary, Environmental Quality Commission, Office of the Governor, American Samoan Government, Pago Pago, American Samoa 96799; Attention: UST Notification

Arizona (EPA Form), Attention: UST Coordinator, Arizona Department of Environmental Quality, Environmental Health Services, 2005 N. Central, Phoenix, Arizona 85004

Arkansas (EPA Form), Arkansas Department of Pollution Control and Ecology, P.O. Box 9583, Little Rock, Arkansas 72219, 501/562-7444

California (State Form), Executive Director, State Water Resources Control Board, P.O. Box 100, Sacramento, California 95801, 916/445-1533

Colorado (EPA Form), Section Chief, Colorado Department of Health, Waste Management Division, Underground Tank Program, 4210 East 11th Avenue, Denver, Colorado 80220, 303/320-8333

Connecticut (State Form), Hazardous Materials Management Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106

Delaware (State Form), Division of Air and Waste Management, Department of Natural Resources and Environmental Control, P.O. Box 1401, 89 Kings Highway, Dover, Delaware 19903, 302/726-5409

District of Columbia (EPA Form), Attention: UST Notification Form, Department of Consumer and Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, Room 114, 5010 Overlook Avenue SW., Washington, DC 20032

Florida (State Form), Florida Department of Environmental Regulation, Solid Waste Section, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399, 904/487-4398

Georgia (EPA Form), Georgia Department of Natural Resources, Environmental Protection Division, Underground Storage Tank Program, 3420 Norman Berry Drive, 7th Floor, Hapeville, Georgia 30354, 404/656-7404

Guam (State Form), Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, Overseas Operator (Commercial call 646-8863)

Hawaii (EPA Form), Administrator, Hazardous Waste Program, 645 Halekauwila Street, Honolulu, Hawaii 96813, 808/548-2270

Idaho (EPA Form), Underground Storage Tank Coordinator, Water Quality Bureau, Division of Environmental Quality, Idaho Department of Health and Welfare, 450 W. State Street, Boise, Idaho 83720, 208/334-4251

Illinois (EPA Form), Underground Storage Tank Coordinator, Division of Fire Prevention, Office of State Fire Marshal, 3150 Executive Park Drive, Springfield, Illinois 62703-4599

Indiana (EPA Form), Underground Storage Tank Program, Office of Environmental Response, Indiana Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46225

Iowa (State Form), UST Coordinator, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50219, 512/281-8135

Kansas (EPA Form), Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620, 913/296-1594

Kentucky (State Form), Department of Environmental Protection, Hazardous Waste Branch, Fort Boone Plaza, Building #2, 18 Reilly Road, Frankfort, Kentucky 40601, 501/564-6716

Louisiana (State Form), Secretary, Louisiana Department of Environmental Quality, P.O. Box 44066, Baton Rouge, Louisiana 70804, 501/342-1265

Maine (State Form), Attention: Underground Tanks Program, Bureau of Oil and Hazardous Material Control, Department of Environmental Protection, State House—Station 17, Augusta, Maine 04333

Maryland (EPA Form), Science and Health Advisory Group, Office of Environmental Programs, 201 West Preston Street, Baltimore, Maryland 21201

Massachusetts (EPA Form), UST Registry, Department of Public Safety, 1010 Commonwealth Avenue, Boston, Massachusetts 02215, 617/566-4500

Michigan (EPA Form), Michigan Department of State Police, Fire Marshal Division, General Office Building, 7150 Harris Drive, Lansing, Michigan 48913

Minnesota (State Form), Underground Storage Tank Program, Division of Solid and Hazardous Wastes, Minnesota Pollution Control Agency, 520 West Lafayette Road, St. Paul, Minnesota 55155

Mississippi (State Form), Department of Natural Resources, Bureau of Pollution Control, Underground Storage Tank Section, P.O. Box 10385, Jackson, Mississippi 39209, 601/961-5171

Missouri (EPA Form), UST Coordinator, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102, 314/751-7428

Montana (EPA Form), Solid and Hazardous Waste Bureau, Department of Health and Environmental Science, Cogswell Bldg., Room B-201, Helena, Montana 59620

Nebraska (EPA Form), Nebraska State Fire Marshal, P.O. Box 94677, Lincoln, Nebraska 68509-4677, 402/471-9465

Nevada (EPA Form), Attention: UST Coordinator, Division of Environmental Protection, Department of Conservation and Natural Resources, Capitol Complex 201 S. Fall Street, Carson City, Nevada 89710, 800/992-0900, Ext. 4670, 702/885-4670

New Hampshire (EPA Form), NH Dept. of Environmental Services, Water Supply and Pollution Control Division, Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301, Attention: UST Registration

New Jersey (State Form), Underground Storage Tank Coordinator, Department of Environmental Protection, Division of Water Resources (CN-029), Trenton, New Jersey 08625, 609/292-0424

New Mexico (EPA Form), New Mexico Environmental Improvement Division, Groundwater/Hazardous Waste Bureau, P.O. Box 968, Santa Fe, New Mexico 37504, 505/827-2933

New York (EPA Form), Bulk Storage Section, Division of Water, Department of Environmental Conservation, 50 Wolf Road, Room 326, Albany, New York 12233-0001, 518/457-4351

North Carolina (EPA Form), Division of Environmental Management, Ground-Water Operations Branch, Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, 919/733-3221

North Dakota (State Form), Division of Hazardous Management and Special Studies, North Dakota Department of Health, Box 5520, Bismarck, North Dakota 58502-5520

Northern Mariana Islands (EPA Form), Chief, Division of Environmental Quality, P.O. Box 1304, Commonwealth of Northern Mariana Islands, Saipan, CM 96950, Cable Address: Gov. NMI Saipan, Overseas Operator: 6984

Ohio (State Form), State Fire Marshal's Office, Department of Commerce, 8895 E. Main Street, Reynoldsburg, Ohio 43068, State Hotline: 800/282-1927

Oklahoma (EPA Form), Underground Storage Tank Program, Oklahoma Corporation Comm., Jim Thorpe Building, Oklahoma City, Oklahoma 73105

Oregon (State Form), Underground Storage Tank Program, Hazardous and Solid Waste Division, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 98204, 503/229-5788

Pennsylvania (EPA Form), PA Department of Environmental Resources, Bureau of Water Quality Management, Ground Water Unit, 9th Floor Fulton Building, P.O. Box 2063, Harrisburg, Pennsylvania 17120

Puerto Rico (EPA Form), Director, Water Quality Control Area, Environmental Quality Board, Commonwealth of Puerto Rico, Santurce, Puerto Rico, 809/725-0717

Rhode Island (EPA Form), UST Registration, Department of Environmental Management, 83 Park Street, Providence, Rhode Island 02903, 401/277-2234

South Carolina (State Form), Ground-Water Protection Division, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, 803/758-5213

South Dakota (EPA Form), Office of Water Quality, Department of Water and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501,

Tennessee (EPA Form), Tennessee Department of Health and Environment, Division of Superfund Underground Storage Tank Section, 150 Ninth Avenue, North, Nashville, Tennessee 37219-5404, 615/741-0690

Texas (EPA Form), Underground Storage Tank Program, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711
Utah (EPA Form), Division of Envirormental Health, P.O. Box 45500, Salt Lake City, Utah 84145-0500
Vermont (State Form), Underground Storage Tank Program, Vermont AEC/Waste Management Division, State Office Building, Montpelier, Vermont 05602, 802/828-3395
Virginia (EPA Form), Virginia Water Control Board, P.O. Box 11143, Richmond, Virginia 23230-1143, 804/257-6685
Virgin Islands (EPA Form), 205(J) Coordinator, Division of Natural Resources Management, 14 F Building 111, Watergut Homes, Christianstead, St. Croix, Virgin Islands 00820
Washington (State Form), Underground Storage Tank Notification, Solid and Hazardous Waste Program, Department of Ecology, M/S PV-11, Olympia, Washington 98504-8711, 206/459-6316
West Virginia (EPA Form), Attention: UST Notification, Solid and Hazardous Waste, Ground Water Branch, West Virginia Department of Natural Resources, 1201 Greenbriar Street, Charleston, West Virginia 25311
Wisconsin (State Form), Bureau of Petroleum Inspection, P.O. Box 7969, Madison, Wisconsin 53707, 608/266-7605
Wyoming (EPA Form), Water Quality Division, Department of Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002, 307/777-7781.

Appendix III—Statement for Shipping Tickets and Invoices

Note.—A Federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated State or local agencies by May 8, 1986, of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986, must be made within 30 days. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280) to determine if you are affected by this law.

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BILLING CODE 6560-50-M

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40 CFR Part 281

[FRL-3385-4]

Underground Storage Tanks; State Program Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today finalizes regulations for approval of states to run underground storage tank programs in lieu of the federal program. These regulations were first proposed on April 17, 1987 (52 FR 12853) and were further developed in a subsequent Supplemental Notice published on December 23, 1987 (52 FR 48638).

Subtitle I of the Resource Conservation and Recovery Act (RCRA) establishes a federal program for the regulation of underground storage tanks (USTs) Subtitle I of RCRA also allows EPA to approve state programs to operate in place of the federal UST requirements if those state programs have standards that are no less stringent than the federal requirements and provide adequate enforcement of compliance with those standards. States with approved UST programs will have primary enforcement responsibility with respect to UST program requirements in their states. Today's rule establishes final requirements for approval of state UST programs and for streamlined procedures to be used in submitting and evaluating state applications.

DATES: These regulations will become effective on December 22, 1988.

ADDRESSES: The public docket for this rulemaking is available for public inspection from 9:00 a.m to 4:00 p.m., Monday through Friday, excluding holidays at: Office of Underground Storage Tanks (WH-562A), Docket No. UST 4, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Call (202) 475-9720 to make an appointment with docket clerk.

FOR FURTHER INFORMATION CONTACT: RCRA/SUPERFUND Hotline, (800) 424-9346; or in Washington, DC, (202) 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are promulgated under sections 9004, 9005, 9006 and 2002 of the Solid Waste Disposal Act, as amended.

II. Background

A. Subtitle I of RCRA (section 9004)

The Hazardous and Solid Waste Amendments of 1984 added Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I establishes a federal program for the regulation of underground storage tanks and has the following components.

Section 9002 requires each owner of an underground storage tank (UST) in operation after 1973 to notify the designated state agency of the existence of the tank and the tank age, size, type, location, and use. This notification was due on May 8, 1986, or within 30 days after an owner brings a new UST into use.

Section 9003(a) requires EPA to promulgate standards and requirements for new and existing USTs covering detection, prevention, and correction of releases. These regulations are set forth in the final UST technical standards published elsewhere in today's **Federal Register.**

Section 9003(g) establishes a prohibition on the installation of certain USTs from May 8, 1985 until the effective date of EPA's new tank performance standards established under section 9003(e). Section 9003(h), added to Subtitle I under section 205 of the Superfund Amendments and Reauthorization Act of 1986, establishes a program for cleanup of petroleum from leaking USTs.

Section 9004 provides a procedure by which states may administer and enforce state UST programs in lieu of the federal program established under section 9003. Under section 9004, states may submit their programs to EPA and will be approved by EPA if the state program meets the requirements for notification found under section 9002, provides for adequate enforcement of compliance with all program requirements, and includes requirements that are no less stringent than the corresponding federal UST technical standards for leak detection and prevention, recordkeeping for leak detection, reporting of releases and

corrective action, corrective action, closure, financial responsibility, and new tank standards. Section 9004 specifies that a state program submitted to EPA for approval may cover petroleum substances, hazardous substances (not including hazardous wastes), or both.

Under Subtitle I, a state with an approved UST program has primary enforcement responsibility for the requirements of its program. EPA retains authority to take enforcement action in approved states as necessary and will notify the designated lead state agency of any such intended action in accordance with procedures contained in a memorandum of agreement executed with EPA and section 9006(a)(2) of RCRA. In this rulemaking, EPA establishes requirements that a state UST program must meet in order for EPA to approve the program under section 9004. These regulations are codified in Part 281 of the Code of Federal Regulations.

In section 9004, Congress clearly provided EPA the authority to authorize state UST programs to operate in lieu of the federal program. Congressional intent that Subtitle I be implemented at the state level is supported by its legislative history. In introducing the Subtitle I legislation in 1984, its sponsor stated: "The purpose of this amendment is to establish a constructive federal role to aid the states in establishing programs to safeguard their water supplies. Passage of this program will help to ensure consistency between state programs and tank standards and measured progress toward our goal of protecting ground water from this ubiquitous source of contamination." 130 Cong. Rec. 9164 (daily ed. July 25, 1984) (statement of Senator Durenberger). Accordingly, EPA believes that Congress intended EPA to play an important leadership role by establishing UST criteria, and that, consistent with statutory requirements, the state and local governments should carry out the program wherever possible. This Congressional intent has been influential in shaping today's final rule for state UST program approval.

B. Summary of the April 17 Proposal

The April 17, 1987 proposal (52 FR 12853) solicited public comments on several topics concerning requirements and procedures for approving state UST programs to operate in place of federal UST regulations. In the proposal, EPA discussed the two criteria for approval that are required under section 9004 of RCRA. EPA described requirements for ensuring "adequate enforcement of compliance", including the specific legal authorities that must be available to the state enforcement agency. The proposal also presented three possible approaches that could be used to determine whether state technical and program requirements are "no less stringent" than the federal standards.

In addition, the proposal contained a number of procedural and administrative requirements. The proposal outlined the components of a standard application for approval. These components include: A program description; an Attorney General's statement; an implementation plan that includes a Memorandum of Agreement; and copies of all applicable state laws and regulations. Furthermore, the proposal suggested procedures that EPA will follow when evaluating state applications for approval or when withdrawing approval of state programs. The procedures for reviewing a state application for approval must be completed within 180 days, according to section 9004, and the proposal provided details on how the review should proceed: (1) Confirm that an application is complete; (2) review the application; (3) publish a tentative decision in the **Federal Register**; (4) consider public comments and hold public hearings if necessary; and (5) publish a final decision in the **Federal Register**.

Finally, the proposal reflected the provision in section 9004 that, in cases when a state program has requirements that are less stringent in certain areas than corresponding federal requirements, EPA could approve these programs on an interim basis. The proposal clarified the requirements and procedures concerning the content and review of a state application for such interim approvals.

C. Summary of Supplemental Notice

EPA published a Supplemental Notice on December 23, 1987 (52 FR 48638) that requested public comments on some aspects of state program approval that EPA believed needed further clarification. The two parts of this supplemental notice that dealt specifically with state program approval are summarized below.

One part of the supplemental notice addressed the "no less stringent" issue and provided further details for public review and comment on how the Agency intended to implement its proposed approach to state program approval: A comparison of each of the technical program elements of the state program to the federal objectives for the corresponding program elements. For example, a state's regulations for release detection as a whole would be compared to the federal objectives for release detection. As long as the state program's overall requirements for release detection were "no less stringent" than the federal objectives for release detection, then EPA could approve that state program element. An essential part of this process was the identification in the supplemental notice of federal objectives for each of the eight program elements. These federal objectives were proposed to clarify what constitutes acceptable "no less stringent" requirements in state programs.

The other part of the supplemental notice concerning the issue of state program approval requested comment on providing additional flexibility to implementing agencies by changing the wording of several sections of the technical standards proposed on April 17. These proposed wording changes were intended to allow state implementing agencies to substitute their own procedural and administrative requirements for those detailed in the federal technical standards for USTs.

D. Summary of Public Comments

EPA received many comments regarding both the April 17 proposed rule for state program approval and the December 23 supplemental notice. Four major issues were identified by public comment: Implementation by states and localities; adequate enforcement; no-less-stringent criteria; and federal funding. These issues are briefly highlighted below and discussed in more detail in section IV of today's preamble.

• *Implementation by states and localities.* Many commenters expressed concern about the potential for a lack of national consistency, which they believed would be an inherent result of the proposed rule for state program approval. They recommended that EPA not approve state regulations that would be different and perhaps more stringent than the federal rule. In addition, several other commenters were concerned that implementation of the UST program by local governments, specifically those with different technical regulations, would cause confusion for the regulated community. EPA received other comments concerning implementation by local governments. Generally, these commenters requested that EPA's final approval rule require that states negotiate with localities and include them in plans for UST program implementation.

• *Adequate enforcement criteria.* In defining what constitutes "adequate enforcement", commenters particularly wanted clarification of EPA's policy

regarding enforcement. Some commenters requested that broad objectives be developed as a means of approval in the federal rule, and some suggested such objectives should be part of the regulations. Others thought that guidance alone would be appropriate. Commenters also objected to the requirements for inspections and surveys, and wanted clarification of EPA's expectations. Regarding legal authorities required for enforcement, many commenters felt that states must be allowed to evaluate their own penalties and devise their own approaches on a case-by-case basis, and that EPA could require, at a minimum, general categories of authorities without dictating their terms. Finally, many commenters expressed concern about EPA's public participation requirements for state program approvals. Some commenters suggested that states should be allowed to assess the degree of participation necessary for each individual case, while others questioned the statutory authority for requiring specific levels of participation as criteria for approval.

• *No less stringent criteria.* In the April 17 preamble, EPA had considered three options for determining whether state programs meet the no-less-stringent criteria. Some commenters supported EPA's proposed approach (option 3), which compares the state and federal programs element-by-element, as the most flexible and implementable. An "element", was one of the paragraphs (1) through (8) in section 9004(a). Each paragraph defined an element, for example, release detection. Others claimed that only the holistic approach of option 1 that evaluates the overall results of a program gave states sufficient flexibility. These commenters also stressed that effectiveness in meeting the environmental goals should be considered first in approving states rather than the ability to meet specific individual legal requirements. A few commenters supported the line-by-line approach of option 2, believing that the flexibility of the other options could lead to the approval of inadequate programs.

Many comments were received on EPA's proposed approach to implementing state program approval. Most commenters agreed with the use of objectives for determining the stringency of state programs and liked the objectives that EPA outlined in the December 23 supplemental notice. In general, they believed the objectives would facilitate state program approval by allowing state programs the necessary room to develop regulations appropriate to the individual state's geographical characteristics and regulated communities. For the same reason, these commenters also liked EPA's proposal to provide states additional decisionmaking authority within the technical and financial responsibility regulations.

Some commenters, however, did express reservations about EPA's proposed approach to provide states with flexibility. Most of these commenters felt that while flexibility was an admirable goal, consistency was also important. These commenters argued that the proposed regulations, particularly the additional state decisionmaking authority in the technical standards, allowed too much flexibility to the states without providing assurances that such flexibility was necessary to protect human health and the environment. A few commenters disagreed completely with the objectives approach and stated that objectives were not a substitute for detailed technical requirements.

• *Federal funding.* Some commenters raised the issue of the high cost of developing state UST programs compared to the small amount of federal funding available to assist state program development. They protested that EPA wanted states to run a program without sharing sufficient funds to make it possible and they urged the Federal Government to provide more grant money.

E. Important Influences on Today's Rule

In developing today's final rule for state program approval, the Agency has taken into consideration several characteristics of the UST system universe that are associated with any attempt to regulate UST system management. The following sections identify and discuss the influence of specific features of the UST system universe on the approval of state programs.

1. Leaking USTs Present a Unique Regulatory Challenge

EPA's approach to the regulation of UST systems on a national scale must be different from that undertaken by most of its other regulatory programs because the UST problem is significantly different. This difference is mainly due to two factors: The large number of facilities to be regulated and the nature of the regulated community.

The most significant problem is the sheer size of the regulated community. Nationally, over 700,000 UST facilities account for about 2 million UST systems. Estimates indicate that roughly 75 percent of existing UST systems are unprotected from corrosion (and thus present a serious environmental risk). A relatively high proportion of UST facilities (10 to 30 percent) already have had a leak, and soon others will leak unless measures are taken to upgrade them

Another problem arises from the nature of the regulated community. A large proportion of USTs are owned by small businesses with $500,000 or less in total assets. For example, 72 percent of all retail motor fuel outlets are owned by small businesses. These small entrepreneurs, who are used to operating their businesses under minimal regulation, will be significantly affected by environmental regulations for UST systems. In the promulgation of the technical standards elsewhere in today's **Federal Register**, EPA has attempted to minimize the regulatory impact on small businesses without compromising the statutory requirements to protect human health and the environment.

In addition, the problem of releases from USTs is multi-faceted. There are three major sources of release incidents: Product delivery piping failures; corrosion of unprotected tanks; and spills and overfills. Environmental regulations for UST systems must be aimed at preventing these different types of petroleum and hazardous substance releases as well as increasing the ability to quickly detect and minimize the contamination of soil and ground water by such releases, and ensuring adequate cleanup of contamination. To do this, UST regulatory requirements must address every phase of the life cycle of a storage tank system: Selection of the tank system; installation; operation and maintenance; financial responsibility; closure; and cleanup of the site where releases have occurred.

In summary, the size of this regulated community, the predominance of small business ownership of the UST systems, and the need for comprehensive management of an UST so that releases are minimized during its operating life present a unique regulatory challenge. This challenge calls for the consideration of new approaches from federal, state, and local regulators. Some existing state and local UST programs already provide effective UST management through a variety of different approaches. In developing a strategy for approval of state UST programs, EPA has been guided by a realization that there is often more than one way to ensure sound UST management using different regulatory approaches.

2. Challenges for Compliance and Enforcement

The experience of state and local agencies that are currently implementing UST programs demonstrates two realities. First, large businesses are generally willing and have already begun to comply with UST requirements. Second, small business owners, with limited resources and knowledge of federal regulations, often need more direct attention and technical assistance to ensure compliance. Given the unique nature of this regulated community, EPA believes the UST regulatory program will be most effectively carried out by those who are closest to the problem, who can respond quickly, and who can create a visible presence, that is, the state and local governments.

In addition, successful implementation of this program depends a great deal on the regulated community's voluntary compliance with the requirements because, ultimately, they are responsible for conducting the work under this new program. Also, the large number of facilities and the numerous types of activities that take place on-site preclude the implementing agency from being present to ensure that tank management activities are performed properly. Compliance is best prompted by owners and operators who are clearly informed of the regulations and in close contact with the regulators. Interaction between regulators and UST system owners during the development of a regulatory program and during program implementation can be used to gain acceptance within the regulated community, and may be most effective at the state and local level. Another incentive for voluntary compliance can be the type of regulations developed at the state level. For example, the federal technical requirements, where possible, rely on familiar industry codes and build on recognized trends developing in the field of UST management.

Because much of the environmental improvement from the UST program will come from the regulated community's voluntary compliance, the process of approving state programs should recognize that regulatory approaches developed in response to the specific needs of different local areas may be more appropriate and thus better understood by the regulated community.

3. State and Local UST Programs Are Already Underway

Many states and localities have already begun to address the ground-water contamination threat and cleanup problems posed by leaking USTs. At least 18 states have developed UST programs that, at a minimum, regulate the basic elements of proper UST system management. Although all of these programs address petroleum UST systems, only a few currently include hazardous substance USTs within their scope. Other states have enacted legislation and are developing a regulatory program. Because many of these states plan to use EPA's rules to guide their own regulatory decisions, EPA expects state progress in developing regulations to proceed rapidly with the appearance of today's final rule on the technical standards.

This high level of state activity has taken many routes. Some state programs have established stringent release detection for existing USTs (California and Florida), and others emphasize state-of-the-art prevention technologies for new USTs (New York, California, and New Hampshire). Some are phasing in the upgrading or replacement of existing substandard systems (Florida, Connecticut, and Delaware). Others have attempted to tailor their standard-setting based on proximity to sensitive ground-water locations (Maine and South Carolina). EPA has closely studied these state regulatory program approaches and found that diversity on important technical issues is often the rule rather than the exception. EPA believes that its approach toward the approval of state programs must accommodate these differences where such initiatives are no less stringent than the federal program.

Many county and municipal governments also are already implementing UST programs. Over 100 major cities in the U.S. have developed local UST ordinances and programs. Some programs are operated independently of the state; others are part of a wider state regulatory program. The implementation role of local agencies in the UST regulatory effort is being encouraged in many states in hopes of making use of available local manpower (such as fire marshals and building code officials) and thus improving overall enforcement and administrative capabilities. Three of the leading state UST programs—New York, Florida, and California—have begun to work out solid working relationships with local UST programs within the state, a policy that is believed to be critical to the success of the state program. In several of the eastern urban counties of New York, the state has delegated authority to the county governments, allowing the state agency to focus its efforts on implementing the UST program in the less urban counties where local UST programs are less developed. In Florida, Dade and Broward counties have been given authority to implement the UST program in their jurisdictions. Several other counties in the state are reported to be considering local UST programs. California has given responsibility for administering and enforcing the state UST program to over 100 local county and city agencies.

In order to protect vulnerable ground-water supplies or in response to a series of local incidents, some local governments have issued their own ordinances, regulations or by-laws, even in the absence of any state regulatory action. In some cases, these local controls predate the corresponding state regulations and may be more stringent than their state counterparts. Savannah, Georgia; New Orleans, Louisiana; and San Antonio and Austin, Texas are examples of localities that have created their own UST regulations. In Massachusetts, at least 78 communities have enacted some level of UST controls. EPA has noted over the past three years that these independent actions at the local level often are the precursors to the development of an UST program for the entire state (as occurred in California, Florida, and New York).

EPA believes the high level of local UST program activity nationwide will increase with today's promulgation of the federal technical standards and as numerous state programs begin to develop or revise their own regulatory standards in response. Also, as other states begin to wrestle with the reality of how to implement their UST programs and as the dangers posed by existing UST systems become more widely known, local UST programs and involvement should increase significantly over current levels.

4. EPA's National UST Program Strategy and State Program Approval

The factors discussed above led EPA to conclude that the approach taken in today's final rule is the most effective way to implement this approval program. First, the state program approval language of section 9004 of RCRA, as well as its legislative history indicates that Congress intended state and local UST programs to have a pivotal role in the national UST program. At the same time, however, it is clear that Congress intended EPA to lead in establishing and supporting standards necessary to protect human health and the environment nationwide. The "no less stringent" and "adequate enforcement" criteria must be met to ensure protection of the nation's ground

water. Second, the nature of the problem, the regulated community, and the work involved in implementing the regulatory program dictate that the actual day-to-day work take place at the state and local level. EPA has concluded that much of the environmental improvement to be gained under this program will be made through supporting and building the implementation efforts of state and local UST programs. Third, substantial activity is already occurring in states and localities, and EPA's approval process should work to build, rather than disrupt, this established network. The Agency's role in approval, therefore, must focus on encouraging the state and local governments to carry out their own unique programs. The approval of state programs, however, is just one step in a long-term strategy to develop a national UST program. EPA must look ahead to the actual implementation of the program after approval has been given.

In facing the implementation challenge that today confronts the national UST program, EPA has concluded that the approval approach established today is necessary to address the realities of the UST regulatory program. First, as more state and local governments become involved, the work of the UST program must be routinely repeated in thousands of jurisdictions nationwide. Several operating state and local UST programs already report that they are quite busy "running the store," and express surprise at the size of the regulated community and how fairly simple tasks must be routinely repeated numerous times for the implementing agency to be successful in bringing UST systems into, and maintaining, compliance.

Second, visits to several state and local UST program offices have shown that they have developed their own unique requirements and operate differently even though they are geared towards solving similar technical problems. They need the flexibility to continue to improve upon their own approaches. They have common implementation problems, however, and have expressed the need for better technical aids, such as data management tools.

Third, many state and local governments that already implement UST programs report a significant effort to provide visible on-site monitoring, which means a constant "regulatory presence" is needed to effectively ensure the regulated community's compliance with UST requirements. A significant environmental gain is achieved through the implementation at the local level by these individual UST programs. Thus, improving their performance will produce maximum environmental benefits and ensure the success of the UST program nationwide. Accordingly, EPA believes its implementation efforts should be focused on serving the network of state and local programs through listening to their concerns and helping them solve implementation problems with tools that improve their programs' effectiveness.

Approval of state programs thus becomes a basic competence test to ensure that the work associated with the implementation of regulatory controls by the state program will, in fact, cause the needed level of improvement in UST system management by the regulated community. A requisite level of enforcement authority and technical standards must be ensured, and therefore must be the focus for approval by EPA. Other program performance and implementation capability concerns are less of a focus for state program approval and more of a question of improving implementation of the national UST program over time after states have received program approval. EPA recognizes that the nature of the problem and the work involved in effective direct implementation of the regulation by EPA will overwhelm the Agency's capabilities and resources. Accordingly, the strategy for state program approval must focus on ensuring that a bottom-line level of protection is maintained, but at the same time must avoid setting requirements that would prevent or discourage the development of sound state and local UST programs that should be approved to operate "in lieu of" the federal program. The aim of state program approval is to develop the state-federal partnership that will allow both parties to focus on preventing leaking USTs from causing further environmental contamination.

III. Today's Rule

A. Summary of Today's Rule

EPA is promulgating today a final regulation for approval of state underground storage tank programs under section 9004 of RCRA, to be codified at 40 CFR Part 281. This regulation establishes criteria for state programs in the areas of "no less stringent" and "adequate enforcement" of compliance. The major elements of today's rule are outlined below.

In defining "no less stringent," EPA is promulgating criteria in the form of objectives. These objectives are established for seven of the eight technical program elements: New UST systems design, construction, and installation; release detection; general operating requirements; upgrading of existing USTs; release reporting, investigation and confirmation; out-of-service USTs and closure; and release response and corrective action. The objective for the element of financial responsibility will be provided by EPA when the final technical requirements in this area are provided at a later date. These objectives represent the minimum standard that the state program must achieve in order to be considered "no less stringent" than the federal requirements. Through these objectives, EPA intends to provide the states with the flexibility to develop an administrative approach that best suits the needs of the state while ensuring that an adequate level of performance is achieved in protecting human health and the environment in all states

In determining "adequate enforcement", EPA has defined the minimum authorities and procedures a state must have. The state must have authority to inspect records, inspect sites, and require monitoring and testing by the owner. The state must also have procedures for inspecting sites and reviewing records. The state must have legal authority to obtain a temporary restraining order and a preliminary injunction, and to assess or sue to recover penalties. In addition, the state must allow opportunity for public participation in enforcement actions.

Finally, the components of a state application for program approval are described in the regulation. These components include: A Governor's transmittal letter; a description of the state program; a description of compliance monitoring and enforcement procedures; where interim approval is sought, a schedule for final approval; a Memorandum of Agreement, which defines the roles and responsibilities of EPA and the approved state; an Attorney General's statement, which certifies to the state's authorities for the eight technical program elements and for enforcement and compliance monitoring; and copies of the applicable state statutes and regulations. EPA believes that the above requirements ensure that approved state programs meet the requirements set out in RCRA section 9004.

B. Strategy for State Program Approval

In the April 17 preamble, EPA proposed three options for evaluating whether a state program is "no less stringent." As stated in the proposal, EPA's preferred approach was to compare the state and federal programs

element-by-element. (Section 9004(a) of RCRA establishes those elements that must be included in a state program in order to receive EPA approval; under today's rule an element is a discrete segment of a comprehensive UST management program that has an identifiable objective.) EPA believed this option gave the best combination of flexibility and ease of implementation. On December 23, 1987, EPA requested public comment on certain general objectives provided as the criteria for determining the stringency of each program element. Today, the Agency is promulgating these criteria substantially as presented in the December 23 notice (although the objective for financial responsibility will be promulgated at a later date with its associated technical rules), except that they do reflect the points of departure made to the proposed underlying technical standards (discussed elsewhere in today's **Federal Register**) and public comments on the supplemental notice.

As discussed in the December 23 notice, EPA does not believe that the specific federal requirements in the Part 280 regulations provide the only definitive and protective approach for UST regulation. In developing the federal technical standards, EPA recognized that other approaches would meet EPA's overall performance objectives. These federal technical standards are by necessity more detailed and specific than the objectives they are designed to meet because the federal regulations must be able to be implemented by the regulated community and must be enforceable in those states without approved state programs. As indicated in today's rule, EPA does not believe that the individual requirements set forth within the federal program elements should necessarily preclude states from developing other approaches that will achieve the overall objectives of performance identified for purposes of state program approval.

The objectives in Subpart C of today's final rule identify the performance standards for each element that the federal requirements are intended to meet and that a state program must meet in order to be as stringent as the federal program. They ensure that state programs meet the basic standards established by the federal program but, at the same time, do not dictate the methods the states can use in reaching these standards. EPA believes this approach to state program approval will provide the states with significant flexibility, permit alternative methods of implementation, and still ensure that state UST programs achieve the same result in protecting human health and the environment as the federal program.

Under section 9004, EPA also must ensure that state programs demonstrate "adequate enforcement" of compliance with program requirements. EPA proposed that states demonstrate compliance monitoring and enforcement authorities and basic compliance monitoring procedures. In addition, EPA solicited comment on whether it should require a demonstration of enforcement response procedures. As a result of public comments, the Agency is promulgating regulations for adequate enforcement that require state programs to demonstrate compliance monitoring and enforcement authorities *and* procedures for implementing those authorities (except in the area of public participation, where EPA will allow the state to choose between specific authorities or procedures). As explained above, EPA seeks to approve a variety of state programs and to encourage states to use innovative approaches in all program areas, including monitoring compliance and undertaking enforcement actions. In the near future, EPA will be issuing additional guidance on "adequate enforcement" that will provide examples of acceptable compliance monitoring and enforcement programs currently being used by several states.

Today EPA is also clarifying the issue of program scope. In evaluating the state's program scope, EPA considered requiring states to include all the jurisdictional definitions listed in the federal technical standards rule. EPA concluded, however, that this would be both burdensome and unnecessary. Instead, the state must describe its jurisdiction and regulated population in the program description to show that its program includes the UST population that is covered by the federal program. Broad state authorities are sufficient if, under state law, they cover the same or a greater universe than the federal program. States may, of course, choose to adopt any of the terms that are included in the list of definitions in the federal regulations at 40 CFR 280.12.

IV. Analysis of Today's Rule

The following sections of this preamble include discussions of the major issues and address the public comments received in response to the April 17 proposed rule and December 23 supplemental notice.

EPA has reorganized the proposed rule for two reasons. First, the Agency is incorporating as Subpart C of today's rule the criteria for "no less stringent" as proposed on December 23, 1987 (52 FR 48638), except for the criterion for financial responsibility which will be promulgated at a later date along with its supporting technical rules. Second, the Agency has clarified the requirements for adequate enforcement as a component of the state's application. Previously, the adequate enforcement demonstration was proposed to be part of the program description. Today, the Agency is promulgating the adequate enforcement requirements in a separate subpart of the rule. Further explanation of this change can be found later in this preamble (section IV.B.). For ease of reference, the following preamble discussion is organized to address each subpart of the rule separately.

A. Subpart A—Purpose, General Requirements, and Scope (§§ 281.10 through 281.12)

Section 9004 of RCRA sets forth a number of requirements for state UST program approval. Section 9004(a) establishes the elements that must be included in a state program in order to receive EPA approval. In order to correspond with the technical requirements promulgated elsewhere in today's **Federal Register** (or to be promulgated later, in the case of the financial responsibility standards), EPA refers to these program elements as new UST systems; upgrading of existing UST systems; general operating requirements; release detection; release reporting, investigation and confirmation; release response and corrective action; out-of-service UST systems and closure; and financial responsibility. Section 9004(b) requires that each of the state program elements be no less stringent than the corresponding federal program elements for final approval. (A discussion of the Agency's approach to determining "no less stringent" is provided in Subpart C of this section of the preamble.) Under section 9004(b) state programs may receive interim approval as long as certain (but not all) requirements are no less stringent than the corresponding federal standards. In the preamble to the April 17 proposal, EPA solicited comments on the requirement that a state seeking interim approval must have each program element present in some form before interim approval. No comments were received on this issue, however. The proposed regulatory language simply provided that a state must have requirements in all the program elements, including the less stringent ones, as a condition of receiving interim approval. The proposed rule did not specify the type of requirements the states must have for

these other less stringent elements. Therefore, the Agency is clarifying that a state must have at least general statutory authority for the less stringent elements.

EPA received many comments regarding the program elements necessary for interim approval. Many commenters expressed concern that some of the most difficult program elements to achieve were required to be "no less stringent" at the time of application in order for a state to qualify for interim approval. The commenters suggested that EPA change this in the final rule. The Agency agrees with these commenters that the program element requirements required to be no less stringent at the time of application, such as financial responsibility, may be the most difficult to develop. The Agency, however, has promulgated these no less stringent requirements substantially as proposed because they are set forth by statute and cannot be changed through rulemaking.

In the proposal, the elements of a state program that must be immediately no less stringent were listed as corrective action, financial responsibility, notification, and new tank performance standards. Those elements that could be less stringent were listed as leak detection and prevention, recordkeeping for leak detection, reporting of releases and corrective action, and closure. Since the April 17 proposal, the elements of a program have been reorganized to parallel the order in the technical standards, and the new tank performance standards have been divided into standards for upgrading existing UST systems and general operating requirements as well as standards for new tank design, construction, installation and notification.

In order to be no less stringent than the federal program, a state must have requirements for upgrading of existing UST systems and for general operating requirements. For purposes of interim approval of state programs, these elements are considered to be part of the new tank performance standards. Therefore, a state applying for interim approval must have requirements that meet the federal objectives for the following elements: New tank design, construction, installation, and notification; upgrading existing UST systems; general operating requirements; release response and corrective action; and financial responsibility.

If a state chooses to apply for interim approval, it is accepting the limitations associated with it. It must upgrade all less stringent authorities within the federal law's established timeframes. EPA acknowledges that this limitation will make interim approval less attractive to states, and will discourage states from applying for interim approval. Today's rule, however, provides procedures for both final and interim approval, including the automatic expiration of interim approval when a state with interim approval does not submit a program revision within the prescribed time periods.

Under sections 9004 (a) and (d), the state UST program must also provide for adequate enforcement of compliance. The Agency proposed, and today is finalizing, requirements mandating certain state legal authorities and procedures for compliance monitoring and enforcement. These regulatory requirements are found in §§ 281.40 through 281.43 and are discussed in greater detail later in this preamble.

The following section of the preamble explains the parts of the state's application that must be provided to demonstrate coverage of all of these requirements.

B. Subpart B—Components of a Program Application (§§ 281.20 through 281.25)

Today's regulation identifies the components that must be included in the state program application package submitted to EPA. Many commenters requested that the Agency keep the application process as flexible and streamlined as possible. The Agency attempted to do this, and has simplified the process even further by designing a standard state application form that will be provided in a State Program Approval Handbook to be issued before the effective date of this rule. The use of this application form is optional and the state may submit whatever application form that it prefers as long as it meets the regulatory requirements. As outlined in § 281.20 (a) through (g), the state's application must at least contain the following basic parts: (1) A transmittal letter from the Governor of the state; (2) a description of the current state program; (3) a description of compliance monitoring and enforcement procedures; (4) a schedule for interim approval, where applicable; (5) a Memorandum of Agreement; (6) a statement from the state Attorney General; and (7) copies of all applicable state laws and regulations. Although for purposes of clarity today's rulemaking separately addresses the Attorney General's statement and the demonstration of adequate enforcement, the state may join the two into one document in the application package.

The Agency had originally proposed that states submit an implementation plan as part of the application for program approval. The proposed implementation plan included: a long term implementation strategy; a schedule for interim approval; and a Memorandum of Agreement (MOA).

One commenter expressed concern that the implementation plan (proposed § 281.22) was redundant and therefore burdensome to require both a program description and an implementation plan. This commenter questioned the purpose of a long term implementation strategy, interpreting it to suggest that EPA would conduct detailed oversight of approved state programs. The commenter asked whether the Agency would disapprove a state that did not achieve the goals laid out in the long-term implementation strategy.

The Agency's intention is to conduct oversight in a manner that allows for changing circumstances. The original intent of the long-term implementation strategy was to provide a starting point that the Agency could use to determine the amount of assistance the state needed to improve its UST program. EPA expects that a significant amount of this improvement will occur after state program approval. As a result, the information provided by the plan can and should be satisfied apart from the approval process, and thus the proposed long-term implementation strategy is unnecessary. Because EPA believes that the implementation plan is no longer necessary for approval, and to be consistent with its efforts to streamline the application package, EPA has deleted the proposed requirement for an implementation plan. The schedule for interim approval and the MOA are now separate application components.

A brief description of each of the reorganized components in the final rule is provided below.

1. Transmittal Letter (§ 281.20(a))

A transmittal letter signed by the Governor of the state must accompany the original state application. This letter serves to transmit the state's formal request for UST program approval, and indicates that the Governor has approved the designated lead state agency for implementation of the UST program.

2. Program Description (§ 281.21)

The program description is intended to provide EPA and the public with basic information on the extent of the state's effort to manage UST systems. During the formal 180-day application review period, EPA must issue a public

notice of the tentative decision to approve or disapprove a state program application. As part of that notice, EPA must note the availability for inspection by the public of the state program application. The information in the program description is necessary to ensure that the public is informed of (1) the state's scope and jurisdiction, and (2) the state's plans for implementing an UST regulatory program in lieu of the federal program. Many commenters asked how EPA would use the resource information in the program description. In particular, they were concerned that specific staffing and funding figures would be set by EPA in determining state approval or disapproval. EPA notes that states have been receiving federal grant funds for program development since 1986. These grants, which require matching state funds, have enabled states to develop notification systems, obtain necessary legislation, write regulations and policies, and hire and train staff. In addition, most states now have LUST Trust Fund cooperative agreements that provide funds for corrective action, staff hiring and training, and enforcement and cleanup activities. Through the grants and cooperative agreements, and matching state funds, most states have demonstrated sufficient staffing and management capability for purposes of state program approval.

The program description must address several subjects. First, the scope of the state's UST program is described, including the extent of the state's jurisdiction and whether the state program is a "partial" or "complete" program. Knowledge of program scope is important for approval because the approved state program is formally designated to operate in lieu of the federal program. Thus, the state program must regulate at least the same categories of UST systems and substances as the federal program to avoid non-regulation by states of categories of UST systems that Congress intended to be regulated under the national UST program. The program description also indicates whether the state's authority extends to Indian lands. For those states that do not have authority over their Indian lands, EPA will implement an UST program on those lands.

Although the Agency received no comments on program scope, EPA is providing further clarification of its requirements in this area with regard to partial and complete programs. To demonstrate that the state program covers the same universe as the federal program, the state definitions will be compared to the following six basic terms, defined in Subtitle I, that EPA believes are essential in defining the scope of the federal UST universe. Those six terms, which are defined in Section 9001 of Subtitle I, are: operator, person, release, regulated substances, petroleum, underground storage tank. (Of course, the state may incorporate any of the other terms that are included in the list of definitions in the federal regulations at 40 CFR 280.12.) The Agency does not require the state to use the exact definitions of these terms promulgated in the federal regulations. Broadly written state authorities will be sufficient, although the Agency may ask for a clarification if it is not clear that a state definition includes the same jurisdiction as the federal program. For example, rather than defining "underground storage tank," a statute that could regulate any facility with potential for release into air, soil or ground water would be sufficient.

Section 281.12(a) allows the Administrator to approve either partial or complete state programs as specified in section 9004(a) The definition of a "partial" state program is one that regulates either petroleum tanks only or hazardous substance tanks only. To receive program approval, a partial state program must include within its jurisdiction all of the major categories of UST systems that are addressed within the scope of the federal program for either petroleum tanks or hazardous substance tanks. For instance, a state program only covering petroleum tanks will not be approved if it does not cover retail motor fuel UST systems. The state, however, does not have to have immediate jurisdiction over all categories of petroleum tanks. To be approved in such cases, the state must reach an agreement with EPA in the Memorandum of Agreement on how those tanks not in the state scope will be regulated, and the state also must provide a schedule showing its plan for expanding its jurisdiction so that these tanks will be regulated by the state.

A "complete" state program regulates both petroleum and hazardous substance tanks, and the state must have jurisdiction over at least the same categories of tanks as the federal program. As discussed above, the state may indicate in the MOA how any tank not in its jurisdiction will be covered as long as it provides a schedule for expanding its jurisdiction Those categories of USTs that EPA had proposed to defer but now regulates in the final technical standards must be included within the scope of the state program. For example, used oil USTs need to be regulated under state programs.

Today's final technical rules do not cover certain UST systems. Because the Agency currently has insufficient information to decide whether to regulate these deferred USTs, the question of what (if any) standards are appropriate will be considered in the future. Deferred UST systems, however, are subject to interim prohibition and the release response and corrective action requirements under the federal program. UST systems storing fuel for emergency generators are subject to all but the release detection requirements. Thus, EPA and the state must agree on how to oversee compliance of the regulatory requirements applicable to any deferred USTs in the MOA. States may want to consider including the list of deferred USTs within their statutory authority from the start to avoid the necessity for future changes to expand their jurisdiction when and if federal regulations for the deferred systems are eventually published.

EPA has exempted by regulation certain other categories of UST systems entirely, and states will not need to include these systems within their jurisdictions in order to have adequate program scope for approval. The categories of USTs that are deferred and exempted are described elsewhere in today's **Federal Register.**

Today's rulemaking does not hinder states from implementing a state program that is broader in scope than the federal program (§ 281.12(a)(3)). A state program, for example, may regulate all heating oil tanks, although tanks used for storing heating oil for consumptive use on the premises where stored are excluded from the federal UST program. In such cases, the additional scope of coverage is not reviewed by EPA as part of the state program approval process. In addition, if EPA were asked to provide enforcement assistance, EPA cannot enforce these additional state requirements. On the other hand, in approved states with requirements (such as release detection) that are more stringent than the corresponding federal requirements, the more stringent requirements are part of the approved program and are federally enforceable (§ 281.12(a)(3)).

Second, this program description will also describe the organizational structure of any state and local implementing agencies administering the UST program within a state. The program description must generally identify the major jurisdictional responsibilities, program operation roles, and lines of communication and

authority of these implementing agencies. Copies of any Memoranda of Understanding (MOUs) or written agreements for coordination of intra-state responsibilities should be provided.

In addition, the program description should identify the number of persons currently involved in UST program operations, their general functions, and the staff expected to be employed in the near future (if available). State applications should also explain any limitations on hiring or the utilization of existing staff. This information is requested so that the public will be informed of operating constraints when the approval application is made available to the public through the formal review process. This information would rarely be a determining factor in assessing the adequacy of the state's program for regulating the UST system universe. In their response to the proposal, many states commented on their current resource problems. The Agency will not dictate staffing levels for purposes of state program approval.

Third, the program description should explain any plans the state program has for meeting the estimated future costs of administering the program. There will be no minimum base number used by EPA in approving state programs. All states must have some source of funding independent of federal grant monies. The Subtitle I federal grants are provided by Congress as seed money for use by states to initiate program development, among other things. EPA received many comments about the high costs of implementing UST programs in the states. EPA will not expect states to have all necessary funds available at the time of application for approval. As with staffing, EPA will approve states that need to develop additional funding sources, and believes that funding is a longer-term issue that is largely separate and apart from the state program approval process.

In conclusion, EPA does not expect the resource information required in the program description to result in the disapproval of state programs. Only in the unlikely situation where a state clearly has insufficient staff or funds to implement its program will EPA disapprove the state because of inadequate resource levels. The program description, in general, will be used by EPA and the public as background information that will help to ensure that a viable state program does exist. Additional guidance on the program description and the other parts of the application is being made available to states in the form of a State Program Approval Handbook, which EPA has developed to help states implement today's rule.

In the April 17 proposal, EPA required states to include a description of their compliance monitoring and enforcement procedures in the program description. In reorganizing the proposal, EPA is now including compliance monitoring and enforcement as separate parts of the application. The Attorney General's statement (§ 281.25) should include the state's authorities for compliance monitoring and enforcement. The state's demonstration of adequate enforcement (§ 281.22) will ensure that the state has appropriate procedures for implementing those authorities. EPA's criteria for evaluating the adequacy of the state's authorities and procedures are explained under Subpart D of this preamble.

3. Description of Compliance Monitoring and Enforcement Procedures (§ 281.22)

The description of compliance monitoring and enforcement procedures must include information on the state's procedures for UST population identification, general compliance monitoring, and general enforcement response. More specifically, the implementing agency must have systems for: Updating and maintaining an inventory of the UST population; collecting and maintaining data on violators and monitoring their subsequent compliance status over time; and exercising legal authorities to take enforcement actions against violators, bring them into compliance, and deter other potential violators.

4. Schedule for Interim Approval (§ 281.23)

States applying for interim approval must include a schedule to propose, finalize, and change the necessary regulations and legislation. The schedule should address major milestones in the program development process, for example, submission of draft legislation, proposal of regulation, and promulgation of final regulations.

5. Attorney General's Statement (§ 281.25)

A fifth component of the state UST program application is a statement from the state Attorney General certifying that state laws and regulations provide adequate authority to implement the required elements of an approved program. The Attorney General's statement is the foundation for ensuring that the state UST program is no less stringent than the federal program. The Attorney General, or an independent legal counsel for the state, must certify that the state laws and regulations provide authority to implement the program described in the application and has legal authorities for compliance monitoring and enforcement that meet the requirements of §§ 281.40 through 281.43.

6. Memorandum of Agreement (§ 281.24)

The MOA explains EPA's and the lead state agency's respective responsibilities for UST program administration and enforcement. The state staff will develop the draft MOA in close consultation with EPA staff. The MOA will be particularly important if a state is applying for approval of only a partial UST program. In addition, if the state program does not cover the same universe of underground storage tanks as the federal program, the MOA should include an agreement between the state and EPA with regard to how those tank systems not covered by the state program will be regulated.

EPA received comments suggesting that local agencies be allowed to sign the MOA. The MOA, however, is signed only by EPA and the lead state agency because it is important to have all UST program issues within the state coordinated by one lead state agency. The need for coordination makes it impractical for other participating state agencies and all the local authorities to sign the MOA. In addition, EPA is only authorized to approve states.

7. Copies of All Applicable State Laws and Regulations (§ 281.20)

Copies of all applicable state laws and regulations are essential for EPA to evaluate the state program's scope and technical requirements. This information will also serve as the basis for establishing a record of the state laws and regulations regarding USTs in approved states. EPA will codify state programs by incorporating state laws and regulations by reference as part of its final approval of the state program. Codification will enable all interested parties to receive notice of which state laws and regulations comprise the Subtitle I program in approved states. Another reason the Agency codifies state laws and regulations is to clarify the requirements that are effective in that state for purposes of federal enforcement. Once the state program is approved, it operates in lieu of the federal UST program. Therefore, if EPA were to take an enforcement action in an approved state, it would do so using federal authorities but citing violations of state law or regulations.

C. Subpart C—Criteria for "No Less Stringent" (§§ 281.30 through 281.36)

1. Background

a. Summary of public comments. In the preamble to the April 17 proposal (52 FR 12858). EPA solicited comments on three options for determining whether technical requirements in states seeking approval are no less stringent than the corresponding federal standards. Several states commented on the importance of two goals: Establishing flexible criteria for approval of state programs, and clearly identifying the minimum state program requirements in the final state program approval regulation. EPA recognizes that these two goals may often be in tension, and today's final rule attempts to strike a balance between them through the establishment of clear baseline criteria that will accommodate effective existing state UST programs to the greatest extent possible consistent with the statute.

The Agency's preferred option consisted of comparing the overall requirements within each technical program element of the state program to the federal objective for that element. Whether the state program element was no less stringent would be determined by its performance in meeting the overall federal objectives for that element. The two rejected options included (1) a holistic evaluation that would compare the overall stringency of the total state program to the total federal program, which would allow trade-offs between program elements (for example, balancing less stringent financial responsibility with more stringent release detection requirements), and (2) a line-by-line comparison of specific state and federal requirements. In the second of these two options, all the federal requirements would be matched by identical or closely similar state requirements for purposes of state program approval.

Many comments were received on these options for defining "no less stringent." Some commenters felt that only the holistic approach would allow states sufficient flexibility. Some commenters believed that only a line-by-line review would result in no less stringent state programs. Other commenters agreed with the Agency's preference for the element-by-element approach as a balance between flexibility and certainty. EPA carefully reviewed these comments and still prefers the element-by-element approach. This decision was based on EPA's intention (1) to develop a state program approval process that will allow states to use alternative approaches in program development and implementation, and (2) to ensure that state programs meet the baseline standards established in the federal program to protect human health and the environment.

In the preamble to the April 17 proposal, EPA requested comment on whether to include state approval criteria in regulation or guidance. Many commenters wrote, and the Agency agrees, that including the criteria in regulation would ensure needed consistency and clarity in approving state programs. Subpart C of today's final rule provides the criteria all states must meet before receiving approval, and that EPA will use in judging each state application.

In its supplemental **Federal Register** notice of December 23, 1987, EPA proposed criteria for state program approval in the form of objectives for each of the eight technical program elements: New UST system design, construction, installation and notification; upgrading existing UST systems; general operating requirements; release detection; release reporting and investigation; corrective action; out-of-service and closed UST systems; and financial responsibility. Through the process of identifying the underlying purpose of the federal technical requirements in each program element, EPA developed the proposed federal objectives. The Agency's own interpretation of administrative and procedural details that were in the technical rule were intentionally left out of the federal objectives.

These objectives represented the Agency's expectations of what constitutes a no-less-stringent state program. By requiring the state to achieve the objectives underlying the detailed federal requirements in each element rather than match each regulatory detail of the federal requirements, EPA provides a performance-based measure for evaluating programs and recognizes that the precise details in the federal program are not the only feasible approach to UST regulation. By establishing these objectives, EPA also provides a framework for approval that guarantees that each state UST program provides a minimum level of protection.

Many comments were received on EPA's proposal to use the objectives as criteria for state program approval. Many commenters agreed with the objectives approach and felt that objectives would allow development of regulations appropriate to the geographical characteristics and the profile of the regulated community of each individual state. Some commenters agreed with the objectives approach, but they suggested that the objectives needed to be more specific in several areas. The Agency has reviewed each of the objectives and provided greater specificity for several of them. More details and guidance are included in today's preamble in the section-by-section discussion of the objectives for each program element. Other commenters expressed concern that the objectives not be confused with regulations and emphasized that the objectives should be viewed by the states as no less stringent review criteria, but not as the model to be copied into state regulations. EPA agrees with these commenters and, in the following section, has provided further guidance on how states should develop regulations that will meet the performance goals set out in the objectives. Furthermore, the Agency has developed a Handbook for State Program Approval that will give more guidance and clarification on meeting the objectives.

One commenter discussed the legality of the federal objectives approach. This commenter argued that the approach was illegal, saying that Congress did not authorize EPA to create a subset of the federal requirements that would be used to assess the adequacy of state programs. However, EPA does not agree with the commenter who argued that the federal objectives and element-by-element approach promulgated today are inconsistent with Congressional intent. First, under today's rule, EPA is not, contrary to the commenter's suggestion, picking and choosing a subset of federal requirements by which to judge the stringency of state UST programs. Instead, the federal objectives and the element-by-element approach are designed to identify, on a holistic basis, the environmental performance standards to be achieved by the technical requirements in each program area. State programs will be required to achieve the performance standard for each program area rather than match each detail in the federal rule. EPA does not believe that the environmental objectives approach set out in today's rule will result in the approval of state UST programs that are less stringent than the federal UST program.

Second, the language of section 9004 is consistent with the federal objectives and element-by-element approach promulgated in today's rule. Section 9004(b) requires EPA to judge the stringency of state programs by comparing the state requirements in seven program areas to the

corresponding federal standards. Nothing in the statutory language suggests that a line-by-line comparison must be made between individual state requirements and corresponding federal regulations. Rather, paragraphs (a) and (b) of section 9004, when read together, strongly suggest that the relevant comparison is to the standard set in each federal program area.

Consistency among state programs was an objection raised by many commenters who are concerned that UST programs that vary from state to state will create an excessive compliance burden on those members of the regulated community operating in more than one state. These commenters believe some flexibility for states is useful, but that uniformity and consistency are equally important. Some commenters pointed out that the federal technical rule is the result of extensive research and analysis, and they suggested that states should be encouraged to adopt the federal standards.

EPA does not believe, however, that the specific federal requirements in the technical rule provide the only definitive approach for protection of human health and the environment. Many of the specific details of the federal regulations are necessary to establish requirements that the regulated community can follow and that the Agency can enforce. State regulations must accomplish the same underlying goals that the federal requirements aim to achieve. If a state chooses to accomplish them using different methods or administrative procedures than the federal government, however, EPA does not believe that that choice should preclude program approval.

b. The technical standards rule and state program approval. The details provided in the technical rule had to be included so that the regulated community could understand specifically what had to be done to comply with federal requirements, and so that the regulations could be enforceable by EPA. Given the nature of the state program approval process, EPA is aware that state program reviews will inevitably entail some comparison of specific federal and state technical requirements because EPA's technical requirements provide a model against which the state program can be measured. The Agency is concerned that requiring such a line-by-line review of state programs would result in delays that would be due to issues having little to do with that actual stringency of the state program or its overall performance. Thus, in order to establish the federal objectives for each program element, EPA distinguished between those requirements in its technical standards that are substantive baseline environmental standards from those procedural and administrative requirements that are necessary to protect human health and the environment, but are not the only approach for doing so. The former only are the basis for state program approval under the "no less stringent" standard. The latter may also be advised through a variety of approaches established by the implementing agency in states that have not yet received program approval.

In the Supplemental Notice, EPA requested comment on whether changes were needed in several provisions of the proposed UST technical standards to ensure the intended flexibility was available for the approval of states that are no less stringent. These changes would allow states to substitute their own procedural and administrative requirements for those set forth by EPA in the federal technical standards. Many commenters supported allowing states additional latitude in this exercise of administrative discretion, specifically as pertains to the development of administrative and procedural requirements. In considering this issue, EPA noted that several state and local programs are already implementing varying procedural and administrative requirements that appear to be effective. For the above reasons, EPA has decided to integrate this additional decision-making authority into the final technical rule. (See the preamble discussion in support of that rule elsewhere in today's **Federal Register** notice.)

c. Achieving the objective. In developing a state UST program, EPA believes all states will have the same problem the Agency had in defining sufficiently clear requirements so that the regulated community will understand their responsibilities under the rules and can be held to comply with them. UST system owners and operators, the interested public, and state inspectors will need to know and be able to understand the minimum state requirements that apply to the complete operation (from installation to closure) of all UST systems. However, the final objectives promulgated in today's state program approval regulations do not, and were not meant to, restrict states to all the specific details of the federal program. EPA intends to allow states to choose a number of methods that will establish UST programs with clear, understandable requirements. The three major methods are discussed below.

First, a state may adopt or incorporate by reference today's final technical regulations. EPA already has some indications that several states plan to do this. These technical requirements have been developed with the thought that state programs may use them as the model for their state UST regulations. This approach is the simplest and takes advantage of the effort made by EPA to develop implementable and environmentally protective regulations.

Second, a state may develop a different regulatory approach that is, however, analogous to the federal program because it satisfies the performance objectives for each program element. EPA's final technical requirements reflect administrative and technical decisions that do not always have to be duplicated for a state program to be no less stringent in performance. For example, the federal requirements for new UST system installations mandate the use of nationally accepted codes. The same performance objective (sound installations at all new USTs) may be achieved if the state simply requires owners and operators to use certified installers and the state has a system of licensing or certifying installers that includes adherence to these same codes. If a state uses another approach or requires a different method than that specified under the federal program, the state must demonstrate that it has achieved the federal objective within that program element to be accepted to operate "in lieu of" the federal program.

In adopting this second approach, the state may develop different regulations that provide as specific and clear directions for the owners and operators as do the federal requirements. One advantage of this method of rulemaking that the regulated communities will understand their responsibilities and can be held to comply with them.

Alternatively, a state may choose to promulgate regulations that are more general and then supplement these with detailed policies and guidelines to instruct the regulated community and the public of its requirements and procedures for implementing the regulations. These general requirements must at least provide the state with authority to hold all UST system owners and operators responsible for achieving the overall performance goals provided in the objectives, even if the state regulations do not specify exactly how to meet each performance goal. This method of rulemaking, however, has a significant disadvantage in that it may increase the state's implementation burden because, to be enforceable, any

such general requirements must be supplemented by other state actions that ensure adequate clarification of how, at a minimum, to achieve the performance goal. Supportive actions could consist of state administrative policies, technical interpretations, procedures, or guidelines that more clearly establish how the general requirements can be met. For example, if the state regulations require the use of only approved methods of release detection, then some system for review and approval of release detection methods must be developed by the state that will not result in approval of methods less stringent than those allowed under the federal program.

Several commenters on the December 23 supplemental notice expressed concerns about this type of state approach and whether state guidelines should be sufficient for program approval as opposed to detailed state regulatory requirements. Several other commenters felt that procedures and guidelines would be adequate to demonstrate the adequacy of a state program and that this could significantly expedite program approvals, thus allowing the state to concentrate its resources on cleanups and other necessary activities. Two commenters objected to allowing state guidelines or procedures to replace state regulations for given requirements. One of these commenters wrote that regulations and statutes should be required in order to eliminate the possibility of an informal change in policy or of enforcement problems. The other commenter felt that, in order to provide fair notice and clarity of state methods, such guidelines or procedures must be submitted for public notice and comment.

In response to those commenters who expressed concerns over whether state guidelines should be sufficient for purposes of program approval, EPA is clarifying that guidelines are not a substitute for regulations. Guidance documents and written policies are not generally enforceable, while regulations do have the force of law. However, because EPA's Subtitle I program approval process focuses on whether a state program meets federal performance objectives, an approvable program will not need to have the same level of detail and specificity in regulations that would be required if the approach to program approval involved a comparison of individual state requirements with the federal standards. State requirements that meet the underlying federal objectives are sufficient for approval in terms of meeting the no less stringent criteria, irrespective of whether or not they are supplemented with additional guidance or procedures. However, if the state does not provide specific enough direction to the regulated community and public on how to implement the state regulations, the state may not receive approval for their UST program. General regulations are difficult to enforce because the vagueness and lack of specificity may confuse owners and operators who will then be less likely to try and comply with them. Without the ability to provide adequate enforcement through clear direction, the state program will not be approvable. One of the criteria for withdrawing approval of state programs (§ 281.60(1)) is the lack of ability to enforce state regulations; thus, it is also a criterion for approval. An instance of where clear direction might be needed occurs in the objective for release investigation, confirmation and reporting, which says that a state must have standards that require prompt reporting of confirmed releases. The state should define what "prompt" is using a number so that the owners and operators have a clear direction on when such reporting must be done and so that the state has the ability to determine and then to enforce a violation of this reporting requirement. Therefore, where specific state standards are not embodied in statute or regulations, the Agency will consider policies or guidance documents submitted with the state application for approval if they are used to support applicable general state regulations.

Third, a state can use, for example, a combination of the above approaches that copies some elements of the federal program in some elements, and uses a different regulatory approach in other program elements. The state program will have met the no less stringent criteria for state program approval if the regulations within each element achieve the performance objectives for those elements.

d. State approaches to ground-water classification. EPA recognizes that releases from UST systems located in certain sensitive areas could pose a greater risk to human health and the environment than other areas. In developing the technical regulations, the Agency considered and requested comments on a federal classification approach under which a class or classes of UST systems located in higher-risk areas would be subject to more stringent requirements than UST systems located in less sensitive areas. After careful consideration of this issue, EPA rejected the concept of a federal ground-water classification scheme in promulgating the final technical regulations for underground storage tanks. (This is discussed in more detail in the technical standards rule, published elsewhere in today's **Federal Register**.) The Agency strongly believes that the classification of ground water must be based on highly localized hydrogeological circumstances and, therefore, that classification should be a state or locally initiated activity. The Agency has also concluded that criteria for a national scheme of classification (that is, one that could encompass all the conditions across the country) could not be developed and feasibly applied to the national UST program.

A classification approach to regulating UST systems at state or local levels, however, where local environmental conditions are better known, may be feasible and appropriate; such a classification approach could result in improved environmental management. For example, several states have karst or limestone areas where contamination, once released, is nearly impossible to contain. In such areas, the state is free to consider whether secondary containment with interstitial monitoring could provide enhanced leak detection and better prevent releases in these sensitive areas. Under today's approach to program approval, the Agency allows, but does not require, states to develop a classification approach for use in determining whether more stringent leak detection and containment standards should apply to UST systems being located in sensitive or high-risk areas. States that have already developed a classification system may decide to use it to regulate USTs. Under today's final rule for state program approval, the federal objectives must be the minimum requirements in all areas of the state for the program to be determined "no less stringent" than the federal program; however, states could use a classification scheme to establish standards for certain areas that are more stringent than those under the federal program.

e. The use of state variances in approved programs. The Agency solicited comment on the use of technology- and risk-based variances in the preamble to the proposed EPA technical standards rule (52 FR 12739 and 48641). Technology-based variances are included in the federal technical regulations (published elsewhere in today's **Federal Register**). For example, the release detection standards allow owners or operators to use non-specified methods of release detection if they can demonstrate to the implementing

agency, or if the implementing agency otherwise determines, that the alternative method will achieve performance that is as effective as the allowed methods. Risk-based variances would allow less frequent or alternative approaches to release detection of protected tanks in areas where the risk to human health and the environment is believed to be lower (for example, where ground water is deep and not vulnerable to contamination). The Agency has decided not to include risk-based variances in the federal technical standards rule because it is the Agency's experience that variances based on site characteristics are generally difficult to justify and implement. In a regulated community the size of the national UST community, such a provision would be practically impossible for EPA to implement throughout the nation. Instead, the Agency has developed national standards that set a baseline of protection in all areas.

This subject also arises in connection with state program approval. In the December 23, 1987 Supplemental Notice (52 FR 48645), the Agency solicited comments on whether state programs should be approved if they had a variance procedure for owners and operators of petroleum UST systems that allowed alternative and less stringent release monitoring methods in lower risk areas (for example, a state could prospectively classify such lower risk areas). The Agency received some comments in favor and some in opposition to this approach. In reviewing these comments, the Agency has decided not to allow approval of state programs that do not maintain the minimum federal objectives in all areas of the state. An important reason for not accepting the use of less stringent release detection in "lower risk areas" is the difficulty in clearly establishing what constitutes a lower risk. Several state officials commented that they would not be allowed by the public to "write-off" less vulnerable areas. Another commenter questioned the judgement of classifying lower risk areas based on ground water because a safety and health hazard (explosive or toxic gases) could be present at any site with a release. EPA agrees that the final technical standards for release detection have been developed to enable the early detection and minimization of all releases to ensure that present and future ground water uses are protected at all sites and that all health and safety threats are avoided. The state requirements can do no less if they are to be considered no less stringent. For this reason, today's final state program approval objectives for no less stringent programs do not allow approval of states if these states permit less stringent release detection in areas that are described or classified as less vulnerable, whether on a case-by-case or class basis.

If a state program includes a variance procedure, it can still be approved if the state can demonstrate that its eligibility criteria and procedures for reviewing site-specific or more general technology-type variance requests will ensure no less stringent protection of human health and the environment. However, if a state allows variances, it must agree to issue them only in a manner that is no less stringent in protecting human health and the environment as the federal program. Terms of this agreement will be specified in the MOA included in the state program application.

Following is a more detailed explanation of the objectives associated with approval of no-less-stringent state program elements.

2. New UST Systems and Notification (§ 281.30)

EPA has concluded that an important objective of the national UST program is for all new UST systems to be designed, constructed, installed, and protected from corrosion in a manner that will prevent releases during their operating life. Also, certain notification requirements should be met when new USTs are installed. States can achieve this objective in several ways: Adopt the same new UST system requirements found in the federal technical standards; require new UST systems to be built and installed in accordance with nationally recognized industry designs and standards by incorporating the applicable national codes and practices directly into state requirements; or adopt such codes by reference into state regulation. The proposed federal objective for new UST systems has been revised somewhat to reflect changes made in the final technical standards and public comment received on the proposed objective. The objectives for design and construction have been merged with the installation objective to emphasize the common reliance on established codes in today's final technical standards rule.

Some commenters were concerned that a general dependence on current national consensus codes would not be protective of the human health and the environment. As discussed in the preamble to the technical standards rule, published elsewhere in today's **Federal Register**, EPA does not agree. The Agency's analysis of these industry codes and practices, public comments on the proposal, and new information on the causes of releases from UST systems has led to the conclusion that implementation of these nationally recognized codes will protect human health and the environment. EPA notes that several of these codes for new UST system design, construction, and installation have been revised and improved since the publication of EPA's proposed technical requirements on April 17, 1987.

Another commenter was concerned that state requirements adopting current industry codes will not reflect future improvements in technology when they occur. The Agency believes the current industry codes and standards are already protective of human health and the environment. If a state adopts current codes and those codes are later updated and improved in response to new knowledge and technological developments, the state may decide to adopt the revised code, but it will not generally be required to do so for purposes of program approval. They may need to submit program revisions in the future, however, if the federal technical standards are revised based on a new code.

One commenter suggested that EPA specify which industry standards were acceptable. The commenter believed that EPA should not assume that all standards developed by all national groups were adequate. For each element in which codes have been developed, the final federal technical standards list the appropriate codes that may be used for purposes of compliance.

The federal objective concerning spill and overfill equipment (§ 281.30(b)) requires that the state program ensure that all owners and operators of new UST systems install equipment to prevent spills and tank overfills. In addition, when tanks are upgraded, such equipment must be installed as part of the upgrade. The proposed objective (§ 281.32(b)) was modified to reflect changes in the final technical rule. The federal requirement for spill and overfill equipment was originally contained in Subpart C, General Operating Requirements. In today's final technical standards rule, this requirement for equipment has been moved to Subpart B, UST System Design, Construction, Installation and Notification. To remain consistent with this formatting change in the federal technical standards rule, the final objective for spill and overfill equipment has been included with the objectives for New UST Systems in the state program approval rule (§ 281.30(b)).

To be no less stringent in this area, the state must have requirements that all new tanks must have spill and overfill equipment (except as noted below). Equipment to provide such protection includes small catchment basins for spills, and alarms, automatic flow restrictors, or shutoff devices for overfill prevention. A provision has been added to clarify that states do not have to require spill and overfill equipment on tanks that are manually filled through the addition of less than 25 gallons of product at a time (for example, used oil storage collection tanks at service stations that are manually filled in small volumes). This change recognizes the limited equipment exemption that has been added to the final EPA technical standard concerning spill and overfill equipment.

The proposal allowed state substitution of requirements on transporters in lieu of spill and overfill equipment. Several commenters were concerned that this provision could interfere with current regulations set forth by the U.S. Department of Transportation, and that they would also not provide sufficient spill and overfill protection. EPA agrees that this problem cannot be adequately solved by procedures required on the transporters alone and that requiring UST preventive equipment is more protective. Therefore, the final objective has been revised to no longer allow for substitution of procedural requirements on transporters in lieu of spill and overfill equipment on the UST system.

The federal objective concerning the notification requirement (§ 281.30(c)) is that the state program ensures that all owners of new UST systems notify the implementing agency of the UST's existence. Under section 9002 of RCRA, this notification requirement already has been implemented nationally for existing UST systems. Owners of existing and new UST systems were required to notify the designated state agency of the existence, age, size, type, use and location of their USTs beginning May 1986. Therefore, states may be approved if they only require owners and operators of new UST systems to notify the state agency because notifications of existing USTs have already taken place under existing federal authorities.

Although it was not included as a requirement for state program approval, the April 17 proposal solicited comment on whether approved states must require updated notifications from owners and operators of existing USTs (52 FR 12857). Updates of existing notifications, however, are not mandated by federal law and are not part of the final federal technical requirements. In general, commenters concurred with the decision not to include updating as a state program approval requirement, although several pointed out that such updated information may be useful to the state. A few commenters expressed their belief that states should be required to update existing tank notification precisely because this data is useful to the state for enforcement purposes. Although some states may choose to have notification updates as part of their program, EPA is not requiring collection of this information for purposes of state program approval because it is not required under the federal program.

Another commenter pointed out that the federal notification form was proposed (on April 17) to be revised to include a new compliance status section that must be filled out by new UST system owners and operators. The commenter questioned why this additional information was not included in the objective for new UST systems in approved state programs. While this information will be useful to the implementing agency, EPA is not convinced that such a requirement is necessary to achieve the federal objective for new UST systems. The new UST system compliance checklist is to assist in compliance monitoring, and will not act as a substantive performance standard. Because the additional information is an enforcement tool rather than a new UST system standard, it is not required as part of the objective for new UST systems. Thus, states will be left with the discretion as to whether or not they desire to use the notification form to collect this additional information on new UST installations for purposes of compliance monitoring

3. Upgrading Existing UST Systems (§ 281.31)

An important national objective is to ensure that unprotected steel UST systems are either upgraded or replaced within 10 years. This phase-in of protected tank systems is expected to prevent numerous leaks that would otherwise occur in the future due to corrosion of unprotected steel. The upgrading of existing UST systems ensures that existing USTs meet essentially the same standards of protection as new UST systems. Thus, by 1998, all UST systems must prevent releases due to corrosion, and spills or overfills. This 10-year schedule, however, does not include installation of release detection devices, which must be completed within 5 years according to the release detection objective at § 281.33(b).

This 10-year goal may be achieved in two general ways. First, the state may develop a phase-in schedule that will bring all the USTs into compliance incrementally during the 10-year period. The phase-in schedule could be based on the age of the tank, ground-water sensitivity, county, zip code or any other factor chosen by the state. Second, the state may establish the same baseline goal as the federal requirements (1998), without specifying a detailed phase-in schedule.

The proposed objective for upgrading existing UST systems included a provision that allowed states to demonstrate in the state program approval application how other state requirements will achieve this federal goal without an explicit 10-year deadline. In the Supplemental Notice, EPA described what such a demonstration might consist of and requested comments on this approach. While several commenters encouraged the use of this more flexible approach, other commenters objected that the 10-year deadline was not simply a goal to work toward but that it was a requirement that must be achieved. The language in the proposed objective created confusion on this point. The discussion of this objective in the Supplemental Notice further raised commenters' concerns because it said that states could establish other requirements that might reasonably achieve the same general objective by prompting most unprotected tanks to be upgraded. One commenter asked for a definition of "most tanks." Another commenter argued that if EPA's best judgment dictates that tanks should be upgraded within 10 years (as required in the federal technical standards), then a state program that does not accomplish this is not as stringent as the federal program.

The Agency has considered these arguments and has deleted the provision that allows a demonstration of how upgrading will be achieved without a 10-year deadline. An important goal in the federal technical standards rule is for all existing UST systems storing regulated substances to be required either to upgrade to new tank standards within 10 years through retrofit or replacement, or be permanently closed. Most commenters to the proposed technical standards rule supported this requirement (for further discussion, see the Preamble to the final federal technical standards rule elsewhere in today's **Federal Register**). The Agency was concerned that the provision in the

proposed objective would lead states to believe that a time period greater than 10 years for upgrading was allowable. In addition, it was unclear what information would provide an adequate demonstration. The Agency was concerned that the interpretations would vary widely on what was sufficient for the state program to be approved and guidance on the subject has proved difficult to provide. For all these reasons, the Agency has deleted the proposed provision that allowed the state to demonstrate how the goal of upgrading existing USTs within 10 years would be achieved without a deadline.

4. General Operating Requirements (§ 281.32)

An important objective of the final EPA technical standards is the prevention of releases through the proper operation and maintenance of the UST system. EPA has concluded that the improper operation of UST systems can result in significant releases into the environment. To achieve the objective of the corresponding federal requirements in this program element, a state program needs to demonstrate that the risk of operation-related releases is minimized. This objective consists of five different provisions: (1) The use of procedures to prevent overfills and spills during transfer; (2) the maintenance of corrosion protection mechanisms; (3) ensuring the continued compatibility of the regulated substance stored with the UST systems; (4) ensuring only sound upgrades and repairs, which are performed in accordance with nationally-recognized practices; and (5) maintenance of recordkeeping necessary to demonstrate recent facility compliance.

The final technical standards require that spills and overfills be prevented through the use of proper procedures during product transfer (§ 281.32(a)). In response to one commenter's concern that the proposed objective in this area was not specific enough regarding proper transfer procedures, the final rule now requires that steps be taken to ensure that the space in the tank is sufficient to receive the volume being transferred and that the transfer operation is monitored constantly. This change makes it clearer that the Agency's intent in this aspect of the objective is consistent with the final technical standards.

The objective concerning the operation and maintenance of corrosion protection has been modified in response to commenters' concerns (§ 281 32(b)). One commenter correctly pointed out that the proposed objective, which stated that UST systems must "be operated and maintained to prevent releases due to corrosion for the operating life of the UST systems if they have been equipped with corrosion protection", was not specific enough to ensure that states achieved the same performance goals as the corresponding EPA technical standards. Thus, the revisions to the final wording of the provision clarify EPA's intent that procedures for operation and maintenance of corrosion protection be carried out by someone knowledgeable and trained in corrosion protection. The goal is to ensure that the necessary protection is in place and operating properly. A note has been added for further guidance to suggest that state requirements in this area build on several existing national codes (such as those established by the National Association of Corrosion Engineers).

State programs must hold owners and operators responsible for ensuring compatibility between tank systems and their stored substances (§ 281.32(c)). EPA has concluded that incompatibility can result in releases due to structural deterioration of tanks or piping. EPA recommends the use of certain industry codes for ensuring the compatibility of alcohol-blended fuels with fiberglass tanks. For purposes of program approval, a general state requirement in this area would be sufficient (as it is in EPA's final technical standard in § 280.32).

The general operating objective includes a provision that addresses UST system upgrading and repairs (§ 281.32(d)). An additional requirement that has been added to this objective is that the system be found structurally sound before upgrades or repairs can take place. EPA has concluded that such an assessment is an important performance objective because all repair and upgrade technologies depend on the structural soundness of the existing system. Today's final technical standards for upgrading and repairs emphasize this initial assessment of tank system soundness before a repair or upgrading. The change to the federal objective similarly reflects this clarification of the corresponding federal requirements. This change also is made to respond to concerns raised by some commenters on the December 23 Supplemental Notice that the proposed objective appeared to ignore the emphasis on an initial assessment that was included in the proposed (and now final) technical standard concerning repairs.

To clarify the proposed objective, EPA has revised the language for the final rule to ensure that states mandate that such assessments are conducted. There are several approaches for determining the structural integrity of tanks, for example, internal inspections, vacuum tests, and tightness testing. To meet this objective, a state may allow several approaches, mandate a specific test technology, or simply require that a general performance level be achieved.

This objective also ensures that upgrades and repairs are conducted in a manner that will prevent future releases for the remaining operating life of the UST system. Under today's final technical rules, a steel tank that is structurally sound may be upgraded or repaired by use of an internal lining alone (without cathodic protection), by retrofitting with a cathodic protection system, or both. FRP tanks must be repaired by the tank manufacturer's authorized representative or in accordance with national codes EPA's final technical standards require the use of applicable national codes and standards to ensure sound repairs and upgrading practices. Thus, the stringency of the state requirement will be considered in light of these existing nationally recognized practices.

The final provision of the general operating objective establishes that state programs must require UST owners and operators to maintain records of monitoring, testings, repairs and closure sufficient to demonstrate recent facility compliance status, except that repair and upgrading records must be kept for the operating life of the facility (§ 281.32(e)). As discussed in greater detail in the preamble to the final technical standards rule (elsewhere in today's **Federal Register**), the Agency has concluded that some recordkeeping requirements are necessary to establish the recent compliance status of this large regulated community because regular reporting and frequent and routine inspections at all sites are not feasible. One commenter requested that EPA specify extensive recordkeeping requirements for state programs, including site plans and tank tests. EPA encourages states to require that owners and operators keep site plans on file as they could be useful. However, EPA will leave this administrative requirement, as well as other specifics of recordkeeping, to the discretion of the state according to the needs of its particular UST program.

In evaluating whether a state program is no less stringent in this area, the Agency will consider four points pertaining to the state's recordkeeping requirements. First, the state must require records addressing the same areas of the program that are mandated

under the federal technical standards. These areas are listed in the objective and include release detection monitoring, corrosion protection testing, testing and certifications for repairs and upgraded UST systems, and site assessments at closure. Second, the state program must require records to be retained long enough to demonstrate recent facility compliance. EPA has designed the final technical standards to represent a minimum paperwork burden that will still enable an inspector to assess current facility compliance during an on-site inspection. These requirements in the technical standards rule may provide a guide for states to follow in developing their own requirements.

Third, the state's requirements must ensure that documentation of compliance is sufficiently detailed to enable an inspector to evaluate compliance in the areas mentioned above. For example, site assessment test results that demonstrate the condition of the site at closure must be available. Finally, the state program must require that all on-site records be made immediately available when requested by representatives of the state agency, or provided promptly to the inspector when they are stored off-site. If a state requires routine reporting, or collects and maintains this information itself, then an owner and operator may not need to maintain records on-site in order for the state program to meet this objective.

5. Release Detection (§ 281.33)

The detection of releases from new and existing UST systems is an important objective in the federal program. In the preamble to the December 23 Supplemental Notice (52 FR 48645), EPA discussed five major provisions of the performance objective for release detection. These provisions included requirements for: (1) The phase-in of release detection requirements; (2) new petroleum tank systems; (3) the applicability of release detection to both tanks and piping, and the capability of detection methods used; (4) new hazardous substance UST systems; and (5) all existing UST systems.

EPA received numerous comments on these proposed objectives, as well as the April 17 proposed technical requirements for release detection. The comments related to the proposed objective are addressed below, while the comments on the federal technical standards for release detection are discussed in the preamble to the federal technical standards rule published elsewhere in today's **Federal Register**. The final technical standards for release detection have been revised to reflect public comment as well as new information available to the Agency since proposal regarding the causes of releases from UST systems. These changes in the federal technical rule are summarized in Section IV.D. of the preamble to that final rule package.

First, more frequent tank tightness testing (annual) of unprotected tanks is required during the 10-year upgrading period. Second, less frequent monitoring of new and upgraded tanks is allowed for 10 years from installation or upgrade, or by 1998 if it is later, at which point release monitoring must become more frequent. Third, the schedule for phase-in of release detection over 1 to 5 years at existing tanks will be based on age; and fourth, release detection is phased-in sooner on pressurized piping systems (within 2 years).

EPA has modified the substance and organization of the proposed release detection objective in today's final rule as a result of these changes and the reformatting of the final technical standards. The changes in the format for the final release detection objective resulted in a section for: General methods, phase-in of the requirements, requirements for petroleum tanks and piping, and requirements for hazardous substance USTs. The following discussion addresses the changes to the federal objective for release detection in greater detail.

a. General methods (§ 281.33(a)). An important provision of the release detection objective is for state programs to ensure that only those methods are used that can detect releases from UST systems as effectively as methods allowed under the federal program. The technical standards for release detection specify general performance and design requirements for several different detection methods to ensure reliable detection of releases. Accordingly, the proposed objective for state programs generally required the use of methods that are as effective as the methods allowed under the federal standards, and that the method be designed, installed, operated and maintained so that releases are detected.

A few commenters expressed concern that this provision of the proposed objective was vague and should include some of the details from the proposed technical standards concerning allowable methods. For example, one commenter expressed concern that the wording of the proposed objective would allow states to use different types of interstitial monitoring, and that such flexibility would place an undue burden of oversight and evaluation on the state implementing agency.

EPA does not agree that the objective must include the same details contained in the final federal technical standards. As stated earlier, state programs do not have to mandate exactly the same requirements as the corresponding federal standards in order to be no less stringent. The state program must have an approach, however, that will ensure at least an equivalent level of performance as the federally-allowed methods. EPA plans to issue guides soon concerning the performance and correct use of various generic methods of release detection that should assist states in developing their own guidelines and evaluations of release detection methods

The provision of the proposed objective regarding general methods has been revised to reflect changes made in the final release detection technical standards. First, wording has been added to § 281 33(a)(1) clarifying that release detection methods must be able to detect releases from any portion of the UST system "that routinely contains the regulated substance." EPA interprets this phrase to include all underground delivery piping and the tank vessel itself (except for the very top of the tank, which is protected by overfill prevention requirements). This clarification ensures that several viable methods of release detection are not disallowed (for example, in-tank level gauges that cannot detect releases due to loose bung hole covers, or double-walled tanks that do not cover the full 360-degree circumference of the tank).

The proposed objective for release detection specified that, in general, the method of release detection chosen must be capable of detecting a release of regulated substances before it migrates beyond the excavation area. This phrase, "before it migrates beyond the excavation area," was intended to be the performance goal that the state requirements must meet. The Agency requested comments on this language in the Supplemental Notice, specifically on what types of state requirements would ensure a similar level of performance as the federally-allowed methods. The Supplemental Notice discussed the placement of ground-water monitoring wells as an example of possible flexibility in specific requirements. EPA noted that state regulations permitting ground-water monitoring wells to be located outside the excavation zone might be acceptable if another method was combined with the wells. One commenter pointed to a contradiction between this example and the

performance requirement, and asked for clarification.

The phrase "before it migrates beyond the excavation area" has been deleted in the final objective for release detection because it precludes the use of some acceptable out-of-tank methods of release detection that are sometimes installed just beyond the excavation zone, such as ground-water monitoring wells. The state should be able to allow the use of the same release detection methods that are allowed under the federal technical standards. EPA has deleted the original phrase and added a second sentence that specifies the factors that must be considered when comparing other release detection methods against the methods approved in the federal technical standards. This change alters the basic performance goal that the state requirements on release detection methods must achieve; the new performance goal consists of a comparison with the federally-allowed methods. The federal technical standards allow six methods of release detection and also allow any other methods that meet either of two more general release detection requirements. One of these requirements is a release detection rate of 0.2 gallons per hour (§ 280.43(h)(i)). The alternative is a comparison test of the effectiveness of the proposed method against the first six methods, which consists of a demonstration by the owner and operator for the implementing agency (§ 280.43(h)(ii)). Therefore, the language in the final release detection objective for state program approval is intended to allow the state to permit the use of any of the federally-approved methods as well as any methods that the state determines are as effective as the federally-approved methods.

Second, § 281.33(a)(2) has been revised to specify that all methods must be properly calibrated in addition to being designed, installed, operated, and maintained to detect releases. This minor change makes the objective consistent with the approach in the final technical standards. Third, wording has been added that makes it clear that all methods must be implemented in accordance with the capabilities of the method. This change reflects an amendment to the technical standards to clarify that a method not only has to be capable of detecting small releases but must also be operated in a manner that will make use of those capabilities.

b. Phase-in of requirements (§ 281.33(b)). As discussed in the preamble to the December 23 Supplemental Notice, EPA has also concluded that to be no less stringent, a state program must ensure that release detection is applied at all UST systems as rapidly as required under the federal program. The Agency is convinced that numerous existing UST systems are now leaking and, therefore, an important performance objective for state programs is quick detection to enable initiation of release response and corrective action. The proposed objective allowed states the flexibility to complete this phase-in in different ways providing that it is completed as rapidly as under the federal technical standards rule. Several commenters supported this approach. Several others, however, expressed the belief that EPA should not permit any variation from the proposed federal technical standards with regard to phase-in dates for purposes of state program approval. These commenters were concerned that the proposed objective would allow any state phase-in method to be approved and did not clearly identify evaluation criteria for determining acceptable state phase-in approaches.

In today's final technical standards rule, EPA has decided to phase in release detection over 1 to 5 years at all UST systems following a specific schedule that is based on the age of the UST system. This approach was suggested by numerous commenters. Although EPA recommends that a similar approach be used by state programs, the Agency has decided to retain flexibility in the final objective to continue to allow states to use other phase-in approaches. EPA believes numerous other reasonable approaches are possible including the phase-in of release detection sooner at UST systems located near drinking water wells. The key to meeting this federal objective is to ensure that release detection is scheduled to be completed at all UST systems before the end of the 5-year phase-in period.

In response to some commenters' concern about the clarity of this objective, the final objective has been revised to mandate that states provide "an orderly schedule that completes" the phase-in within 5 years. Although states do not have to use the criterion of age to be no less stringent in performance, they must provide a phase-in schedule that results in significant segments of the regulated community using release detection methods well before the end of the 5-year time period. Approaches that allow a majority of the regulated community to wait until the end of the 5-year period would not be accepted as an "orderly schedule." Allowing the major portion of the regulated community to wait until the end of the period will result in serious noncompliance because much of the regulated community will wait until the last minute to apply release detection. A scarcity of release detection services would then result when everybody begins to demand these services at the same time, and releases will continue to go undetected in the interim.

EPA has also clarified § 281.33(b)(2) to require that each state's phase-in approach mandate that either release detection be applied or the system be closed. The objective for release detection proposed on December 23 did not include a conditional requirement to close the UST system if the owner or operator chose not to apply release detection. One commenter argued that the requirement to close is a powerful incentive to ensure that release detection takes place, and therefore, is important to the achievement of the objective. This commenter pointed out that such a requirement was proposed in the federal technical standards and is important to ensure that facilities are not allowed to operate in noncompliance (without release detection) after the phase-in period is over EPA agrees with this commenter and has revised this objective to include this requirement.

The final objective has been changed also by adding the requirement that release detection methods that can detect a release within an hour must be applied at all pressurized underground piping within 2 years of the effective date of the federal requirements. This change reflects the increased stringency of the final technical standards concerning release detection for pressurized piping. EPA believes that an important performance objective is that state programs ensure that automatic flow restrictors or shutoff equipment or other hourly monitoring methods (such as vapor monitoring) with alarms be applied to all pressurized piping as rapidly as is required under the corresponding federal requirements. The Agency has concluded that pressurized piping without such release detection equipment poses a serious threat to human health and the environment.

c. Requirements for petroleum tanks (§ 281.33(c)). Another important aspect of the proposed release detection objective was for all release detection methods to be applied at least monthly, except that for 10 years, infrequent tightness testing combined with monthly inventory control could be used. As discussed in the preamble to the proposed technical standards, EPA believes that repeated monitoring on a frequent to continuous basis is the first

step toward minimizing threats posed by releases from UST systems, particularly existing systems unprotected from corrosion. EPA did not receive any comments on this aspect of the release detection objective except that one commenter requested further clarification of the proposed frequency requirements. However, three important changes in today's final technical standards have resulted in a revision to this provision of the final objective in § 281.33(c), and they are discussed below.

First, the final technical standards for release detection have been revised to allow tightness testing every 5 years combined with monthly inventory control for the first 10 years after the tank is installed or upgraded, or until 10 years from the effective date of today's requirements, whichever is later. The final objective has been revised to reflect these changes in § 281 33(c)(1). After 10 years, monthly monitoring must be conducted, even at protected petroleum tanks equipped with spill and overfill prevention devices. Again, this change reflects the performance requirements in EPA's final technical standards.

Second, the final release detection standards have been changed to require either monthly monitoring or annual tightness testing in combination with monthly inventory control for all existing petroleum tanks unprotected from corrosion or not equipped with spill and overfill prevention devices. The final objective has been revised to reflect these changes in § 281.33(c)(2).

Third, all the final release detection technical standards have been reorganized and the release detection objective has been changed accordingly to reflect this. Thus, today's final objective highlights more clearly the requirements for petroleum tanks by featuring them in new § 281.33(c).

d. Requirements for petroleum piping (§ 281.33(d)). Another important aspect of the release detection objective is monitoring of the underground piping attached to the tank. In the proposed objective (as well as the proposed federal technical standards for release detection), all underground piping had to meet the same release detection requirements as the tanks except that new pressurized lines without continuous monitoring had to use automatic shutoff equipment. Today's final objective concerning release detection for the piping reflects several changes that are due to revisions made to the final technical standards.

First, to be consistent with the final technical standards, the provision in the objective pertaining to release detection for petroleum piping has been separated from the one for the tanks. This change is intended to clarify the different performance objectives that must be achieved for the piping. In addition, monthly inventory control as a method of release detection is not sufficient to meet this requirement because it is not as effective as any of those methods allowed under the federal technical standards (see § 281.33(a)(1)).

Second, a phrase has been added to clarify that only underground piping that routinely contains petroleum must have release detection. State requirements do not have to address release detection for fill pipes and vent pipes to be considered no less stringent.

Third, the objectives for pressurized lines have been made clearer to indicate that all such lines must be equipped with release detection that is able to detect a release within an hour by restricting or shutting off flow or sounding an alarm. In addition to hourly release detection equipment, monthly monitoring must be applied to pressurized piping or annual tightness tests must be conducted. Reflecting clarifications of the final technical standards, these changes indicate the Agency's increased concern about the threats posed by pressurized piping.

Fourth, the objective for suction piping has been changed to make clear that these types of lines, as in the federal technical standards, must be tightness tested every three years. Two possible exceptions exist. Testing every three years is not necessary if a monthly method of release detection is in use, for example, release detection that already applies to the tank. The other possible exception to testing every three years is in the case where the suction piping system is designed so that product always drains back into the tank when the suction is released and the design of the piping is such that an inspector can immediately determine the integrity of the piping system. These types of piping systems generally have an easily accessible check valve near the dispenser that an inspector can test to identify if the system is working correctly. Further discussion on the technical aspects of the design of a suction piping system may be found in the preamble to the final technical standards rule (section IV.D.) and in the preamble to the proposed technical standards rule (52 FR 12745).

e. Requirements for hazardous substance UST systems (§ 281.33(e)). The final provision of the release detection objective is release detection for hazardous substance UST systems. The proposed objective specified that all existing systems must meet the same requirements as existing petroleum UST systems, and that all new UST systems must use secondary containment and interstitial monitoring unless the state approves another method. EPA is today promulgating the final objective substantially as proposed. The objective has been reformatted, however, to add clarity and to reflect the organization of the final technical standards rule.

First, the release detection objective for hazardous substances for both new and existing UST systems has been consolidated into one two-part objective The objective for existing hazardous substance UST systems (§ 281.33(e)(1)) is followed by the objective for new ones (§ 281.33(e)(2)). The wording in the objective for existing UST systems refers back to the objectives for petroleum UST systems for purposes of simplicity, but the meaning of the requirement is unchanged from the proposal.

Second, a couple of minor wording changes have been made to the proposed language concerning the objective for new UST systems in § 281.33(e)(2). The deletion of the "no less stringent" language and the substitution of wording that holds variance approvals only to methods that are "as effective as" methods already allowed under the state program is intended to clarify that the performance of the methods sought under a variance must be judged relative to other methods allowed by a state program.

In addition, an effective clean up technology must be identified for the hazardous substances being stored in the tank. This language has been added to simply make the objective consistent with the revisions to the variance allowed in the federal technical standards rule. This information on clean up technologies will allow the state to make a more informed decision when evaluating requests for a variance from the secondary containment requirement. In some cases this may lead the state to determine that existing corrective action methods are unsatisfactory even though release detection technology for the hazardous substance is available.

6. Release Reporting, Investigation, and Confirmation (§ 281.34)

The objective of this program element is to ensure that all suspected below ground releases are promptly investigated and all confirmed releases are immediately reported, including all spills and overfills that are not contained and cleaned up. EPA will consider the following points in determining whether a state program is

no less stringent than the corresponding federal program requirements.

First, the state must require the investigation of all suspected releases. The final federal technical standards allow the owner and operator to double-check data and retest and repair release detection equipment before determining that an unusual condition or signal at the site signifies a suspected release. The discovery of released regulated substances at the UST site or in the surrounding area must, at a minimum, be a trigger for investigating a suspected release. EPA notes that many different methods are being used already to investigate suspected releases and they can be tailored to site-specific conditions.

Another aspect of this objective is that the state requirements will need to establish how and when a suspected release is determined to be a confirmed release and corrective action must begin. It is important that state requirements for release investigation be clear on this point. Ambiguity on how a suspected release must be investigated and when it is confirmed may result in delays on the part of the owner and operator in initiating clean up actions. Because such delays could increase the threat to human health and the environment, vague state requirements would be less stringent that the federal technical standards rule, which establishes a failed tightness test or a finding of significant contamination in the bottom of the UST system excavation zone as two separate ways of confirming a release. A state program must ensure that unintended delays in reporting confirmed releases that may occur as a result of uncertainty are avoided.

Second, the state must require a prompt investigation of all suspected releases. The federal technical standards specify completion of the investigation within 7 days (or another time period specified by the implementing agency). In contrast, the federal objective for state program approval purposes simply requires "prompt" investigation because EPA believes the precise definition of what constitutes a prompt investigation should be left to the discretion of the states within reason. EPA selected 7 days as a time limit in the final technical standards because the Agency believes that the type of investigation (a tightness test or initial site investigation) that is being required at the federal level can be arranged and carried out within that time period. The ability to investigate a site, however, can depend on the site and on the availability of the existing service community. Therefore, a state that allows some additional time for completing investigations may still be considered no less stringent. For example, a state that requires more intensive or complex investigations may need more than 7 days to complete. EPA intends to be flexible in interpreting the promptness of a required state investigation in consideration of these factors. However, EPA also notes that if a state program allows owners and operators to carry out the same or similar investigations as required by EPA significantly beyond the 7 days (for example, 30 days), that state program is not likely to meet the objective with regard to prompt investigation.

Third, EPA has concluded that spills and overfills are generally identifiable through visual observations and that remedial action should be taken as soon as possible after such a discovery. The federal technical standard mandates that all spills be contained and cleaned up, and reported when they are not cleaned up or when they are greater than certain volumes (for example, greater than 25 gallons for petroleum releases). To meet the federal objective in this area, the state must require that spills and overfills be cleaned up. Those spills and overfills that are not completely cleaned up must also be reported so that the state can ascertain whether further corrective action is necessary. The Agency is aware, however, of states that have varying levels for automatically reporting aboveground releases Under today's rule, a state with higher reporting levels than those under the final EPA technical standards (for example, Florida's requirement for reporting of all spills or overfills of petroleum greater than 100 gallons) can be considered no less stringent if two conditions are satisfied: (1) The state mandates that the unreported spills be completely contained and cleaned up; and (2) the state has requirements that identify the specific steps an owner and operator must take to ensure unreported spills and overfills are contained and cleaned up in a manner that will protect human health and the environment. (For example, Florida has several requirements in its regulations that will result in complete containment and removal of all released product, including contaminated soils.)

EPA has chosen a reporting threshold of 25 gallons because it feels that its requirements are sufficient to guide owner and operator activities for spills under this amount, but that spills larger than 25 gallons must be reported so that further and more specific guidance can be obtained by the owner and operator. However, if state regulations are more specific than the federal regulations and provide more extensive guidance for how to carry out a clean-up at the sites with larger spills or overfills, then EPA believes that the state could allow a larger reporting threshold and still be considered no less stringent. Under the above objective, for program approval purposes, a state may decide to specifically guide and direct spill responses through regulations or enforceable policies and procedures. EPA believes the selection of an approach in this area is a matter of administrative discretion and is best left to state decision-makers who must choose how to effectively implement the program in their states.

7. Release Response and Corrective Action (§ 281.35)

An important objective of the federal program is that release response and corrective action be taken as needed to protect human health and the environment at all sites with confirmed releases. For purposes of determining whether the state program will achieve this objective as effectively as the corresponding federal requirements, the Agency proposed to evaluate the stringency of a state release response and corrective action program by focusing on several key aspects. First, the state program must require that confirmed releases from the UST system are promptly stopped. Second, the state program must require immediate steps to stop migration of the release, and ensure that health and safety hazards are quickly mitigated. Third, the state program must require that adverse impacts to soil and ground water be investigated, identified, and cleaned up as necessary to protect human health and the environment. Fourth, the state program must require timely reporting of release responses and corrective actions taken, including information necessary to establish cleanup goals and to monitor cleanup progress at the site.

As discussed in the preamble to the April 17 proposal (52 FR 12751), the experiences of several state and local UST programs indicate that no matter what approach is taken in the regulations, the actual work associated with UST release response and corrective action in the field commonly translates into two general phases: (1) Immediate abatement actions that are typically required at many UST sites (for example, control of explosion threats and free product removal), and (2) long-term release response and corrective action associated with soil and ground-

water remediation. For purposes of state program approval, EPA proposed that state requirements could achieve the federal objectives for release response and corrective action without being identical to the federal technical standards. In fact, many of the operating state and local UST programs have requirements that are more general than the technical standards proposed by EPA. As discussed previously in today's preamble, when state requirements are more general in nature, they tend to place a greater burden on the state to supply site-specific directions and to oversee more closely corrective actions taken. Recognizing the need for clear technical direction at clean-up sites, some states have established release response and corrective action funds that provide the state agency with the capability to take over a significant part of the responsibility for remedial action after the owner or operator reports a release.

Today's final technical requirements for release response and corrective action mandate that the owner and operator conduct an initial site investigation and promptly abate health and safety threats. Free product must also be recovered to prevent further movement of the released product within the soil or ground water. Once the initial abatement of hazards has been completed, certain conditions may require that a more detailed soil and ground-water investigation be undertaken. After each step in the corrective action process, the owner is required to report to the implementing agency. In some cases the implementing agency may require a corrective action plan that specifies how further cleanup will be conducted. At this point, further corrective action of soil or ground water proceeds on a site-specific basis.

Several commenters responded to the Agency's request for input concerning the proposed approach to the release response and corrective action objective. Most of them agreed with the flexibility provided by the proposed objective and stated that it not only provided for adequate protection of human health and the environment but was also feasible for state agencies to implement.

Another commenter expressed concern with the proposed objective, saying that it was too vague, and that almost all the details of the proposed federal corrective action standards had been left out. This commenter also pointed out that the objective omitted requirements for reporting and public participation, and requested that they be included in the final objective.

After considering all the comments, EPA agrees with the commenter who suggested that more detail had to be included in the objective for release response and corrective action, and has provided more specificity in the final rule. In particular, the Agency has clarified in the objective that when a potential threat to human health exists, such as the presence of free product in the soil or ground water, a more extensive investigation of contamination must be conducted. The Agency also agrees with this commenter that the objective should be expanded to ensure that state programs include requirements for corrective action reporting and public participation in the corrective action process, and the final objective includes such requirements.

In general, the Agency has concluded that the states should be left with the flexibility to choose whether to adopt the federal corrective action approach or to adopt an alternative approach that is more suitable to the pattern of work and procedures already used by the implementing agency. Therefore, EPA believes that the overall goal of the federal requirements in the area of release response and corrective action is to ensure that the basic release response and corrective action steps that may be necessary at the site to protect human health and the environment be carried out at the site. In order to be no less stringent than the federal release response and corrective action program, the state's approach must ensure that the same basic work will get done in as timely and effective a manner as is required by the corresponding federal technical requirements. This objective can be met in a state that does not have all of EPA's release response and corrective action technical requirements in state regulations. In the same manner as the other objectives, EPA will require state programs to meet the underlying performance goals of the federal program, rather than all the details contained in the federal technical regulations. The following discussion addresses this final objective in greater detail.

a. Assess and stop further releases (§ 281.35(a)). EPA's final technical standards require that all confirmed releases are promptly investigated and stopped (§ 280.61 in the final technical rule). To demonstrate the state program's stringency in comparison to this provision of the federal objective, the state must provide requirements that ensure that the owner and operator is obligated to promptly take action to assess and stop any ongoing releases at the site. The actions appropriate to stop a release will vary depending on how the release was confirmed (for example, through a tightness test or presence of fuel in nearby utility lines) as well as the conditions at the site (such as a four-tank gasoline station with pressurized lines versus a one-tank operation with suction lines). If the confirmation of the release identifies the tank or piping component responsible for the release, then actions to prevent future releases could include emptying the problem tank or not using the suspect piping run until it is replaced or repaired. However, if the location of the source is unknown, then the entire UST system or systems will need to be considered suspect and addressed accordingly.

The use of the word "promptly" in the objective is intended to mean that the state must require that owners and operators take such steps quickly to minimize future releases. The less prompt such actions are, the more likely it is that future releases will not be minimized and, therefore, the state's requirement will not be considered no less stringent by EPA. To provide adequate enforcement of such a requirement, the state must clearly define, using a number, the time frame within which an owner or operator is expected to respond to this requirement. General state requirements that are further clarified by detailed technical guidance or policies will be sufficient to demonstrate that a state program is no less stringent in this area.

b. Initial abatement activities (§ 281.35(b)). EPA's final technical standards require each site with a confirmed release to be investigated and addressed to ensure that any immediate threats to health and safety are identified and brought under control (§ 280.62 in the final technical rule). Under the federal program, some of the concerns that must be identified and addressed at the site include: Explosive gas levels or vapor threats that are due to the exposure of contaminated soils; the off-site impacts of free product (or resulting vapors) on nearby water, sewer lines, or in building basements; and the location of any nearby ground-water users who could be exposed to or threatened by dissolved contaminants in their drinking water. The objective underlying these federal requirements is to ensure that owners and operators take action to identify, contain, and mitigate any immediate health and safety threats that are posed by a release (such as mitigation of explosive or other hazards posed by released gas or vapors). Accordingly, a state is no less stringent than the federal program if its program contains such requirements.

The actions taken to mitigate the effects of the release at a particular site will be tailored to the nature of the release and the sensitivity of the site and the surrounding area. (See the discussion on this subject provided in the preamble to the final technical standards rule published elsewhere in today's **Federal Register**.) The state may decide to have an inspector immediately conduct a review of the site, or it may instruct the owner and operator to do the review and submit the information to the state. The state program must clarify the general actions that the owner and operator are expected to perform to identify, contain, and mitigate any immediate health and safety hazards. In addition, the state must require that the site must be investigated for free product, and if present, begin free product removal.

c. Investigation of impacts on soil and ground water (§ 281.35(c)). Another important aspect of the release response and corrective action objective is the investigation and identification of the extent of adverse impacts on soil and ground water at all sites with confirmed releases. EPA's final technical standards rule includes the requirement to investigate all sites to characterize the presence of contamination in the area of this site most likely to have been impacted (e.g., below the excavation zone; see § 280.63 in the final technical standards rule). A more detailed investigation of the extent of soil and ground water contamination (including dissolved product) is required if free product is present on or within the aquifer, or if contaminated soil is in contact with ground water (§ 280.65 in the final technical rule). Even if these conditions are not present, the implementing agency can require the more detailed site investigation if a potential threat to nearby surface or ground water is believed to exist.

To be no less stringent than these federal technical standards, a state must provide requirements that mandate an initial investigation of every site with a release to identify possible adverse impacts on soil, ground water, and nearby surface waters. The state requirements could establish the need to characterize the extent of ground-water contamination at all sites (which would be more stringent than the federal approach) or alternatively the state could require that a more extensive investigation be performed based on site conditions identified during an initial investigation. If the second approach is used, the state must develop a method or policy for determining when further site investigation is required, and this policy must include the existence of a potential threat to human health and the environment. Potential threats may include evidence that drinking water wells have been affected, that free product is present on or within the aquifer, or that contaminated soil is in contact with the ground water. As with the other aspects of the release response and corrective action objective, more detailed requirements concerning what constitutes an initial versus a full site investigation, and when a detailed investigation must be conducted, can be established by the state through the use of guidelines, written policies, and implementation protocols and procedures as long as the owner and operator will be required to undertake the investigation when requested by the implementing agency.

In response to a concern raised by one commenter, this aspect of the overall objective has been modified to require investigation for nearby surface water impacts. This amendment is consistent with a change made to the final technical standards in § 280.65(a)(4).

d. Soil and ground-water remediation (§ 281.35(d)). Another objective for release response and corrective action is the cleanup of contaminated soil and ground water identified at the site as necessary to protect human health and the environment. For example, the extent of remediation may be based on a site-specific risk analysis that includes potential human exposure. Alternatively, a state may use statewide numerical standards to establish cleanup levels at a site. In evaluating this aspect of the objective, the Agency does not intend to distinguish between the two approaches when determining whether a program is no less stringent. In either case, the state requirements must ensure that remediation provides adequate protection of human health and the environment.

To be approved as no less stringent, EPA will consider the following points in evaluating whether the state program provides for release response and corrective action as necessary to protect human health and the environment. The state must have authority to require an owner and operator to develop and submit for approval information concerning how remediation of contaminated soil, ground water, and nearby surface water at the site will be conducted (§ 281.35(e)). In addition, the state must be able to require the implementation of steps for release response and corrective action after they have been identified. The release response and corrective action steps must consider the risk posed to human health and the environment by contamination at the site and address potential routes of human exposure.

e. Reporting on corrective actions taken (§ 281.35(e)). Another objective of federal release response and corrective action requirements is to require the owner and operator to report to the implementing agency on corrective actions taken in response to confirmed releases. In today's final technical standards rule, EPA requires the owner or operator to submit status reports and to report plans for future corrective action activities, such as free product removal or soil and ground-water remediation (§§ 280.61 through 280.65 in the final technical standards rule). The proposed release response and corrective action objective for determining no less stringent state programs inadvertently did not include provisions for corrective action reporting. EPA agrees with the commenter who argued that this is an important aspect of state corrective action programs and that reporting must be included in the final rule as a no-less-stringent criterion. A certain amount of reporting and recordkeeping on the part of owners and operators is necessary for adequate oversight by the implementing agency and to ensure that owners and operators properly carry out their corrective action responsibilities. Thus, today's final rule includes an added objective that makes clear that states must require timely and complete reporting on corrective action steps planned and taken (§ 281.35(e)). This change makes the final objective fully consistent with the corresponding federal technical standards in the final rule, and responds to the concern raised by public comment.

In determining whether a state program meets the objective in the area of corrective action reporting, EPA does not require that states copy the same details as are required in the federal standards. General reporting requirements that obligate the owner and operator to report on corrective actions taken and planned should be sufficient for a state to meet this objective. EPA will examine the following factors in determining whether a state is no less stringent than this aspect of the release response and corrective action objective. The reporting on corrective action plans must result in the information being made available to the state quickly to ensure that steps are being taken to prevent further contamination, and so that technical direction can be provided by the state. In addition, the level of detail reported to the state should be

sufficient to oversee the process of corrective action and ensure technical adequacy. The state should be able to require reporting on all phases of corrective action to ensure that corrective action in fact is taking place and is sufficient to protect human health and the environment. In addition, information on the site and the surrounding area should be reported so that the corrective action can be tailored to the specific conditions of the site and the nature of the release. Initial corrective action steps, results of investigations of soils and ground water, and plans and status reports on long-term remediation of contamination at the site are among the types of specific information that the state might require

f. Public participation in release response and corrective action (§ 281.35(f)). To achieve this aspect of the objective, the state must provide opportunity for public participation when a confirmed release requires a corrective action plan. This provision was not included in the objective proposed in the December 23 Supplemental Notice. In order to respond to concerns raised by public comment on the proposal, and to remain fully consistent with the final federal technical standard (§ 280.67), a public participation provision has been added to the final release response and corrective action objective.

Section 7004(b) of RCRA and long-standing Agency policy indicate a need to be open to the involvement of any interested member of the public in site-specific cleanup decisions. EPA does not intend to prescribe the nature and extent of the public involvement procedures to be followed by the state. Rather, EPA's intention is that a forum be provided that is in keeping with the state's administrative procedures for the interested public to express its views on the proposed corrective actions for serious UST releases. To achieve this aspect of the federal objective, the state must ensure open access to information pertaining to specific corrective actions for those members of the public that are potentially affected by the release or any planned corrective action. EPA does not expect this to be a significant additional burden because many states already have been involving the public in the decisionmaking process for UST cleanups for many years. For example, many states already allow for public access to their site files and those most affected by the release are usually kept well informed through personal contacts with the state response staff.

8. Out-of-Service UST Systems and Closure (§ 281.36)

EPA has concluded that UST systems temporarily or permanently closed can pose a significant threat to human health and the environment if they are not managed properly. To be no less stringent in this program element, the state must demonstrate that it can satisfy two objectives: (1) Releases from temporarily closed UST systems must be minimized, and (2) future releases must be prevented, and existing conditions needing corrective action identified and corrected at permanent closure. EPA believes these goals can be met in different ways.

To ensure that releases are minimized from temporarily closed UST systems, the state must mandate that the general operating requirements continue to be practiced (§ 281.36(a)(1)). For those tanks where product remains in the UST system, the release detection, corrosion protection, reporting, and release response and corrective action requirements must be followed to achieve these general operating requirements A state may allow release detection requirements to cease if all product is removed from temporarily closed UST systems (§ 281.36(a)(2)).

Another aspect of the closure objective states that each UST system must be closed-off to outside access if it is temporarily closed (§ 281.36(a)(3)). Although this was not addressed in the proposed objective, it is included in today's final rule in order to follow more closely the intent of the corresponding technical standards in this area. The objective reflects the underlying concern in the final technical standards that a tank temporarily closed for extended periods of time could (unknown to the owner and operator) be tampered with or misused as a waste sump or storage pit, or otherwise become the source of accidents during the period of temporary closure. To be able to satisfy this aspect of the objective, the state program must specify when a tank system is considered to be temporarily closed due to the fact that it has been removed from service.

EPA's final technical standard specifies that the tank must be closed-off from outside access if the UST system is temporarily closed for greater than 3 months. The objective has been written to allow some state administrative discretion as to what defines an "extended period of time" for temporary closure. Thus, while this means that states will not be held strictly to the 90-day time period specified in the final technical standards for closing off outside access to the tank, the state still must establish clearly when temporary closure begins in order to meet this objective. Also, the longer a state allows for a definition of "temporary", the less likely they will be able to demonstrate that they are no less stringent in this area.

EPA's final technical standards set a maximum limit of 1 year for allowing unprotected tanks to be closed temporarily, unless the implementing agency allows a longer time period on a site-by-site basis. This time period limitation is primarily to make sure that permanent closure takes place, and the casual temporary abandonment of numerous unprotected USTs for extended periods of time is thereby avoided. Although this subject also was not addressed in the proposed objective, it is included in the final objective to more closely reflect the intention of the final technical standards. To meet this objective, the state must ensure that unprotected UST systems do not remain out of service for more than one year. A state may choose to allow extensions to this one year limit, in which case the state must require that a site assessment be conducted to make sure that a release has not already occurred from the UST system. The time limit for the temporary closure of USTs has been set at one year to ensure that owners and operators of unprotected USTs that are unused are held responsible for protecting the UST system from corrosion or permanently closing it. If the unprotected UST system is new or has been protected from corrosion, then the tank may remain temporarily out of service for an indefinite period of time (although the other requirements for temporary closure still apply).

Adverse environmental and public health impacts at all permanently closed UST systems may be caused by future releases as well as past releases. To avoid these impacts, the state must mandate that regulated substances and accumulated sludge be removed prior to closure and that the site condition around the UST system be assessed. To determine if there are any present or past releases at closure, the state should ensure that the condition of the site below the UST system is evaluated by the owner and operator. This evaluation can be done by any of the methods allowed at the federal level or approved by the state as protective of human health and the environment. The state may choose to hold owners and operators responsible for using appropriate national codes of practice or specify the particular steps needed to ensure a tank is completely emptied and cleaned.

EPA's technical standard for closure also mandates notification before permanent closure so that a state or local inspector may choose to be present. For purposes of program approval the state is only required to have owners and operators report at the time of closure. EPA has concluded prior notification is not essential to achieving the underlying objective in this area, particularly if a state has established a different method of compliance monitoring and has decided that notice before closure is unnecessary under that approach. If the site assessment confirms the existence of a release requiring some corrective action, then release response and corrective action requirements must be followed.

9. Financial Responsibility (§ 281.37—Reserved)

An important objective of the federal program is that owners and operators of UST systems containing petroleum have adequate financial responsibility to undertake corrective action and meet third-party liability claims. An objective for financial responsibility was proposed in the December 23, 1987 Supplemental Notice. The federal law mandates $1 million per occurrence with appropriate aggregate amounts as the minimum level of assurance needed by most owners and operators of petroleum UST systems to meet cleanup and liability costs for a one-time release. The final objective in this area will be provided at a later date when the final technical requirements for financial responsibility are promulgated by EPA. States will need to be no less stringent in this area to be able to receive program approval from EPA.

10. Financial Responsibility for UST Systems Containing Hazardous Substances (§ 281.38—Reserved)

EPA is also developing financial responsibility requirements for USTs containing hazardous substances. These regulations will require owners and operators to maintain evidence that funds are readily available in the event of a release from their USTs to pay for the costs of corrective action and third-party liability for property damage and bodily injury. On February 9, 1988, EPA issued an Advance Notice of Proposed Rulemaking for financial responsibility requirements for USTs containing hazardous substances (53 FR 3818). In this advance notice of proposed rulemaking, EPA solicited comments and information about the approaches under consideration. The Agency intends to propose financial responsibility requirements for USTs containing hazardous substances in the near future, and at that time, a federal objective for such requirements will also be proposed for purposes of state program approval.

Until these requirements are finalized, EPA is reserving this section of today's state program approval rule for this federal objective. For a state to receive program approval, a state does not currently need to have the authority to write financial responsibility requirements for USTs containing hazardous substances. However, if a state plans to regulate UST systems containing hazardous substances in the state program, then the state should consider obtaining the necessary authority in the near future. When EPA promulgates final requirements for financial responsibility for UST systems containing hazardous substances, each state with an approved program will have to submit a revision that incorporates corresponding changes into its state program.

D. Subpart D—Adequate Enforcement of Compliance (§§ 281.40 through 281.43)

In the April 17, 1987 proposed rule, the Agency set minimum requirements for states seeking to demonstrate adequate enforcement of compliance for program approval. In the proposed §§ 281.30 through 281.32, the Agency set forth three categories of requirements: (1) Legal authorities and procedures for collecting and maintaining data on the regulated community; (2) legal authorities for enforcement that must be available to the implementing agency; and (3) options for either procedural requirements or legal authorities for public participation. Section 281.33 of the proposed rule set requirements for sharing of information. The Agency received several comments on this subpart of the proposal and is today clarifying in the final rule its expectations of what constitutes adequate enforcement of compliance for purposes of state program approval. The final requirements are discussed in detail in this section of the preamble.

In summary, under today's final rules (§§ 281.40 through 281.43), states must have adequate compliance monitoring authority so that tank owners or operators can be required by the state to furnish information related to their tanks and conduct monitoring or testing. States must also have authority to enter and inspect any site subject to regulation. In addition, a state must have procedures for: Inspections; evaluation of records; recordkeeping; enforcement against violators; and encouraging citizen reports of suspected violations. A state must also have enforcement authority sufficient to: Immediately restrain violators or potential violators by order or by suit; sue in a court of competent jurisdiction; and assess or sue to recover civil penalties and procedures to implement these authorities. Finally, a state must provide for public participation in enforcement proceedings by using one of three public participation options: Providing one of two types of authority to allow citizen intervention in civil actions; or more general public involvement procedures in compliance monitoring and enforcement actions.

In the preamble to the proposed rule (52 FR 12856), the Agency requested comments on how it should evaluate compliance monitoring and enforcement procedural requirements in state programs, for example, in the form of broad objectives or specific requirements. Many commenters expressed concern regarding the amount of flexibility to be allowed in developing state enforcement programs. Several commenters requested that states only be required to meet broad objectives in the regulations or in guidance. One commenter asked that enforcement procedural requirements be clearly outlined and defined.

In response to the comments, the Agency is clarifying its expectations for the requirements for adequate enforcement of compliance. In developing the requirements for adequate enforcement, the Agency seeks to maintain flexibility in approving a variety of state programs, and encourages states to use innovative approaches in monitoring compliance and carrying out enforcement actions. Consistent with that intent, today's regulations do not mandate the details of compliance monitoring and enforcement procedures for purposes of program approval. Instead, the regulations set forth certain authorities and programs or procedural areas that should enable a state program to demonstrate adequate enforcement of compliance with its technical requirements.

(Note that the insertion of the no-less-stringent criteria (in Subpart C § 281.30 of the final rule) has caused the adequate enforcement requirements to be reorganized into Subpart D, §§ 281.40 to 281.43 of the final rule.)

1. Requirements for a Compliance Monitoring Program (§ 281.40)

a. Legal authorities for compliance (§ 281.40 (a)–(c)). Proposed § 281.30 (a) and (b) required that state employees have the authority to obtain from an owner or operator any information on their USTs necessary to determine

compliance. State employees must also have the authority to require the owner or operator to conduct monitoring or testing, and the authority to enter the site to conduct such testing themselves.

One commenter suggested that these authorities, particularly the authority to require the owner or operator to conduct testing, will place unnecessary burdens on the owner and operator. The Agency believes that these authorities, which are analogous to federal authorities under Subtitle I, are necessary to ensure that states have the means of monitoring compliance, gathering necessary information, and assessing the potential risk to human health and the environment. The Agency is promulgating the language of these sections substantially as proposed.

The Agency is clarifying today the intent of this section by making two changes. First, the term "employee of the state" as it appeared in proposed § 281.30(a) has been replaced by the language of Subtitle I, Section 9005, which provides for such inspection authority for "any officer, employee, or representative or the Environmental Protection Agency duly designated by the Administrator * * * or *any officer, employee, or representative of a state* with an approved program." Since the proposal, the Agency has become concerned that the term in the statute may be construed to be broader in scope than "employee"; thus, for purposes of the final rule, the Agency has substituted the law's more inclusive language. Because of the nature of the regulated universe, many states are likely to depend on personnel other than state employees to inspect, monitor, and test UST systems. For example, the implementing agency may delegate such responsibility to the local building inspector or fire marshal. Because the Agency did not intend to restrict the original authority provided by the statute to only employees of the state, the term "employee" is being replaced by "representative" in the final rule's § 281.40(a). The term "employees" is being replaced by "representative" in the final rule's § 281.40(b) for the same reasons.

Second, in order to be consistent with the terms and definitions found in 40 CFR 280.12, and the wording used in the rest of the technical standards finalized elsewhere today, the Agency is replacing the phrases "his/her tanks, tank contents, and associated equipment" in proposed § 281.30 (a) and (b) with the more concise term, "the UST system", in the final rule's § 281.40 (a) and (b). This change does not alter the substantive meaning of the requirement. The phrases "underground storage tank" and "underground storage tank program" in § 281.30(b) of the proposed rule were replaced with "UST system" in the final rule's § 281 40(c) for the same reason.

b. Procedures for compliance monitoring (§§ 281.40 (d) through (g)). Proposed § 281.30 (c) through (g) set requirements for compliance monitoring programs, including inspections and record reviews. Several commenters requested that the Agency clarify its expectations regarding a compliance monitoring program. These commenters were primarily concerned that the Agency may be restricting flexibility in developing compliance monitoring programs by requiring certain types and numbers of inspections under these programs. Furthermore, these commenters were concerned that the proposed regulatory language could be interpreted as requiring resource-intensive activities, such as a minimum number of scheduled inspections and comprehensive surveys of all UST systems.

Although the proposed regulations set general requirements for a compliance monitoring program, the Agency did not intend that states must develop a "traditional" inspection and record collection program for purposes of state program approval. In particular, the Agency has no intention of requiring states to undertake a specific number of inspections, record reviews, or enforcement actions. As discussed above, the Agency's intention was and still is to provide the states with maximum flexibility consistent with statutory requirements. Thus, the Agency intends to approve programs with innovative approaches to gathering compliance data as long as they adequately ensure compliance. Such compliance monitoring and inspection programs may range from programs that target portions of the tank population, to programs that use permitting. The Agency is clarifying this intent in the final rule by making several changes to proposed §§ 281.30 (d)–(g). These requirements and associated comments are addressed in greater detail below.

• *Requirements for record collection (§ 281.40(d)).* Proposed § 281.30(c) required states to have procedures for receiving, evaluating, and investigating all records and reports and for investigating failure to submit these reports. The Agency is promulgating the language of this section—now numbered § 281.40(d)—substantially as proposed.

Comments on this section expressed a general concern that the requirements may be resource-intensive. One commenter requested clarification on how the proposed requirements would be interpreted. Specifically, the commenter asked how it might determine if an owner or operator failed to submit records, and what proportions of those identified must be investigated. The Agency believes that it is neither desirable nor necessary to promulgate additional requirements that specify procedures for receipt and investigation of required records and reports. The general wording in the final rule was retained in order to provide maximum flexibility for states in developing these programs. In response to the commenters' concerns, it is the Agency's intent to encourage states to develop a potentially wide range of procedures that allow the implementing agency to identify owners and operators who have not submitted required records and reports.

Consistent with this approach, the Agency has not specified procedures for identifying noncompliance. Therefore, in promulgating § 281.40(d), the Agency is clarifying its intent by deleting the word "all" from the language in the proposal. Section 281.40(d), as promulgated, requires states to develop procedures for evaluating records and reports but does not specify the number or percentage of reports to be evaluated.

For further clarification, the Agency is also deleting the word "possible" from the phrase "possible enforcement." "Possible" was removed because it was only needed where "all" records had to be evaluated, but this final action does not change the meaning. The Agency believes that the discretion to undertake an enforcement action is inherent in the state's authority to run the program.

The proposal established that state programs "must provide for investigation for enforcement of failure to submit these records and reports", and today the Agency is removing the phrase "for investigation" from the final wording in § 281.40(d) to clarify its intent not to limit specific means of enforcement. Under the final rule, the implementing agency must have a program for investigating owners' or operators' failure to submit records or reports for purposes of determining whether enforcement is warranted. The Agency thus clarifies that the states have discretion to determine whether, when, and by what means such failure warrants further investigation and enforcement actions.

• *Requirements for inspection procedures (§ 281.40 (e)(1) and (e)(2)).* The proposed § 281.30(d) required states to have inspection and surveillance procedures, including periodic

inspections, to ensure compliance with program requirements. For clarification, the proposed § 281.30 (d) and (e) have been renumbered, respectively, as § 281.40(e)(1) and § 281.40(e)(2).

The Agency received a number of comments on these proposed requirements, particularly the definition of "shall maintain a program for periodic inspections." Many commenters were concerned about the resources that would be necessary to implement a traditional inspection program with respect to the UST universe. One commenter requested that the Agency specify the number of inspections to be accomplished within a given time period and the frequency of inspections. The Agency agrees with the commenters that the requirements for inspection and surveillance, as proposed, could suggest that a traditional inspection program is required for program approval, which would be impossibly resource-intensive given the large UST universe. This was not the Agency's intent. Therefore, the final rule's requirements have changed the wording of the proposed § 281.30(d) to clarify that greater flexibility is available in this area for purpose of approving state programs.

In promulgating § 281.40(e)(1) today, the Agency has retained the general requirement that the state has inspection procedures, but has replaced the description of "periodic" inspections with "systematic" inspections. The Agency has promulgated a requirement for "systematic" inspections to clarify its expectations with regard to state inspection programs. The Agency expects states to conduct inspections but has chosen not to mandate a particular number of inspections within a specified time period. Instead, the Agency encourages states to develop a method for determining when to conduct inspections and encourages other, more innovative methods of determining compliance. Examples of systematic inspection programs include targeting inspections to certain tank groups or tank activities (for example, at closure) and developing permitting programs.

In the preamble to the proposed rule, the Agency requested comment on the need for requiring enforcement procedures. One commenter noted that states' legal, procedural, and institutional processes and structures are relevant to assessing adequate enforcement. The Agency agrees that an adequate enforcement program must not only have the legal authorities to carry out enforcement actions, but also the procedures for exercising these authorities. To clarify that intent, the Agency has added to § 281.40(e)(1), the requirement that states provide for enforcement of failure to comply with program requirements. This requirement is consistent with final § 281.40(d), which requires that states not only have procedures for receipt of records and reports but also provide for enforcement of failure to submit such documents. In addition, this requirement will ensure that the regulated community and the public are provided with an opportunity to learn what procedures will be in effect in the state.

The proposed § 281.30(e) set requirements for the manner in which compliance monitoring information will be gathered. The purpose of these requirements was to ensure that all types of state inspection procedures were conducted in a manner that will produce evidence admissible in court. States are expected to be well aware of the need to conduct inspections properly for these reasons, and should be easily able to demonstrate compliance with this requirement. No comments were received on this requirement, and the Agency is making adjustments only to remain consistent with the changes to the inspection program requirement, as described above, and renumbering the subsection to emphasize its purpose as an addendum to the previous requirement.

• *Requirements for public reporting (§ 281.40(f)).* Section 281.30(f) of the proposed rule required states to develop a program for encouraging and processing public reports of violations. The purpose of the proposed requirement was to ensure that state applicants' efforts to monitor compliance were open to this important additional source of information regarding compliance. Several commenters, however, did not understand the purpose and scope of this requirement. One commenter requested clarification on what type of citizen complaints had to be addressed by the program. For example, would speculation concerning a possible violation be considered a complaint that must be investigated?

The final requirements have been revised to ensure that states develop programs that respond to public reports of both speculated or confirmed violations. The purpose of this requirement is to encourage citizens to provide information to implementing agencies—for example, report a suspected release—that may be crucial to early response, investigation, and compliance efforts by the implementing agency. Such a program is particularly crucial in light of the large UST universe and the impracticality of large-scale enforcement efforts. This clarification of the scope of this requirement, however, is not intended by the Agency to require states to develop a substantial public outreach program. On the contrary, providing a telephone line for citizens to call if they suspect a leak or other violations would be the basic kind of program that will meet this requirement. Accordingly, the Agency has reworded § 281.40(f) of the final rule to clarify that state investigation procedures must allow for follow-up on tips and other reports and complaints to determine their validity. The Agency, however, is not promulgating specific requirements concerning such a program, and states are encouraged to adopt follow-up procedures that are tailored to their specific UST programs.

• *Requirements for monitoring compliance over time (§ 281.40(g)).* Section 281.30(g) of the proposed rule required states to maintain a "program which is capable of making comprehensive surveys of all facilities and activities subject to regulations," and that any resulting compilation, index, or inventory of such facilities be made available to EPA upon request.

Many commenters objected to this requirement because of the significant resource demands it would impose on the states. In particular, one commenter was concerned about having to maintain the capabilities to conduct "comprehensive surveys of all facilities and activities," and because this would be extremely resource-intensive, the commenter asked for more guidelines in implementing this requirement. Another commenter questioned the requirement for approvable states to provide EPA, upon request, an inventory or list of facilities in violation of UST requirements, because it would be burdensome and unnecessary.

The primary purpose of this requirement, as proposed, was to ensure that states are able to assemble information on the regulated community that can be used to measure their compliance status. This requirement is based on section 9002 of Subtitle I, which mandates the establishment of state inventories, and the necessity of such inventories for effective compliance monitoring. The Agency intended to allow states flexibility in determining how extensive the survey undertaking must be, provided that they achieve the purpose of measuring compliance. In response to concerns of the commenters, and to clarify its intent, the Agency has substantially altered proposed § 281.30(g) by deleting the first sentence pertaining to a program for

making "comprehensive surveys." The final rule simply requires that a state program must maintain the data collected through inspections and evaluation of records in a manner that allows the implementing agency to monitor over time the compliance status of the regulated community.

Section 281.40(g) also requires that states make any compilation, index, or inventory of such facilities and activities available to EPA upon request. With respect to the commenter who questioned the necessity of using such inventories to oversee state actions, the Agency wishes to clarify that this requirement was not intended to be used as an oversight tool. Although the Agency is promulgating this part of the requirement as proposed, the Agency does not intend to request submission of this information on a regular basis and will negotiate specific reporting requirements with the states as part of the MOA and the annual state grant process. The Agency prefers that reporting of information on state enforcement programs be managed through the MOA between the state and the EPA Regional Administrator. The Regions will negotiate specific reporting requirements with each of their states and will incorporate those requirements into the State Grant Workplan.

• *Requirements for updating of notification.* The preamble to the proposed rule (52 FR 12857) described how the Agency considered and rejected requiring states to include a requirement for updating UST notification information by owners and operators as a condition of state program approval. This issue was raised in the proposal in the context of adequate enforcement of compliance; however, the Agency considers it to be primarily a no less stringent issue. This issue is discussed earlier in today's preamble in section C.2.

2. Requirements for Enforcement Authority (§ 281.41)

The proposed § 281.31 established requirements for legal authorities for enforcement. The Agency proposed that states demonstrate some specific enforcement authorities as a condition of program approval. This was to ensure that states have sufficient authorities to carry out an enforcement program in lieu of the federal program. The final rule includes only a few changes to the proposed requirements.

The proposed § 281.31(a) specified the authorities necessary to implement remedies for violations of state program requirements. Section 281.31(a)(1) required that states have the authority to issue a temporary restraining order that would prevent violators or potential violators by order or by suit from engaging in unauthorized activity that is endangering or causing damage to public health or the environment. One commenter requested that the Agency define "unauthorized activity". This term is intended to include any activities that result in noncompliance with the regulations. The Agency is promulgating this requirement—now numbered § 281.41(a)—substantially as proposed.

Section 281.31(a)(2) in the proposed rule required that states have authority to sue in a court of competent jurisdiction for a preliminary or permanent injunction. The Agency received no comments on this section and is promulgating the requirement as proposed. Both this section and § 281.31(a)(1) in the proposed rule—now numbered § 281.41(a)(1) and (a)(2)—are standard legal authorities and are often located in a general enforcement statute. The Agency expects that most states should be able to easily satisfy these requirements.

Section 281.31(a)(3) of the proposed rule set the authorities that states were required to have to recover civil penalties. In this section, the Agency required states to be able to recover civil penalties for failure to notify or for submitting false notification information "up to at least $10,000 per tank." For failure to comply with state requirements or standards, the penalties were required to be assessible "up to at least $10,000" for each tank for each day of violation.

The Agency received a number of comments concerning the penalty authorities, particularly regarding the phrase "up to at least $10,000" for each day of violation of state requirements. Several commenters interpreted the rule to mean that EPA was dictating a *minimum* civil penalty of $10,000. These commenters argued that the determination of whether civil penalties are necessary for effective implementation should be made at the state level.

The Agency agrees with the commenters that the proposed language in this section was unclear as written, and is clarifying that the intent is to require states to have authority to assess a wide range of penalties either for each violation or for each tank system for each day of violation. Therefore, the Agency is promulgating this revised section as § 281.41(a)(3) of the final rule to require that states "be capable of assessing civil penalties up to" the requisite amount per violation or for each tank for each day of violation. One commenter requested that EPA lower the limit for the penalty authority from $10,000 to $5,000 for each tank for each day of violation and suggested that a $5,000 penalty level was sufficient to promote compliance. The Agency agrees with this commenter and has changed the requirement for civil penalties accordingly. The penalty level was originally set at $10,000 for each tank for each day of violation to reflect the penalty authority that Congress provided to EPA for enforcement of the federal program. States, however, do not necessarily have to have the same penalty level authority to run an adequate UST program. A high penalty level is often used as an incentive for compliance, and generally states do not actually ever exercise this authority to the full amount. In addition, much of the regulated community consists of small businesses, therefore a $5,000 penalty level is more than adequate to promote compliance. EPA notes that most states already have the authority to assess $5,000 for each violation. The language change in this section is also consistent with the Agency's intent to allow states flexibility in carrying out enforcement actions. Under the promulgated § 281.41(a)(3), states may determine during specific enforcement actions that a lower penalty may be sufficient to ensure compliance, and similarly are not restricted to $5,000 for each tank for each day of violation as a maximum penalty if additional authority is obtained. Thus, EPA expects that a state will evaluate violations on a case-by-case basis, and enforce fines according to the severity of environmental hazard, the intentions of the owner and operator, a history of past violations, or other extenuating circumstances.

The proposed § 281.31 (b) and (c)—now § 281.41 (b) and (c) in the final rule—required standard enforcement authorities regarding burden of proof and appropriateness of penalties sought to violations detected. The Agency received no comment on these requirements and no changes have been made since proposal.

3. Requirements for Public Participation (§ 281.42)

The proposed § 281.32 set forth three options that states may choose from to ensure that the opportunity for public participation in enforcement proceedings is provided. The purpose of providing public participation in the decisionmaking process is to promote public involvement in implementation of the UST program in the state. The first option set in the proposed § 281.32 was authority that allows intervention as of right in any civil action to enforce UST requirements. The second option was

assurance that the implementing agency will provide at least 30 days for public comment on all proposed settlements; will investigate and provide written responses to all citizen complaints; and will not oppose citizen intervention. The third option was authority to allow intervention analogous to Federal Rule 24(a)(2). To fulfill this requirement, states must comply with only one of the three options.

The Agency received a number of comments on the requirements for public participation. It appears that many commenters did not understand that only one of the three options must be met. Several commenters expressed the opinion that the Agency's requirements were inappropriate for a rule that emphasized flexibility in state program development. For example, several commenters objected to EPA's dictating the level of public participation in enforcement proceedings. The commenters argued that states and localities have more expertise than the federal government in identifying circumstances in which public participation is appropriate. Another concern expressed by commenters is that certain public participation procedures may strain available resources. In particular, commenters objected to the requirement in the proposed § 281.32(b)(2) that states investigate *all* citizen complaints. Commenters also objected to the requirement that states provide 30 days for public comment on all proposed settlements of civil enforcement actions. One commenter indicated that this requirement would be a tremendous burden on implementing agencies. Conversely, one commenter objected to the option approach, and stressed the need for very specific public participation requirements.

The Agency has retained the option approach in the final rule because each of the options separately provides an adequate opportunity for public participation, and requiring all three options would be unnecessary. To emphasize that the Agency is providing options for this requirement, the Agency has added the phrase "any one of the following three options" to the first sentence in § 281.42 of the final rule. The Agency has also changed the order of the requirements for clarification. The option for the authority presented in the proposed § 281.32(c) is promulgated as the first option in § 281.42(a) of the final rule. The Agency has presented this authority first because it recognizes that most states will already have an authority analogous to Federal Rule 24(a)(2). Several commenters from state agencies noted that they have this authority. The other options for legal authority proposed in § 281.32 are renumbered accordingly: Proposed § 281.32(a) is now § 281.42(b); proposed § 281.32(b) is now § 281.42(c).

Because the Agency received a number of comments regarding the specific requirements for the third option—proposed as § 281.32(b)—the Agency has made several changes in this requirement as § 281.42(c) of the final rule. The Agency has revised the requirement that states ensure "public notice of and provide at least 30 days for" public comment. In the final rule, the Agency has simply required that states must "provide notice and opportunity for" public comment. These changes will allow the state to develop procedures for notification in methods other than publishing (which implied that states may have to publish all notices in a newspaper). The Agency has also deleted the requirement that responses to *all* citizen complaints must be written. The Agency does not believe that the specifics in the requirement are necessary to ensure public participation; given the nature of the universe, responding in writing to all citizen complaints would be an overwhelming burden on state and local resources. Many citizen complaints can be handled effectively by telephone. In the final requirement, the method of response is not specified, and the word "all" is deleted. The new language reflects the need for flexibility in UST enforcement due to the nature of the regulated universe

4. Sharing of information (§ 281.43)

The proposed § 281.33(a) set forth procedures for states to share with the Agency information obtained or used in the state program. Section 281.33(b) of the proposed rule indicated that the Agency will furnish approved states with any information necessary for administering the state program. Information submitted to the Agency under a claim of confidentiality subject to the conditions in 40 CFR Part 2 will not necessarily be treated as confidential by the state unless the owner and operator reapplies for confidentiality. The Agency received no comment on this section and is promulgating it in the final rule in § 281.43.

E. Subpart E—Approval Procedures (§§ 281.50 through 281.52)

1. Approval Procedures for State Programs (§ 281.50)

States may submit an application for approval on the date of promulgation of the federal technical requirements. Though states may apply to operate all aspects of the UST program for both petroleum and hazardous substance tanks, approval of state UST programs may also occur in phases Section 9004 of RCRA authorizes interim approval of state programs for a brief time-period and also authorizes approval of certain types of partial programs (this is discussed under the analysis of the program description earlier in this preamble). EPA regional offices will review state applications to determine if the application is complete. Section 281.40(c) of the proposed rule allowed EPA 180 days for review and approval of complete state applications. Commenters suggested that this time period be shortened and that an additional time period be established for determination of the completeness of an application. EPA has decided, however, to promulgate this section substantially as proposed because section 9004 of RCRA establishes 180 days as the time period for accepting and reviewing state applications, and EPA does not believe that it is possible to accommodate all the required procedures in a shorter period. For example, 30 of these 180 days are necessary for a public comment period. EPA staff will be available to states to work with them in developing both their applications and programs. Additionally, EPA encourages states to participate in pre-application reviews with the Agency's regional offices in order to facilitate final approval and ensure that applications will be complete upon submittal.

Comments on other aspects of the approval procedures were not received. The Agency includes a brief description of the process here for informational purposes. As part of the application review process, under § 281.50(e) of the final rule, the EPA Regional Administrator will make a tentative recommendation on approval or disapproval. EPA then will publish a tentative determination in the **Federal Register** and allow 30 days for public notice and comment. EPA will hold a public hearing if there is sufficient public interest shown during the comment period. Next, under § 281.50(f) of the final rule, the EPA Regional Administrator will evaluate the public comments and make a final decision on approval or disapproval within the statutorily mandated 180 days. EPA will publish this decision in the **Federal Register.**

2. Interim Approval (§ 281.51)

Section 281.51 of the final rule establishes the procedures for approval

of state revisions to interim programs. Initially, state programs may be approved for a period of 1 to 3 years from the date of promulgation of the federal technical standards, even if their requirements are less stringent than federal standards for: Release detection; release reporting and investigation; and out-of-service or closed UST systems. States seeking interim approval are required to submit a schedule (discussed in section IV.B. of this preamble) that outlines the major steps and milestones for obtaining the additional statutory and/or regulatory authorities necessary for final program approval.

States applying for interim approval must submit to EPA an amended application with their completed program revisions by the end of the applicable time period. The amended application need only cover changes in the state program since the award of interim approval. EPA must review this amended application using the same procedures applied to the original application. The Regional Administrator will publish the tentative determination on the amended application in the Federal Register, and will make a final determination within 180 days. In the April 17 proposal, the Agency proposed in § 281.41(e) that the approved status of the state's interim program would expire automatically if EPA disapproves its amended application. One commenter expressed concern that this provision does not allow for instances where a program amendment is submitted and disapproved early in the specified time frame, when opportunity still exists to correct the deficiencies and reapply. EPA did not intend this situation to occur and has added language to clarify the situation. A state may re-submit an application any time until the last day of its allowed interim period. The state program will revert to EPA only if the state submission is disapproved and a revised application is not submitted before expiration of the interim period. If a state application for final approval is received at the end of the interim period, EPA will evaluate the submission after termination of the interim period and will either determine the state's program to be complete and approvable, or will determine the application to be unapprovable, in which case the state program will automatically revert to EPA.

EPA interprets the interim period as that period of time the state has to submit an amended application. States seeking interim and then final approval are required to submit two separate approval applications for interim and final approval and undergo the 180-day EPA review twice. States receiving interim approval must submit a complete application for final approval by the end of the interim period or automatic expiration of approval will occur. The expiration of interim approval under Subtitle I does not require EPA to terminate or withdraw the program, because the approval terminates automatically under the statute. State programs with expired interim approval may, through a Memorandum of Understanding with EPA, continue to implement parts of the federal UST program until they apply for and receive final approval.

3. Revision of Approved State Programs (§ 281.52)

At some point in the future it may be necessary for states to submit revisions to approved programs for approval by EPA. This need for revision may occur, for example, when federal or state authorities are changed by new legislation or rulemaking. EPA will treat revised applications in the same way as amended applications in that only those program areas affected by the change will be subject to review by EPA; however, the review process will be streamlined. Instead of publishing a tentative determination in the **Federal Register**, EPA will publish a proposed determination that may become final immediately after 60 days. This "immediate-final" rulemaking procedure has been used in state program approval under Subtitle C of RCRA, and for approval of revisions to State Implementation Plans under the Clean Air Act.

One commenter asked whether the meaning of "adverse comments" in proposed § 281.42(c) referred to public comments opposing EPA's decision or to public comments supporting program disapproval. In today's rulemaking the Agency has clarified the meaning of that section by explicitly referring to "significant negative comment opposing the proposed revision". If EPA receives public comments that strongly oppose the proposed revision and provide good reasons for EPA to reconsider its decision, the Agency may choose one of two options. The Agency may publish a notice in the **Federal Register** withdrawing the immediate-final decision and return to the procedures for initial and amended applications (found in § 281.50). Alternatively, the Agency may publish a notice in the **Federal Register** that responds to the significant negative comments and describes the Agency's final decision. In addition, if EPA has reason to believe that a particular revision will receive significant negative comment, EPA may choose to follow the usual review procedures for program applications, rather than begin with the immediate-final rulemaking process.

One commenter misunderstood EPA's intent in this last case. EPA will not reject a revision simply because negative public comment is anticipated or received. Rather, the procedures for publishing EPA's determination regarding the state's application will follow those procedures normally used rather than the streamlined immediate-final rulemaking procedures. This course of action allows more time for the consideration of public comment.

F. Subpart F—Withdrawal of Approval of State Programs (§§ 281.60 through 281.61)

No comments were received on this part of the proposed regulations. EPA is promulgating these sections substantially as proposed. EPA has designed two withdrawal procedures for circumstances (1) when an approved state voluntarily transfers program responsibilities back to EPA, or (2) when EPA initiates proceedings to determine if approval of a state program should be withdrawn. If EPA initiates withdrawal, the proceedings are to be conducted in accordance with adjudicatory hearing proceedings as outlined in 40 CFR 271.23 (b) and (c) of the RCRA Subtitle C state program approval regulation. EPA considered, but has rejected at this time, an alternative to the Subtitle C approach calling for withdrawal procedures by regulation rather than an adjudicatory hearing process. An example of this alternative approach is found in 40 CFR 145.34, under the Underground Injection Control (UIC) program. Subtitle I of RCRA, covering the regulation of underground storage tank systems, lacks the explicit statutory direction provided to the UIC program under the Safe Drinking Water Act, and a precedent for adjudicatory hearings in withdrawal proceedings has been established for RCRA under Subtitle C. (The Agency is, however, re-evaluating the withdrawal procedures found in 40 CFR 271.23 of the Subtitle C state program approval regulations. Since this rule incorporates those procedures by reference, any final Agency changes will automatically take effect in §§ 281.60 through 281.61 of today's rule.) No public comments were received on this issue, so EPA has chosen to incorporate the adjudicatory hearing procedures.

In § 281.60(a) of today's final rule, the Agency has clarified the criteria for withdrawal of state program approval. The criteria proposed on April 17, 1987 required the Agency to consider whether

a state is taking timely and appropriate enforcement action and to evaluate the quality and number of state compliance inspections. The Agency is promulgating final criteria that are more consistent with the requirements for adequate enforcement as promulgated today, by emphasizing its expectations for quality enforcement actions rather than quantitative successes. The final withdrawal criteria require the Agency to consider whether the state agency is implementing an adequate enforcement program by evaluating the quality of state enforcement actions.

The criteria for withdrawal also include failure to have adequate statutory or regulatory authority. This would include failure to submit an application for program revision when requested by EPA as a result of changes to Subtitle I statutory authorities or regulatory provisions. However, the final rule contains no provisions setting a timeframe for states to submit such applications. The appropriate timeframe for such revisions has been a difficult issue in other state approval programs. The Agency intends to provide a timeframe for revisions of Subtitle I state programs each time a change in federal statutory or regulatory provisions is published in a notice in the **Federal Register**.

Finally, the Agency is making one change to § 281.60(a) to change "the Administrator must" to "the Administrator may" withdraw program approval. This change now makes § 281.60(a) consistent with § 271.22(a) of the RCRA Subtitle C regulations. It was the Agency's intention to use the same approach for withdrawing program approval as the Subtitle C program, and this correction has been made to reflect that intention.

V. Relationship to Other EPA Programs

A. Leaking Underground Storage Tank Petroleum Response Fund

The Superfund Amendments and Reauthorization Act of 1986 amended Subtitle I to establish a Leaking Underground Storage Tank (LUST) Trust Fund to provide funds for corrective action and enforcement for releases from USTs storing petroleum. The long-term goals of the Trust Fund cleanup program and UST prevention program are to protect human health and the environment, primarily from releases to ground water caused by leaking USTs. Cleaning up releases using the Trust Fund is an immediate need, but by itself is a short-term and temporary solution. The long-term solution is for states to develop prevention programs, which over time will result in fewer leaking tanks needing cleanup responses. States must also develop financial assurance mechanisms that will provide funds for future cleanups.

EPA, therefore, has made a link between the LUST Trust Fund and UST regulatory program to ensure that future contamination is minimized. After the effective date of today's final rule, a state's success in making reasonable progress toward submitting a completed application for state program approval may be grounds for increasing state access to the Trust Fund in FY 90 and thereafter. EPA realizes that "reasonable progress" toward submitting a complete application will vary depending upon the status of the individual state program. EPA intends to develop criteria for measuring state progress, and will evaluate progress for each individual state during FY 89.

B. RCRA Hazardous Waste Program

State UST program requirements and approval procedures will be treated independently of state authorization under other related EPA programs. Federal UST legislation, under Subtitle I of RCRA, was developed to address an environmental problem not adequately covered by existing EPA programs. Regulations governing tanks storing *hazardous wastes* have been promulgated under Subtitle C (40 CFR Parts 264 and 265, July 14, 1986). These regulations are only applicable to hazardous wastes, the storage of which is exempted from today's technical standards under § 280.10. Approval of a state UST program under Subtitle I of RCRA does not entitle a state to implement hazardous waste tank requirements under Subtitle C of RCRA. For additional information, see "Relationship to Other EPA Programs" discussed under the promulgation of federal UST technical standards, published elsewhere in today's **Federal Register**.

VI. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets. In the April 17 proposal, the Agency stated its belief that an RIA was not needed for the Part 281 rulemaking.

One commenter requested that a regulatory impact analysis be performed for the Part 281 regulations, but EPA still believes that this regulation will have none of the above effects. The requirements for state UST programs as outlined in this proposal will not add substantial costs beyond those imposed under the federal UST regulations proposed elsewhere in today's **Federal Register**. Because this rulemaking does not meet the definition of a major regulation, the Agency has not conducted a Regulatory Impact Analysis. A Regulatory Impact Analysis, however, has been prepared for the federal technical requirements and the results are described in the preamble to that regulation, published elsewhere in today's **Federal Register**. Today's rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This rule, in itself, will not have a significant impact on a substantial number of small entities, because federal UST requirements will already be in effect in all states seeking program approval subsequent to promulgation of federal UST requirements under Subtitle I. Therefore, no regulatory flexibility analysis has been prepared. EPA has determined that the final rule for UST technical standards under Subtitle I, published elsewhere in today's **Federal Register**, will have a significant economic impact on a substantial number of small entities based on the analysis prepared for the final rule.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control

Number 2050–0067. The one-time reporting and recordkeeping burden on the public for this collection is estimated at 15,272 total hours, or 1,632 hours for the 6 respondents per year over nine years (with an average of 272 hours per response). These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICF #1355), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202–382–2745); and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, Petroleum, State program approval, Underground storage tanks.

Date: September 8, 1988.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 281 as follows:

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

Authority: Sections 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991 (c), (d), (e)).

Subpart A—Purpose, General Requirements and Scope

§ 281.10 Purpose.

(a) This subpart specifies the requirements that state programs must meet for approval by the Administrator under section 9004 of RCRA, and the procedures EPA will follow in approving, revising and withdrawing approval of state programs.

(b) State submissions for program approval must be in accordance with the procedures set out in this part.

(c) A state may apply for approval under this subpart at any time after the promulgation of release detection, prevention, and correction regulations under section 9003 of RCRA.

(d) Any state program approved by the Administrator under this part shall at all times be conducted in accordance with the requirements of this part.

§ 281.11 General requirements.

(a) *State program elements.* The following substantive elements of a state program must be addressed in a state application for approval:

(1) Requirements for all existing and new underground storage tanks:

(i) New UST systems (design, construction, installation, and notification);

(ii) Upgrading of existing UST systems;

(iii) General operating requirements;

(iv) Release detection;

(v) Release reporting, investigation, and confirmation;

(vi) Out-of-service USTs and closure;

(vii) Release response and corrective action; and

(viii) Financial responsibility for UST systems containing petroleum.

(2) Provisions for adequate enforcement of compliance with the above program elements.

(b) *Final approval.* The state must demonstrate that its requirements under each state program element for existing and new UST systems are no less stringent than the corresponding federal requirements as set forth in Subpart C of this part, except as provided in paragraph (c) of this section. The state must also demonstrate that it has a program that provides adequate enforcement of compliance with these requirements.

(c) *Interim approval.* (1) The Administrator may approve state programs with requirements less stringent than the federal requirements for a period of 1 to 3 years from September 23, 1988. Such interim approval may be granted only if state regulatory and/or legislative change is required in order for the state program to be no less stringent than the federal requirements and standards under Part 280 for one or more of the following program elements: Release detection at existing UST systems; release reporting and investigation; and out-of-service or closed UST systems.

(2) A state program may receive interim approval if it:

(i) Has requirements for three elements:

(A) Release Detection;

(B) Release Reporting, Investigation, and Confirmation; and

(C) Out-of-Service UST Systems and Closure; and

(ii) Has requirements that are no less stringent than the corresponding federal requirements for five elements:

(A) New UST System Design, Construction, Installation and Notification;

(B) Upgrading Existing UST Systems;

(C) General Operating Requirements;

(D) Release Response and Corrective Action; and

(E) Financial Responsibility for UST systems containing petroleum; and

(iii) Provides for adequate enforcement of compliance with these requirements.

(3) A state with a program that has received interim approval must receive final approval of an amended program containing program elements that are no less stringent than the corresponding federal program elements under Subpart C in accordance with the following schedule:

(i) If only state regulatory action is required, the state must submit an amended program to EPA for approval before September 23, 1989.

(ii) If only state legislative action is required, the state must submit an amended program to EPA for approval before September 23, 1990.

(iii) If both state legislative and regulatory action are required, the state must submit an amended program to EPA for approval before September 23, 1991.

(d) States with programs approved under this part are authorized to administer the state program in lieu of the federal program and will have primary enforcement responsibility with respect to the requirements of the approved program. EPA retains authority to take enforcement action in approved states as necessary and will notify the designated lead state agency of any such intended action.

§ 281.12 Scope and definitions.

(a) *Scope.* (1) The Administrator may approve either partial or complete state programs. A "partial" state program regulates either solely UST systems containing petroleum or solely UST systems containing hazardous substances. If a "partial" state program is approved, EPA will administer the remaining part of the program. A "complete" state program regulates both petroleum and hazardous substance tanks.

(2) EPA will administer the UST program on Indian lands, except where Congress has clearly expressed an intention to grant a state authority to regulate petroleum and hazardous substance USTs on Indian lands. In either case, this decision will not impair a state's ability to obtain program approval for petroleum and/or hazardous substances on non-Indian lands in accordance with this part.

(3) Nothing in this subpart precludes a state from:

(i) Adopting or enforcing requirements that are more stringent or more extensive than those required under this part; or

(ii) Operating a program with a greater scope of coverage than that required under this part. Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

(b) *Definitions.* (1) The definitions in Part 280 apply to all subparts of this part.

(2) For the purpose of this part, the term "interim approval" means the approval received by a state program that meets the requirements in § 281.11(c) (1) and (2) for the time period defined in § 281.11(c)(3).

(3) For the purposes of this part the term "final approval" means the approval received by a state program that meets the requirements in § 281.11(b).

Subpart B—Components of a Program Application

§ 281.20 Program application.

Any state that seeks to administer a program under this part must submit an application containing the following parts:

(a) A transmittal letter from the Governor of the state requesting program approval;

(b) A description in accordance with § 281.21 of the state program and operating procedures;

(c) A demonstration of the state's procedures to ensure adequate enforcement;

(d) A schedule for obtaining needed authorities under interim approval, where applicable;

(e) A Memorandum of Agreement outlining roles and responsibilities of EPA and the implementing agency;

(f) An Attorney General's statement in accordance with § 281.25 certifying to applicable state authorities; and

(g) Copies of all applicable state statutes and regulations.

Note: EPA has designed an optional application form that is available for use by state applicants.

§ 281.21 Description of state program.

A state seeking to administer a program under this part must submit a description of the program it proposes to administer under state law in lieu of the federal program. The description of a state's existing or planned program must include:

(a) The scope of the state program:

(1) Whether the state program regulates UST systems containing petroleum or hazardous substances, or both;

(2) Whether the state is applying for interim or final approval;

(3) Whether the state program is more stringent or broader in scope than the federal program, and in what ways; and

(4) Whether the state has any existing authority over Indian lands or has existing agreements with Indian tribes relevant to the regulation of underground storage tanks.

(b) The organization and structure of the state and local agencies with responsibility for administering the program. The jurisdiction and responsibilities of all state and local implementing agencies must be delineated, appropriate procedures for coordination set forth, and one state agency designated as a "lead agency" to facilitate communications between EPA and the state.

(c) Staff resources to carry out and enforce the required state program elements, both existing and planned, including the number of employees, agency where employees are located, general duties of the employees, and current limits or restrictions on hiring or utilization of staff.

(d) An existing state funding mechanism to meet the estimated costs of administering and enforcing the required state program elements, and any restrictions or limitations upon this funding.

§ 281.22 Procedures for adequate enforcement.

A state must submit a description of its compliance monitoring and enforcement procedures, including related state administrative or judicial review procedures.

§ 281.23 Schedule for interim approval.

For a state program that must modify its statutory or regulatory requirements for release detection, release reporting and investigation, and out-of-service or closed UST systems in order to be no less stringent than the federal requirements, the plan must include a schedule for making such changes and for submitting an amendment to the state application in accordance with § 281.51.

§ 281.24 Memorandum of agreement.

EPA and the approved state will negotiate a Memorandum of Agreement (MOA) containing proposed areas of coordination and shared responsibilities between the state and EPA and separate EPA and state roles and responsibilities in areas including, but not limited to: Implementation of partial state programs; enforcement; compliance monitoring; EPA oversight; and sharing and reporting of information. At the time of approval, the MOA must be signed by

the Regional Administrator and the appropriate official of the state lead agency.

§ 281.25 Attorney General's statement.

(a) A state must submit a written demonstration from the Attorney General that the laws and regulations of the state provide adequate authority to carry out the program described under § 281.21 and to meet other requirements of this part. This statement may be signed by independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the state Agency in court on all matters pertaining to the state program. This statement must include citations to the specific statutes, administrative regulations, and where appropriate, judicial decisions that demonstrate adequate authority to regulate and enforce requirements for UST systems. State statutes and regulations cited by the state Attorney General must be fully effective when the program is approved.

(b) If a state currently has authority over underground storage tank activities on Indian Lands, the statement must contain an appropriate analysis of the state's authority.

Note: The reporting requirements under this section have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 2050-0067.

Subpart C—Criteria for No-Less-Stringent

§ 281.30 New UST system design, construction, installation, and notification.

In order to be considered no less stringent than the corresponding federal requirements for new UST system design, construction, installation, and notification, the state must have requirements that ensure all new underground storage tanks, and the attached piping in contact with the ground and used to convey the regulated substance stored in the tank, conform to the following:

(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion.

Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate that the state program requirements are no less stringent in this area.

(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time.

(c) All UST system owners and operators must notify the implementing state agency of the existence of any new UST system using a form designated by the state agency.

§ 281.31 Upgrading existing UST systems.

In order to be considered no less stringent than the corresponding federal upgrading requirements, the state must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills.

§ 281.32 General operating requirements.

In order to be considered no less stringent than the corresponding federal general operating requirements, the state must have requirements that ensure all new and existing UST systems conform to the following:

(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;

(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system;

Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the state program requirements are no less stringent.

(c) Be made of or lined with materials that are compatible with the substance stored;

(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;

(e) Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with repair and upgrading requirements must be maintained for the remaining operating life of the facility. These records must be made readily available when requested by the implementing agency.

§ 281.33 Release detection.

In order to be considered no less stringent than the corresponding federal requirements for release detection, the state must have requirements that at a minimum ensure all UST systems are provided with release detection that conforms to the following:

(a) *General methods.* Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:

(1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances—as effectively as any of the methods allowed under the federal technical standards—for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.

(2) Designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method.

(b) *Phase-in of requirements.* Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems:

(1) Immediately when a new UST system is installed:

(2) On an orderly schedule that completes a phase-in of release detection at all existing UST systems (or their closure) before December 21, 1993, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased-in before December 22, 1990.

(c) *Requirements for petroleum tanks.* All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that:

(1) New or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every 5 years for the first 10 years after the tank is installed or upgraded or until December 22, 1998, whichever is later; and

(2) Existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until December 22, 1998.

(d) *Requirements for petroleum piping.* All underground piping attached to the tank that routinely conveys petroleum must conform to the following:

(1) If the petroleum is conveyed under greater than atmospheric pressure:

(i) The piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and

(ii) The piping must have monthly monitoring applied or annual tightness tests conducted.

(2) If suction lines are used:

(i) Tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or

(ii) The piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.

(e) *Requirements for hazardous substance UST systems.* All UST systems storing hazardous substances must meet the following:

(1) All existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in paragraphs (c) and (d) of this section and after December 22, 1998, they must comply with the following paragraph (e)(2) of this section.

(2) All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.

§ 281.34 Release reporting, investigation, and confirmation.

In order to be considered no less stringent than the corresponding federal requirements for release reporting, investigation, and confirmation, the state must have requirements that ensure all owners and operators conform with the following:

(a) Promptly investigate all suspected releases, including:

(1) When unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred; and

(2) When required by the implementing agency to determine the source of a release having an impact in the surrounding area; and

(b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.

(c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.

§ 281.35 Release response and corrective action.

In order to be considered no less stringent than the corresponding federal requirements for release response and corrective action, the state must have requirements that ensure:

(a) All releases from UST systems are promptly assessed and further releases are stopped;

(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground water contamination must be delineated when a potential threat to human health and the environment exists.

(d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment;

(e) Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and

(f) In accordance with § 280.67, the state must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

§ 281.36 Out-of-service UST systems and closure.

In order to be considered no less stringent than the corresponding federal requirements for temporarily closed UST systems and permanent closure, the state must have requirements that ensure UST systems conform with the following:

(a) Removal from service. All new and existing UST systems temporarily closed must:

(1) Continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;

(2) Continue to comply with release detection requirements if regulated substances are stored in the tank;

(3) Be closed off to outside access; and

(4) Be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the state approves an extension after the owner and operator conducts a site assessment.

(b) Permanent closure of UST systems. All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and any future releases. The owner or operator must notify the state of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.

(c) All UST systems taken out of service before the effective date of the federal regulations must permanently close in accordance with paragraph (b) of this section when directed by the implementing agency.

§ 281.37 Financial responsibility for USTs containing petroleum. EM [Reserved]

§ 281.38 Financial responsibility for USTs containing hazardous substances. [Reserved]

Subpart D—Adequate Enforcement of Compliance

§ 281.40 Requirements for compliance monitoring program and authority.

(a) Any authorized representative of the state engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.

(b) Any authorized representative of the state must have authority to require an owner or operator to conduct monitoring or testing.

(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).

(d) State programs must have procedures for receipt, evaluation, retention, and investigation of records and reports required of owners or operators and must provide for enforcement of failure to submit these records and reports.

(e)(1) State programs must have inspection procedures to determine, independent of information supplied by regulated persons, compliance with program requirements, and must provide for enforcement of failure to comply with the program requirements. States must maintain a program for systematic inspections of facilities subject to regulations in a manner designed to determine compliance or non-compliance, to verify accuracy of information submitted by owners or operators of regulated USTs, and to verify adequacy of methods used by owners or operators in developing that information.

(2) When inspections are conducted, samples taken, or other information gathered, these procedures must be conducted in a manner (for example, using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding, or in court.

(f) Public effort in reporting violations must be encouraged and the state enforcement agency(ies) must make available information on reporting procedures. State programs must maintain a program for investigating information obtained from the public about suspected violations of UST program requirements.

(g) The state program must maintain the data collected through inspections and evaluation of records in such a manner that the implementing agency can monitor over time the compliance status of the regulated community. Any compilation, index, or inventory of such facilities and activities shall be made available to EPA upon request.

§ 281.41 Requirements for enforcement authority.

(a) Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements:

(1) To restrain immediately and effectively any person by order or by suit in state court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover in court civil penalties as follows:

(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation.

(ii) Civil penalties for failure to comply with any state requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to $5,000 or more for each day of violation.

(b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this section, must be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the Resource Conservation and Recovery Act.

(c) A civil penalty assessed, sought, or agreed upon by the state enforcement agency(ies) under paragraph (a)(3) of this section must be appropriate to the violation.

§ 281.42 Requirements for public participation.

Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options:

(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate state enforcement agency that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.

(b) Authority that allows intervention as of right in any civil action to obtain the remedies specified in § 281.41 by any citizen having an interest that is or may be adversely affected; or

(c) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) It will investigate and provide responses to citizen complaints about violations; and

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation

§ 281.43 Sharing of information.

(a) States with approved programs must furnish EPA, upon request, any information in state files obtained or used in the administration of the state program. This information includes:

(1) Any information submitted to the state under a claim of confidentiality. The state must submit that claim to EPA when providing such information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with federal regulations in 40 CFR Part 2; and

(2) Any information that is submitted to the state without a claim of confidentiality. EPA may make this information available to the public without further notice.

(b) EPA must furnish to states with approved programs, upon request, any information in EPA files that the state needs to administer its approved state program. Such information includes:

(1) Any information that is submitted to EPA without a claim of confidentiality; and

(2) Any information submitted to EPA under a claim of confidentiality, subject to the conditions in 40 CFR Part 2.

Subpart E—Approval Procedures

§ 281.50 Approval procedures for state programs.

(a) The following procedures are required for all applications, regardless of whether the application is for a partial or complete program, as defined in § 281.12, or for interim or final approval in accordance with § 281.11.

(b) Before submitting an application to EPA for approval of a state program, the state must provide an opportunity for public notice and comment in the development of its underground storage tank program.

(c) When EPA receives a state program application, EPA will examine the application and notify the state whether its application is complete, in accordance with the application components required in § 281.20. The 180-day statutory review period begins only after EPA has determined that a complete application has been received.

(d) The state and EPA may by mutual agreement extend the review period.

(e) After receipt of a complete program application, the Administrator will tentatively determine approval or disapproval of the state program. EPA shall issue public notice of the tentative determination in the **Federal Register**; in enough of the largest newspapers in the state to attract statewide attention; and to persons on the state agency mailing list and any other persons who the

agency has reason to believe are interested. Notice of the tentative determination must also:

(1) Afford the public 30 days after the notice to comment on the state's application and the Administrator's tentative determination; and

(2) Include a general statement of the areas of concern, if the Administrator indicates the state program may not be approved; and

(3) Note the availability for inspection by the public of the state program application; and

(4) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination unless insufficient public interest is expressed, at which time the Regional Administrator may cancel the public hearing.

(f) Within 180 days of receipt of a complete state program application, the Administrator must make a final determination whether to approve the state program after review of all public comments. EPA will give notice of its determination in the **Federal Register** and codify the approved state program. The notice must include a statement of the reasons for this determination and a response to significant comments received.

§ 281.51 Amendment required at end of interim period.

(a) State programs that meet the requirements of section 281.11(c) (1) and (2) may be approved for 1 to 3 years from September 23, 1988. States that receive such interim approval must adopt requirements that are no less stringent than the corresponding federal requirements and standards within the timeframes specified under § 281.11(c)(3).

(b) By the end of the specified time period, a state with interim approval must submit to EPA an amendment to its application that includes all modified and new requirements for any of the elements containing less stringent requirements. Such amended applications must also include a modified program description, an Attorney General's statement and a Memorandum of Agreement that incorporate the amended program requirements, and copies of all applicable state statutes and regulations.

(c) Upon receipt of the application amendment, the Administrator shall follow the same review and approval procedures as required in § 281.50.

(d) If a state fails to submit an amendment within the specified timeframe, the interim approval of the state program expires upon the applicable date established under § 281.11(c), and the Subtitle I program automatically reverts to EPA.

(e) If a state submits an amendment to the program application within the timeframe specified under § 281.11(c)(3) and the amendmant is disapproved after the end of the time period, the interim approval of the state program expires immediately upon disapproval and the Subtitle I program automatically reverts to EPA.

(f) If interim approval of the state program expires, EPA must notify the regulated community and the public of the re-establishment of the federal program through a notice in the **Federal Register**.

§ 281.52 Revision of approved state programs.

(a) Either EPA or the approved state may initiate program revision. Program revision may be necessary when the controlling federal or state statutory or regulatory authority is changed or when responsibility for the state program is shifted to a new agency or agencies. The state must inform EPA of any proposed modifications to its basic statutory or regulatory authority or change in division of responsibility among state agencies. EPA will determine in each case whether a revision of the approved program is required.

(b) Whenever the Administrator has reason to believe that circumstances have changed with respect to an approved state program or the federal program, the Administrator may request, and the state must provide, a revised application as prescribed by EPA.

(c) The Administrator will approve or disapprove program revisions based on the requirements of this Part and of Subtitle I pursuant to the procedures under this section, or under section 281.50 if EPA has reason to believe the proposed revision will receive significant negative comment from the public.

(1) The Administrator must issue public notice of planned approval or disapproval of a state program revision in the **Federal Register**; in enough of the largest newspapers in the state to attract statewide attention; and by mailing to persons on the state agency mailing list and to any other persons who the agency has reason to believe are interested. The public notice must summarize the state program revision, indicate whether EPA intends to approve or disapprove the revision, and provide for an opportunity to comment for a period of 30 days.

(2) The Administrator's decision on the proposed revision becomes effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (c)(1) of this section, unless significant negative comment opposing the proposed revision is received during the comment period. If significant negative comment is received, EPA must notify the state and within 60 days after the date of publication, publish in the **Federal Register** either:

(i) A withdrawal of the immediate final decision, which will then be treated as a tentative decision in accordance with the applicable procedures of § 281.50 (e) and (f); or

(ii) A notice that contains a response to significant negative comments and affirms either that the immediate final decision takes effect or reverses the decision.

(d) Revised state programs that receive approval must be codified in the **Federal Register**.

Subpart F—Withdrawal of Approval of State Programs

§ 281.60 Criteria for withdrawal of approval of state programs.

(a) The Administrator may withdraw program approval when the Agency determines that a state no longer has adequate regulatory or statutory authority or is not administering and enforcing an approved program in accordance with this part. The state must have adequate capability to administer and enforce the state program. In evaluating whether such capability exists, the Agency will consider whether the state is implementing an adequate enforcement program by evaluating the quality of compliance monitoring and enforcement actions.

(b) Such withdrawal of approval will occur only after the state fails to take appropriate action within a reasonable time, not to exceed 120 days after notice from the Administrator that the state is not administering and enforcing its program in accordance with the requirements of this part.

§ 281.61 Procedures for withdrawal of approval of state programs.

(a) The following procedures apply when a state with an approved program voluntarily transfers to EPA those program responsibilities required by federal law.

(1) The state must give EPA notice of the proposed transfer, and submit, at least 90 days before the transfer, a plan for the orderly transfer of all relevant program information necessary for EPA to administer the program.

(2) Within 30 days of receiving the state's transfer plan, EPA must evaluate the plan and identify any additional

information needed by the federal government for program administration.

(3) At least 30 days before the transfer is to occur, EPA must publish notice of the transfer in the **Federal Register**; in enough of the largest newspapers in the state to attract statewide attention; and to persons on appropriate state mailing lists.

(b) When EPA begins proceedings to determine whether to withdraw approval of a state program (either on its own initiative or in response to a petition from an interested person), withdrawal proceedings must be conducted in accordance with procedures set out in 40 CFR 271.23 (b) and (c), except for § 271.23(b)(8)(iii) to the extent that it deviates from requirements under § 281.60.

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Friday
September 23, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801

Medical Devices; Labeling; User Labeling for Menstrual Tampons; Proposed Ranges of Absorbency for Menstrual Tampons; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

Medical Devices; Labeling; User Labeling for Menstrual Tampons; Proposed Ranges of Absorbency for Menstrual Tampons

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to require that manufacturers of menstrual tampons add to each tampon package label a letter designation of the range of absorbency of the products. The purpose of the proposed rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles.

Labeling of tampons to allow consumers to compare the absorbency of different brands and styles is important because the use of tampons is associated with toxic shock syndrome (TSS), a rare but sometimes fatal disease, and the risk of contracting TSS increases with the use of tampons of higher absorbency. FDA is proposing this rule under the Federal Food, Drug, and Cosmetic Act.

FDA is also announcing the availability of, and requesting comments on, a citizen petition submitted by the Public Citizen Health Research Group (HRG) concerning absorbency labeling for tampons.

DATE: Comments on the proposed rule and on HRG's petition by December 22, 1988. FDA is proposing that any final rule based on this proposal take effect for packages of tampons initially introduced or initially delivered for introduction into commerce 6 months after its date of publication in the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

A. Toxic Shock Syndrome (TSS)

TSS is a rare but serious and sometimes fatal disease that occurs most often in menstruating women 30 years of age or younger who use tampons, although it can occur in any person of any age (Ref. 6). TSS is believed to be caused by a bacterium, *Staphylococcus aureus,* that produces a toxin or toxins (Ref. 6). TSS is characterized by a rapid drop in blood pressure and shock. The warning signs of TSS include a sudden fever (usually 102 °F or more), vomiting, diarrhea, fainting, near fainting or dizziness when standing, a sunburn-like rash, and shedding of the skin of the palms of the hands and soles of the feet 1 or 2 weeks after onset of the illness.

In the **Federal Register** of June 22, 1982 (47 FR 26982), FDA published a final rule to require manufacturers of tampons to include information about TSS in the labeling of the devices (21 CFR 801.430). FDA stated in the preamble to that rule that a reasonable estimate of the incidence of TSS is between 6 and 17 per 100,000 menstruating girls and women per year (47 FR 26982), and that women 30 and under and teenage girls are at greater risk of contracting TSS (47 FR 26986). The actual incidence of TSS remains unknown, primarily because of the lack of an ongoing active TSS reporting system. In 1980, the Centers for Disease Control (CDC) initiated the national TSS surveillance system (predominantly a passive reporting system) and CDC tabulates all cases that are reported. CDC advises that, from a peak of about 120 reported cases in 1 month in 1980 (Ref. 1), the numbers of new reported TSS cases have leveled off and are now reported at a national rate of approximately 14 cases per month (Ref. 37). CDC estimated that its passive surveillance system detects approximately 15 percent of the TSS cases that actually occur (Ref. 1). Thirty-nine deaths from TSS have been reported to FDA's medical device reporting (MDR) system during the period December 1984 through May 1987 (Ref. 45).

Several epidemiologic studies have demonstrated that there is a statistically significant association between tampon use and the occurrence of TSS. These studies were conducted by CDC (Refs. 1 and 2), the Utah State health department (Ref. 3), the Wisconsin State health department (Ref. 4), and the Minnesota, Wisconsin, and Iowa State health departments (the Tri-State study) (Refs. 5, 7, and 8). Based upon an evaluation of the risk factors associated with TSS, the Tri-State study also concluded that use of high absorbency tampons increased the risk of contracting TSS. This conclusion was supported by the Institute of Medicine of the National Academy of Sciences, which reviewed all the unavailable scientific data on TSS in 1981 (Ref. 6).

The association between TSS and tampon absorbency is an important finding of the Tri-State study. The finding was based on a subset of patients who each used exclusively one tampon brand, and within that brand, one style. Fifty-four patients (out of a total of 80 in the study) and 104 controls (out of a total of 160 in the study) were in that subset of patients. Several statistical analyses were performed on the data, permitting a calculation of the likely relative risk of TSS posed by tampons of different absorbencies within the same brand. The results of the analyses can be represented by the relative risk of TSS for each of four tampon absorbencies, set out below in terms of mean absorbency (fluid capacity) in grams (Ref. 5).

Group	Absorbency	
	Mean fluid capacity in grams*	Relative risk of TSS
1	19.11	8.84
2	16.09	6.26
3	12.91	4.36
4	10.30	3.24

*The absorbencies are those of tampons as manufactured at the time of the study; the absorbencies of specific products may have changed (lowered or raised) since then.

In summary, the Tri-State study (Ref. 5) confirmed the one finding consistent among all TSS epidemiologic studies; tampon use is associated with TSS. In addition, the Tri-State study demonstrated that there is an association between the level of tampon absorbency and TSS. Moreover, based on its assessment of all the current

information respecting TSS, the Institute of Medicine of the National Academy of Sciences, through its Committee on TSS, recommended that use of high absorbency tampons be minimized (Ref. 6).

The conclusions in a recent report (Ref. 46) of a study of the relationship of tampon use to cases of TSS conducted by CDC fully support the Tri-State study's conclusions regarding the role of tampon absorbency in TSS risk. The CDC study includes cases of TSS with onset between January 1, 1983, and December 31, 1984, and compares the data of 285 tampon-associated cases of TSS where the woman reported using a single brand of tampon, to age- and year-matched controls from a national survey of tampon usage. CDC found that users of all brands of tampons have elevated "odds ratios" (a measure of relative risk) for TSS compared to nonusers of tampons. Based on an analysis of the 215 cases in which the users gave information as to the absorbency of tampon used, CDC also found that the relative risk of TSS generally increases as the absorbency of the tampon increases and that without regard to the chemical composition of the tampon, for each gram increased in absorbency, there is a significant increase in the risk of illness (Refs. 46 and 47). This finding is valid over the entire range of absorbencies represented by each category of chemical composition, which indicates that use of a low absorbency tampon is likely to reduce the risk of TSS.

To provide a perspective on the overall risk of contracting TSS, the CDC report describes one study stating that the estimated incidence of TSS is between 2 and 4 cases per 100,000 menstruating girls and women per year. These incidence data are based on data from one study from a limited geographical area, northern California, and should be considered as a subset of the overall national incidence data. There is currently no explanation for this reported lower incidence of TSS. It is possible, however, that earlier reports of higher incidences were based on data from time periods in which higher absorbency tampons and higher risk tampons were widely used (Ref. 47).

In the years since the initial research on and evaluation of TSS were done, TSS epidemiologic data have been reevaluated and critiqued. Concerns have been raised regarding the validity of the results owing to possible bias in the reporting of data to the investigators. In 1982, the Journal of the American Medical Association (JAMA) published an article describing biases that, taken together, could allegedly reproduce the association between tampon use and TSS (Ref. 9), albeit artificially. Because of that possibility, the authors of the 1982 JAMA article questioned the conclusion that there was an association between tampon use and TSS. However, in an editorial response accompanying the article, B. S. Hulka (a member of the Institute of Medicine Committee on TSS) expressed a contrary view (Ref. 11). The editorial used the Tri-State study data to demonstrate that a large error in reporting tampon use versus nonuse would have been necessary to invalidate the data establishing an association between tampons and TSS. Because of the great amount of careful surveillance actually done at the time of the Tri-State study, FDA concludes that such a large error was not a reasonable possibility.

A 1984 study published in the American Journal of Medicine (Ref. 10) expressed an additional concern regarding the validity of the Tri-State study results. The 1984 study tested how physicians' diagnostic judgments were influenced by knowledge of a patient's gender, menstrual history, or menstrual product use based on the premise that physician bias in recognizing TSS could influence the basis tampon/TSS association data. The study concluded that there was a bias towards diagnosing TSS in tampon users. The 1984 study, however, involved physicians diagnosing TSS after several years of publicity about the reported association. It did not demonstrate that physicians who diagnosed TSS cases that were included in epidemiologic case control studies conducted in 1980 were influenced in making a TSS diagnosis by a patient's use of tampons. In both CDC's first study (Ref. 1) and the Wisconsin State health department study (Ref. 4), the researchers closed case-admission before the appearance of national news media coverage linking TSS with tampon use.

FDA continues to believe that substantial scientifically sound evidence shows that there is an association between the use of tampons and TSS and that increased absorbency is associated with increased risk. The consensus of the scientific community is that women who choose to use tampons should use tampons with the minimum absorbency needed to control menstrual flow in order to reduce their risk of contracting TSS.

B. Current Special Labeling Requirements for Menstrual Tampons

Based on the evidence of the increased risk of TSS associated with the use of tampons, particularly by young women and girls, the severity and rapid onset of the disease, and the significant risk of death for users who contract TSS, FDA concluded that failure to inform consumers about TSS constituted an omission of material facts about tampons (47 FR 26983). Accordingly, in the **Federal Register** of June 22, 1982 (47 FR 26982), FDA established 21 CFR 801.430 to require manufacturers of menstrual tampons to include certain information about TSS in the labeling of the devices. Section 801.430 allows a manufacturer to provide the TSS information only in the package insert if the following alert appears prominently and legibly on the package label:

> ATTENTION: Tampons are associated with Toxic Shock Syndrome (TSS). TSS is a rare but serious disease that may cause death. Read and save the enclosed information.

The TSS information required by the regulations must be placed prominently and legibly in a package insert or on the package of menstrual tampons in terms understandable to the layperson and must include the following:

1. Warning signs of TSS and what to do if these or other signs appear;

2. The risk of TSS of all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls, the estimated incidence of TSS, and the risk of death from contracting TSS;

3. The advisability of using tampons with the minimum absorbency needed to control menstrual flow;

4. How to avoid the risk of getting tampon-associated TSS by not using tampons, and possibly reduce the risk of getting TSS by alternating tampon use with sanitary napkin use; and

5. The need to seek medical attention before again using tampons if TSS warning signs have occured in the past, or if women have any questions about TSS or tampon use.

As discussed in the following sections of this preamble, FDA believes that § 801.430 does not ensure that women are provided with the information they need to select the lowest absorbency needed to control menstrual flow and thus, to reduce the risk of contracting TSS. Moreover, tampon manufacturers have been unable to agree to provide, on a voluntary basis, absorbency information that would facilitate interbrand comparisons of products. For these reasons, FDA is now proposing to amend § 801.430, as described in detail in Section K of this preamble, to require

that manufacturers provided additional absorbency information.

C. TSS Education

The agency continues to provide information to the public about TSS through public statements and professional, consumer, and industry education programs. Although FDA informs the general public about TSS because it can strike anyone, not just tampon users, FDA is especially concerned about the prospective or new tampon user who may not read tampon labeling information or understand its significance. In an effort to reduce the severity and the incidence of TSS in this group, FDA conducted a nationwide poster education program designed to educate teenage girls about TSS, its symptoms, and what to do should the symptoms occur. Because younger women and teenage girls are at the greatest risk of contracting TSS and have little or no experience upon which to draw in evaluating the absorbency of different tampon brands and styles, they could benefit the most from absorbency information on the labeling of tampons.

D. Menstrual Tampon Absorbency Claims

In June 1983, FDA's Center for Devices and Radiological Health sent a letter (Ref. 13) to all manufacturers of tampons regarding absorbency claims on tampon packaging. The letter noted that some tampon packages featured advertising or promotional material that stressed absorbency and that this emphasis was at variance with advice to use the minimum absorbency needed to control menstrual flow. The agency requested that all manufacturers add to the outside package label of tampons the advice to use the minimum absorbency needed to control menstrual flow and to place this advice next to the promotional messages about absorbency. Because all manufacturers complied voluntarily with this request, FDA believes that they recognize the public health value of the advice to use the minimum absorbency needed.

E. American Society for Testing and Materials' Effort to Develop a Standard

On July 13, 1981, FDA asked the chairperson of the American Society for Testing and Materials (ASTM) Committee on Medical and Surgical Materials and Devices (the committee) to form a task force to develop a standard for tampons (Ref. 14). FDA believed that the private sector was interested in developing a standard that would address concerns regarding absorbency and that the appropriate forum in which to develop such a standard would be ASTM. The agency suggested that the standard include a method for determining tampon absorbency and provide for appropriate labeling.

In response to FDA's request, the committee first met with representatives from consumer groups, industry, and FDA in November 1981. The committee agreed to set up a task force to develop a voluntary standard for tampons. The task force, formally established in January 1982, was composed of representatives from the following organizations: Coalition for Medical Rights of Woman; Women Health International; National Consumers League; National Women's Health Network; Boston Women's Health Book Collective; Empire State Consumer Association, Inc.; Personal Products; International Playtex, Inc.; Kimberly-Clark Corp.; Jeffrey-Martin, Inc.; Tambrands, Inc. (formerly Tampax); Sentinel Consumer Products, Inc.; and FDA. The task force made a commitment to develop, among other things, a standard test method for measuring tampon absorbency and a means for expressing absorbency on tampon labeling.

F. Public Citizen Health Research Group Petitions

1. The July 29, 1982, Petition

On July 29, 1982, the Public Citizen Health Research Group (HRG) petitioned FDA to establish a performance standard for tampons that would (1) prescribe a test method for determining tampon absorbency; (2) require tampon manufacturers to determine the absorbency of each of their styles of tampons using the test method adapted by the ASTM task force (the Syngyna (simulated vagina) test); (3) establish a uniform nomenclature for tampon absorbency; and (4) compel manufacturers to disclose absorbency on the outside of the tampon packages.

On September 22, 1982, FDA issued a tentative response (Ref. 19) to HRG's petition. The agency stated that, although it agreed in substance with the objectives of the petition, FDA preferred to work actively with the ASTM tampon task force because the agency believed that the voluntary standards process was the most efficient and economical method available for developing uniform tampon absorbency testing and labeling. FDA also pointed out that scientific data regarding the relationship of absorbency to the risk of TSS were limited. The agency promised that it would monitor the task force's progress, and indicated that the agency would reconsider its position if it became evident that the task force's efforts were being delayed or were not adequately addressing the issues of absorbency and disclosure.

On November 2, 1982, HRG submitted a supplement to its petition (Ref. 20), which stated that HRG considered tampons to be misbranded within the meaning of section 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a)). HRG reiterated its request that FDA establish a performance standard for tampons.

On April 22, 1983, FDA issued a final response denying HRG's petition as supplemented (Ref. 21). As FDA had stated in its September 22, 1982, tentative response to HRG, the agency continued to agree in substance with the objectives of the petition but preferred to work with the ASTM task force instead of initiating regulatory action or rulemaking. However, FDA also advised HRG that, if regulatory action or rulemaking became necessary or if the task force's activities became delayed and the public health was apparently being compromised, FDA would reconsider its position.

2. The August 20, 1987, Petition

On August 20, 1987, FDA received another citizen petition (87P-0280CP) from HRG concerning absorbency labeling of tampons. FDA is announcing the availability of this petition and invites interested persons to submit written comments on it. Two copies of any comments are to be submitted by December 22, 1988, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In its August 20, 1987, petition, HRG requests that FDA:

1. Issue a rule on an expedited basis that would:

a. Eliminate the unstandardized nomenclature ("junior," "regular," "super," "super plus") used by tampon manufacturers to describe absorbency.

b. Require tampon manufacturers to determine the fluid capacity of each style of tampon they manufacture using the "syngyna test," which simulates tampon use conditions in humans. Require manufacturers to test, and periodically retest, a statistically significant number of tampons to assure that fluid capacity measurement is accurate.

c. Require tampon manufacturers to assign a single number to absorbency based on syngyna test results. For example, currently marketed tampons will yield syngyna test results ranging from 5 to 18 grams of absorbed liquid. Absorbency factors on tampon packages would range from 5 to 18,

where 5 would signify the least absorbent brand and 18 the most absorbent.

d. Require tampon manufacturers to disclose these numerical absorbency factors on the outside of tampon boxes in a uniform fashion, with the message that higher absorbency is associated with a higher risk of TSS. * * *

2. Announce in the notice of proposed rulemaking that the agency intends to issue a final rule as expeditiously as possible and to make the rule effective upon publication so that manufacturers may immediately begin making plans for changing tampon labels in a manner that is consistent with the proposed rule.

3. Declare that any tampons sold after the effective date of the rule are misbranded under the Federal Food, Drug, and Cosmetic Act and that the agency will commit the necessary resources to enforce the final rule.

FDA will consider HRG's August 20, 1987, petition and any comments received on it when the agency considers the comments received on the proposed rule, and will include in any final rule or in any document withdrawing the proposed rule a final response to the petition.

G. FDA Reconsiders Its Position

The ASTM task force met frequently for more than 3 years. It appointed two subcommittees, one on test methods and the other on labeling, to prepare separate sections of the voluntary standard. The subcommittee on test methods agreed on the Syngyna test (see Sections F. and K. of this preamble) as the test method for measuring absorbent capacity. The subcommittee on labeling failed to reach agreement on an approach to tampon absorbency labeling. In an attempt to resolve the impasse at the subcommittee level, the full task force discussed a number of alternative approaches to tampon labeling, such as those set out in Section J. of this preamble. However, the full task force never reached a consensus either among the tampon manufacturers or between the manufacturers and the consumer members of the task force on a means for expressing tampon absorbency on labeling.

On April 16, 1984, a coalition of consumer and women's health organizations urged FDA to develop a comprehensive performance standard for tampons that would include standardized absorbency testing and labeling (Ref. 24).

On May 2, 1984, the task force unanimously passed a resolution tabling any further discussion of absorbency labeling. On April 18, 1985, the task force recommended to its parent ASTM committee that the task force become inactive because the task force could not resolve its differences regarding labeling. The task force has not met since that date.

Citing the failure of the task force to reach a consensus on a voluntary absorbency standard, HRG wrote to FDA on May 7, 1984 (Ref. 25). HRG requested that FDA reconsider its April 22, 1983, response to HRG (Ref. 21) and initiate a proceeding to establish a performance standard under section 514 of the act (21 U.S.C. 260d) for the device or, in the alternative, establish requirements with respect to a method for determining absorbency and with respect to a tampon labeling format for disclosing absorbency.

The failure of the ASTM effort led FDA to reconsider its position. In reconsidering, FDA once again reviewed the scientific data regarding tampon absorbency and TSS. FDA concluded that the data showed an association between tampon absorbency and TSS. Accordingly, on June 22, 1984 (Ref. 26), FDA advised HRG and the consumer and women's health organizations that had written to the agency on April 16, 1984, that the agency planned to promulgate a rule that would include a standardized absorbency test and absorbency labeling requirements for tampons (Ref. 24). FDA believed then, as it does now, that the scientific data support such a rule, which would allow women to choose the least absorbent tampon for their needs, thus reducing their relative risk of contracting TSS.

On August 20, 1985, FDA's Obstetrics-Gynecology Devices Panel (the Panel) discussed the safety of tampons in general, the association of tampons with TSS in particular, and the need to formulate a research agenda to investigate and address various safety concerns related to tampons. The Panel discussed each of these issues as requested in a citizen petition submitted by Woman Health International and the Empire State Consumer Association on September 11, 1984 (Ref. 30). The Panel supported (Ref. 31) FDA's plan to promulgate a tampon absorbency labeling regulation that would facilitate interbrand comparison, and recommended an absorbency rating system based on a single test method.

The Panel also recommended the FDA consider including "content" (ingredient) labeling in the tampon absorbency labeling regulation. This recommendation resulted from the Panel's discussion of ingredient labeling for scented tampons. During that discussion, a consumer group suggested that FDA regulate scented tampons as cosmetics so that, as cosmetics, scented menstrual tampons would be required to bear ingredient labeling.

However, if FDA regulated scented tampons as cosmetics, their labeling would not change. Under 21 CFR 701.3 (FDA's regulation governing the declaration of ingredients in cosmetics), a fragrance may be listed on the label of a cosmetic as "fragrance," and no further information is required on the label. The only manufacturer of scented tampons already lists "fragrance" as an ingredient. Accordingly, FDA has decided not to regulate tampons as cosmetics.

Because several consumers testified before the Panel in favor of ingredient labeling for other than scented tampons, FDA invites interested persons to submit comments with relevant data and information on the need for such labeling as well as on the kind of ingredient labeling that would be appropriate. The agency also invites such persons to submit comments setting out the basis for FDA to require ingredient labeling for other than scented tampons, under the act or any other law administrated by the agency.

H. Manufacturers' Voluntary Actions

On January 8, 1986, Mr. Edwin Shutt, Jr., President of Tambrands, Inc., wrote to FDA of Tambrands' intention to include absorbency labeling on all tampons marketed by the firm (Ref. 33). Mr. Shutt sent FDA an addendum to this letter on January 27, 1986 (Ref. 34), stating that Tambrands intended to use the Syngyna test method for absorbency proposed during the ASTM tampon task force deliberations. Tambrands also stated that it would use the following absorbency ranges to correspond to its existing absorbency terms: Junior—4 to 6 grams of fluid absorbed, Regular—6 to 9 grams, Super—9 to 12 grams, and Super Plus—12 to 16 grams.

On January 27, 1986, FDA wrote to the other tampon manufacturers informing them of Tambrands' intended actions and asking whether they planned to take any action regarding tampon absorbency testing and labeling (Ref. 35). On January 30, 1986, FDA sent a similar letter to a representative of several consumer groups asking for the groups' comments on Tambrands' proposed labeling scheme (Ref. 36). The responses the agency received from the tampon manufacturers and from the consumer groups are described below.

Responses from manufacturers: The other four manufacturers of tampons, International Playtex, Inc., Personal Products, Inc., Sentinel Consumer Products, and Kimberly-Clark Corp., responded that, like Tambrands, they would test their tampons for absorbency using the Syngyna test method (Refs. 38,

39, 40, and 41). However, the manufacturers did not agree on a labeling plan.

Two companies, Kimberly-Clark Corp. (Ref. 38) and Sentinel Consumer Products (Ref. 39), indicated that they would adopt a labeling plan using the absorbency ranges suggested by Tambrands and that they would retain their currently used absorbency terms. The combined sales of Tambrands and these two manufacturers represent about 70 percent of the tampon market.

Two other companies, International Playtex, Inc. (Ref. 40), and Personal Products, Inc. (Ref. 41), which represent approximately 30 percent of the tampon market, stated that they would label each style of their tampons with a single number representing absorbency in grams instead of using a range of absorbency and would also retain currently used terms of absorbency. These two firms stated that, to allow for variations in absorbency of tampons, the number placed on the label would be stated with an allowance of a plus or minus 1 gram variation. Thus, for example, a tampon that was determined by the Syngyna test to absorb 9 grams of the test solution would be characterized on the package label as absorbing 9±1 grams.

In sum, each tampon manufacturer voluntarily agreed to adopt the same absorbency testing method for tampons, but the manufacturers did not agree on a way to represent the results of this testing on tampon labeling, nor did they agree on a unified approach to the use of descriptive absorbency terms.

Responses from consumer groups: Representatives of two consumer groups responded to the January 30, 1986, letter (Refs. 42 and 43). The two groups supported Tambrands' approach, but stated that the agency needed to mandate a uniform approach in the face of the nonuniform approach offered by the industry. The two groups also stated that their views were widely shared among all the consumer groups listed in Section E. of the preamble who had been involved with the task force deliberations on a voluntary standard.

I. Basis for Proposed Rule

FDA is proposing a rule to ensure uniform absorbency testing of tampons and to standardize a method of expressing absorbency on tampon package labels. FDA is proposing this rule for several reasons. First, FDA believes that additional tampon absorbency information is necessary to enable menstruating women to make interbrand comparisons and choose the lowest absorbency needed to control menstrual flow and, thus, reduce their risk of contracting TSS. Second, a manufacturer's failure to provide absorbency information in the labeling constitutes omission of a material fact that misbrands the device under the act because current labeling does not provide adequate directions for tampon use and misleads consumers who want to use tampons with the minimum absorbency needed to control menstrual flow. Third, FDA has concluded that manufacturers will not voluntarily agree to provide absorbency information that will facilitate interbrand comparisons of tampons.

The act gives FDA broad authority to regulate medical devices for human use. The word "device" is defined in section 201(h) of the act. Under section 513 of the act (21 U.S.C. 360c), FDA has classified menstrual tampons as class II devices (performance standards) in 21 CFR 884.5460 and 884.5470.

Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to promulgate substantive binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.), *cert. denied*, 423 U.S. 825 (1975).

Under the proposed rule, any tampon that is not labeled as requried and that is initially introduced or initially delivered for introduction into commerce after the effective date of a final rule would be misbranded under sections 201(n) and 502 (a) and (f)(1) of the act (21 U.S.C. 321(n) and 352 (a) and (f)(1)).

Section 502(a) of the act provides that a device is misbranded if "its labeling is false or misleading in any particular." Section 201(n) of the act provides that, in determining whether labeling of a regulated article (such as a device) is misleading:

> * * * there shall be taken into account * * * not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling * * * relates * * *.

Tampon labeling currently advises women to use tampons with the minimum absorbency needed. This advice is based on the association between increased absorbency and TSS. It is difficult, however, for women to heed this advice because there is no information on tampon labeling with which a woman can make interbrand comparisons with respect to absorbency. (Although manufacturers may use common terms to represent absorbency, these terms have different meanings across brands. For example, one manufacturer's tampon labeled as "regular" was found to absorb between 12 and 13 grams of fluid, while another manufacturer's "super" tampon absorbed only 9 grams. Moreover, between products labeled with the same term, e.g., "super," FDA has found a variance in absorbency of up to 7 grams (Ref. 27).) This omission of uniform absorbency information from the labeling constitutes an omission of a material fact and renders tampons misbranded within the meaning of section 502(a) of the act.

The courts have upheld FDA's authority to prevent false and misleading labeling by promulgating regulations requiring label warnings and other affirmative disclosures, see, e.g., *Cosmetic, Toiletry and Fragrance Association* v. *Schmidt*, 409 F. Supp. 57 (D.D.C. 1976), *aff'd without opinion*, Civil No. 75–1715 (D.C. Cir. August 19, 1977), even in the absence of a proven cause-and-effect relationship between product usage and harm. *Council for Responsible Nutrition* v. *Goyan*, Civil No. 80–1124 (D.D.C. August 1, 1980).

Section 502(f)(1) of the act provides that a device is also misbranded unless its labeling bears adequate directions for use. Adequate directions for use means adequate directions under which a layperson can use a device safely and for the purpose for which it is intended (see 21 CFR 801.5 and 801.6). A woman cannot use tampons safely if she cannot determine which tampons have the minimum absorbency that she needs to control menstrual flow. Because current tampon labeling does not contain any information with which a woman can determine the relative absorbency of different brands of tampons, tampons do not bear adequate directions for use, and therefore are misbranded under section 502(f)(1) of the act.

FDA may impose testing requirements in a labeling regulation promulgated under its general rulemaking authority. See, e.g., *American Frozen Food Inst.* v. *Mathews*, 413 F. Supp. 548 (D.D.C. 1976), *aff'd per curiam sub nom. American Frozen Food Inst.* v. *Califano*, 555 F.2d 1059 (D.C. Cir. 1977); see also *National Nutritional Foods Ass'n* v. *Weinberger*, *supra*. Thus, FDA may require that all tampon manufacturers use the same test

method to determine absorbency, to ensure that there is uniformity in measuring tampon absorbency. A similar requirement is imposed in 21 CFR 801.420(c)(4) on hearing aid manufacturers and distributors who must determine and state technical data values for hearing aid labeling in accordance with specified test procedures. The hearing aid regulation has been upheld. *American Speech and Hearing Ass'n* v. *Califano*, Med. Devices Rept. (CCH) No. 77-1327, §§ 15,004, 15,007 (D.D.C. August 23, 1977), *aff'd*, No. 77-1327 (D.C. Cir. Dec. 19, 1977). Food regulations promulgated under section 701(a) of the act also impose many such specific testing requirements. See, e.g., 21 CFR 113.40 (tests for low-acid canned foods); 21 CFR 155.190(b)(2)(i) (test for determining drained weight of canned tomatoes); 21 CFR 161.190 (method for determining color designation of tuna).

The proposed rule does not require that tampons perform at a specified level of absorbency, only that each manufacturer measure the absorbency of its tampons and state the results on package labeling.

J. Other Options for Expressing Absorbency on Package Labels Considered by FDA

FDA is proposing to require absorbency to be expressed on tampon labels using letter designations of the ranges of absorbency. Before deciding on this approach, FDA considered alternative approaches, as described below. These alternatives, and the approach FDA has selected, are based on the agency's understanding of the currently available manufacturing technology and data on incremental TSS risk associated with increased absorbency. Ideally, a very small variation in absorbency would exist for all production of a single style of tampon, such that the range of absorbencies contained in a given box could be accurately represented, for example, by a single number. Combining such information on absorbency with a clear indication that each increment in absorbency was associated with an increase in TSS risk would allow FDA to consider more narrow absorbency range categories. Although FDA is inviting comments on the relative advantages and disadvantages of the alternative approaches described below, the agency also solicits information and comments on the technical feasibility of offering more absorbency ranges, without significant overlap in absorbencies of products in adjacent ranges.

1. Absorbency Values

FDA considered proposing to require that absorbency be represented on tampon labeling by a single number, rather than by a range. This alternative is similar to that described in the August 20, 1987, petition from HRG discussed in section F. of this preamble. With this alternative, if a tampon manufacturer determined that a particular tampon style absorbed, on average, 7 grams of fluid, the manufacturer would represent the absorbency of such tampons as "7" on the label. However, because the "7" would represent an average absorbency, any one tampon in a package might actually absorb fewer than 6 grams of fluid or more than 8 grams of fluid. Variations in raw materials, production, and even testing contribute to this uncertainty. For example, the absorbency of a raw material such as cotton may be influenced by its natural moisture content, which in turn may be affected by the geographical area in which it is grown and by the conditions under which it is harvested, transported, and stored. The humidity level at the time of tampon production may also cause batch-to-batch or run-to-run variations in absorbency. In addition, minor differences in testing procedures among laboratories and within a given laboratory could cause differences in results of absorbency testing. Thus, although FDA believes that a single number representing absorbency would be easy for consumers to understand, the agency does not believe that, at this time, a single number is sufficiently accurate. Moreover, FDA does not believe that, using currently available technology, it is possible to make a tampon the absorbency of which is accurately represented by a single number. Should technology, quality control, and testing improve to the extent that variation is significantly reduced, however, this alternative would be more viable.

FDA also considered proposing that absorbency be expressed with a single number followed by "± '×'" grams in order to more accurately express absorbency, given the variations between individual tampons in a single box, while retaining some of the simplicity of a single number. FDA believes, however, that this approach might be confusing to some consumers. For example, a box of tampons labeled "absorbency 7± 1.5 grams" would contain some tampons that actually absorb more than tampons from a box labeled "absorbency 9± 1.5 grams." FDA is concerned that many consumers would focus on the "7" and the "9" and not recognize this overlap in absorbency. (FDA has other concerns about overlappping absorbencies which will be discussed below.)

Therefore, to clearly express the variation in absorbency of tampons of a particular style, FDA has proposed that manufacturers represent absorbency using ranges. Ranges allow an accurate expression of the variation in absorbency of individual tampons, provide consumers with meaningful information, and are technologically feasible.

FDA considered a proposal allowing manufacturers the flexibility to market an unlimited number of absorbency ranges. This approach would be technologically feasible and would offer the theoretical advantage of providing for the development of a greater variety of products, thus increasing consumer choice. At the same time, however, this approach could result in product lines with overlapping absorbencies. For example, one product could be labeled "absorbency 6–9 grams" and another product could be labeled "absorbency 7–10 grams."

While consumers would be expected to notice that the ranges overlap, FDA is concerned that, under this approach, consumers could have the misleading impression that tampons in a "7–10" package are all more absorbent than tampons in a "6–9" package. In fact, however, there would be tampons in the "6–9" package that would be more absorbent, and thus pose a higher risk of TSS, than many tampons in the "7–10" package. To show this, a representation of the distribution of product absorbencies for tampons in a 6–9 gram absorbency range is set out in figure A.

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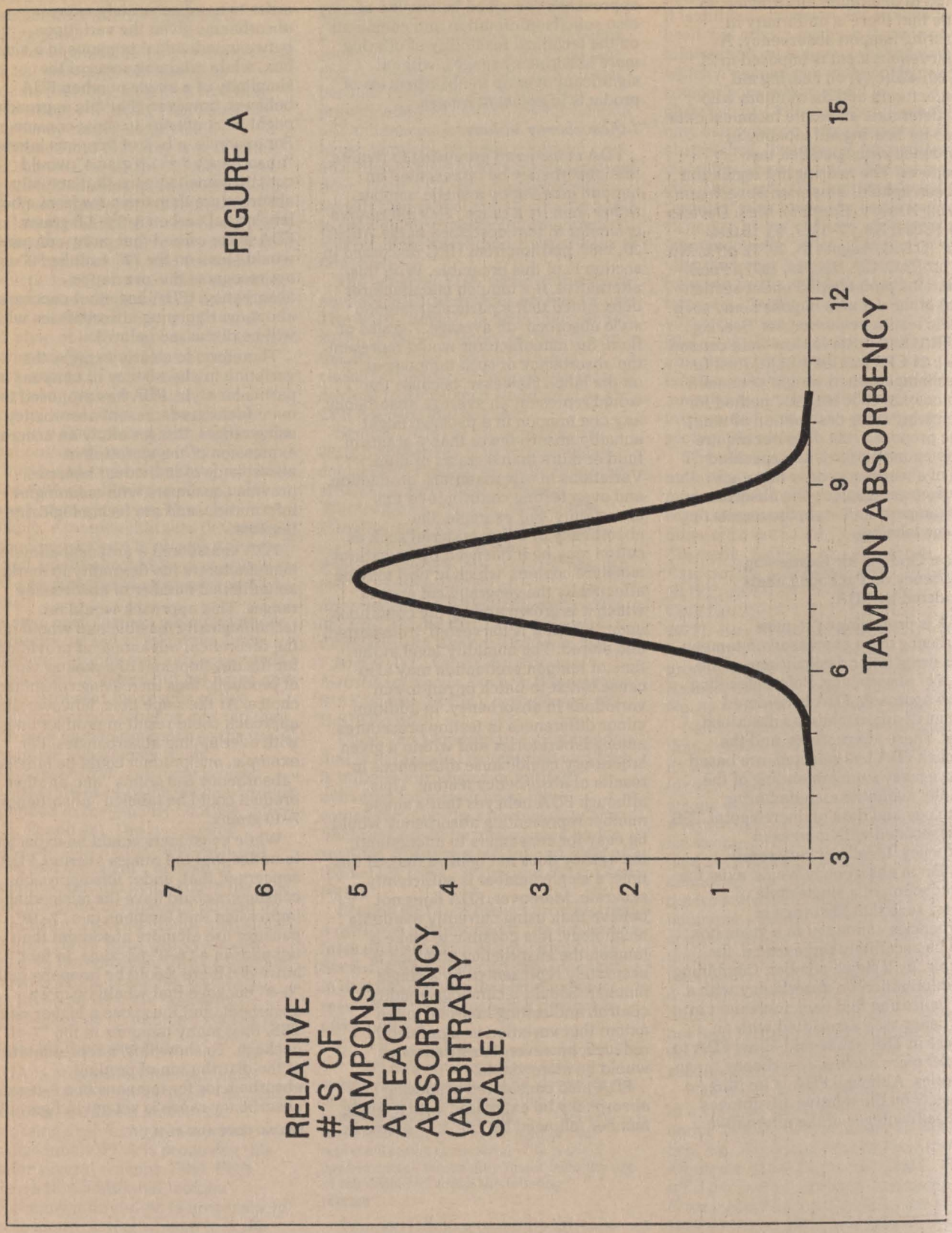
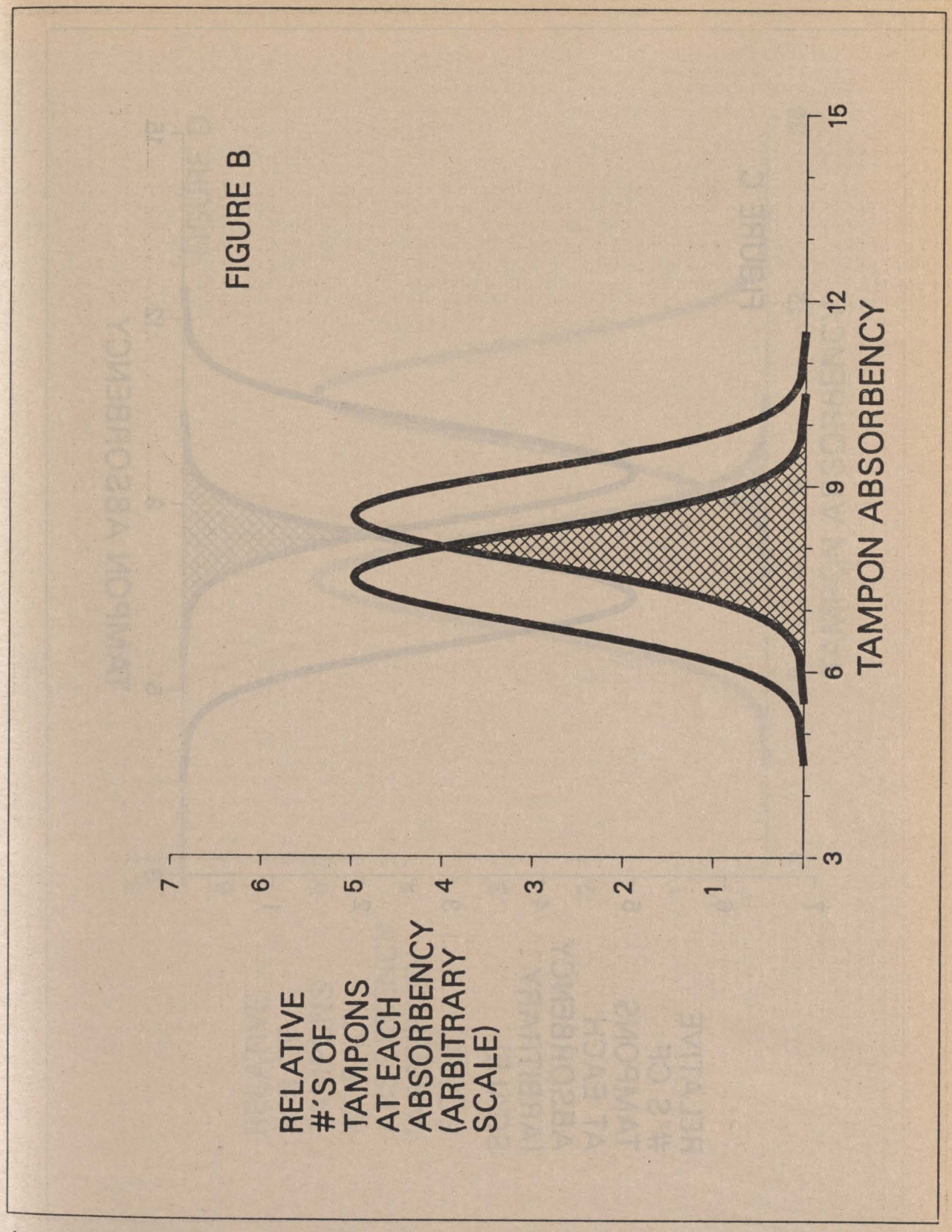
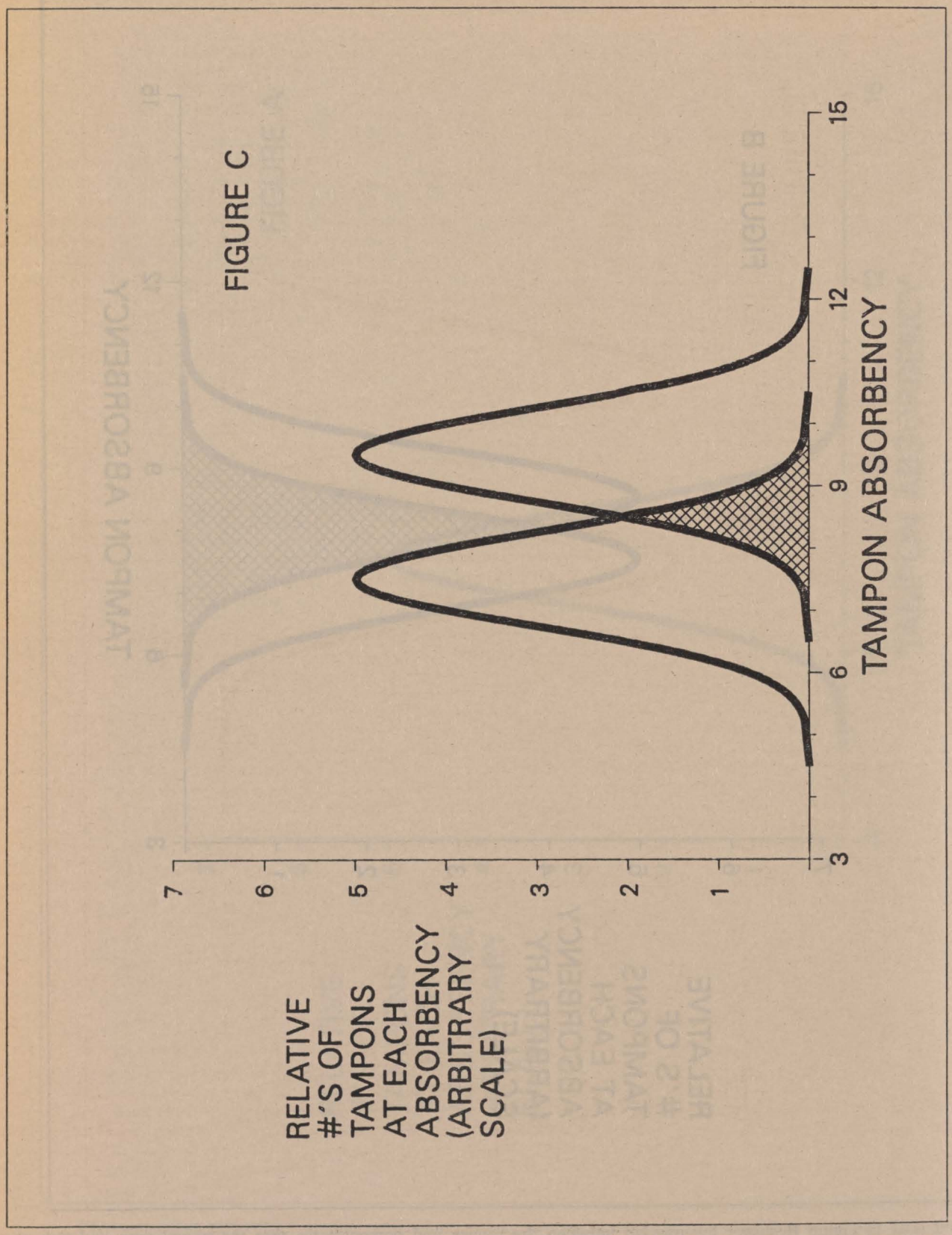


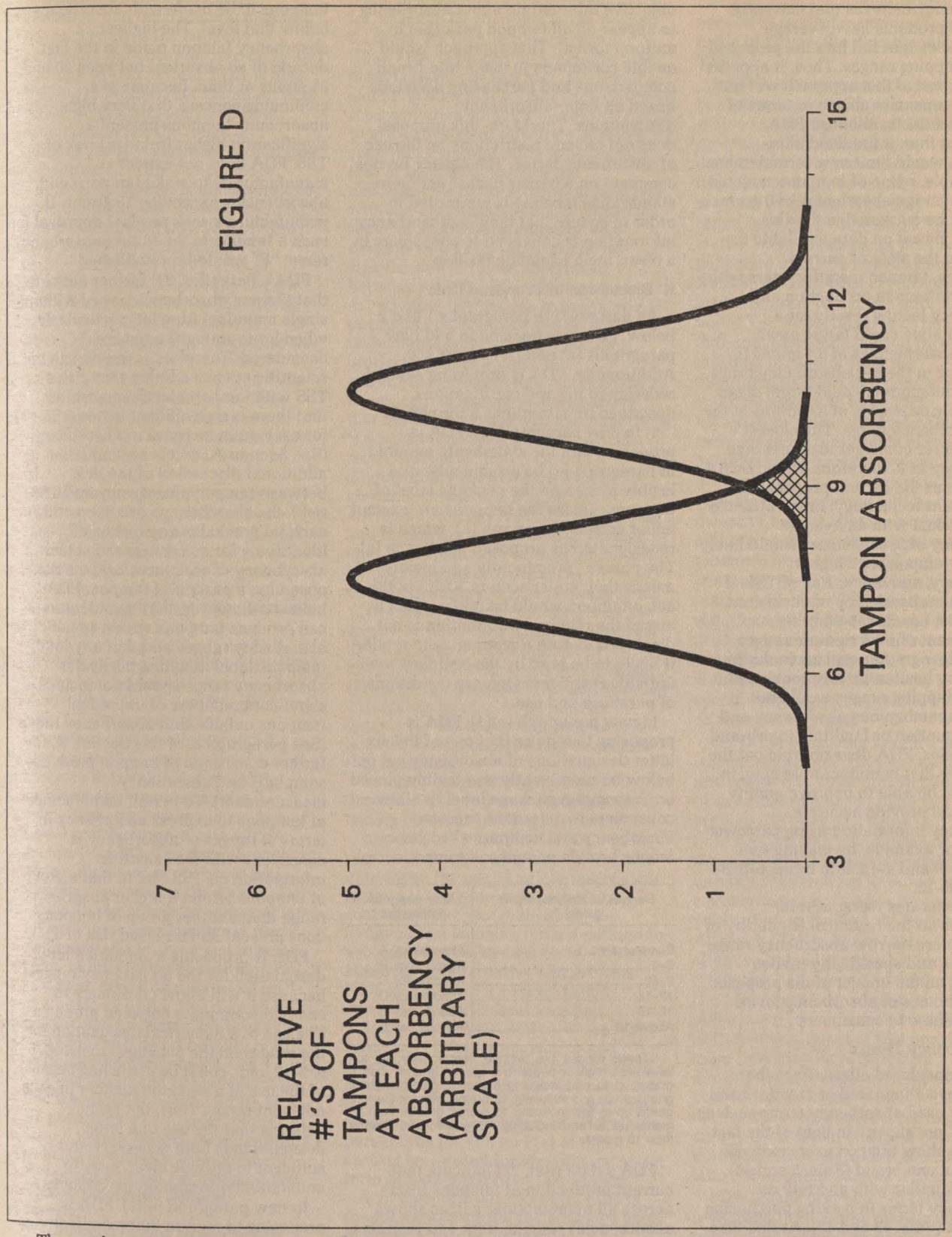
For comparison purposes, a similar representation for tampons in a 7–10 gram absorbency range is added in figure B.



The shaded area in Figure B shows the overlap between the ranges and demonstrates that the absorbency and risk of TSS associated with tampon from a package with the lower range could be larger than that of a tampon from the higher range package. The region of overlap is reduced, but still pronounced in figure C, which compares a 6–9 gram absorbency range with an 8–11 gram absorbency range.



Only when a 6–9 gram absorbency range is compared with a 9–12 gram absorbency range is the overlap significantly reduced, as seen in figure D.



Thus, only in this latter case with virtually nonoverlapping ranges could consumers be assured that products in a lower range had lower absorbency and presented a lower risk of TSS than those in a higher range. Accordingly, FDA is proposing to have tampon absorbencies fall into nonoverlapping ranges.

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The agency believes that currently marketed products have average absorbencies that fall into the proposed nonoverlapping ranges. Thus, it appears that adoption of this approach will not diminish consumer choice in terms of existing products, although FDA recognizes that, if finalized, this approach would limit new formulations. For example, a line of tampons targeted with an average absorbency of 9 grams could not be marketed under this proposal. Based on data available to FDA as to the state of current technology, tampon manufacturers with small variations in production and absorbency testing results for a particular style could target mean product absorbencies of 8.4 grams in order to be in the 6–9 absorbency range. Such manufacturers could target mean product absorbencies of 9.6 grams in the 9–12 absorbency range. The closest a manufacturer could get to an average absorbency of 9, therefore, would be 8.4 or 9.6, under the current proposal and with current technology. In the absence of the product with an average absorbency of 9, consumers would likely choose a tampon with higher absorbency, and higher risk of TSS, if any greater absorbency were desired. While FDA concludes that the development of intermediate ranges would allow greater consumer choice, the agency has tentatively concluded that overlapping ranges would not provide unambiguous absorbency and risk information or facilitate interbrand comparisons. FDA does not rule out the possibility that manufacturers may, in the future, be able to improve quality control and provide accurate absorbency information using narrower ranges, for example, by making two ranges, 6–9 and 9–12, into three, 6–8, 8–10, and 10–12.

FDA reiterates its request for comments on the technical feasibility of offering more narrow absorbency range categories and specifically invites comment on the impact of the proposed rule on choices of absorbency levels now available to consumers.

2. Absorbency Terms

FDA considered alternatives that would have eliminated or standardized currently used absorbency terms such as "regular" or "super," in light of the fact that data show tampon users may use more than one brand (Refs. 5 and 46) and are familiar with and rely on absorbency terms in making purchasing decisions (Refs. 33 and 43). At this time, women must rely in part on absorbency terms for interbrand comparisons. The labeling system envisioned in this proposal, however, would require objective information about absorbency to appear on all tampon packages in a uniform format. This approach would enable consumers to make interbrand comparisons and purchasing decisions based on letter absorbency designations. Therefore, this proposal does not include restrictions on the use of absorbency terms. The agency invites comment on whether further action to standardize labeling is warranted in order to ensure that tampon absorbency information is conveyed to consumers in a clear, nonmisleading fashion.

K. Discussion of Proposed Rule

As described in paragraphs 1 and 2 below, FDA is proposing to add new paragraphs (e) and (f) to § 801.430. Additionally, FDA is proposing several redesignations and clarifications described in paragraphs 3 through 6.

1. In new paragraph (e), FDA is proposing that the statements required in paragraph (e) be prominently and legibly placed on the package label of tampons, unless the tampons are exempt under current paragraph (e), which is redesignated as proposed paragraph (g). The phrase "prominently and legibly" means that, under section 502(c) of the act, a tampon would be misbranded if any of the required information is not displayed in such a manner as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

In new paragraph (e)(1), FDA is proposing to require that one of the six letter designations of absorbency set out below be prominently and legibly placed on the tampon package label to allow consumers to determine tampon absorbency and compare absorbency among brands or styles of tampons.

Ranges of absorbency in grams [1]	Letter designation of absorbency
6 and under	Absorbency A.
6–9	Absorbency B.
9–12	Absorbency C.
12–15	Absorbency D.
15–18	Absorbency E.
Above 18	Absorbency F.

[1] These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

FDA's data (Ref. 27) indicate that current production of tampons from across all manufacturer's lines shows absorbencies ranging from 4 to 18 grams. Because of the reduced effectiveness of tampons with absorbency of less than 4 grams in preventing leakage of menstrual fluid, FDA does not expect tampons to be made with absorbency below that level. The highest absorbency tampon made in the last decade or so absorbed between 20 and 21 grams of fluid. Because of a continuing concern that very high absorbency tampons present a significantly higher (relative) risk of TSS, FDA does not expect manufacturers to make tampons with absorbencies exceeding 18 grams. If manufacturers seek product approval for such a tampon in the future, absorbancy range "F" would be established.

FDA's data (Ref. 27) further indicate that tampon absorbencies vary within a single manufacturing lot, particularly when lot-to-lot variations are considered. Therefore, even though the scientific evidence linking the risk of TSS with tampon absorbency shows that there is a significant increase in risk for each gram increase in absorbency (See Section A. of this preamble for additional discussion of the link between tampon absorbency and TSS risk), the absorbency variance within each lot precludes any means of identifying for consumers the actual absorbency of and, therefore, the risk posed by, a particular tampon. FDA believes, however, that manufacturers can produce tampons within specific absorbency ranges and that any lot of tampons labeled with a particular absorbency range should not include significant numbers of individual tampons outside that absorbency range (See paragraph 2. of this Section K. for further discussion of tampon production, sampling, and absorbency measurement). To permit manufacturers of tampons to express absorbency in terms of ranges of absorbency is consistent with the scientific information on TSS risk in that a group of tampons within a higher absorbency range than another group of tampons does present an increased risk of TSS.

FDA is proposing a simplified letter designation for the abosrbency ranges because it will allow consumers to easily discriminate between products. The use of a numerical designation for the ranges on the package label, e.g., 6–9, 9–12, etc., could be confusing because of the use of a common number in each adjacent range. Thus, the agency believes that the use of a letter designation is both necessary and sufficent to provide clear, easy to understand information to consumers.

In new paragraph (e)(2), FDA is proposing to require that manufacturers include on the package label an explanation of the range of absorbency shown on that label. For example, a tampon package labeled "Absorbency

B" would be required to bear an explanation that each tampon enclosed in the package has the capacity to absorb more than 6 grams and up to and including 9 grams of fluid. FDA is also proposing to require that manufacturers describe on the package label how consumers can use the range of absorbency, e.g., consumers should use the absorbency ranges to compare different tampon brands and styles and choose the minimum absorbency needed to control menstrual flow and, thereby, reduce the risk of contracting TSS.

In new paragraph (e)(3), FDA is proposing that terms currently used in labeling to represent absorbency (e.g., regular, super, and super plus) of tampons may continue to be used in the labeling provided that, if a term of absorbency is used, it is required to be placed on the package label in close proximity to its corresponding letter designation of the range of absorbency each time the term of absorbency is used.

The agency is specifically requesting public comment as to whether these proposed labeling requirements would influence consumer choices in selecting a tampon with a lower absorbency level.

2. In new paragraph (f), FDA is proposing to require that manufacturers use a test based on the tampon absorbency testing method (the Syngyna test) that was agreed upon by the ASTM task force's subcommittee on test methods (Refs. 15, 17, and 27). (See Section G. of this preamble.)

To evaluate the feasibility of the Syngyna test, FDA sampled and tested tampons to determine if their fluid absorbency as measured by the Syngyna test was homogeneous from lot-to-lot and from run-to-run within given lots (Ref. 27). The data show that there is a distribution of absorbencies represented by tampons in a single lot. That distribution tends to widen as lot-to-lot variations are considered. Such variations would be expected to occur because of differences in raw material (e.g., cotton, rayon) or in production conditions (humidity). The data show that statistical tolerance limits can be placed such that the probability is 95 percent that the fluid absorbency values for a given brand and tampon style lie within the stated tolerance limits, if mean absorbency is rounded to the nearest 0.1 gram. Based on these data, FDA believes that it is feasible for manufacturers to use the Syngyna test method to determine tampon absorbency.

Accordingly, in new paragraph (f), FDA is proposing to require that manufacturers measure the absorbency of individual tampons and calculate the mean absorbency of the production run, lot, or batch by rounding to the nearest 0.1 gram. Further, in new paragraph (f)(1), FDA is proposing to require that manufacturers design and implement a sampling plan that includes collection of representative samples of adequate size to yield consistent tolerance intervals such that the probability is 95 percent that at least 95 percent of the absorbencies of the individual tampons within a brand and style fall within the range of absorbency stated on the package label, i.e., there will be no significant overlap in absorbency between ranges. Where a manufacturer experiences differences in raw material or production conditions such that a wide distribution of absorbencies is produced within a style, the manufacturer would have to increase its sampling and testing to demonstrate that the outlying high and low absorbing tampons in the lot or run are actually small in number. In the case of a demonstrably narrow distribution of abosrbencies within a style, the manufacturer could reduce its sampling and testing and still demonstrate that only a small number of tampons in the lot or run could be outside the absorbency range on the package label.

The agency invites comments on the degree to which this approach assures that there are a small number of tampons outside the absorbency range stated on the package label and whether a tolerance level of 90 percent as opposed to the 95 percent proposed in this rule would be sufficient to provide that assurance.

In new paragraph (f)(2), FDA describes the proposed absorbency testing method, the Syngyna test.

In new paragraph (f)(3), FDA would require that a manufacturer that wants to propose the use of an alternative test method that yields results that are equivalent to those yielded by the Syngyna test submit a citizen petition in accordance with 21 CFR 10.30. If FDA approves an alternative test method, FDA will publish a notice of such approval in the **Federal Register.**

3. In current § 801.430(b), in the last sentence, FDA is proposing to add reference to new paragraphs (e) and (f). FDA is proposing that the last sentence read in pertinent part "* * * menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency as set forth in paragraph (f) of this section."

4. In current § 801.430(d)(3), FDA is proposing to conform the language used to the information in proposed new § 801.430(e)(2). Thus, FDA is proposing that § 801.430(d)(3) be revised to read as follows: "(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS."

5. FDA is proposing to redesignate current paragraph (e) as paragraph (g), with a minor clarification. FDA is proposing that new paragraph (g) read as follows: "Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section." FDA stated in the preamble to the final rule published in the **Federal Register** of June 22, 1982 (47 FR 26988) requiring manufacturers to include information about TSS in the labeling of tampons, that any tampon dispensed by a vending machine is exempt from the requirements. FDA had concluded that it is not necessary to have TSS information either on vending machine tampons or on the outside of the vending machine itself because women only infrequently purchase tampons from vending machines and will be made aware of the association between TSS and tampons from the tampons they purchase from other retail sources. FDA continues to exempt vending machine tampons from the TSS information requirements of § 801.430 and is proposing to exempt them from the absorbency labeling requirements as well. The agency is, however, specifically requesting public comments on these exemptions.

6. FDA is proposing to redesignate current paragraph (f) as paragraph (h) and revise it to state the effective date of any final rule based upon this proposal. FDA is proposing that any final rule become effective as to any tampon that is initially introduced or initially delivered for introduction into commerce 6 months after its date of publication in the **Federal Register.** Although FDA believes that a 6-month effective date is reasonable for relabeling, the agency understands that, if reformulation or redesign is undertaken (on a manufacturer's own initiative as a result of this proposal), more time may be required for developing and implementing new production methods. Therefore, FDA invites comments and supporting data on any need for an effective date greater than 6 months (and if any need, how long), after publication of a final rule.

FDA also is proposing in redesignated paragraph (h) that any menstrual tampon not labeled as required in § 801.430 (c), (d), and (e) is misbranded under sections 201(n) and 502 (a) and (f) of the act.

L. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome—United States," *Morbidity and Mortality Weekly Report*, Centers for Disease Control, June 27, 1980, Vol. 29, No. 25.

2. "Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome," *Morbidity and Mortality Weekly Report*, Centers for Disease Control, September 19, 1980, Vol. 29, No. 37.

3. "Toxic-Shock Syndrome—Utah," *Morbidity and Mortality Weekly Report*, Centers for Disease Control, October 17, 1980, Vol. 29, No. 40.

4. Davis, J.P., et al., "Toxic-Shock Syndrome," *New England Journal of Medicine*, 303:1429–1435, December 18, 1980.

5. Osterholm, M.T., et al., "Tri-State Toxic-Shock Syndrome Study. I. Epidemiologic Findings," *Journal of Infectious Diseases*, 145:431–440, April 1982.

6. Institute of Medicine, National Academy of Sciences, "Toxic-Shock Syndrome: Assessment of Current Information and Future Research Needs," National Academy Press, Washington, DC, 1982.

7. Osterholm, M.T., et al, "Toxic Shock Syndrome Study: Methodologic Analysis," *Annals of Internal Medicine*, 96:903–905, June 1982.

8. Osterholm, M.T., et al., "Tri-State Toxic-Shock Syndrome Study: Evaluation of Case Definition and Prevention of Recurrence," *Annals of Internal Medicine*, 96:903–905, June 1982.

9. Harvey, M., et al., "Toxic Shock and Tampons, Evaluation of the Epidemiologic Evidence," *Journal of the American Medical Association*, 248:840–846, August 20, 1982.

10. Harvey, M., et al., "Diagnostic Bias and Toxic Shock Syndrome," *American Journal of Medicine*, 76:351–360, March 1984.

11. Hulka, B. S., "Tampons and Toxic Shock Syndrome (editorial)," *Journal of the American Medical Association*, 248:872–874, August 20, 1982.

12. Marlowe, D.E., "Measurement of Tampon Absorbency—Evaluation of Tampon Brands," Center for Medical Device Analysis Report No. 81–017, June 29, 1981.

13. Letter from John C. Villforth to "Tampon Manufacturers," June 1983.

14. Letter from F. Alan Andersen to Patrick G. Laing, Chairman, Subcommittee F4, Medical and Surgical Materials and Devices, American Society for Testing and Materials, July 13, 1981.

15. Rapp, G.W., "A Comparison of the Absorptive Efficiency of Commercial Catamenial Tampons," unpublished, June 1958.

16. Marlowe, D.E., R.M., Weigle, and R.W. Stauffenberg, "Measurement of Tampon Absorbency: Test Method Evaluation," Center for Medical Device Analysis Report No. 81–013, May 1981.

17. Technical Task Group Tampon Task Force—ASTM F–4.02, "Tampon Absorbency Interlaboratory Evaluation Production Evaluation," unpublished, November 1983.

18. Petition from Public Citizen Health Research Group to the Food and Drug Administration, July 29, 1982.

19. Letter from Mark Novitch to Sidney M. Wolfe and Allen Greenberg, September 22, 1982.

20. Letter from Allen Greenberg, Sidney M. Wolfe, and William B. Schultz to Mark Novitch, November 2, 1982.

21. Letter from Mark Novitch to Sidney M. Wolfe and Allen Greenberg, April 22, 1983.

22. Letter from David A. Swankin to John C. Villforth, August 19, 1983.

23. Letter from John C. Villforth to David A. Swankin, January 9, 1984.

24. Letter from a coalition of consumer and women's health groups to Mark Novitch, April 16, 1984.

25. Letter from Allen Greenberg and Sidney M. Wolfe to Mark Novitch, May 7, 1984.

26. Letter from Mark Novitch to Rebecca Cohen, June 22, 1984.

27. "Determination of Fluid Capacity of Some Commercial Tampons," October 1984; report entitled "Tampon Fluid Capacity Measurements," Winchester Engineering and Analytical Center, January 20, 1985; memo from Richard Chiacchierini to Director, Office of Science and Technology, on the subject of tampon absorbency analysis, January 22, 1985; memo from Richard Chiacchierini to Alan Andersen on the subject of tampon absorbency analysis, February 8, 1985.

28. Mills, J.T., et al., "Control of Production of Toxic Shock Syndrome Toxin-1 (TSST–1) by Magnesium Ion," *Journal of Infectious Diseases*, 151:1158–1161, June 1985.

29. Interagency agreement between the Centers for Disease Control and the Food and Drug Administration; Approved and accepted by CDC on May 30, 1985, and by FDA on June 18, 1985.

30. Petition from Woman Health International and Empire State Consumer Association to the Food and Drug Administration, September 11, 1984.

31. Transcript of Obstetrics/Gynecology Devices Panel, Thirty-Second meeting, Vol. II, August 20, 1985.

32. Memorandum of Telephone Communication between Keith Merril and Lillian Yin, March 29, 1985.

33. Letter from Edwin Shutt, Jr., to John C. Villforth, January 8, 1986.

34. Letter from Edwin Shutt, Jr., to John C. Villforth, January 27, 1986.

35. Letters from John C. Villforth to International Playtex, Inc.; Personal Products, Inc.; Sentinel Consumer Products; and Kimberly-Clark Corp., January 27, 1986.

36. Letter from John C. Villforth to David A. Swankin, January 30, 1986.

37. Unpublished data, Centers for Disease Control, 1987.

38. Letter from Thomas A. Newby, Jr., to John C. Villforth, February 24, 1986.

39. Letter from Robert R. Arrighi to John C. Villforth, March 25, 1986.

40. Letter from Hercules P. Soto to John C. Villforth, February 26, 1986.

41. Letter from M.R. Hayes to John C. Villforth, February 12, 1986.

42. Letter from Esther R. Rome and Jill Wolhandler to John C. Villforth, February 13, 1986.

43. Letter from David A. Swankin to John C. Villforth, February 25, 1986.

44. Roper Reports 86–9, The Roper Organization, Inc., November 1986.

45. Medical Device Reporting Summary Data, December 1984 through May 1987.

46. Berkley, S.F., et al., "The Relationship of Tampon Characteristics to Menstrual Toxic Shock Syndrome," *Journal of the American Medical Association*, 258: 917–920, August 21, 1987.

47. Memorandum from Chief, Meningitis and Special Pathogens Branch, Division of Bacterial Diseases, Center for Infectious Diseases to Director, Office of Program Planning and Evaluation, Centers for Disease Control, October 19, 1987.

M. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

N. Economic Impact

FDA has examined the economic consequences of the proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule, if promulgated, will not be a major rule under Executive Order. The agency also has considered the effect that the proposed rule would have on small entities including small businesses. The agency believes that none of the affected manufacturers meets the definition of a small entity under the Regulatory Flexibility Act (Pub. L. 96–354). Therefore, FDA certifies under the Regulatory Flexibility Act that the proposed rule would not have significant economic impact on a substantial number of small entities.

There are five major manufacturers of tampons in the United States. These manufacturers' tampon products comprise 99 percent of the market. FDA estimates that this regulation will impose direct costs of $66,000 on each tampon manufacturer for redesignating and printing labels, redesignating package inserts, and absorbency testing. If manufacturers choose to reformulate products to have a tampon style in a greater number of ranges, they may incur additional direct costs of about $6 million each. Additionally, there are 11 private label manufacturers or distributors of store brand tampons. FDA estimates that this regulation will impose costs of $2,240 on each of these private label manufacturers or distributors for redesigning and printing labels and package inserts. A further description of these costs and the methods for estimating them can be

found in the threshold assessment on file with the Dockets Management Branch (address above).

Section 801.430(e) and (f) of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

O. Request for Comments

Interested persons may, on or before December 22, 1988, Submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 801 be amended as follows:

PART 801—LABELING

1. The authority citations under the sections in 21 CFR Part 801 are removed and the authority citation for 21 CFR Part 801 is revised to read as follows:

Authority: Sec. 701, 52 Stat. 1055–1056 as amended (21 U.S.C. 371); 21 CFR 5.10, § 801.420 also is issued under secs. 201 (h), (k), (m), and (n), 502, 519, 520(e), 704, 52 Stat. 1041 as amended, 1050–1051 as amended, 67 Stat. 477 as amended, 90 Stat. 564–565, 567, 575 (21 U.S.C. 321 (h), (k), (m), and (n), 352, 360i, 360j(e), 374); § 801.430 is issued under secs. 201(n), 502, 701(a), 52 Stat. 1041 as amended, 1050–1051 as amended, 1055 (21 U.S.C. 321(n), 352, 371(a)); 21 CFR 5.11.

2. Section 801.430 is amended by revising paragraphs (b) and (d)(3), by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them, and by adding new paragraphs (e) and (f) to read as follows:

§ 801.430 User labeling for menstrual tampons.

* * * * *

(b) Data show that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious effects of TSS, menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency listed in this paragraph representing the absorbency as set forth in paragraph (f) of this section.

* * * * *

(d) * * *

(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

* * * * *

(e) The statements required by this paragraph shall be prominently and legibly placed on the package label of menstrual tampons in conformance with section 502(c) of the act (unless the menstrual tampons are exempt under paragraph (g) of this section).

(1) Menstrual tampon package labels shall bear one of the six letter designations of absorbency of the production run, lot, or batch as measured by the test described in paragraph (f) of this section.

Ranges of absorbency in grams [1]	Letter designation of absorbency
6 and under	Absorbency A.
6–9	Absorbency B.
9–12	Absorbency C.
12–15	Absorbency D.
15–18	Absorbency E.
above 18	Absorbency F.

[1] These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

(2) The package label shall include an explanation of the range of absorbency and a description of how consumers can use the range of absorbency to make comparisons of absorbency of tampons to allow selection of the tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

(3) Use of terms of absorbency is optional. If a term of absorbency (e.g., Regular, Super, or Super Plus) is used, its corresponding letter designation of the range of absorbency shall be placed on the package label in close proximity each time the term of absorbency is used.

(f) A manufacturer shall measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) of this section and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

(1) A manufacturer shall design and implement a sampling plan that includes collection of representative samples of adequate size to yield consistent tolerance intervals such that the probability is 95 percent that at least 95 percent of the absorbencies of individual tampons within a brand and type are within the range of absorbency stated on the package label.

(2) In the absorbency test, an unlubricated condom is attached to the large end of a glass chamber with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. The condom is pulled through until all slack is removed. The tip of the condom is cut off and the remaining end of the condom is stretched over the end of the tube and secured with a rubber band. A preweighed (to the nearest 0.01 gram) tampon is placed within the condom membrane so that the center of gravity of the tampon is at the center of the chamber. An infusion needle (14 gauge) is inserted through the septum created by the condom tip until it contacts the end of the tampon. The outer chamber is filled with water pumped from a temperature-controlled waterbath to maintain the average temperature at 27±1 °C. The water returns to the waterbath as shown in Figure 2. Syngyna fluid (10 grams sodium chloride, 0.5 gram Certified Reagent Acid Fuchsin, 1,000 milliliters distilled water) is then pumped through the infusion needle at a rate of 50 milliliters per hour. The test is terminated when the tampon is saturated and the first drop of fluid exits the apparatus. The water is then drained and the tampon is removed and immediately weighed to the nearest 0.01 gram. The absorbency of the tampon is determined by subtracting its dry weight from this value.

(3) The Food and Drug Administration may permit the use of an absorbency test method different from the test method specified in this section if the following conditions are met:

(i) The manufacturer presents evidence, in the form of a citizen petition submitted in accordance with the requirements of § 10.30 of this chapter, demonstrating that the alternative test method will yield results that are equivalent to the results yielded by the test method specified in this section; and

(ii) FDA approves the method and has published notice of its approval of the alternative test method in the **Federal Register.**

BILLING CODE 4160-01-M

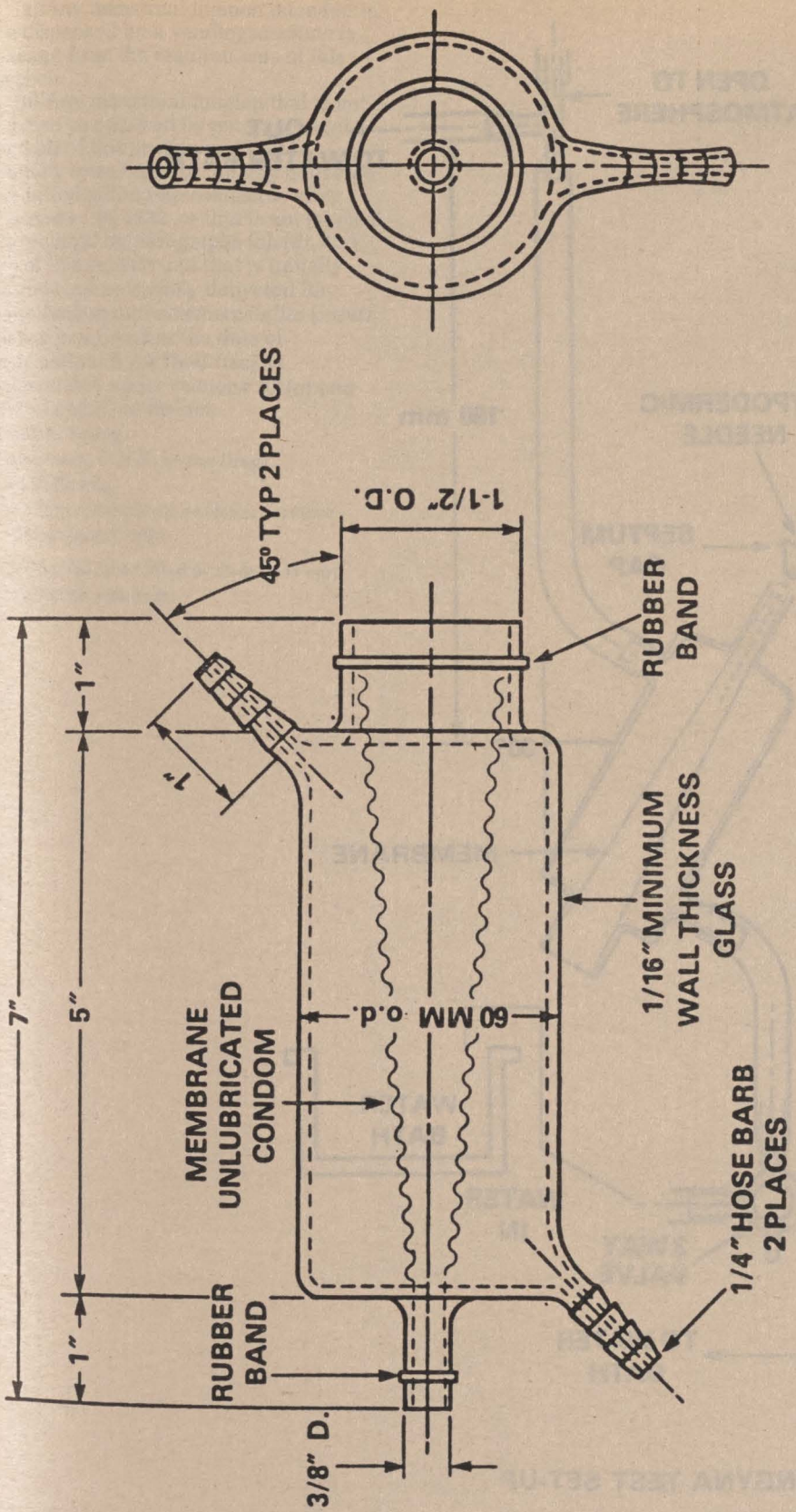

FIGURE 1 — SYNGYNA TEST CHAMBER

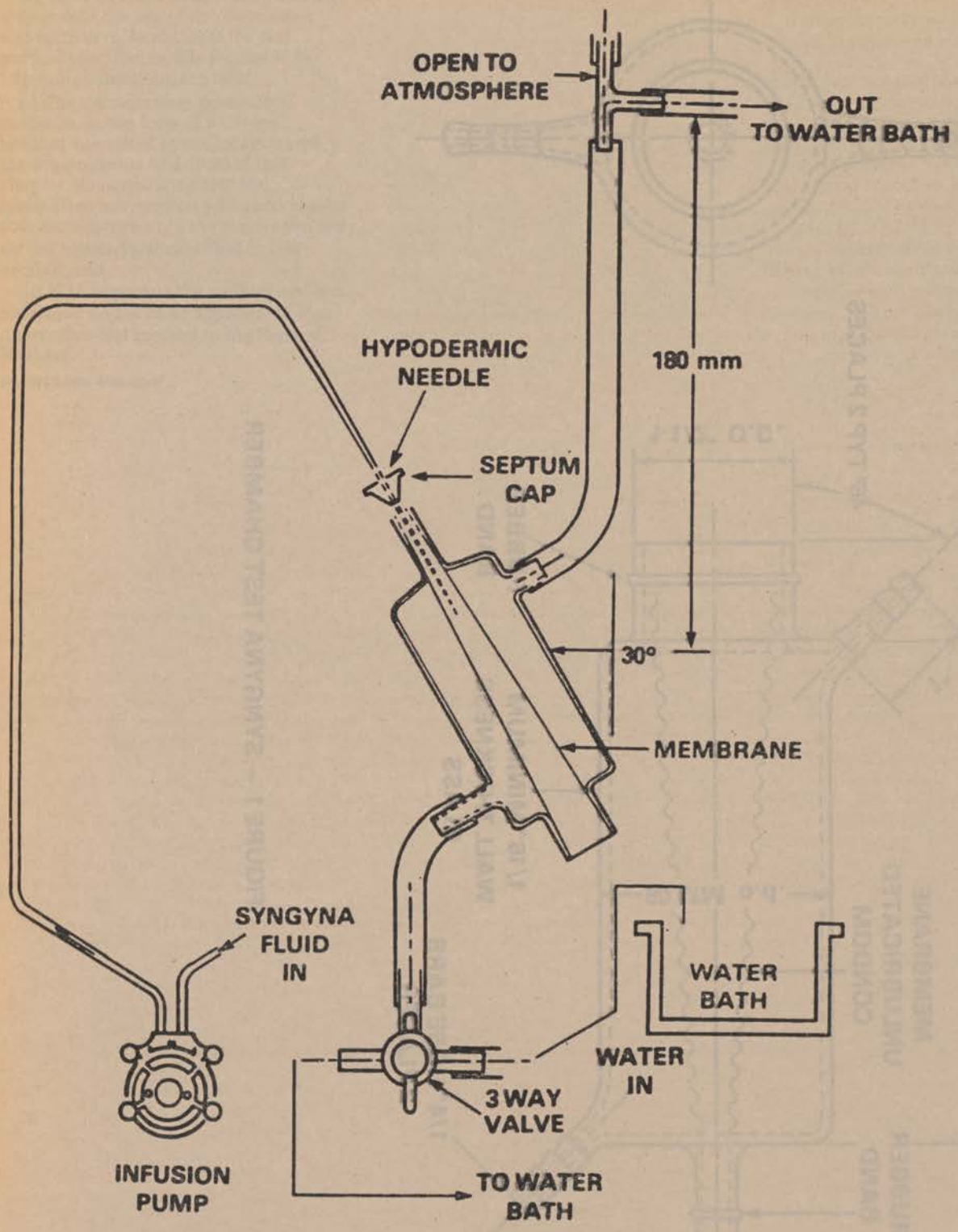

FIGURE 2—SYNGYNA TEST SET-UP

(g) Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section.

(h) Any menstrual tampon that is not labeled as required by paragraphs (c) and (d) of this section and that is initially introduced or initially delivered for introduction into commerce after December 20, 1982, or that is not labeled as required by paragraphs (c), (d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after (insert date 6 months after the date of publication of the final rule), is misbranded under sections 201(n) and 502(a) and (f) of the act.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: June 2, 1988.

[FR Doc. 88-21664 Filed 9-22-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
September 23, 1988

Part IV

Environmental Protection Agency

40 CFR Part 13

Claims Collection Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 13

[FRL-3364-9]

Claims Collections Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is revising its regulation at 40 Code of Federal Regulations, Chapter I by adding a new Part 13. This revision is necessary to implement the Debt Collection Act of 1982 (Pub. L. 97-365), the Federal guidelines for Agency debt collection issued by the Department of Justice and the General Accounting Office (4 CFR 101 *et seq.*) and the guidelines of the Office of Personnel Management (5 CFR 550 *et seq.*) on offsets against employee salaries.

This regulation will enhance EPA's ability to collect its debts and reduce delinquencies by providing guidance to its officers and employees on the procedures authorized by the Debt Collection Act of 1982.

DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Ray E. Spears, EPA Claims Officer, at (202) 382-4548.

SUPPLEMENTARY INFORMATION: On August 25, 1987, the U.S. Environmental Protection Agency (EPA) requested public comment on its proposed claims collection standards. We received comments from one commenter. The commenter questioned whether EPA continues to have "common law authority" to assess interest on delinquent debts owned by State and local governments. We reviewed the Government's position on the issue of the continued validity of common law authority for interest assessments. We have concluded that continued assessment of interest on State and local governments is consistent with the United States' position that the Debt Collection Act did not abrogate the assessment of interest on outstanding debts authorized outside of that statute.

The commenter also raised several questions concerning the relationship of the claims collection standards to EPA's procedures for grant resolutions under 40 CFR Part 30. The claims collection standards control EPA's collection, compromise, suspension, termination, offset and referral of delinquent debts. The regulation clearly states at § 13.4 that it does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures. As such, the regulation does not alter the grant requirements of Part 30. Accordingly, we do not find that further clarification of the regulation is needed.

Lastly, the commenter suggests that the concept of retroactive application precludes applying the procedures of the regulation to existing grants. As indicated above, the regulation controls EPA's collection and resolution of its debts, it does not address either the rights or available procedures of grantees under grant agreements; such rights and procedures are defined by EPA's grant regulations and the grant agreement itself. Accordingly, the issue of retroactive application of the regulation to grantees is not relevant and changes to the regulation have not been made.

The Administrator has determined that this final regulation is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Administrator further certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

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 EPA response to those comments are in the public docket for this rule making.

List of Subjects in 40 CFR Part 13

Claims, Government employees, Wages.

Dated: September 15, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Chapter I is amended by adding a new Part 13 to read as follows:

PART 13—CLAIMS COLLECTION STANDARDS

Authority: Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 *et seq.*; the Federal Claims Collection Standards, 4 CFR Parts 101-105; 5 U.S.C. 552a, 5512, and 5514.

Subpart A—General

§ 13.1 Purpose and scope.

This regulation prescribes standards and procedures for the Environmental Protection Agency's (EPA's) collection and disposal of debts. These standards and procedures are applicable to all debts for which a statute, regulation or

contract does not prescribe different standards or procedures. This regulation covers EPA's collection, compromise, suspension, termination, and referral of debts.

§ 13.2 Definitions.

(a) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, grants, contracts, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources. As used in this regulation, the terms "debt" and "claim" are synonymous.

(b) "Delinquent debt" means any debt which has not been paid by the date specified by the Government for payment or which has not been satisfied in accordance with a repayment agreement.

(c) "Debtor" means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(d) "Agency" means the United States Environmental Protection Agency.

(e) "Administrator" means the Administrator of EPA or an EPA employee or official designated to act on the Administrator's behalf.

(f) "Administrative offset" means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(g) "Creditor agency" means the Federal agency to which the debt is owed.

(h) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(i) "Employee" means a current employee of the Federal Government including a current member of the Armed Forces.

(j) "Person" means an individual, firm, partnership, corporation, association and, except for purposes of administrative offsets under Subpart C and interest, penalty and administrative costs under Subpart B of this regulation, includes State and local governments and Indian tribes and components of tribal governments.

(k) "Employee salary offset" means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) "Waiver" means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 13.3 Interagency claims.

This regulation does not apply to debts owed EPA by other Federal agencies. Such debts will be resolved by negotiation between the agencies or by referral to the General Accounting Office (GAO).

§ 13.4 Other remedies.

(a) This regulation does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, *e.g.*, resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this regulation for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

§ 13.5 Claims involving criminal activities or misconduct.

(a) The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General. That office has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the Administrator for further actions. Examples of activities which should be referred are matters involving fraud, anti-trust violations, embezzlement, theft, false claims or misyse of Government money or property.

(b) The Administrator will not administratively compromise, terminate, suspend or otherwise dispose of debts involving criminal activity or misconduct without the approval of DOJ.

§ 13.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the $20,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 13.7 Omission not a defense.

Failure by the Administrator to comply with any provision of this regulation is not available to a debtor as a defense against payment of a debt.

Subpart B—Collection

§ 13.8 Collection rule.

(a) The Administrator takes action to collect all debts owed the United States arising out of EPA activities and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The Administrator may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (*e.g.*, to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The Administrator maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information from a debt file relating to an individual may be disclosed only for purposes which are consistent with this regulation, the Privacy Act of 1974 and other applicable law.

§ 13.9 Initial notice.

(a) When the Administrator determines that a debt is owed EPA, he provides a written initial notice to the debtor. Unless otherwise provided by agreement, contract or order, the initial notice informs the debtor:

(1) Of the amount, nature and basis of the debt;

(2) That payment is due immediately upon receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30

days of the date mailed or hand-delivered;

(4) That interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs may be assessed against a delinquent debt;

(5) Of any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt), and of the possibility of assessment of interest, penalty and administrative costs; and

(6) The address, telephone number and name of the person available to discuss the debt.

(b) EPA will respond promptly to communications from the debtor. Response generally will be within 20 days of receipt of communication from the debtor.

(c) Subsequent demand letters also will advise the debtor of any interest, penalty or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 13.14), a collection agency (see § 13.13) or to DOJ (see § 13.33) if it is not paid.

§13.10 Aggressive collection actions; documentation.

(a) EPA takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of EPA's activities. EPA cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented in the claim file, and the bases for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required § 13.33, is retained in the appropriate debt file.

§13.11 Interest, penalty and administrative costs.

(a) *Interest*

EPA will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the date of the initial notice to the debtor. EPA will not recover interest where the debt is paid within 30 days of the date of the notice. EPA will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interest of the Government. EPA will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The Administrator may extend the 30-day period for payment where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(3) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be assessed on interest charges, administrative costs or later payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs. Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by § 13.12.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waiver.* (1) The Administrator may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(i) Waiver is justified under the criteria of § 13.25;

(ii) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(iii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(2) A decision to waive interest, penalty charges or administrative costs may be made at any time prior to payment of a debt. However, where these charges have been collected prior to the waiver decision, they will not be refunded. The Administrator's decision to waive or not waive collection of these charges is a final agency action.

§ 13.12 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; *except,* that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 13.13 Contracting for collection services.

EPA will use private collection services where it determines that their use is in the best interest of the Government. Where EPA determines that there is a need to contract for collection services it will—

(a) Retain sole authority to resolve any dispute by the debtor of the validity of the debt, to compromise the debt, to suspend or terminate collection action, to refer the debt to DOJ for litigation, and to take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (*e.g.*, the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Internal Revenue Service;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to EPA, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 13.14 Use of credit reporting agencies.

EPA reports delinquent debts to appropriate credit reporting agencies.

(a) EPA provides the following information to the reporting agencies:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information, EPA will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested, that:

(i) The designated EPA official has reviewed the claim and has determined that it is valid and overdue;

(ii) That within 60 days EPA intends to disclose to a credit reporting agency the information authorized for disclosure by this subsection; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in EPA's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting agency, EPA will provide a written statement to the reporting agency that all required actions have been taken. Additionally, EPA will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amounts of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate EPA official. The credit reporting agency will exclude the debt from its reports until EPA certifies in writing that the debt is valid.

§ 13.15 Taxpayer information.

(a) The Administrator may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to credit reporting agencies only for the purpose of their use in preparing a commercial credit report on the taxpayer for use by EPA.

§ 13.16 Liquidation of collateral.

Where the Administrator holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. EPA will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The Administrator will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

§ 13.17 Suspension or revocation of license or eligibility.

When collecting statutory penalties, forfeitures, or debts for purposes of enforcement or compelling compliance, the Administrator may suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Administrator may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with EPA or engaging in programs EPA sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The Administrator will report the failure of any surety to honor its obligations to the Treasury Department for action under 6 U.S.C. 11.

§ 13.18 Installment payments.

(a) Whenever, feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment. However, where the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the Administrator agrees to accept payment by installments, the Administrator may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the Administrator determines that a longer period is required. Installment payments of less than $50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify. If the debt is unsecured, the Administrator may require the debtor to execute a confess-judgment note with a tax carry-forward and a tax carry-back provision. Where the Administrator secures a confess-judgment note, the Administrator will provide the debtor a written explanation of the consequences of the debtor's signing the note.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the Administrator determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the Administrator will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

§ 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

(a) The Administrator may periodically compare EPA's costs in handling debts with the amounts it collects.

(b) The Administrator may periodically consider the need, feasibility, and cost effectiveness of automated debt collection operations.

(c) The Administrator may establish internal controls to identify the causes of overpayments and delinquencies and may issue procedures to prevent future occurrences of the identified problems.

SUBPART C—Administrative Offset

§ 13.20 Administrative offset of general debts.

This subpart provides for EPA's collection of debts by administrative offset under section 5 of the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authorities and the

common law. It does not apply to offsets against employee salaries covered by §§ 13.21, 13.22 and 13.23 of this subpart. EPA will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract.

EPA will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The Administrator collects debts by administrative offset it—

(i) The debt is certain in amount;

(ii) Efforts to obtain direct payment from the debtor have been, or would most likely be, unsuccessful or the Administrator and the debtor agree to the offset;

(iii) Offset is not expressly or implicitly prohibited by statute, regulation or contract;

(iv) Offset is cost-effective or has significant deterrent value;

(v) Offset does not substantially impair or defeat program objectives; and

(vi) Offset is best suited to further and protect the Government's interest.

(2) The Administrator may, in determining the method and amount of the offset, consider the financial impact on the debtor.

(b) *Interagency offset.* The Administrator may offset a debt owed to another Federal agency from amounts due or payable by EPA to the debtor, or may request another Federal agency to offset a debt owed to EPA. The Administrator may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due a debtor where reasonable attempts to obtain payment have failed. Interagency offsets from employee salaries will be made in accordance with the procedures contained in §§ 13.22 and 13.23.

(c) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the Administrator on a case-by-case basis.

(d) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate EPA official determines that a debt exists (e.g., contracting officer, grant award official, etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a payment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when EPA requests offset from money held by another agency.

(e) *Pre-offset notice.* Before initiating offset, the Administrator sends the debtor written notice of:

(1) The basis for and the amount of the debt as well as the Agency's intention to collect the debt by offset if payment or satisfactory response has not been received within 30 days of the notice;

(2) The debtor's right to submit an alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request review of the determination of indebtedness or to apply for waiver under any available statute or regulation; and

(3) Applicable interest, penalty charges and administrative costs.

(f) *Alternative repayment.* The Administrator may, at the Administrator's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the Administrator may consider such factors as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The Administrator may require financial documentation from the debtor before considering the repayment arrangement.

(g) *Review of administrative determination.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the Administrator. The Administrator may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The Administrator may administratively offset a debt prior to the completion of a formal or informal review where the determines that:

(i) Failure to take the offset would substantially prejudice EPA's ability to collect the debt; and

(ii) The time before the first offset is to be made does not reasonably permit the completion of the review procedures. (Offsets taken prior to completion of the review process will be followed promptly by the completion of the process. Amounts recovered by offset but later found not to be owed will be refunded promptly.)

(3) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(4) The Administrator may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(5) The Administrator will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

§ 13.21 Employee salary offset—general.

(a) *Purpose.* This section establishes EPA's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed EPA and debts owed to other Federal agencies by EPA employees. This section does not apply to debts owed EPA arising from travel advances under 5 U.S.C. 5705, employee training expenses under 5 U.S.C. 4108 and to other debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to EPA's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR Part 550, Subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 4 CFR Parts 101–105, the Federal Claims Collection Standards.

§ 13.22 Salary offset when EPA is the creditor agency.

(a) *Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, EPA will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States which will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements which are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to entitlement to notice, hearing, written response and final decision.* The procedural requirements of paragraph (a) of this section are not applicable to any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by certified mail (return receipt requested), and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate EPA official and will be included in the employee's personnel file and documented in the EPA payroll system);

(7) The right to a hearing conducted by a hearing official not under the control of the Administrator, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalty and administrative costs and the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. Chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(13) That amounts paid or deducted for the debt, except administrative costs and penalty charges where the entire debt is not waived or terminated, which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written request directly with the Director, Financial Management Division (PM–226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The request must state the bases upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by EPA within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses which support his/her position to the Director, Financial Management Division, within 15 days of the date of the request for a hearing. The Director, Financial Management Division, will arrange for the services of a hearing official not under the control of the Administrator and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under these procedures.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g.,

5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump-sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the Administrator and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than $25 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump-sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, EPA will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (*e.g.*, retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 13.20.

(n) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency prior to repaying a debt owed to EPA, the following action will be taken:

(1) The appropriate debt-claim form specified by the Office of Personnel Management (OPM) will be completed and certified to the new paying office by EPA. EPA will certify: That the employee owes a debt; the amount and the basis for the debt; the date on which payment is due; the date the Government's rights to collect the debt first accrued; and that EPA's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) The new paying agency will be advised of the amount which has already been collected, the number of installments and the commencement date for the first installment, if other than the next officially established pay period. EPA will also identify to the new paying agency the actions it has taken and the dates of such actions.

(3) EPA will place or will arrange to have placed in the employee's official personnel file the information required by paragraphs (n) (1) and (2) of this section.

(4) Upon receipt of the official personnel file from EPA, the new paying agency will resume collection from the employee's current pay account and will notify both the employee and EPA of the resumption.

(o) *Interest, penalty and administrative cost.* EPA will assess interest and administrative costs on debts collected under these procedures. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) A processing and handling charge will be assessed on debts collected through salary offset under this section. Where offset begun prior to the employee's receipt of the 30-day written notice of the proposed offset, processing and handling costs will only be assessed after the expiration of the 30-day notice period and after the completion of any hearing requested under paragraph (d) of this section or waiver consideration under paragraph (g) of this section.

(2) Interest will be assessed on all debts not collected within 30 days of either the date of the notice where the employee has not requested a hearing within the allotted time, completion of a hearing pursuant to paragraph (d) of this section, or completion of waiver consideration under paragraph (g) of this section, whichever is later. Interest will continue to accrue during the period of the recovery.

(3) Deductions by salary offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 120 days from the date of notice to the debtor and penalty assessments have not been suspended because of waiver consideration by EPA.

(p) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights which the employee may have under either these procedures or any other provision of law.

(q) *Refunds.* EPA will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(r) *Time limit for commencing recovery by salary setoff.* EPA will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

§ 13.23 Salary offset when EPA is not the creditor agency.

The requirements below apply when EPA has been requested to collect a debt owed by an EPA employee to another Federal agency.

(a) *Format for the request for recovery.* (1) The creditor agency must complete fully the appropriate claim form specified by OPM.

(2) The creditor agency must certify to EPA on the debt claim form: The fact that the employee owes a debt; the date that the debt first accrued; and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM and send it to the Director, Financial Management Division (PM-226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) If the collection is to be made in installments, the creditor agency must also advise EPA of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(4) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this information is attached to the claim form, the creditor agency must indicate the actions it took under its procedures for salary offset and the dates of such actions.

(b) *Processing of the claim by EPA*—(1) *Incomplete claims.* If EPA receives an improperly completed claim form, the claim form and all accompanying material will be returned to the requesting (creditor) agency with notice that OPM procedures must be followed and a properly completed claim form must be received before any salary offset can be taken. The notice should identify specifically what is needed from the requesting agency for the claim to be processed.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. EPA will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. EPA will not assess a handling or any other related charge to cover the cost of its processing the claim.

(c) *Employees separating from EPA before a debt to another agency is collected*—(1) *Employees separating from Government service.* If an employee begins separation action before EPA collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from EPA in accordance with § 13.22(1);

(ii) If the total amount of the debt cannot be recovered, EPA will certify to the creditor agency and the employee the total amount of EPA's collection; and

(iii) If EPA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it will forward a copy of the claim form to the agency responsible for making such payments as notice that a debt is outstanding. EPA will also send a copy of the claim form to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency before EPA collects the total amount due the creditor agency, the following actions will be taken:

(i) EPA will certify the total amount of the collection made on the debt; and

(ii) The employee's official personnel folder will be sent to the new paying agency. (It is the responsibility of the creditor agency to ensure that the collection is resumed by the new paying agency.)

Subpart D—Compromise of Debts

§ 13.24 General.

EPA may compromise claims for money or property where the claim, exclusive of interest, penalty and administrative costs, does not exceed $20,000. Where the claim exceeds $20,000, the authority to accept the compromise rests solely with DOJ. The Administrator may reject an offer of compromise in any amount. Where the claim exceeds $20,000 and EPA recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for EPA's recommendation. EPA refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures. EPA refers offers of compromise for claims of $20,000 to $100,000 to the United States Attorney in whose judicial district the debtor can be found. If the Administrator has a debtor's firm written offer for compromise which is substantial in amount but the Administrator is uncertain as to whether the offer should be accepted, he may refer the offer and the supporting data to DOJ or GAO for action.

§ 13.25 Standards for compromise.

(a) EPA may compromise a claim pursuant to this section if EPA cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the Administrator may consider, among other factors, the following:

(1) *Individual debtors.* (i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor;

(v) The availability of assets or income which may be realized by enforced collection proceedings; or

(vi) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(2) *Municipal and quasi-municipal debtors.* (i) The size of the municipality or quasi-municipal entity;

(ii) The availability of current and future resources sufficient to pay the debt (*e.g.*, bonding authority, rate adjustment authority, or taxing authority); or

(iii) The ratio of liabilities (both short and long term) to assets.

(3) *Commercial debtors.* (i) Ratio of assets to liabilities;

(ii) Prospects of future income or losses; or

(iii) The availability of assets or income which may be realized by enforced collection proceedings.

(b) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is substantial doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, EPA will give proportionate weight to the likely amount of court costs and attorney fees the Government

may incur if it is unsuccessful in litigation.

(c) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, EPA may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the Administrator determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confess-judgment agreement which accelerates payment of the balance due upon default.

§ 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

Subpart E—Suspension of Collection Action

§ 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed $20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension. Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding $20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of $20,000 to $100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator may suspend collection activities on debts of $20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

Subpart F—Termination of Debts

§ 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed $20,000. If the debt exceeds $20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of $20,000 but $100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

§ 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

Subpart G—Referrals

§ 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of $100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

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Federal Register

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Friday, September 23, 1988

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CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List September 21, 1988.

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 2560/Pub. L. 100-435

Hunger Prevention Act of 1988. (Sept. 19, 1988; 102 Stat. 1645; 35 pages) Price: $1.25

H.R. 4783/Pub. L. 100-436

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989. (Sept. 20, 1988; 102 Stat. 1680; 37 pages) Price: $1.25

H.R. 1270/Pub. L. 100-437

To award a congressional medal to Mrs. Jesse Owens, and for other purposes. (Sept. 20, 1988; 102 Stat. 1717; 1 page) Price: $1.00

H.R. 5143/Pub. L. 100-438

District of Columbia Revenue Bond Act of 1988. (Sept. 20, 1988; 102 Stat. 1718; 2 pages) Price: $1.00

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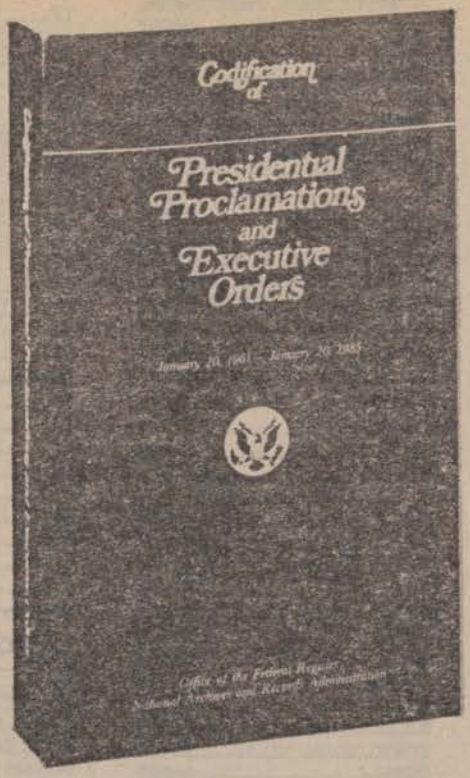

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